

Florida Prevailing Wage Update

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Outline

- I. Background: What is a Prevailing Wage Rate
- II. Davis Bacon and Related Acts
 - A. Application
 - B. Violation
- III. Little Davis Bacon and Local Jurisdictions
 - A. Does FL Have a Prevailing Wage Rate
 - B. Local Wage Rates

I. What is a Prevailing Wage?

- **Prevailing Wage** is a rate gov't determines to be normal / fair rate in geographic locale for a given class of labor and project type
- Prevailing wages determined by assessing local data and (should be) analogous to *union rates
- * Gov't doesn't want to give non-union employer bidding advantage over union employer by allowing non-union employer to pay *below* union rates for same labor class (and, thus, be more competitive than union employer)

II. Davis Bacon and Related Acts

A. Application

- Act applies to contractors and subcontractors performing work on **federally funded or assisted contracts** in excess of \$2,000 for the construction, alteration or repair of public buildings
 - federally funded job = Davis Bacon job (e.g., Department of Veterans Affairs enters contract to build hospital)
 - federally assisted job (when federal gov't assists projects through grants, loans, loan guarantees, and insurance through other federal laws) = Davis Bacon job through "Related Acts" (see 29 C.F.R. s. 5.1) (e.g., FDOT signs contract that includes federally assisted funds from federal gov't)
- U.S. Dep't of Labor (Wage Hour Division) determines local prevailing wage rate (including fringe benefits) for similar projects known as **wage determinations**
- Cannot pay **laborers and mechanics** performing **directly on the site of the work** less than locally determined prevailing wages and fringes
- Prevailing wage rate must be paid for all hours **worked** and is **combination of hourly rate + fringe benefit**

II. Davis Bacon and Related Acts

A. Application

- **Contract Hours and Safety Standards Act**-For prime contracts greater than \$100k, contractors and subcontractors must pay laborers and mechanicals **1.5 times rate** for hours worked over 40 hrs a work week. Also prevents unsanitary, dangerous, or hazardous working conditions.
- Dep't of Labor's **Wage and Hour Division** enforces compensation requirements
- Dep't of Labor's **Occupational Safety and Health Administration** enforces safety requirements

II. Davis Bacon and Related Acts

A. Application

Embodied in 40 U.S.C. s. 3141 en seq. (with procedures in 29 C.F.R. s. 1.1 en seq.)

“The advertised specifications for every contract **in excess of \$2,000**, to which the Federal Government or the District of Columbia is a party, **for construction, alteration, or repair, including painting and decorating**, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of **mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics**”

“The **minimum wages** shall be based on the **wages the Secretary of Labor determines to be prevailing** for the **corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed**, or in the District of Columbia if the work is to be performed there.”

II. Davis Bacon and Related Acts

A. Application

What does “minimum wage” or “prevailing wage mean?”

-the **basic hourly rate** of pay; and

-for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other **bona fide fringe benefits**....

40 U.S.C. s. 3141

II. Davis Bacon and Related Acts

A. Application

29 C.F.R. § 1.2

(a)(1) The **prevailing wage** shall be the wage paid to the majority (more than 50 percent) 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.

(2) In **determining the prevailing wages at the time of issuance of a wage determination, the Administrator** [of the Wage and Hour Division] will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part [explaining that Administrator will “**conduct a continuing program for the obtaining and compiling of wage rate information.**”]

II. Davis Bacon and Related Acts

A. Application

What does “conducting a continuing program for the obtaining and compiling of wage rate information”?

- Wage and Hour Division conducts surveys *encouraging the “voluntary submission of wage data by contractors, contractors’ associations, labor organizations, public officials, and other interested parties”*

II. Davis Bacon and Related Acts

A. Application

29 CFR s. 1.6

“Contracting agencies are responsible for insuring that only the **appropriate wage determination(s) are incorporated in bid solicitations and contract specifications** and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question”

II. Davis Bacon and Related Acts

A. Application

40 USC s. 3142

(c) Stipulations required in contract.--Every contract based upon the specifications referred to in subsection (a) must contain stipulations that--

(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;

(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and

(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

II. Davis Bacon and Related Acts

A. Application

Department of Labor's key classes for 4 types of projects:

 <p>Building</p> <p>Includes sheltered enclosures with walk-in access for the purpose of housing, persons, machinery, or supplies</p>	 <p>Residential</p> <p>Includes construction, alteration or repair of single family houses or apartment buildings of no more than four stories in height</p>
 <p>Highway</p> <p>Includes roads, streets, runways, highways or other similar projects</p>	 <p>Heavy</p> <p>Is a catch-all grouping that includes projects not properly classified under the other three types of construction</p>

II. Davis Bacon and Related Acts

A. Application

BUILDING		RESIDENTIAL	
1.	Heat and frost insulators	1.	Bricklayers
2.	Bricklayers	2.	Carpenters
3.	Boilermakers	3.	Cement masons
4.	Carpenters	4.	Electricians
5.	Cement masons	5.	Iron workers
6.	Electricians	6.	Laborers - common
7.	Iron workers	7.	Painters
8.	Laborers - common	8.	Plumbers
9.	Painters	9.	Power equipment operators (operating engineers)
10.	Pipefitters	10.	Roofers
11.	Plumbers	11.	Sheet metal workers
12.	Power equipment operators (operating engineers)	12.	Truck drivers
13.	Roofers		
14.	Sheet metal workers		
15.	Tile setters		
16.	Truck drivers		
HEAVY & HIGHWAY			
1.	Carpenters		
2.	Cement masons		
3.	Electricians		
4.	Iron workers		
5.	Laborers - common		
6.	Painters		
7.	Power equipment operators (operating engineers)		
8.	Truck drivers		

II. Davis Bacon and Related Acts

A. Application

Wage Determinations

→ General wage determination

→ Project determination

II. Davis Bacon and Related Acts

A. Application

General Decision Number: FL100017 09/30/2011 FL17

Superseded General Decision Number: FL20080017

State: Florida

Construction Types: Building, Heavy and Highway

County: Brevard County in Florida.

BRFL0001-001 05/01/2010

	Rates	Fringes
BRICKLAYER (BRICKLAYERS, BLOCKLAYERS, PLASTERERS, TERRAZZO WORKERS, TILE SETTERS AND CEMENT MASONS)		
COMMERCIAL.....	\$ 18.50	6.00
INDUSTRIAL.....	\$ 23.15	7.85

ROOF0103-001 02/01/2003

	Rates	Fringes
ROOFER, Including Built Up, Composition and Single Ply Roofs.....	\$ 14.50	5.10

NORRIS

II. Davis Bacon and Related Acts

A. Application

DAVIS BACON ACT

General Decision Number: FL100129 04/23/2010 FL129

Superseded General Decision Number: FL20080129

State: Florida

Construction Type: Building

County: Orange County in Florida.

BRICKLAYER.....	\$ 20.00	0.00
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ROOFER, Including Built Up, Hot Tar, Modified Bitumen, Shake & Shingle, Single Ply and Slate & Tile (Excluding Metal Roof).....	\$ 14.65	1.53
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II. Davis Bacon and Related Acts

A. Application

What if there needs to be a **project-specific** wage determination?

29 C.F.R. s. 1.5

“The Federal agency shall request a wage determination under the Davis–Bacon Act or any of its related prevailing wage statutes by submitting Form **SF–308**”

Request For Wage Determination And
Response To Request
(Davis Bacon Act as Amended and Related Statutes)

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

II. Davis Bacon and Related Acts

A. Application

What if the general wage determination *doesn't* cover every single labor class?

- A wage determination generally isn't going to include every class of labor applicable to the project / contract
- If a necessary classification is missing, contractor needs to due its *due diligence* and find out what the prevailing wage rate for that class of labor should be

II. Davis Bacon and Related Acts

A. Application

Contract Requirement: 48 CFR 52.222 (29 CFR s. 5.5)

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division....

II. Davis Bacon and Related Acts

A. Application

Form SF-1444

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE		CHECK APPROPRIATE BOX <input type="checkbox"/> SERVICE CONTRACT <input type="checkbox"/> CONSTRUCTION CONTRACT	OMB No.: 9000-0089 Expires: 02/28/96	
Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.				
NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER				
1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210		2. FROM: <i>(REPORTING OFFICE)</i>		
3. CONTRACTOR			4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED <i>(SEALED BIDDING)</i>	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED <i>(IF APPLICABLE) (SCA ONLY)</i>
10. SUBCONTRACTOR <i>(IF ANY)</i>				
11. PROJECT AND DESCRIPTION OF WORK <i>(ATTACH ADDITIONAL SHEET IF NEEDED)</i>				
12. LOCATION <i>(CITY, COUNTY AND STATE)</i>				
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION				
NUMBER: _____		DATED: _____		
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLES(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)		b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS	
<i>(Use reverse or attach additional sheets, if necessary)</i>				

II. Davis Bacon and Related Acts

A. Application

- Contractors and subs required to pay covered workers weekly and submit weekly **certified payroll**
- Covered workers must be paid prevailing wage rate entirely as cash wages or combination of cash wages + “bona fide” employer furnished fringe benefits:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly 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 if no such recognized agency exists 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**

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) **WHERE FRINGE BENEFITS ARE PAID IN CASH**

Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

II. Davis Bacon and Related Acts

A. Application

Example 1: Computing regular rate

Roofer: \$14.50/hourly rate \$5.10/fringes

- 1) Cash wages = \$19.60/hourly rate
- 2) Cash + Fringes = \$14.50/hourly rate + \$5.10 in bona fide fringe benefits
- 3) Combo = \$12.50/hourly rate + \$7.10 in bona fide fringes
- 4) Combo = \$15.50/hourly rate + \$4.10 in bona fide fringes

II. Davis Bacon and Related Acts

A. Application

Example 2: Computing fringe benefit rate when employer pays \$4,000/year in health insurance; \$1,500/year in dental insurance; \$750/year in vision insurance

$$*\$4,000/2,080 \text{ annual hours} = \$1.92/\text{hour}$$

$$*\$1,500/2080 \text{ annual hours} = \$.72/\text{hour}$$

$$*\$750/2080 \text{ annual hours} = \$.36/\text{hour}$$

Roofer: \$14.50/hourly rate \$5.10/fringes

Roofer must be paid \$16.60/hour + \$3/hour in above-stated fringes

*Key is to convert fringe benefits into **hourly rate** by **annualizing** hours worked on all projects (can use **representative** period of time to determine # of hours)

**If fringe benefit is based on monthly benefit, can determine hourly rate by # of hrs worked during month (can use representative month to determine # of hours)

II. Davis Bacon and Related Acts

A. Application

Example 3: OT of Roofer that worked 50 hours during week

Roofer: \$14.50/hourly rate \$5.10/fringes

-OT is based on the \$14.50/hourly rate or hourly rate paid to employee

-Roofer entitled to 10 hours of time at \$21.75 hour (1.5 x hourly rate)

-Fringe benefits required for **all** hours worked

II. Davis Bacon and Related Acts

A. Application

Submission of Certified Payroll – 29 C.F.R. s. 3.3

Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, **shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part ...during the preceding weekly payroll period.** This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of **Form WH 347.....**

II. Davis Bacon and Related Acts

A. Application

Other Applicable Federal Acts to Consider

Copeland Act (Anti-Kickback) Act – prohibits kickback of wages (prohibits employers from inducing employee to kickback or give up entitled wages)

Contract Hours and Safety Standards Act - discussed above re: OT and unsanitary conditions

McNamara –O’Hara Service Contract Act – applies to **service** contracts (e.g., janitorial, security) and requires prevailing wages for covered contracts per Department of Labor

II. Davis Bacon and Related Acts

B. Violation

Department of Labor says violations occur due to:

- 1) Misclassification of labor
- 2) Failure to pay full prevailing wage including fringe benefits for all hours worked
- 3) Inadequate record keeping (such as not recording hours if person worked in different labor classifications during day)
- 4) Failure to submit weekly certified payroll
- 5) Failure to post the Davis Bacon poster and applicable wage determination

II. Davis Bacon and Related Acts

B. Violation

- Violations (disregarding obligations or willful violations) can include contract termination, debarment from future contracts for up to 3 years, withholding of contract payments to satisfy unpaid wages, and liquidated damages resulting from OT violations (\$10/day per employee)
- Falsification of payroll or wage kickbacks can result in penalties, imprisonment, and subject entity to False Claims Act
- Violations can be challenged through ALJ

II. Davis Bacon and Related Acts

B. Violation

Department of Labor governs enforcement

29 USC s. 255 – statute of limitations

“shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.”

II. Davis Bacon and Related Acts

B. Violation

Davis Bacon does **not** give employees a private cause of action to enforce the Act except to the extent withheld funds are *insufficient*...

29 USC s. 3144

- (1) **In general.**--The **Secretary of** Labor shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

- (2) **Right of action.**--If the accrued payments withheld under the terms of the contract are **insufficient** to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the **laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law** on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

II. Davis Bacon and Related Acts

B. Violation

But...

Private person can institute qui tam / False Claims Act claims on behalf of federal government

United States ex rel. Brian Wall v. Circle C. Construction, LLC, 697 F.3d 345 (6th Cir. 2012) – submitting false payroll certificates under Davis Bacon can form basis of False Claims Act action

See also *United States of America ex rel. Brian Smith v. Clark/Smoot/Russell*, 796 F.3d 424 (4th Cir. 2015) – error to dismiss False Claims Act action based on submission of false payroll certificates under Davis Bacon

III. Little Davis Bacon and Local Jurisdictions

A. Does FL Have Prevailing Wage Rate

- FL repealed prevailing wage statute in 1979 (Fla. Stat. s. 259.19)
- All federally funded / assisted construction projects will fall under **Davis Bacon**
- FL regarded as “Little Davis Bacon” state
- No requirement that public entities (not using federally assisted funds) impose prevailing wage rates....BUT....

III. Little Davis Bacon and Local Jurisdictions

B. Local Wage Rates

Miami-Dade County's Responsible Wages and Benefits (Section 2-11.16 of Code of Miami-Dade)

All employees working on the project must be paid the **hourly rate and benefits listed in the Wages and Benefits Schedule**...The rates paid shall be not less than those contained in the Wage and Benefits Schedule regardless of any contractual relationship that may exist between the contractor and the workers hired to perform under the contract. For any classification of workers, the hourly rate paid must equal the sum of the base rate and the fringe benefit rates listed for that classification in the Wage and Benefits Schedule.

III. Little Davis Bacon and Local Jurisdictions

B. Local Wage Rates

Broward County, Section 36-5 of the Code

Establishment of Minimum Wages. Every construction contract in excess of two hundred fifty thousand dollars (\$250,000.00) to which Broward County is a part shall include a provision that the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract shall be not less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work as established by the Federal Register, in Broward County, Florida.

III. Little Davis Bacon and Local Jurisdictions

B. Local Wage Rates

City of Orlando Solicitation

3. Compliance with Davis-Bacon Act. Bidder shall comply with 24 CFR §570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7)), as amended, and as supplemented by Department of Labor regulation 29 CFR Part 5. Any construction contracts entered into by Bidder shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. Bidder shall also place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of the contract shall be conditioned upon the acceptance of the wage determination. If the attached Wage decision is no longer current at the time of contracting, Bidder must ensure that a current copy is used. Bidder shall ensure that a current copy of the Wage Decision and a copy of the Department of Labor poster called “Notice to All Employees” (Form WH-1521) shall be posted at the jobsite in a place that is easily accessible to all of the construction workers employed on the Project. Bidder shall also require the contractor to obtain weekly certified payroll reports. Bidder shall maintain documentation and records which demonstrate compliance with these regulations, including contract provisions and payroll records. Unless labor regulations require more frequent submission, such documentation shall be submitted to the City for review on a monthly basis.