

# Wage Requirements for Tribal Housing

November 9-10, 2021  
Virtual Training

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Presented by:



Northwest Housing Consultants, LLC



National American Indian Housing Council



Office of Native American Programs

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Instructor

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Charles Anderson:  
Northwest Housing Consultants, LLC



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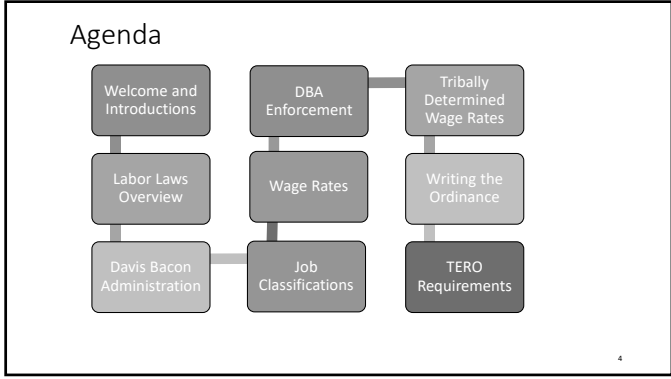
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### Introductions

- Name
- Position
- Organization

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### Course Manual

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Poll Question

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History and Statutory Overview

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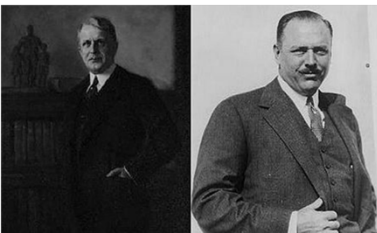
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**Purpose of Davis-Bacon Act**

- To protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels



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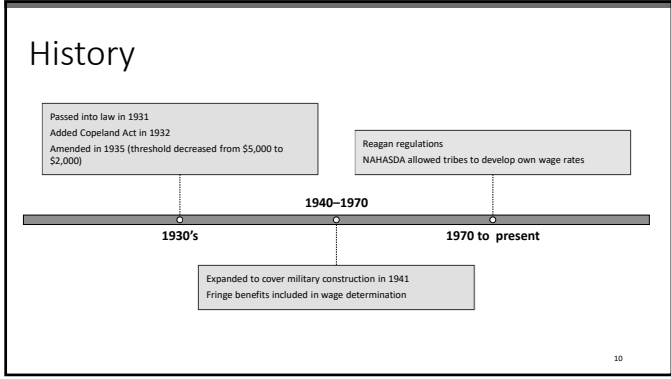
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### Suspensions

- 1934 – by FDR to aid in the introduction of the New Deal
- 1971 – by Nixon as anti-inflationary measure
- 1992 – by G.H.W. Bush in reaction to hurricane Andrew
- 2005 – by G.W. Bush in reaction to hurricane Katrina

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### Controversy

- Data collection and accuracy issues
- Increased cost of federal construction projects
- Claims of racism

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Davis-Bacon and Related Acts (DBRA)

- National Housing Act
- US Housing Act of 1937
- Housing and Community Development Act of 1974
- National Affordable Housing Act of 1990
- NAHASDA

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Overall Authority

- Davis Bacon Act
  - 29 CFR Parts 1-5
- 2 CFR 200
  - Subpart F Appendix II Paragraph D
- NAHASDA 104(b)
  - 24 CFR 1000.16 IHBG Program
- HCDA 110(a)
  - 24 CFR 1003.603 ICDBG Program

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Labor-Related Statutory Provisions

- DBA
- CWHSSA (Contract Work Hours and Safety Standards Act)
- Copeland Act
- FLSA (Fair Labor Standards Act)

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**Davis-Bacon Act Requirements**

When required by a Federal program, all construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act.

Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a determination made by the DOL.

Contractors must pay wages not less than once per week.

A copy of the wage determination must be in each solicitation and posted at the jobsite.

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**Contract Work Hours and Safety Standards Act**

The Contract Work Hours and Safety Standards Act is applicable to prime contracts valued in excess of \$100,000. Any subcontracts are likewise covered. CWHSSA (in part):

1. Mandates premium pay (time and one half on base wages, plus any fringe benefits) for all hours worked on the site of the covered work in excess of 40 hours per week.
2. Requires premium overtime pay only when *all* hours considered under CWHSSA overtime requirements – 40 hours plus additional (O/T) hours – are performed on CWHSSA-covered site(s) of work.
3. Includes watchmen and guards in the classes of workers entitled to premium overtime pay requirements.
4. Imposes liquidated damages at the rate of \$10 per day/violation – any instance where an employee works in excess of 40 hours per week on a daily basis, in addition to full wage compensation.
5. Is *not* applicable to projects/contracts where the nature of federal assistance is only insurance or a loan guarantee. *All* federally-funded programs implemented by tribes/TDHE's are subject to the overtime provisions of CWHSSA. 17

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**Copeland (Anti-Kickback) Act**

The Copeland Act is applicable to contracts/projects subject to Davis-Bacon wage requirements. The CA (in part):

1. Regulates deductions that may be taken from employee earnings.
2. Requires the certification, submission and retention of weekly payroll reports.
3. Prohibits "kickbacks" from employee earnings.
4. The anti-kickback prohibition is *not* applicable where the nature of federal assistance is only insurance or a loan guarantee. *All* federally-funded programs implemented by Tribes/TDHE's are subject to the anti-kickback provision of the CA. 18

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## Fair Labor Standards Act (FLSA)

The FLSA governs such matters as Federal minimum wage rates and overtime (O/T). These standards are generally applicable to any labor performed and may be *pre-empted* by other (often more stringent) Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. Also prohibits "oppressive child labor".

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## NAHASDA Requirements

1000.16 What labor standards are applicable?

(a) Davis-Bacon wage rates.

- 1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.
- 2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.
- 3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

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## NAHASDA Requirement (continued)

- b) **HUD-determined wage rates.** Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.
- c) **Contract Work Hours and Safety Standards Act.** Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).
- d) **Volunteers.** The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

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### NAHASDA Requirements (continued)

e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe. Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

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“Nature” of work for determination of wage rates

- Development of Housing
  - Davis-Bacon Wages
- Operation of Housing
  - HUD-Determined Wages

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Davis-Bacon Elements

- Pre-Contract
  - Determine Job Classifications
  - Determine “Site of Work”
  - Determine Wage Rates
  - Conduct Procurement
- Post Contract
  - Post wage decisions
  - Conduct onsite interviews
  - Review certified payrolls
  - Resolve violations/disputes
  - Prepare DOL reports

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# Job Classifications

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## Laborers and Mechanics

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- "Laborers" and "mechanics" are those individuals, whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., Electrician).
- These terms include apprentices, trainees and helpers and, for contracts subject to CWHSSA, watchmen and guards.
- All laborers and mechanics may be paid no less than the applicable prevailing wage rate for the type of work they perform.
- Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.



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## Laborers and Mechanics

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- Does not include:
  - Timekeepers, inspectors, architects, engineers
  - Bona fide executive, administrative, and professional employees as defined under FLSA
- Working foremen generally must be paid the Davis Bacon (DB) rate for the classification of work performed



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## Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent driving on the "site of the work," and
  - Spent loading or unloading materials and supplies on the "site of the work," if such time is not too trivial for consideration.
  - Transporting materials and supplies between a facility that is part of the "site of the work" and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain



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## Truck Drivers

- Truck drivers are not covered in the following instances:
  - Material delivery truck drivers while off the "site of the work"
  - Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the "site of the work"
  - Truck drivers whose time spent on the "site of the work" is minimal for pick-up or drop off



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## Apprentices and Trainees: Definitions

- An "apprentice" is a person employed and individually registered in a bona fide apprenticeship program, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work.
- A "trainee" is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Bureau of Apprenticeship and Training (BAT).



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## Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)



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## Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL's Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)



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## Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the Wage Determination
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program
  - Paid the Fringe Benefits specified in the approved program, or the full amount of FB's listed on the Wage Determination, if the program is silent; and,
  - Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen

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## Use of Apprentices and Trainees

Apprentices and trainees may be compensated at rates less than those prescribed by the wage decision for their craft only in accordance with the following parameters:

1. **Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC.
2. **Wage rates.** Each apprentice and trainee shall not be paid less than the specified rate in the registered program for his/her level of progress.
3. **Fringe benefits.** Apprentices and trainees must receive fringe benefits as specified in the approved apprenticeship or trainee program. If the program is silent as to fringe benefits for apprentices/trainees, the apprentices/trainees must receive the full fringe benefit specified on the applicable wage decision for their craft.
4. **Ratio to journeyworkers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeyworkers permitted to the employer by the BAT/SAC certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio shall be paid the wage rate contained on the applicable wage decision for the classification of work actually performed.

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## Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the Wage Determination
  - An established prevailing practice in the area,
  - Not employed in an informal training program
- May be added to WD if all above conditions are met; no WD class performs the work

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## Self-Employed Sub Contractors

- The statutory language of DBA requires that all laborers and mechanics employed directly on the site of the work be paid no less than the predetermined wages "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics."
- Under DBA, the term "employed" is not necessarily limited to "employee" and, therefore, may encompass certain independent contractors or workers. Therefore, self-employed "independent contractors" (often referred to as "1099 workers") who perform as laborers or mechanics on a covered project are subject to DBA.
- However, an exception may apply to bona fide business owners – defined as any employee who owns at least 20% equity interest in the enterprise AND who is actively engaged in its management – may be considered exempt under 29 CFR § 541, even though they are themselves performing the work of a laborer or mechanic on the covered project. DBA would, therefore, not apply to these workers.

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Native American Training Program

<https://electricity.net/videos/native-american-training-program-necaibew-team/>

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Site of Work

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Site of Work

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- Davis-Bacon applies only to laborers and mechanics employed "directly on the site of the work"
- The "site of work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.
- "Site of work" includes other adjacent or nearby property used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively or nearly so to the performance of the contract or project and are so located in proximity to the actual construction location that it would be reasonable to include them.

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### Site of the Work

- "Site of the work" does not include a contractor's or subcontractor's
  - permanent home office, branch locations, fabrication plants, tool yards, etc.,
  - whose location and continuance in operation are determined without regard to a particular covered project.



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### Site of Work

- Also not included in the "site of the work" are:
- Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
    - Before the opening of bids for a project, and
    - Not located on the actual site of the work
  - Such permanent, previously established facilities, are not part of the "site of the work," even where the operations for a period may be dedicated exclusively, or nearly so, to the performance of a contract



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### Wage Rates

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### The DBA Wage Determination

- The DBA wage determination is simply a listing of worker classifications and the basic hourly wage and fringe benefit rates that DOL has determined to be prevailing in the locality for each classification. Those rates must be paid to anyone performing work within those classifications on a covered project in that locality.
- The classifications are not generally defined by skill level or years of experience. Any worker performing work within the classification must be paid the wages and benefits for that classification, regardless of skill or years of experience.



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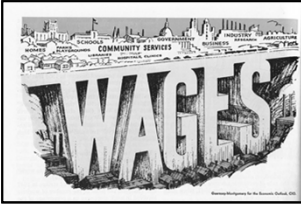
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### “Prevailing” Wages

- **DBA definition:** “the wage paid to the majority (over 50%) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.”



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### Determining “Prevailing” Wages

- There are no nationwide standard classification definitions under DBA. The proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates DOL determined to be prevailing in the area.
- While the duties of many classifications are usually clear (e.g., plumbers, carpenters, painters, electricians, etc.), in some localities the contractor must determine the “prevailing area practice” in order to properly classify a worker.
- A survey of the firms performing similar construction work in that locality will provide the prevailing definition for each classification.

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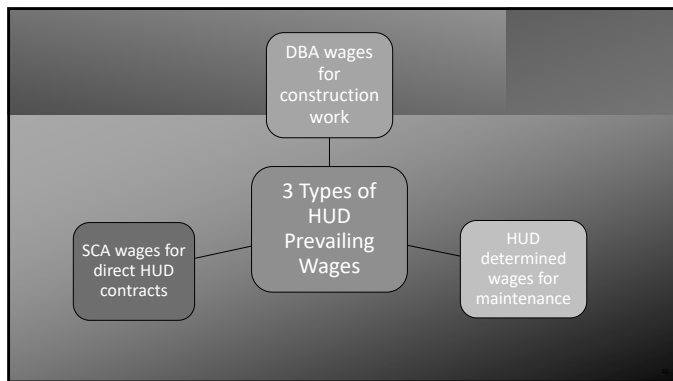
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### Categories of Work

- Residential:** Construction, rehabilitation or repair of single-family homes and apartment buildings no more than 4 stories, including incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.
- Building:** Construction, rehabilitation or repair of apartment buildings great than 4 stories, sheltered enclosures with walk-in access for the purpose of housing people, machinery, equipment or supplies.
- Highway:** Construction, rehabilitation or repair of roads, streets, highways, sidewalks, parking areas and most other paving work not incidental to residential, building or heavy construction.
- Heavy:** A "catch-all" category which includes those projects which cannot be classified as "residential", "building", or "highway". Examples include dredging, sanitary and storm sewers, water mains and supply lines, dams, and flood control projects.

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### Classification of Work

- Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work he/she performs and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill.
- Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification *provided* that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed.
- If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.

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### Wage Classifications

Generally, focuses on tasks, such as:

**Carpenter:** Independently functions as a fully qualified carpenter in the maintenance, repair and construction of structures, walls, floors, windows, screens, sashes, doors, furniture, fixtures, stairs, cupboards, roofs and cabinets.

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### Job Descriptions

**Tasks:** the activities the person is expected to perform

**Skills:** the abilities the person is expected to have to perform the tasks for the position

**Knowledge:** the subject matter the person is expected to know to perform the tasks

**Experience:** the years of on-the-job work the person is expected to have, at a minimum

**Education:** the level of formal education or training the person is expected to have

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### Other Factors That May be Considered

- Skills required
- Effort required
- Responsibility
- Working conditions

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## Wage Decisions

- General wage decisions are published for specific characters of work and by geographic location, usually a county or group of counties. General wage decisions are available on-line at [www.sam.gov](http://www.sam.gov).
- **Selecting the correct wage decision.** Tribes/TDHE's must select the correct wage decision for each project. The correct wage decision is that which is current (i.e., the current modification of that wage decision) and that is applicable based on the character of the work and the geographic location. The appropriate location is generally the county in which the project/construction work will be physically located when completed.

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## Wage Decision Effective Dates

Wage decisions "lock-in" (i.e., become effective) for each covered project based upon bid opening, contract award or start of construction. After "lock-in", the wage decision is "frozen" for the duration of the construction work, i.e., the wage decision for the project is no longer subject to modification. Wage decisions for most projects will "lock-in" at contract award or start of construction if there is no award *except*:

1. For contracts entered pursuant to competitive bidding, the wage decision will "lock-in" on the bid opening date *provided* that the contract is awarded within 90 days.
2. If the contract is not awarded within 90 days, the wage decision must be updated as of the date of award.
3. Modifications that are published less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. If so, a record of the finding must be made to the contract file.

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## Wages & Fringe Benefits

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- DBA: the term "wages" or "prevailing wages" includes:
  - The basic hourly rate (BHR)
  - Contractor contributions irrevocably made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB's where certain conditions are met

Fringe Benefits  
 Examples of the  
 employer-provided  
 employee benefit

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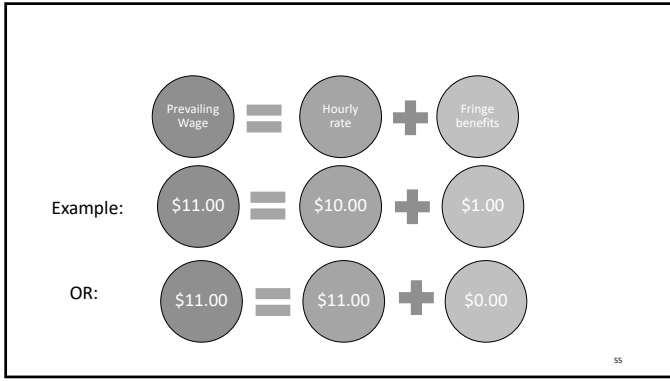
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### Fringe Benefits

- Under DBA, FBs are a component "prevailing wage"
- The Wage Determination obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two

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### Fringe Benefits

Fringe benefits may include:

- Sick, vacation or holiday pay; costs to defray expenses of apprenticeship or similar programs; medical or hospital care; supplemental unemployment benefits; life insurance; pensions on retirement or death; compensation for injuries or illness resulting from occupational activity; other bona fide fringe benefits; or insurance to provide any of these.
- In addition, fringe benefits may reflect the rate of costs to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.
- Fringe benefits **do not** include employer contributions or payments required by other Federal, State or local law, such as FICA, workers' compensation, or unemployment compensation.

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### Fringe Benefit Example

**Example:** The DBA wage determination requires \$18.00/hour basic hourly wage rate, and \$3.00/hour fringe benefits, for a total obligation of \$21.00/hour for the worker.

- The contractor may pay the entire \$21.00/hour in cash to the worker; or
- The contractor may pay \$18.00/hour in cash and provide a bona fide health insurance plan that costs the contractor \$3.00/hour in premiums; or
- The contractor may pay \$20.00/hour in cash and provide \$1.00/hour in benefits; or
- The contractor may pay \$16.00/hour in cash, and provide \$5.00/hour in fringe benefits.

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### Fringe Benefits and Overtime

• Under Davis-Bacon, fringe benefits must be paid for all hours worked, including overtime hours. However, the fringe benefit amounts listed in the applicable wage determination may be excluded from the half-time premium due as overtime compensation. **For example:**

• An employee worked 44 hours as an electrician. The wage determination rate was \$16.00 (basic hourly rate) plus \$2.50 in fringe benefits. The electrician would be due:

44 hours x \$18.50 =	\$ 814.00 - (straight time pay)
4 hours x ½ of \$16.00 =	32.00 - (overtime pay)
	<u>\$ 846.00</u>

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### Computing Overtime Pay (CWHSSA Earnings)

An employee worked 44 hours as electrician, where WD BHR is \$12.00 plus \$2.50 in FB's:

44 hours	X	\$2.50	=	\$110.00	FB's
44 hours	X	\$12.00	=	\$528.00	BHR
4 hours	X	\$12.00/2	=	<u>\$ 24.00</u>	OT
				<u>\$662.00</u>	

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**Workers Performing at Two or More Classifications.**

Contractors are required to maintain complete and accurate records of the hours worked by each worker, including identifying the hours worked by a worker at two or more classifications.

The worker must be paid no less than the DBA wage rate for each of the hours worked at each classification.

Failure to record the hours worked at each classification will result in DOL requiring the contractor to pay all hours worked during that week at the highest of the multiple wage rates.

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**Overtime Computation where Employee Employed at Two Rates**

During a workweek, an employee works 20 hours as an Electrician at \$12.00 BHR plus \$2.50 in FB's and as a Painter for 24 hours at \$10.00 BHR plus \$3.00 in FB's.

The regular rate for determining the Overtime rate is:

20 X \$12.00 = \$240.00 (as Electrician)  
 24 X \$10.00 = \$240.00 (as Painter)  
 Average Rate = \$480.00/44 hours = \$10.91  
**Overtime due:** \$10.91 X 1/2 X 4 hours = \$21.82

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**Reasonableness**

Wage rates used must be reasonable per 2 CFR 200.404



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## Wage Rate Determinations

WDOL.gov has moved to SAM.gov and is now known as Wage Determinations

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**The Official U.S. Government System for:**

<p><b>Contract Opportunities</b> (was fbo.gov)</p> <p><b>Contract Data</b> (Reports ONLY from fpds.gov)</p> <p><b>Wage Determinations</b> (was wdol.gov)</p> <p><b>Federal Hierarchy</b> Departments and Subtiers</p>	<p><b>Assistance Listings</b> (was cfda.gov)</p> <p><b>Entity Information</b> Entity Registrations, Disaster Response Registry, Entity UEI and Exclusions</p> <p><b>Entity Reporting</b> SCR and Bio-Preferred Reporting</p>
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**Help me find a Wage Determination**

I do not know the number

I do know the number

→

Search by WD Number  
DBA or SCA Identifier

I need DBA

Public Buildings/Works Contracts  
Wage rates for laborers and mechanics on federally funded or assisted contracts

I need SCA

Service Contracts  
Wage rates for service employees

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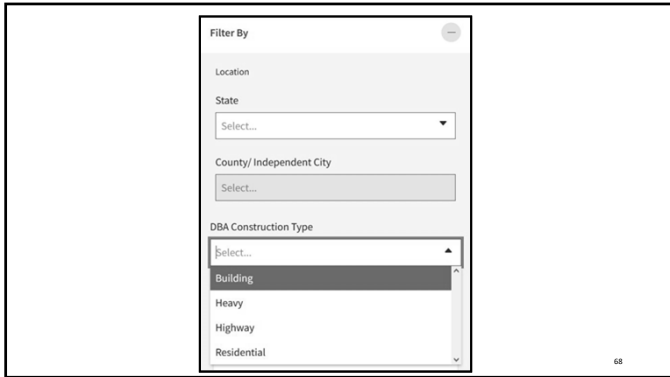
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**Davis-Bacon Act WD # WA20210096**

Wage Determination

Modification #  
0

Construction  
Residential

Published Date  
Jan 01, 2021

**States and Counties**

State  
Washington

Counties  
Thurston

**Document** Download Print

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**Interpreting a General Wage Determination**

Each wage determination begins with a cover sheet that defines its applicability by:

- The decision number.
- The number of the decision superseded, if applicable.
- State(s) covered.
- Type of construction (building, heavy, highway, and/or residential).
- County(ies), parishes, and/or city(ies) covered.
- Description of the construction to which the wage determination applies and/or construction excluded from its application.
- Record of modifications, including the initial publication date, modification numbers and dates.

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"General Decision Number: WA20210096 01/01/2021

Superseded General Decision Number: WA20200096

State: Washington

Construction Type: Residential

County: Thurston County in Washington.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

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## Classifications, Basic Hourly Rates, And Fringe Benefits

In the body of each wage determination is the listing of classifications (laborers and mechanics) and accompanying basic hourly wage rates and fringe benefit rates that have been determined to be prevailing for the specified type(s) of construction in the geographic area(s) covered by the wage determination.

- Classification listings may also include classification groupings, fringe benefit footnotes, descriptions of the geographic areas to which sub-classifications and different wage rates apply, and/or certain classification definitions.
- Above each classification (or group of classifications) listed, an alphanumeric "identifier" and date provide information about the source of the classification(s) and wage rate(s) listed for it. The discussion of "Classification Identifiers," below, focuses on information about the source of a rate (union or non-union).

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Modification Number	Publication Date		
0	01/01/2021		
BEMA0001-019 06/01/2017			
		Rates	Fringes
BRICKLAYER.....		\$ 39.46	16.15
-----			
LABO0238-001 06/01/2019			
		Rates	Fringes
LABORER (Mason Tender - Cement/Concrete).....		\$ 28.21	13.00
-----			
LABO0242-001 06/01/2019			
		Rates	Fringes
LABORER (Mason Tender - Brick)...		\$ 40.36	11.94
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* PAI0300-001 07/01/2020			
		Rates	Fringes
PAINTER (Spray Only).....		\$ 31.02	12.08

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TRUCK DRIVER		
GROUP 3.....	\$ 28.16	17.40
GROUP 4.....	\$ 28.49	17.40
GROUP 5.....	\$ 28.60	17.40
GROUP 6.....	\$ 28.76	17.40
GROUP 7.....	\$ 29.30	17.40
GROUP 8.....	\$ 29.62	17.40
TRUCK DRIVERS CLASSIFICATIONS		
GROUP 3: Trucks, side, end, bottom and articulated end dump (3 yards to and including 6 yds.)		
GROUP 4: Trucks, side, end, bottom and articulated end dump (over 6 yds. to & including 12 yds.)		
GROUP 5: Trucks, side, end, bottom and articulated end dump (over 12 yds. to & including 20 yds.)		
GROUP 6: Trucks, side, end, bottom and articulated end dump (over 20 yds. to & including 40 yds.)		
GROUP 7: Truck, side, end, bottom and articulated end dump (over 40 yds. to & including 100 yds.)		
GROUP 8: Trucks, side, end, bottom and articulated end dump (over 100 yds.)		

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FOOTNOTE A - Anyone working on a HAZMAT job, where HAZMAT certification is required, shall be compensated as a premium, in addition to the classification working in as follows:

LEVEL C-D: - \$.50 PER HOUR - This level may use an air purifying respirator or additional protective clothing.

LEVEL A-B: - \$1.00 PER HOUR - Uses supplied air in conjunction with a chemical splash suit or fully encapsulated suit with a self-contained breathing apparatus.

Employees shall be paid Hazmat pay in increments of four (4) and eight(8) hours.

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	Rates	Fringes
CARPENTER.....	\$ 24.80	4.72
ELECTRICIAN.....	\$ 33.54	11.71
LABORER: Common or General.....	\$ 19.07	3.27
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 36.65	10.50
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 17.53	0.00
OPERATOR: Bulldozer.....	\$ 29.63	0.00
PAINTER (Brush and Roller).....	\$ 23.25	7.16
PLUMBER.....	\$ 30.53	7.84
ROOFER.....	\$ 23.12	2.90

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Let's go to [SAM.gov](https://sam.gov)


SAM
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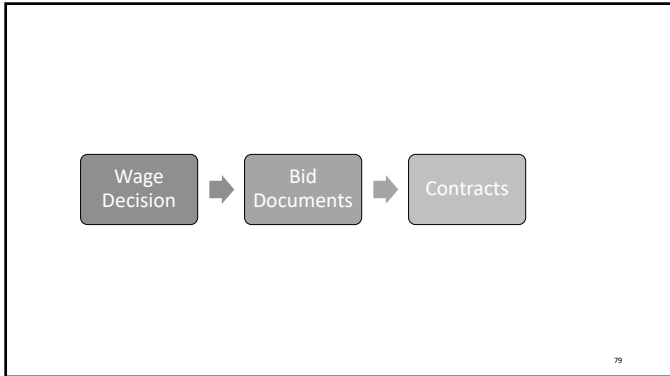
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### Bid documents

Must include wage determinations for all classifications included in the project

- Specified MINIMUM wages to be paid
- Necessary to calculate bid amount
- Normally bound into contract specifications

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### Contract provisions

- Describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements.
- Provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due.
- Enable the contract administrator to enforce the Federal labor standards applicable to the project.

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### HUD Standard Forms (optional)

- HUD-2554, Supplementary Conditions to the Contract for Construction
- HUD-5370, General Conditions of the Contract for Construction (contracts > \$150,000)
  - <https://www.hud.gov/sites/dfiles/OCHCO/documents/5370.pdf>
- HUD-5370-EZ (construction contracts ≤ \$100,000)
  - [www.hud.gov/sites/dfiles/OCHCO/documents/5370-EZ.pdf](http://www.hud.gov/sites/dfiles/OCHCO/documents/5370-EZ.pdf)

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### Davis-Bacon Enforcement

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### Davis-Bacon Elements

**Administration**

- Determine if applicable
- Prepare bid documents
- Verify contractor eligibility
- Provide contractor training

**Enforcement**

- Post wage decisions
- Conduct onsite interviews
- Review certified payrolls
- Resolve violations/disputes
- Prepare DOL reports

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**Tribe/TDHE Responsibilities**

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1. Designate Contract Administrator and manage contract
2. Ensure all relevant documents contain wage decision
3. Ensure contractor eligibility (not debarred for example)
4. Conduct onsite inspections and wage interviews
5. Review certified payroll reports
6. Maintain complete documentation
7. Report criminal or enforcement issues to HUD
8. Comply with all HUD requirements

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**Contractor Responsibilities**

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- The principal contractor (also referred to as the prime or general contractor) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project.
- Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor.

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**Contractor Responsibilities**

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- All employers (contractors, subcontractors and any lower-tier subcontractors) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once a week, the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision.
- Employers must prepare, certify and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work.

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**Weekly Payroll**

DBA requires covered contractors to pay their workers not less than the DBA-required wages and fringe benefits, in full, on a weekly basis.

A week is any consecutive 7-day period set by the contractor.

For any given project, once the payroll period is established it cannot be changed for that project. For example, a payroll period may be Sunday through Saturday, or Friday through Thursday, etc.

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**Payroll Reporting**

- The Copeland Act and DBA regulations require contractors to provide payroll information each week to the contracting agency, listing the workers on the project, including:
  - work classifications
  - hours worked
  - wage rates
  - benefits
  - overtime compensation
  - total wages paid, and
  - information related to payroll deductions.

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**Statement of Compliance**

The Copeland Act requires DBA-covered contractors

- to provide a signed "Statement of Compliance" (or "certified payroll") certifying that the weekly payroll information is correct and complete and that each laborer and mechanic has been paid not less than the DBA prevailing wage and benefit rate for the work performed that week.
- The required certification statement is set forth on the second page of WH-347, which can be accessed at:
- <https://www.dol.gov/whd/forms/wh347.pdf>

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U.S. Department of Labor  
Wage and Hour Division  
PAYROLL  
(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347r(01r.08m)  
Please do not separate or reorganize the collection of information entered in this form to comply with OMB control numbers.  
U.S. Year and Issue Change  
Rev. 08-2005  
OMB No. 1250-0009  
Expires 8/31/2024

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS PROJECT AND LOCATION PROJECT OR CONTRACT NO.  
PAYROLL NO. FOR WEEK ENDING DATE AND DATE  
JOB CLASSIFICATION  
HOURS WORKED  
GROSS PAY  
TAXES  
DEDUCTIONS  
NET PAY

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U.S. Department of Labor  
Wage and Hour Division  
FRINGE BENEFITS  
(1) Name of Signatory Party: (Firm)  
(2) That any agency otherwise under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics mentioned herein are not less than the applicable wage rates established in any applicable collective bargaining agreement, and that the qualifications and job titles for each worker or mechanic mentioned herein are as set forth in the contract.  
(3) That any experienced employee in the above period are both registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or the State Apprenticeship Agency which in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.  
(4) That  
(A) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS  
(B) WHERE FRINGE BENEFITS ARE PAID IN CASH  
(C) EXCEPTIONS

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EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT FEDERAL MINIMUM WAGE \$7.25 per hour

EMPLOYEE RIGHTS FOR WORKERS WITH DISABILITIES PAID AT SUBMINIMUM WAGES

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## Compliance Reviews

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### On-site Interviews

<https://www.hud.gov/sites/dfiles/OCHCO/documents/11.pdf>

- Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other tribe/TDHE representative, or HUD or DOL representative.
- The interviews are confidential, and the employee is to be asked about the kind of work they perform and their rate of pay.
- Every effort must be made to ensure that these interviews cause as little disruption as possible to the on-going work.
- The interviewer records the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator.

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### Project payroll reviews

The contract administrator compares the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days and hours worked on the job site, work classification and rate of pay.

The contract administrator also reviews the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

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**Common payroll errors**

- Inadequate payroll information
- Missing ID numbers
- Incomplete payrolls
- Classifications not on the wage decision
- Wage rates less than rates on wage decision
- Apprentices and trainees
  - No registration
  - Exceeds allowable ratio
- Overtime: not paid time + ½
  - If subject to CWHSSA, pay restitution plus penalties
  - If not, notify of possible FLSA violations
- Computation errors
- Deductions not identified
- Fringe benefits not paid
- Signature missing
- On-site interview comparisons

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**Wage Restitution**

Prevailing wages earned are based upon the wage rate for the classification of work performed, multiplied by the total number of covered hours worked. Wage restitution may be computed as follows:

1. Total hours worked times (x) adjustment rate (DB rate – rate paid) = wage restitution due; or
2. Total wages earned minus total wages paid = wage restitution due.

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**5 Key Labor Standards Objectives**



- Apply Federal labor standards properly
- Support contractor compliance through education and guidance
- Monitor contractor performance
- Identify & follow-up on underpayments
- Pursue debarment against repeat violators

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Maintenance (HUD-Determined) Wage Rates

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NAHASDA Requirements (24 CFR 1000.16)

**b) HUD-determined wage rates.** Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

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What is Maintenance?

- Maintenance, an activity normally funded under an "operating" account, is not defined in existing HUD regulations.
- Per LR-93-01, maintenance means work that involves the regular upkeep and preservation of buildings, grounds, and facilities
- Maintenance may include but is not limited to groundskeeping, janitorial work, patching and/or finishing of interior and exterior walls and other surfaces, and the preservation, inspection and general upkeep of electrical, plumbing, and heating and air conditioning systems.
- Maintenance work is subject to HUD-determined prevailing maintenance wage rates.

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Maintenance vs. Rehab

- Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify as maintenance but falls within the purview of "development" and is subject to Davis-Bacon provisions.
- Deferred maintenance that has been put off is subject to maintenance wage rates unless it is so substantial it has become reconstruction or remodeling.
- Abatement of asbestos or lead-based paint is normally considered development and subject to Davis-Bacon.

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Reporting Requirements

Semi-Annual Labor Standards Enforcement Report

<https://www.hud.gov/sites/dfiles/OCHCO/documents/4710.pdf>

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Tribally Determined Wage Rates

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Statutory Exclusions HUD Programs

**ICDBG Program**

- HCDA 107(e)
- 24 CFR 1003.603
- Not optional

**IHBG Program**

- NAHASDA 104(b)(3)
- 24 CFR 1000.16
- Optional

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ICDBG: 24 CFR 1003.603

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276 a to a-7).

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IHBG: 24 CFR 1000.16

- As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.
- When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.
- Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

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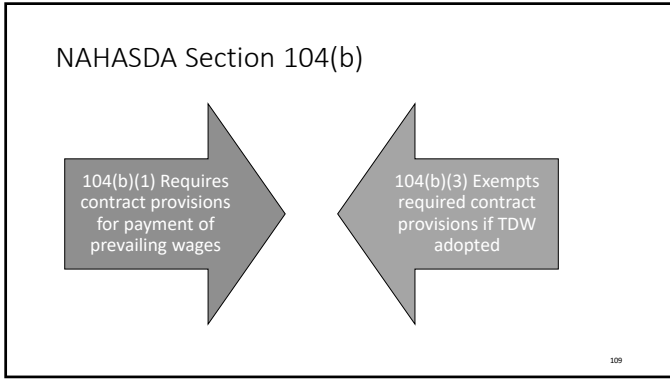
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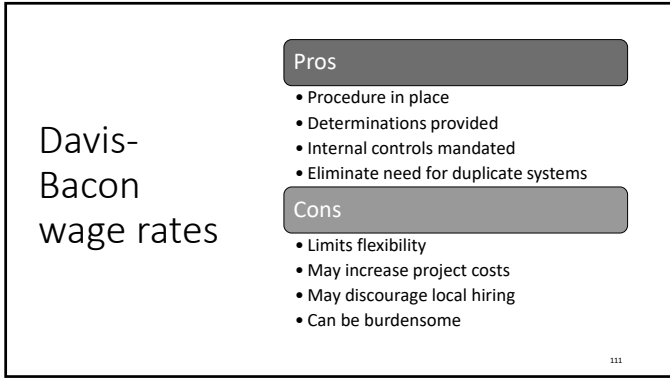
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Tribally-determined wage rates (IHBG only)

**Pros**

- Increases flexibility
- May reduce administrative burden
- May reduce project costs

**Cons**

- Increased up-front time and effort
- Surveys
- Job classifications
- Ordinance
- Requires ongoing effort
- May require two systems (TDW and DBW)

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Tribal Wage Rate Certification (IHP)

By signing the IHP, the recipient informs HUD of its wage rate decision, and if it has decided to use tribally determined wage rates and therefore must adopt the appropriate tribal laws and regulations establishing tribally determined wage rates. Note that the certification allows for three options:

1. The recipient will use tribally determined wage rates for all construction and maintenance activities involving IHBG funds, or
2. The recipient will use Davis-Bacon or HUD-determined wage rates for all construction and maintenance activities involving IHBG funds, or
3. The recipient will use Davis-Bacon and/or HUD-determined wage rates for some types of construction involving IHBG funds and tribally determined wage rates for other types of construction involving IHBG funds. Identify the specific IHBG-funded activities that will use tribally determined wage rates.

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“Prevailing” Wages

**DBA definition:** “the wage paid to the majority of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.”

**Tribal definition:** must be defined in the Ordinance and how they’re determined (HUD recommends using DBA definition)

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Decisions to be made

- Definition of "Prevailing Wages"
  - Use DBA definition or
  - Develop tribal definition
- Application (scope of work) of TDW's
  - All projects
  - Just DBA projects or also HUD-Determined (maintenance)
- Monitoring and enforcement
  - Certified payrolls?
  - Wage rate surveys?
- Job classifications and rates
  - Use DBA?
  - Develop tribal

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Determining "Prevailing Wages"

- Possible to use Davis-Bacon rates
- Use wage surveys
- Look at historical data

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Factors to consider

Size of organization	Administrative capability	Labor costs (TDC applies)
Construction plans	Force account	If TDHE, Tribe impact

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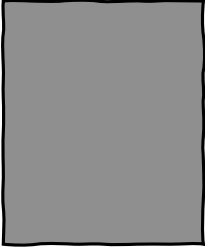
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Applying TDWR's



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Mixed-Funding Projects (IHBG and ICDBG)

- IHBG Funds Only**
  - Must use Davis-Bacon wages or Tribally-Determined wages (if adopted)
- ICDBG Funds Only**
  - Exempt from Davis-Bacon requirements
  - Can use tribally-determined wages if adopted
- IHBG Funds and ICDBG Funds**
  - Must use Davis-Bacon wages or Tribally-Determined wages (if adopted)

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Mixed-Funding Projects (IHBG and Other)

- IHBG Funds Only**
  - Must use Davis-Bacon wages or Tribally-Determined wages (if adopted)
- Other Funding Sources Only**
  - Must use Davis-Bacon if required by the funding source
- IHBG Funds and Other Funds**
  - Must use Davis-Bacon wages if required by the other funding source

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Construction Workers (contracted)

**Davis-Bacon Wage Rates (contracts over \$2,000)**

- Must be paid Davis-Bacon prevailing wages
- Certified and weekly payrolls required
- CWHSSA applies (overtime)

**Tribally-Determined Wage Rates (no dollar thresholds unless specified in Ordinance)**

- Must be paid tribally-determined prevailing wages
- Tribe/TDHE determines payroll requirements
- CWHSSA does NOT apply

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Maintenance Workers (employees)

**HUD-Determined Wage Rates**

- Must be paid HUD-determined prevailing wages
- Certified and weekly payrolls NOT required (LR 2004-01)

**Tribally-Determined Wage Rates**

- Must be paid tribally-determined prevailing wages
- Tribe/TDHE determines payroll requirements

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Contractor Compliance

**Davis-Bacon Wage Rates**

- Certified payrolls required
- Onsite wage interviews required
- Semi-annual reporting required

**Tribally-Determined Wage Rates**

- Procedure may be adopted to verify contractor payrolls
- Procedure may be adopted to verify job classifications and wages

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Volunteers

**Davis-Bacon and HUD-Determined Wage Rates**

- Excluded per NAHASDA 104(b)(2)
- May receive expenses, some benefits, and fees if approved in advance by HUD

**Tribally-Determined Wage Rates**

- No exclusion; tribe would need to exclude as part of Ordinance

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Sweat Equity

**Davis-Bacon Wage Rates**

- Excluded for families participating in a Mutual Help-style homebuyer program (refer to Guidance 2003-03)

**Tribally-Determined Wage Rates**

- No exclusion; tribe would need to exclude as part of Ordinance

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Force Account Labor

**Davis-Bacon Wage Rates (contracts over \$2,000)**

- Must be paid Davis-Bacon prevailing wages
- Tribe/TDHE determines payroll requirements
- Tribe/TDHE determines overtime policy

**Tribally-Determined Wage Rates (no dollar thresholds unless specified in Ordinance)**

- Must be paid tribally-determined prevailing wages
- Tribe/TDHE determines payroll requirements
- Tribe/TDHE determines overtime policy

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Writing the Ordinance

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See sample

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Ordinance Examples

- [Skokomish Tribe](#) (Washington State)
- [Stockbridge-Munsee Band of Mohican Indians](#) (Wisconsin)
- Sample Code

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WHAT ABOUT TERO?

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What is TERO?

- TERO stands for Tribal Employment Rights Ordinance or Office.
- TERO Ordinances require that all employers who are engaged in operating a business on reservations give preference to qualified Indians in all aspects of employment, contracting and other business activities.
- TERO Offices were established and empowered to monitor and enforce the requirements of the tribal employment rights ordinance.

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What is the purpose of TERO?

- The primary purpose of the TERO program is to enforce tribally enacted Indian Preference law to ensure that Indian/Alaska Native people gain their rightful share to employment, training, contracting, subcontracting, and business opportunities on and near reservations and native villages.

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Why was TERO enacted?

- To address the deplorable rate of poverty, unemployment and underemployment that exists among native people living on reservations.
- To eliminate discriminatory and other historical barriers tribal members face while seeking employment and business opportunities on or near reservations.
- To ensure that tribal members receive their rightful entitlements as intended and required under the Tribal and federal Indian preference employment law.

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What does TERO do?

- SETS CONDITIONS: Mandates the tribal requirements for Indian preference that all covered employers must comply with in order to be eligible to perform work on reservations.
- ESTABLISHES AUTHORITY: Empowers the TERO Commission and Staff with sufficient authority to fully enforce all provisions of TERO ordinance.
- ASSIGNS RESPONSIBILITY: Defines and describes the duties and responsibilities of TERO staff and commission.
- DELINEATES PENALTIES FOR VIOLATIONS: Clearly spells out penalties employers may face for violations of tribal law.
- PROVIDES DUE PROCESS: It provides principles of legal fairness to all parties involved in compliance or violation dispute issue.

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What is the extent of TERO jurisdiction?

- TERO has jurisdiction over all employers operating within the exterior boundaries of the reservation as legally defined by treaty or legislation including ceded lands, territories, and lands where jurisdiction has not been extinguished.
- TERO jurisdiction covering employers working on fee land projects has been greatly reduced by the Montana v. U.S.A. case.

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What are the TERO requirements?

- Submit an acceptable compliance plan detailing the steps they will take to ensure compliance with the TERO requirements. Note: TERO compliance plans are closely fashioned after those used by OFCCP for affirmative action compliance.
- Utilize the TERO skills bank for all referrals and consider Indian/ Native applicants before interviewing or hiring non-Indian/ Natives.
- Agree to hire no less than a specific number of Indians/ Natives in each job classification and cooperate (where feasible) with tribal training programs to hire a certain number of trainees.
- Eliminate all extraneous job qualification criteria or personnel requirements which may act as barriers to Indian/ Native employment. EEOC guidelines on legal BFOQs are used by TEROs.
- Agree to acknowledge and respect tribal religious beliefs and cultural differences and to cooperate with TERO to provide reasonable accommodations.
- All contractors claiming preference must file for certification as Indian owned businesses.

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What is exempted from TERO?

- There are several exemptions. Most TERO ordinances exempt direct employment by the Tribe, Federal, State or other governments and their subdivisions, non-profit corporations, churches, schools etc. However, all contractors regardless of the source of funding are covered by the TERO requirements. At the individual level, the only exemption allowed is for the employers "core crew or key person" which is defined as:
- "...a member of a contractor's or subcontractor's crew who is a regular, permanent employee and is a supervisor or other key position such that the employer would face a serious financial loss if that position were filled by a person who had not previously worked for the contractor."

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What are the penalties for violating TERO?

Violation of TERO requirements may result in severe sanctions. If it is determined that employers have willfully violated TERO requirements, tribes have the power to:

- Deny such party the right to commence business within the reservation/village.
- Impose a civil fine on such party ranging from \$500 to \$5000. per each violation.
- Terminate or suspend such party's operation and deny them from doing further business within the reservation or village.
- Order the removal of unlawfully hired non-Natives and take action to ensure future compliance. It can also order the back payment of lost wages to aggrieved Natives.

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TERO Examples

- Cherokee Nation (Oklahoma)
- Spokane Tribe of Indians (Washington)

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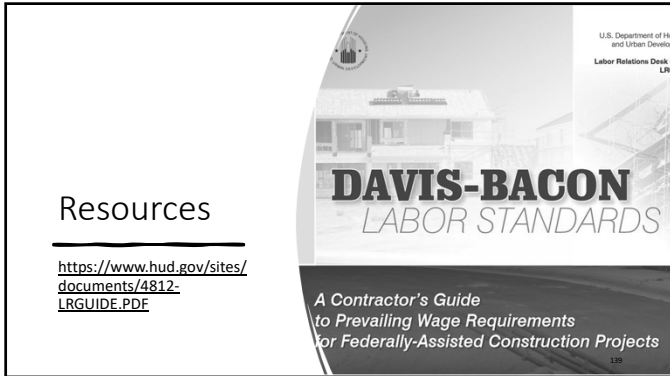
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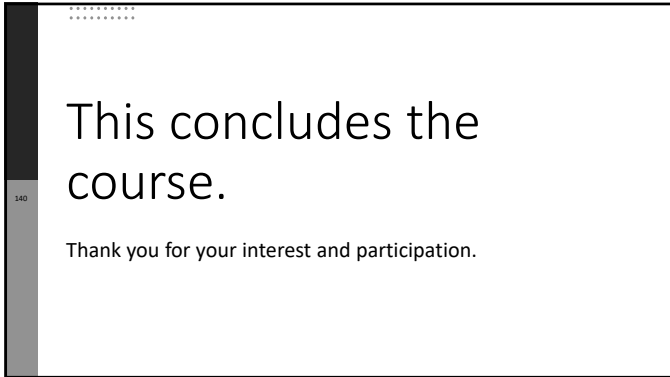
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