

THE DAVIS-BACON ACT PROTECTING WAGE EQUALITY SINCE 1931

Since its enactment in 1931, the Davis-Bacon Act (DBA) has provided critical wage protections for construction workers and has guaranteed a level playing field for construction contractors bidding on federal projects.

The federal government constructs buildings, builds dams, and funds housing projects. State highway departments pave roads with federal funds from the Federal Highway Administration. Local and state governments build water treatment plants, modernize schools, and renovate airports with the support of federal funds.

The DBA ensures that construction workers on federal or federally assisted construction projects will not see their wages and benefits undercut by government spending practices. The DBA exists to prevent the infusion of federal dollars into local communities from depressing local wages. DBA provides a wage floor that protects construction workers' pay, and sets a level playing field for contractors who are bidding on federally funded projects. As important, these standards enable local contractors and their employees to compete for local projects by protecting against under-bidding by contractors from other areas who might import workers or offer the same jobs for less pay.

CONFORMANCES

The Department of Labor's Wage and Hour Division (WHD) determines locally prevailing wage and fringe benefit rates through the conduct of wage surveys on government contracts covered by the Davis-Bacon Act. Published wage determinations for each county in the country list the wages and benefits that have been found to be prevailing for each classification of worker for which there is sufficient wage payment data.

Data collection for these surveys is dependent upon the voluntary submission of information from contractors and third parties that have performed construction work within the geographic scope of the wage survey. At times, the survey collection efforts will not yield sufficient data to establish a rate for every existing classification of work. When this happens, WHD cannot establish a rate for that job classification on the wage determination.

When a contractor performs work on a DBA-covered contract and the applicable wage determination does not provide a rate for a classification of work to be performed, the needed classification and wage rate must be added *in conformance* to the contract wage determination. This is the conformance process.

Accurate and current wage rates are the cornerstone of the DBA's protections, and provide the framework around which prevailing wage requirements protect contractors, employees, and local economies. The Wage and Hour Division has been working to

improve opportunities for stakeholder participation; to improve outreach before surveys; and to improve the quality of the wage determinations that result.

Below are what WHD anticipates will be frequently asked questions about our revised conformance practice, which better reflects our regulatory requirements and was implemented to support improvements in the wage determination process overall. The attached All Agency Memorandum describes the process in detail. Please refer to this memorandum for an explanation of the requirements, and for examples of different scenarios associated with conformance requests. WHD is available to provide further assistance if agencies request additional support under this revised process.

Frequently Asked Questions

Davis-Bacon and Related Acts (DBRA) Conformance Process and the “Reasonable Relationship” Regulatory Requirement

1. What is a conformance and why is it necessary?

A conformance is the addition of a classification of laborers or mechanics and the corresponding wage rate (hourly rate and fringe benefits) not listed on a DBRA wage determination that is incorporated into a DBRA covered contract. A conformance under the governing regulations at 29 C.F.R., section 5.5(a)(1)(ii)(A) (“governing regulations”) is necessary to ensure that laborers and mechanics are compensated in accordance with the DBRA. Conformances are not appropriate when the work of the proposed classification is already performed by a classification on the wage determination. Rather, the conformance process has the limited purpose of establishing a new classification when it is necessary to do so because work needed to perform the contract is not performed by an existing classification.

2. Where can the SF-1444 form and prevailing wage decisions be found and where is a conformance request submitted?

The SF-1444 Request for Additional Classification and prevailing wage determinations may be found online at www.wdol.gov. A conformance request must be submitted to the following Department of Labor (DOL) public email box: WHD-CBACONFORMANCE_INCOMING@dol.gov. Once submitted, an auto-acknowledgment will be sent to the submitter.

3. Who initiates the conformance process and who submits the conformance to DOL?

The governing regulations specify that the contracting agency shall require that any class of laborers or mechanics not listed in the wage determination and who are employed on a DBRA-covered contract shall be classified in conformance with the wage determination. The conformance request is initiated by the

contractor (performing the covered work) and is reviewed by the contracting agency before that agency submits it to DOL.

4. What are the criteria that determine the contracting agency approval and submission of a conformance to DOL?

The governing regulations require that the following three criteria be met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

5. What is being implemented regarding “reasonable relationship”?

In the past, the Wage and Hour Division (WHD) has generally approved proposed wage rates for a conformed skilled craft, laborer, power equipment operator, and truck driver classification when such rates are not less than the rate for the lowest classification in the respective category on the contract wage determination. In keeping with the remedial purpose of the DBRA and the governing regulations, the wage rate of the lowest skilled craft, laborer, power equipment operator, or truck driver classification on the contract wage determination has no longer been an automatic benchmark when reviewing conformance requests. **When the work is performed by a classification on the wage determination**, the conformance request is **not** required and employees must be paid at the wage rate for the craft performing the work.

6. How is “reasonable relationship” defined?

WHD has concluded that it better reflects the regulatory requirement that “the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination” to consider the entirety of the rates within the relevant category (skilled classification, laborer, power equipment operator, or truck driver) on the wage determination and to not generally use as a benchmark the lowest rate within that category. The regulation at 29 C.F.R. § 5.5(a)(1)(ii)(A)(3) requires that the proposed wage rate bear a reasonable relationship to the “wage rates” on the wage determination and not to a particular rate or the lowest rate.

A proposed skilled craft classification is compared to skilled classifications in the wage determination; a proposed laborer classification is compared to existing laborer classifications; a proposed power equipment operator classification is compared to existing power equipment operator classifications; and a proposed truck driver classification is compared to existing truck driver classifications.

When considering a conformance request for a skilled classification, WHD generally considers the entirety of the rates for the skilled classifications on the applicable wage determination and looks to where the proposed wage rate falls

within the rates listed on the wage determination. Occasionally, however, a wage determination may contain some wage rates for laborer classifications that are higher than some wage rates for the skilled classifications or power equipment operators (likely because the laborers' rates reflect union prevailing rates and the skilled crafts' or power equipment operators' rates reflect weighted average wage rates). On such occasions, the contracting officer should look to those skilled classifications whose rates are higher than the laborer classifications' rates. If, however, most of the skilled classifications' or power equipment operators' rates are lower than the laborer classifications' rates, then it may be reasonable to propose a rate that reflects the skilled classifications' rates even if they are lower than the laborer classifications' rates.

Additionally, whether the wage rates in the applicable category (skilled craft, laborer, power equipment operator, truck driver) in the wage determination are predominantly union prevailing wage rates or predominantly weighted average prevailing wage rates should be considered when proposing rates for an additional classification. For example, if a wage determination contains predominantly union prevailing wage rates for skilled classifications, it typically would be appropriate to look to the union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. Conversely, if a wage determination contains predominantly weighted average prevailing wage rates for skilled classifications, it typically would be appropriate to look to the non-union sector skilled classifications in the wage determination and the rates for those classifications when proposing a wage rate for the additional classification. If the wage rates in the applicable category are roughly half union prevailing rates and half weighted average prevailing rates, it would typically be appropriate to look to the lowest union rate and the highest non-union rate (assuming the union rates are higher than the non-union rates) when proposing a wage rate.

7. What is the process for determining whether a proposed wage rate bears a reasonable relationship to the wage rates in the wage determination?

The first step is to review the classifications on the wage determination to ensure that the requested classification's work is not performed by a classification on the wage determination. If the work is performed by a classification on the wage determination, a conformance is not needed, and the wage rate for the classification on the wage determination must be paid. If the work is not performed by a classification on the wage determination, then proceed through the conformance process.

The next step is to determine the category (skilled, laborer, power equipment operator, truck driver). A determination would then be made regarding what the predominant "sector" ("union majority" wage rates or "su" weighted average wage rates) is for the subject category on the wage determinations.

The process of determining whether a proposed conformed wage rate bears a reasonable relationship to the wage rates in the wage determination is illustrated in the examples set forth below.

8. How is a classification conformed and what is considered “reasonable” when there are multiple classifications within a category on the wage determination? Is it permissible to just use the “lowest skilled” or “lowest” wage rate in the category as a rule?

No, it is not permissible to automatically use the lowest in a category by default. The range of rates on the wage determination for the particular category and sector must be considered. The process for conforming a “reasonable” wage rate is illustrated in the examples below.

Skilled Classification Example 1

A conformed rate for a skilled craft, a “Painter,” was requested at a proposed hourly rate of \$20.99 plus \$10.04 in fringe benefits and was denied.

The following skilled classifications were on the WD:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Carpenter (Including Cement Form Work)	union	\$26.06	\$10.56	\$36.62
Cable Splicer	union	\$28.62	3% + \$12.98	\$42.46
Electrician	union	\$28.37	\$13.98	\$42.35
Ironworkers: Rebar, Structural, Fence Erector	union	\$31.09	\$19.60	\$50.69
Cement Mason/Finisher	su	\$20.22	\$7.98	\$28.20

In this example, the classification requested is a skilled classification and only skilled classifications on the wage determination should be considered when conforming a skilled classification and wage rate. A determination would then be made regarding what the predominant “sector” (union majority “union” wage rates or “su” weighted average wage rates) is for skilled classifications on the wage determination. (Wage determinations contain an explanation of how to

determine if a wage rate is a union wage rate or a weighted average wage rate.) In this example, the first four classifications are union majority classifications. The last classification is “su.” The wage determination is predominantly from the union sector for the applicable county.

WHD denied the proposed rate because the total rate requested (\$31.03) was considered to not bear a reasonable relationship to the relevant wage rates in the wage determination. There is a “range of rates” that would meet the test of our regulatory requirement of “bearing a reasonable relationship” in this situation. Any of the following rates or a wage rate within the range of these rates would “bear a reasonable relationship” to the relevant wage rates in the wage determination¹:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Carpenter (Including Cement Form Work)	union	\$26.06	\$10.56	\$36.62
Cable Splicer	union	\$28.62	3% + \$12.98	\$42.46
Electrician	union	\$28.37	\$13.98	\$42.35
Ironworkers: Rebar, Structural, Fence Erector	union	\$31.09	\$19.60	\$50.69

Skilled Classification Example 2

A skilled craft, “Sprinkler Fitter,” was requested at a proposed hourly rate of \$25.00 plus \$11.00 in fringe benefits and was approved.

The following skilled classifications were on the wage determination:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Asbestos Worker	union	\$32.17	\$16.25	\$48.42
Bricklayer	union	\$26.28	\$12.31	\$38.59
Carpenter	union	\$26.06	\$11.84	\$37.90
Electrician	union	\$28.62	\$14.84	\$43.46

¹ The wage rates are considered reasonable in accordance with governing regulations; however, higher rates will be approved.

Ironworker (Ornamental, Reinforcing, And Structural)	union	\$31.35	\$20.10	\$51.45
Drywall Finisher/Taper	union	\$22.78	\$8.88	\$31.66
Glazier	union	\$17.46	\$7.12	\$24.58
Floor Layer: Carpet and Vinyl	union	\$15.50	\$4.22	\$19.72
Plasterer	union	\$25.43	\$11.97	\$37.40
Plumber	union	\$34.86	\$16.19	\$51.05
Roofer (Including Tearoff)	union	\$23.10	\$9.95	\$33.05
Sheet Metal Worker	union	\$27.51	\$16.90	\$44.41
Carpenter (Acoustical Ceiling Installation Only)	su	\$18.00	\$1.43	\$19.43
Carpenter (Drywall Hanging Only)	su	\$20.62	\$0.00	\$20.62
Carpenter (Form Work Only)	su	\$18.63	\$2.65	\$21.28
Painter (Brush Only)	su	\$13.00	\$0.50	\$13.50
Painter (Roller)	su	\$22.62	\$0.25	\$22.87
Painter (Spray)	su	\$22.47	\$0.00	\$22.47
Tile Setter	su	\$14.83	\$0.00	\$14.83
General Laborer	union	\$23.81	\$10.30	\$34.11

A determination regarding the predominant sector would be made as described in questions 7 and 8. The first twelve classifications are union majority. The last seven classifications are “su.” The wage determination is predominantly union majority wage rates. As a reminder, skilled classifications will be conformed at a higher wage rate than the General Laborer on the wage determination, except in the rare circumstance where almost all skilled classifications’ wage rates are below the General Laborer wage rate.

The proposed conformed total wage rate for Sprinkler Fitter at \$36.00 would be approved because it is higher than the General Laborer rate and falls within the union sector of wage rates and is considered to bear a reasonable relationship to relevant wage rates in the wage determination.

Any of the following rates or a wage rate within the range of these rates would “bear a reasonable relationship” to the relevant wage rates in the wage determination²:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Asbestos Worker	union	\$32.17	\$16.25	\$48.42
Bricklayer	union	\$26.28	\$12.31	\$38.59
Carpenter	union	\$26.06	\$11.84	\$37.90
Electrician	union	\$28.62	\$14.84	\$43.46
Ironworker (Ornamental, Reinforcing, And Structural)	union	\$31.35	\$20.10	\$51.45
Plasterer	union	\$25.43	\$11.97	\$37.40
Plumber	union	\$34.86	\$16.19	\$51.05
Sheet Metal Worker	union	\$27.51	\$16.90	\$44.41

Skilled Classification Example 3

A skilled classification, a “Carpenter,” was requested at a proposed hourly rate of \$18.89 plus \$1.93 in fringe benefits and was denied.

The wage determination has the following skilled classifications on the wage determination:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Telecommunications Technician	union	\$29.75	\$19.03	\$48.78
Plasterer	union	\$34.03	\$14.67	\$48.70
Cement Mason/Concrete Finisher	union	\$37.90	\$20.38	\$58.28
Electrician	su	\$24.75	\$10.00	\$34.75
Plumber	su	\$18.89	\$1.93	\$20.82
Sheet Metal Worker	su	\$19.50	\$5.49	\$24.99

² The wage rates are considered reasonable in accordance with governing regulations; however, higher rates will be approved.

Determine if the wage determination is predominantly union majority or “su.”
 The first three classifications are union. The last three classifications are “su.”

The proposed total wage rate was not approved at \$20.82 for the Carpenter classification because the total requested wage rate (\$20.82) was considered to not bear a reasonable relationship to the relevant wage rates in the wage determination as it was the “lowest skilled” wage rate.

There is a “range of rates” that would meet the test of our regulatory requirement of “bearing a reasonable relationship” in this example. Any of the following rates or a wage rate within the range of these rates would be approved:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Telecommunications Technician	union	\$29.75	\$19.03	\$48.78
Plasterer	union	\$34.03	\$14.67	\$48.70
Cement Mason/Concrete Finisher	union	\$37.90	\$20.38	\$58.28
Electrician	su	\$24.75	\$10.00	\$34.75

Power Equipment Operator Example I

A power equipment operator, “Roller Operator,” was requested at a proposed hourly rate of \$16.94 plus \$0.26 in fringe benefits and was approved.

The following Power Equipment Operators are on the WD:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Rate
Bulldozer	union	\$19.54	\$5.44	\$24.98
Forklift	union	\$19.40	\$5.44	\$24.84
Backhoe	su	\$19.14	\$4.08	\$23.22
Bobcat/Skid Loader	su	\$13.77	\$0.00	\$13.77
Grader/Blade	su	\$18.56	\$0.00	\$18.56
Loader (Front End)	su	\$14.62	\$1.28	\$15.90
Tractor	su	\$14.74	\$0.26	\$15.00

Determine if the Power Equipment Operators on the wage determination are predominantly union “su.” The first two classifications are union. The last five classifications are “su.”

The rate was approved because the proposed total wage rate of \$17.20 was considered to bear a reasonable relationship when compared to the “su” Power Equipment Operators on the wage determination.

Any of the following rates or a wage rate within the range of these rates would “bear a reasonable relationship” to the relevant wage rates in the wage determination³:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Grader/Blade	su	\$18.56	\$0.00	\$18.56
Loader (Front End)	su	\$14.62	\$1.28	\$15.90

Power Equipment Operator Example 2

A power equipment operator, “Crane Operator,” was requested at a proposed hourly rate of \$15.86 plus \$3.59 in fringe benefits and was denied.

Classification	Sector	Hourly Wage	Fringe Benefit	Total Wage Rate
Mechanic	union	\$23.82	\$9.22	\$33.04
Motor Grader: Blade-Finish	union	\$23.97	\$9.22	\$33.19
Motor Grader: Blade Rough	union	\$23.67	\$9.22	\$32.89
Roller (over 5 tons)	union	\$23.67	\$9.22	\$32.89
Roller (under 5 tons)	union	\$23.32	\$9.22	\$32.54
Trackhoe	union	\$23.82	\$9.22	\$33.04
Backhoe	su	\$15.93	\$3.58	\$19.51
Bobcat/Skid Loader	su	\$20.22	\$4.41	\$24.63
Bulldozer	su	\$15.08	\$4.44	\$19.52

³ The wage rates are considered reasonable in accordance with governing regulations; however, higher rates will be approved.

Excavator	su	\$15.39	\$0.00	\$15.39
Front End Loader	su	\$15.86	\$3.59	\$19.45

Determine if the wage determination is predominantly union majority or “su.” The first six classifications are union majority. The last five classifications are “su.”

The proposed wage rate was not approved because the rate requested (\$19.45) was considered to not bear a reasonable relationship when compared to the Power Equipment Operators when considered in light of the wage rates of the union and weighted average Power Equipment Operator wage rates on the wage determination.

Any of the following rates or a wage rate within the range of these rates would “bear a reasonable relationship” to the relevant wage rates in the wage determination⁴:

Classification	Hourly Wage	Fringe Benefit	Total Rate
Mechanic	\$23.82	\$9.22	\$33.04
Motor Grader: Blade-Finish	\$23.97	\$9.22	\$33.19
Motor Grader: Blade Rough	\$23.67	\$9.22	\$32.89
Roller (over 5 tons)	\$23.67	\$9.22	\$32.89
Roller (under 5 tons)	\$23.32	\$9.22	\$32.54
Trackhoe	\$23.82	\$9.22	\$33.04

Laborer Example

A laborer craft, “Asbestos Abatement Laborer,” was requested at a proposed wage rate of \$18.15 and was approved.

The following laborer classifications are on the WD:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Rate
Mason Tender - Brick	union	\$17.06	\$4.86	\$21.92
Pipelayer	union	\$17.06	\$4.86	\$21.92
Sandblaster	union	\$17.06	\$4.86	\$21.92
Plasterer Tender	union	\$17.06	\$4.86	\$21.92
Common or	union	\$13.91	\$3.67	\$17.58

⁴ The wage rates are considered reasonable in accordance with governing regulations; however, higher rates will be approved.

General				
Demolition	su	\$15.20	\$0.00	\$15.20
Landscape & Irrigation	su	\$17.64	\$0.25	\$17.89
Mason Tender - Cement/Concrete	su	\$14.13	\$3.21	\$17.34
Power Tool Operator	su	\$14.42	\$4.35	\$18.77
Tile Finisher	su	\$14.02	\$0.00	\$14.02

Determine if the laborers on the wage determination are predominantly union majority wage rates or “su.” There is an equal mix of union and “su” laborer classifications which do not cover the work to be performed by the classification being requested. The proposed wage rate was approved because the rate requested (\$18.15) was considered reasonable when compared to all laborer wage rate on the wage determination and because it was higher than the common or general laborer rate. The common or general laborer rate is typically the lowest approvable rate for laborer classifications.

Truck Driver Example

A truck driver classification, “Hydroseeder Truck Driver,” was requested at a proposed hourly rate of \$15.94 plus \$4.16 in fringe benefits and was approved.

The following truck driver classifications are on the wage determination:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Rate
2 or 3 Axle Dump or Flatrack	su	\$16.27	\$3.30	\$19.57
5 Axle Dump or Flatrack	su	\$13.97	\$2.89	\$16.86
6 Axle Dump or Flatrack (<16 cu yd)	su	\$17.79	\$6.42	\$24.21
Belly Dump	su	\$14.67	\$0.00	\$14.67
Oil Tanker Bootman	su	\$22.03	\$0.00	\$22.03
Self-Propelled Street Sweeper	su	\$13.11	\$5.48	\$18.59
Water Truck: 2500 < 3900 gallons	su	\$18.14	\$4.55	\$22.69

Water Truck: 3900 gallons and over	su	\$15.92	\$3.33	\$19.25
Water Truck: under 2500 gallons	su	\$15.94	\$4.16	\$20.10

First determine if the truck drivers on the wage determination are predominantly union majority wage rates or “su.” All truck driver classifications in this case are “su.” The proposed wage rate of \$20.10 was approved because it was considered reasonable in accordance with the governing regulations.

Any of the following rates or a wage rate within the range of these rates would “bear a reasonable relationship” to the relevant wage rates in the wage determination⁵:

Classification	Sector	Hourly Wage	Fringe Benefit	Total Rate
6 Axle Dump or Flatrack (<16 cu yd)	su	\$17.79	\$6.42	\$24.21
Oil Tanker Bootman	su	\$22.03	\$0.00	\$22.03
Water Truck: 2500 < 3900 gallons	su	\$18.14	\$4.55	\$22.69
Water Truck: 3900 gallons and over	su	\$15.92	\$3.33	\$19.25
2 or 3 Axle Dump or Flatrack	su	\$16.27	\$3.30	\$19.57
Water Truck: under 2500 gallons	su	\$15.94	\$4.16	\$20.10

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⁵ The wage rates are considered reasonable in accordance with governing regulations; however, higher rates will be approved.

