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# FEDERAL GRANT COMPLIANCE Info Sheet

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## **Prevailing Wages in Construction Contracts**

The New Hampshire Department of Education (NHDOE) has prepared this **Prevailing Wages in Construction Contracts Info Sheet** to assist Federal program subrecipients in complying with Davis-Bacon and related Acts (DBRA) compliance requirements for covered construction projects. Specific Federal legislation and requirements related to DBRA can be found at [40 USC §3141 et seq](#) and [29 CFR Parts 1, 3, 5, 6 and 7](#).

### **Who is Covered?**

The DBRA generally apply to contractors and subcontractors performing on federal and federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating). Laborers and mechanics performing on the site of the work of DBRA-covered contracts are entitled to receive prevailing wage rates for such work.

### **Basic Provisions/Requirements**

The DBRA requires that contractors and subcontractors performing on covered contracts pay laborers and mechanics employed on the project jobsite not less than the prevailing wage rates (including fringe benefits) listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics. The rates listed are based on wages and fringe benefits the US Department of Labor (Department) found to be prevailing for laborers and mechanics employed on similar projects in the area. Davis-Bacon labor standards clauses and the applicable wage determination(s) must be included in covered contracts.

Apprentices may be employed at less than the predetermined rates if they are individually registered in and employed pursuant to an apprenticeship program registered with the Department or with a state apprenticeship agency recognized by the Department. Trainees individually registered may be employed at less than predetermined rates if they are participating in a trainee program certified by the Department.

Contractors and subcontractors on DBRA projects are required to pay laborers and mechanics weekly and to submit weekly certified payroll records to the contracting agency. DBRA contractors and subcontractors are also subject to rules concerning allowable payroll deductions.

Contractors and subcontractors on Davis-Bacon Act prime contracts in excess of \$150,000, or related Act contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety

Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek.

## Employee Rights

The DBRA provide laborers and mechanics on covered contracts the right to receive at least the locally prevailing wages (including fringe benefits), as determined by the Department of Labor, for the type of work performed. The [Wage and Hour Division](#) and respective federal contracting agencies accept complaints of alleged Davis-Bacon violations.

## Recordkeeping, Reporting, Notices and Posters

### Notices and Posters

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 [“Employee Rights Under the Davis-Bacon Act” poster](#) at the site of the work in a prominent and accessible place where it may be easily seen by workers. The applicable wage determination must be similarly posted.

### Recordkeeping

Under the DBRA, covered contractors must maintain payroll and basic records for all covered laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and social security number of each worker;
- Each worker’s work classifications;
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
- Daily and weekly numbers of hours worked;
- Deductions made;
- Actual wages paid;
- Detailed information regarding bona fide fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected;
- If applicable, detailed information regarding approved apprenticeship or trainee programs.

Some of the records required to be kept under the law are also required under the Fair Labor Standards Act. See Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](#) .

### Reporting

Each covered contractor and subcontractor must, on a weekly basis, provide the contracting agency a copy of all payrolls providing the information listed above under “Recordkeeping” for the preceding weekly payroll period, except that that full social security numbers and home addresses shall not be included on weekly transmittals, and instead the payrolls only need to include an individually identifying

number for each worker (e.g., the last four digits of the worker's social security number). Each payroll submitted must be accompanied by a "Statement of Compliance" using page 2 of [Form WH-347 Payroll \(For Contractors Optional Use\)](#), or any form with identical wording, certifying compliance with applicable requirements. The statement is to be signed by the contractor or subcontractor, or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and delivered to a representative of the federal or state agency in charge. This must be submitted within seven days after the regular pay date for the pay period.

From time to time, contractors may also be asked to submit, via survey, wage data from construction projects on which they have employed laborers and mechanics for use by the Department in determining the locally prevailing wage rates that will apply to DBRA-covered projects in the future. The submission of wage data is encouraged, but voluntary. When new surveys are conducted to enable the Department to reflect the locally prevailing wages, contractors and others may use the [WD-10 Form, Report of Construction Contractor's Wage Rates](#).

## Penalties/Sanctions

Contractors or subcontractors found to have disregarded their obligations to employees under the DBRA, or found to be "in aggravated or willful violation" of any of the related Acts, may be subject to debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and for liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA). Breach of the required contract clauses under the DBRA and CWHSSA may also be grounds for termination of the contract.

Contractors and subcontractors may challenge the Department's Wage and Hour Division's determinations of violations and debarment before an Administrative Law Judge. Contractors and subcontractors may appeal decisions by Administrative Law Judges to the Department's Administrative Review Board (ARB). ARB determinations on violations may be appealed to and are enforceable through the federal courts.

Falsification of the required certified payroll records or any kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

## Relation to State, Local, and Other Federal Laws

Since 1931, Congress has extended the Davis-Bacon prevailing wage requirements to numerous other laws – "related Acts" – that provide federal assistance for construction through loans, grants, loan guarantees, and insurance. These laws require payment of the prevailing wages determined in accordance with the Davis-Bacon Act on federally assisted construction undertaken pursuant to the relevant law. Examples of the related Acts are the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974 (and various other HUD-administered laws), and the Federal Water Pollution Control Act.

The [Copeland "Anti-Kickback" Act](#) prohibits contractors from inducing any person employed in DBRA-covered construction to give up any part of the compensation to which he or she is entitled, and

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requires contractors to submit a weekly statement of the wages paid to each employee performing DBRA-covered work. Implementing regulations govern allowable payroll deductions.

Contractors on projects subject to Davis-Bacon labor standards may also be subject to overtime pay requirements under the Contract Work Hours and Safety Standards Act (CWHSSA) and the [Fair Labor Standards Act](#).

In addition to these federal labor standards, State and local prevailing wage and overtime pay requirements may apply.

## Compliance Assistance Available

The US Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the DBRA, such as the DOL Prevailing Wage Resource Book and the [DBRA Forms page](#). Other compliance assistance related to the DBRA is available on the [Davis-Bacon and Related Acts \(DBRA\) Web Page](#). Also, the [Wage Determinations OnLine \(WDOL\) Web site](#) provides a single location for federal agency officials to obtain Davis-Bacon wage determinations for use in covered contracts. The WDOL Web site library provides a variety of links that relate to compliance with the prevailing wage laws that apply to federal and federally assisted contracts.

Also, please feel free to contact the NHDOE Bureau of Federal Compliance staff should you have any questions relative to the contents of this document.

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