



IMPACTING DAVIS-BACON WAGE DETERMINATIONS

A Guide for Contributing to the Accuracy of Published Prevailing Wage Rates in Construction

By: Tamika C. Carter, Director of Construction HR

Contractors and other interested parties have the ability to impact the wages that are reported on construction wage determinations. Wage determinations are listings of wage rates and fringe benefit rates for each classification of laborers and mechanics established by the U.S. Department of Labor (DOL) as prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential). The Davis Bacon and Related Acts (referred to simply as “Davis-Bacon” hereafter) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or covered federally assisted contracts in excess of \$2,000 to pay their workers no less than the rates set forth in those wage determinations. The Davis-Bacon “prevailing wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.

This guide will explain how DOL establishes Davis-Bacon wage and fringe benefit rates, how participation and involvement in the survey process by contractors and interested parties can make a difference, and how to challenge a wage determination.

How DOL Establishes Davis-Bacon Wage and Fringe Benefit Rates

Davis-Bacon prevailing wages are established by the Secretary of Labor by trade classification, type of work and geographic location. Prevailing wages are primarily set using data submitted voluntarily by means of Davis-Bacon wage surveys (form WD-10) or adopting wages paid pursuant to collective bargaining agreements (CBAs.) When data provided as a result of a survey or CBA are insufficient, others means are used to determine federal prevailing wage rates. For example, with regard to highway construction, DOL now uses data collected from Davis-Bacon certified payrolls to determine the federal prevailing wage rate in an area.

Data Collection and Analysis

DOL uses several procedures to determine if it has sufficient information from collected and verified surveys to designate a wage rate as prevailing. In cases where the prevailing rate is also a collectively bargained, or union rate, the rate is determined to be “union-prevailing” and adopted as the overall prevailing wage rate. This typically occurs when either the union rate is indeed prevailing, or when survey data provided by open-shop contractors is insufficient in determining a true prevailing wage rate.

The failure of construction contractors to provide sufficient data through the survey process can have long-lasting consequences on open-shop contractors if the union rate is erroneously adopted as the prevailing wage rate in an area when the open shop rate is actually prevailing. Once the union rates are used, the wage determination can be updated as often as the CBA is updated, sometimes multiple times within a year. Wage rates that are not adopted from CBAs can be updated only when a new survey is conducted, which at a minimum could be once every three years according to DOL's survey frequency goal. As a result, open-shop contractors would be required to pay, often higher, union-prevailing wage rates that increase periodically as CBAs are updated.

To issue a wage determination for a construction type in a given area, DOL must have sufficient data to determine prevailing wages for at least 50% of key job classifications. Key job classifications, according to DOL, are those determined necessary for one or more of the four construction job types.

After collecting survey data from contractors, if DOL finds that one rate is paid to a majority (over 50%) of the workers in a specific craft in a specific area, then that rate becomes the Davis-Bacon prevailing wage rate.

Example:

<u>Number of Carpenters</u>	<u>Rates of Pay</u>
15	\$22.00
5	\$20.80
45	\$23.50
10	\$18.35
<u>7</u>	\$20.00
82 (total)	

The prevailing rate in this case is \$23.50, since over 50% (45 out of 82) receive the same rate.

If a majority rate cannot be determined, DOL will use a weighted average rate. This is based on the total amount of wages paid divided by the total number of workers included in the survey information.

Example:

<u>Number of Carpenters</u>	<u>Rates of Pay</u>
15	\$22.00
5	\$20.80
25	\$23.50
10	\$18.35
<u>7</u>	\$20.00
62 total	\$1,345.00

$$\$1,345 \div 62 = \$21.69$$

The prevailing rate in this case is \$21.69, calculated by dividing the total amount paid per hour for each worker (\$1,345) by the total number of workers (62).

Area Practice and Jurisdiction

By statute, DOL must issue wage determinations based on similar projects in the “civil subdivision of the state” in which the federal work is to be performed. DOL’s regulations state that the civil subdivision will be the county (or, in Louisiana, parish), unless there are insufficient wage data. When data from a county are insufficient to issue a wage rate for a job classification, a group of counties is created. When data are still insufficient, DOL includes data from contiguous counties, combined into “groups” or “super-groups” of counties, until sufficient data are available to meet threshold guidelines to make a prevailing wage determination.

Expansion to include other counties, if necessary, may continue until data from all counties in the state are combined. Counties are combined based on whether they are metropolitan or rural, and cannot be mixed.

Making a Difference in the Survey Outcome

Interested parties, such as AGC chapters, may not have much influence over the reporting of wages that are paid through CBAs, at least those not involved in local collective bargaining negotiations, but they can have a significant amount of influence during the survey process.

The Survey Process

DOL periodically sends out surveys to both federal and nonfederal contractors and interested third parties requesting information on the wages and fringe benefits that are paid for various types of work performed.

Previously, DOL determined which states it would survey each year based on a variety of factors, including the date of the state’s most recent survey, planned federal construction, and complaints or requests from interested parties on current wage determinations. Because this process did not guarantee a specific date for surveying, wage determinations went years without changes to reflect current conditions of the market. In recent years, DOL changed its survey selection process and now has a goal of surveying all construction types in each state every three years. As a result, many states are now seeing sudden and dramatic increases in Davis-Bacon wage rates.

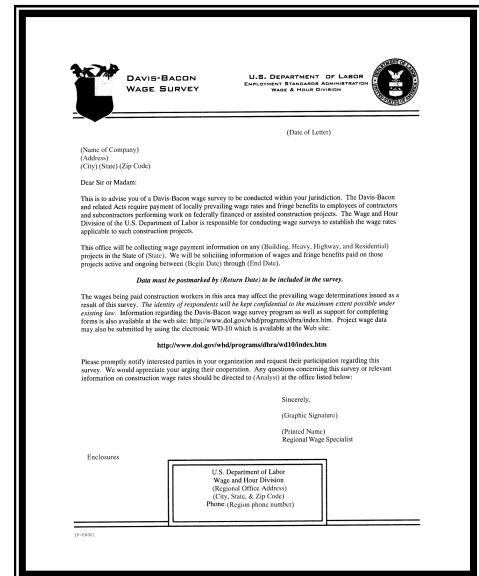
Survey Participation

A report prepared by the U.S. Government Accountability Office on methodological changes needed to improve wage surveys, states that according to DOL’s Office of Inspector General (OIG), in a 2004 sample of collected wage survey forms (known as WD-10s), almost 100% of the forms reviewed contained contractor errors. In addition, the OIG reported that only contractors with the personnel to complete WD-10s typically respond to the survey requests and some companies choose not to participate in order to avoid involvement with the government. The OIG also found that higher participation by either unions or nonunion contractors could potentially weight the wage and benefit rates in their favor. The report noted that “of [DOL’s] published wage rates as of November 12, 2010, about 63% were union-prevailing; in contrast, [only] about 14% of construction workers nationwide were represented by unions in 2010, according to BLS figures.” This is evidence of the importance of contractor participation in the survey process in order to determine accurate prevailing wage rates. The report can be found at <http://www.gao.gov/assets/320/316836.pdf>.

Increasing Survey Participation Among Contractors

There are several actions that interested parties can take to increase survey participation among contractors – both federal and non-federal – to help improve the accuracy of wage determinations.

1. **Get advanced notice** – Once a survey is scheduled, DOL sends a letter to interested parties informing them of the upcoming survey. Interested parties may contact their DOL Regional Wage Specialist to ask to be added to the distribution list to receive notification when a Davis-Bacon wage survey is planned. Scheduled surveys can also be found at www.dol.gov/whd/programs/dbra/surveys.htm.
2. **Request a pre-survey briefing** – DOL frequently conducts *free* pre-survey briefings at its offices to clarify survey procedures and provide information on how data should be submitted in order to be considered valid. The presentation also includes information on how wage and fringe benefit data are obtained and compiled, sufficiency requirements for issuing rates and wage determinations, and the process for filing conformances (requests for missing job classifications) and wage determination appeals.



The image shows a formal letterhead for the Davis-Bacon Wage Survey. It includes the U.S. Department of Labor logo and the Wage and Hour Division seal. The letter is addressed to a company and contains the following text:

(Date of Letter)

(Name of Company)
(Address)
(City/State) (Zip Code)

Dear Sir or Madam:

This is to advise you of a Davis-Bacon wage survey to be conducted within your jurisdiction. The Davis-Bacon and related Acts require payment of locally prevailing wage rates and fringe benefits to employees of contractors and subcontractors performing work on federally financed or assisted construction projects. The Wage and Hour Division of the U.S. Department of Labor is responsible for conducting wage surveys to establish the wage rates applicable to such construction projects.

This office will be collecting wage payment information on any (Building, Heavy, Highway, and Residential) projects in the State of (State). We will be soliciting information of wages and fringe benefits paid on those projects active and ongoing between (Begin Date) through (End Date).

Data must be postmarked by (Return Date) to be included in the survey.

The wages being paid construction workers in this area may affect the prevailing wage determinations issued as a result of this survey. The identity of respondents will be kept confidential to the maximum extent possible under existing law. Information regarding the Davis-Bacon wage survey program as well as support for completing forms is also available at the web site: <http://www.dol.gov/whd/programs/dbra/index.htm>. Project wage data may also be submitted by using the electronic WH-11 which is available at the Web site: <http://www.dol.gov/whd/programs/dbra/dbr11index.htm>

Please promptly notify interested parties in your organization and request their participation regarding this survey. We would appreciate your urging their cooperation. Any questions concerning this survey or relevant information on construction wage rates should be directed to (Analyst) at the office listed below:

Sincerely,
(Graphic Signature)
(Printed Name)
Regional Wage Specialist

Enclosure

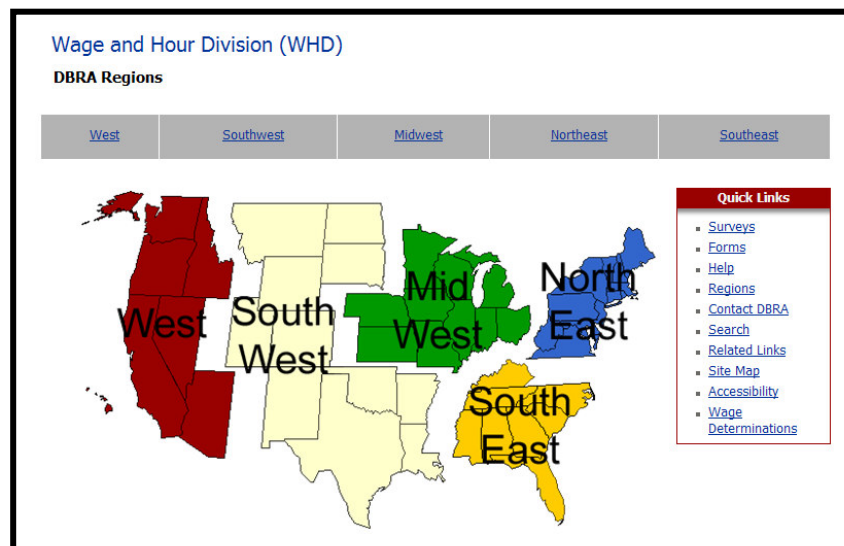
U.S. Department of Labor
Wage and Hour Division
(Registered Office Address)
(City, State, & Zip Code)
(Phone) (Region phone number)

12-1440

Survey announcement letter to interested parties

DOL also conducts these briefings at off-site locations. This is currently one of DOL's primary outreach efforts and is a great opportunity for organizations to educate contractors in a safe zone – either in person or via webinar for greater attendance.

If DOL does not contact your organization directly, you can contact a Regional Wage Specialist to request a briefing. Contact information can be found on the DOL website at www.dol.gov/whd/programs/dbra/regions.htm.

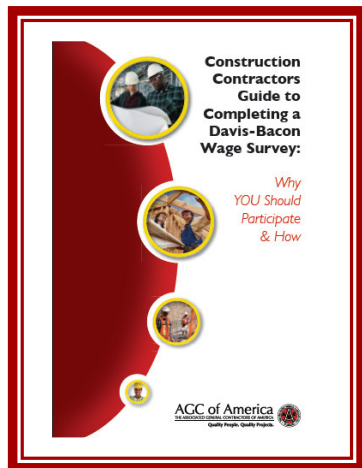


www.dol.gov/whd/programs/dbra/regions.htm

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3. **Encourage contractors to participate** – All contractors might not receive a letter from DOL requesting participation in a wage survey, so it is important for the interested party to notify as many contractors in the survey area as possible, both federal and nonfederal. You could send a letter from your organization to area contractors asking them to participate in the survey and explaining why it is important to do so.



Be sure to include, with each letter, a copy of AGC's *Construction Contractors Guide to Completing a Davis-Bacon Wage Survey: Why YOU Should Participate and How*. The customizable pamphlet includes details about the importance of completing the survey form, how the data will be used, and detailed instructions for completion. AGC chapters can also include their chapter logo and contact information on the pamphlet itself. The guide can be downloaded at www.agc.org/wagesurveyguide.

Remember to include reminders about the submission deadline along with a copy of the survey form. Also, direct survey participants to the electronic WD-10 found at www.dol.gov/whd/programs/dbra/wd10/index.htm.

Form WD-10 Davis-Bacon Wage Survey Report of Construction Contractor's Wage Rates

U.S. Department of Labor Employment Standards Administration Wage and Hour Division

1. Please indicate the full name, address and phone number of the General/Prime Contractor or Subcontractor reporting wage data for the project indicated on this form.

NAME OF CONTRACTOR(SUB)CONTRACTOR

ADDRESS

CITY STATE ZIP

PHONE EXTENSION FAX

2. Subcontract information

LAST NAME AND FIRST NAME

TITLE

ORGANIZATION

PHONE EXTENSION FAX

EMAIL ADDRESS

3. Please indicate the complete name of the project, project description (area within a building, highway, section, sports area, number and address, and name of General/Prime Contractor if different from Item 1).

FULL NAME OF PROJECT

PROJECT DESCRIPTION

ADDRESS

CITY

STATE COUNTY

NAME OF GENERAL / PRIME CONTRACTOR

INSTRUCTIONS: Please enter the information in the white boxes and fill in the circles as appropriate. You can enter more than one rate on the form for each category. Detailed instructions for completing this form (or obtaining additional copies, as well as instructions for every field on this form are found on a separate instruction page.

NOTE: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon related laws. The submission of wage data is encouraged but is voluntary. This is an optional form provided to assist contractors in completion of wage data. Respondents may use an alternate form if all the information requested is included. The source of the information and the contractor to the maximum extent possible under existing law. Purposes are not required to respond to the collection of information unless it displays a currently valid OMB control number.

4. Federal if project is subject to a Federal Davis-Bacon or state wage determination

FEDERAL STATE NEITHER

5. Please select one choice of right.

I AM THE GENERAL/PRIME CONTRACTOR SUBCONTRACTOR

6. Please provide a list, on the enclosed form, of any subcontractors you used on this project, including addresses and phone numbers.

THE LIST IS BEING RETURNED WITH THIS FORM

THE LIST WAS PROVIDED EARLIER

THE LIST IS NO SUBCONTRACTORS

7. Please fill in the area indicating the type of construction for this project being reported and all relevant details. If the project has more than one type of construction, please check the appropriate box.

APARTMENT BUILDING HOTEL/HOTEL FACILITY

BICYCLE PATH MULTIFAMILY HOUSING FACILITY

SINGLE OVERHANGING GARAGE OFFICE/COMMERCIAL BUILDING

BRIDGE (ANY OTHER TYPE) PAVING

DORMITORY PARKING LOT

HOSPITAL PLAYGROUND

OTHER

8. If you selected APARTMENT, NURSING FACILITY, or RESIDENTIAL:

NUMBER OF STORIES KITCHEN IN EACH UNIT? (If yes, fill in circles)

BATH IN EACH UNIT? (If yes, fill in circles)

Form WD-10 Davis-Bacon Wage Survey Page 2 (see reverse for instructions)

7. Classifications and Wage Survey Information. In the question below, check the appropriate box, then fill in the corresponding circles below the brackets. Regarding the location of hourly and additional benefit categories, if appropriate, fill in how many days are paid annually.

8. If you only supplied building materials, and no employee worked on the project, Item 8 is the only section you may skip the rest of this question, and sign and date the form.

9. ONLY SUPPLIES MATERIALS

CLASSIFICATION PEAK WEEK ENDING DATE HOURLY RATE

TYPE OF WORK PERFORMED # OF EMPLOYEES PAID UNDER A CBAY

CLASSIFICATION PEAK WEEK ENDING DATE HOURLY RATE

TYPE OF WORK PERFORMED # OF EMPLOYEES PAID UNDER A CBAY

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CLASSIFICATION PEAK WEEK ENDING DATE HOURLY RATE

TYPE OF WORK PERFORMED # OF EMPLOYEES PAID UNDER A CBAY

8. COMMENTS OR REMARKS

YOUR SIGNATURE

DATE

HEALTH CARE BENEFIT PERSONNEL SETS APPRENTICE TRAINING VACATION HOLIDAY ADDITIONAL PREMIUM

\$ per EMP per % OF HOURLY RATE \$ per EMP per % OF HOURLY RATE \$ per EMP per % OF HOURLY RATE \$ per EMP per % OF HOURLY RATE \$ per EMP per % OF HOURLY RATE

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DESCRIPTION OF ANY ADDITIONAL FRINGE (SEE LAST COLUMN OF ITEM 7)

WD-10 (Davis-Bacon wage survey form)

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Challenging a Wage Determination

The opportunity to influence Davis-Bacon prevailing wage rates does not end once DOL issues a wage determination. Interested parties with good cause to believe that the wage determination is inaccurate do have some prospects for recourse.

Efforts by Contractors

A contractor may challenge the wage determination issued by DOL or identified by the awarding agency by filing a written appeal with DOL's Wage and Hour Administrator.

In these instances, it is not sufficient for a contractor to merely complain that the prevailing wage rate is too high and should be adjusted. Rather statistical data must be submitted with a letter requesting a review.

For example: If plumbing, pipefitting and sheet metal work are all contained under one Davis-Bacon trade classification, the contractor could show through local CBAs, industry surveys, statistical data from the Bureau of Labor Statistics and other independent companies that the classification of plumber-pipefitter should be a separate category from that of sheet metal worker (HVAC), with distinct prevailing practices, wage rates and benefits.

Efforts by Others

Other interested parties that wish to challenge a wage determination must provide similar data. One way to provide the statistical data necessary to present to DOL is to conduct an independent prevailing wage survey of the survey area. It is important that the survey be administered and analyzed by an impartial third party that specializes in conducting and analyzing compensation surveys of this nature. A survey conducted directly by an organization like an AGC chapter, without use of such a third party, might be considered invalid and might raise antitrust concerns.

Getting a Response

The letter and supporting documentation should be submitted to DOL's Wage and Hour Administrator at:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

If the decision of the Administrator is not favorable, an appeal may be directed to the Administrative Review Board (formerly the Wage Appeals Board.) Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

All decisions by the Administrative Review Board are final.

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Getting Federal and State Agencies and Officials Involved

Sometimes, a battle is easier fought with the support of others. Depending on the political environment in which you operate, you may want to contact your federal and/or state government officials (e.g., member of Congress or state secretary of transportation) to explain how the inaccurate reporting of construction wages on wage determinations has affected the way your company (or the companies that your organization represents) conducts business and, in turn, how this affects government contracting and spending. In this era of constrained budgets and enhanced focus on fiscal responsibility, these government officials may be motivated to intervene with DOL on your behalf.

More Information

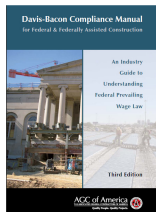
AGC of America offers several other resources on the Davis-Bacon and Related Acts covering a variety of compliance, as well as wage determination, issues.



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Primary Category: Compensation Secondary Category: Davis-Bacon Act



Davis-Bacon Compliance Manual, Third Edition - Copyright ©2010

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This must-have manual is user-friendly and includes modern examples, references to recent court cases and sample formulas in a contractor-friendly format.



The Davis-Bacon and Related Acts: The Ins and Outs of Federal Prevailing Wage Law

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Part 1: Introduction to the Davis-Bacon Act, Wage Determinations and Compliance Principles

<http://store.agc.org/Distance-Learning/Webinars-OnDemand/WB71>

Part 2: Compliance Principles cont., Reporting Requirements & Enforcement

<http://store.agc.org/Distance-Learning/Webinars-OnDemand/WB71B>

The Davis-Bacon Act Today: What's NEW for Federal Contractors?

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Part 1: What's NEW with Wage Determinations?

<http://store.agc.org/Distance-Learning/Audio-Conferences-Download/WB113>

Part 2: What's NEW with Enforcement?

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