

LABOR STANDARDS



National Association of Housing and Redevelopment Officials

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TODAY'S FACULTY MEMBER

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ENFORCING LABOR STANDARDS

- Housing authorities and other recipient of HUD funds are responsible for the administration and enforcement of Federal labor standards provisions in HUD programs.
- These standards include those contained in the:
 - Davis-Bacon and Related Acts
 - Copeland Act
 - Contract Work Hours and Safety Standards Act
- Additionally, administrators of HUD funds are responsible for the administration and enforcement all applicable prevailing wage requirements.

TODAY'S OBJECTIVES

- Gain an Understanding of the Housing Authority's/ Community Development Organization's Responsibilities in Enforcing Labor Standards Regulations
- Gain an Understanding of all facets of Labor Standards and Prevailing Wage Enforcement Requirements
- Develop Procedures for a Labor Standards Enforcement Program
- Provide tools to assist in educating contractors about labor standards compliance
- Learn tips on how to monitor compliance
- Learn what to do in case of non-compliance

ENFORCING LABOR STANDARDS

- The ultimate responsibility for the enforcement of Labor Standards rest with the organization responsible for the expenditure of Federal dollars.
- Labor Standards apply to all contracts involving on-site labor that exceed \$2000.
- HUD Handbook 1344.1 Rev 2 provides PHAs direction and requirements for enforcing labor standards (2/2012)

RESPONSIBILITIES OF STATE, LOCAL & TRIBAL AGENCIES

- Designate appropriate staff - Notify HUD of names
- Implement construction contract management practices – Meet standards of CFR 200
- Inform, support and oversee all subordinate program participants
- Ensure all bid documents contain the appropriate labor standards provisions
- Ensure that no contract is awarded to a contractor that is ineligible
- Conduct on site wage interviews

RESPONSIBILITIES OF STATE, LOCAL & TRIBAL AGENCIES

- Review certified payrolls and related documents
- Maintain full documentation
- Refer any potentially criminal or complex enforcement matters to HUD
- Prepare and submit to HUD federal labor standards enforcement reports – DOL regulations at 29 CFR part 5, and 5.7

5 PRIMARY LABOR STANDARDS OBJECTIVES

1. Apply prevailing wage requirements properly
2. Support compliance by providing training, technical support and oversight of program participants
3. Monitor Contractor Performance
4. Investigate probable violations and complaints
5. Pursue debarment and other available sanctions against repeat labor standards violators

PREVAILING WAGE REQUIREMENTS IN HUD PROGRAMS

- Overview
 - There are three types of prevailing wage requirements governing HUD funded programs
 - **Davis Bacon Act prevailing wages** payable to laborers and mechanics employed on covered construction work
 - **HUD determined prevailing wages** relating to maintenance work (including non-routine maintenance work) in Public, Indian and Hawaiian housing operations
 - **Service Contract Act prevailing wages** relating to contracts for maintenance and other services

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9

BASIC LABOR & LABOR-RELATED STATUTORY PROVISIONS

- **Davis-Bacon Act:** The DBA, enacted in 1931, applies to all contracts in excess of \$2,000 for construction, alteration and/or repair of all public building or public works that involved Federal dollars. The DBA requires that specifications contain a wage decision stating the minimum wages to be paid. The DBA contains provisions that:
 - Requires contractors and sub-contractors to pay all mechanics and laborers at least weekly
 - Prohibit rebates or deductions from wages earned
 - Requires posting, onsite and assessable to workforce a copy of the wage decision
 - Permits contract termination or initiation of debarment proceedings for non-compliance

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10

BASIC LABOR & LABOR-RELATED STATUTORY PROVISIONS

- **Contract Work Hours and Safety Standards Act (CWHSSA)**
- This Act provides that all overtime (O/T) hours in excess of 40 during any workweek must be compensated at a rate not less than 1 ½ times the regular basic rate of pay. The Act also covers:
 - Overtime Requirements
 - Liability for Unpaid Wages
 - Withholding for Unpaid Wages

BASIC LABOR & LABOR-RELATED STATUTORY PROVISIONS

- **Copeland Act (Anti-Kickback Act)**
 - The Act makes it a criminal offense to induce, by any manner, any person employed on a project involving Federal funds to give up any part of the compensation to which he/she is entitled to under his/her contract of employment.
 - The Act also restricts payroll deduction to those that are allowed by the DOL.
 - The Act also requires the submission of weekly payroll reports and statements of compliance by all contractors and subs.

Exemptions: The Copeland Act is only applicable where Davis-Bacon prevailing wage provisions are applicable

SITE OF WORK

- Davis-Bacon applies only to laborers and mechanics employed directly on the site of work.
- A three part definition applies to determine the scope of the term “site of work”

Definition No 1:

- The physical place or places where the construction called for in the contract will remain after the work has been completed; and,
- Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the contract

SITE OF WORK

Definition No. 2: The Site of Work also includes job headquarters, tool yards, batch plants, etc., provided they are:

- Located adjacent or virtually adjacent to the site of work; and,
- Dedicated exclusively or nearly so to the performance of the contract.

Definition No. 3: the “Site of Work” does not include a contractor’s

- Permanent home office, branch locations, fabrication plants, tool yards, etc. whose location and operation are determined without regard to a particular covered contract.
- Facilities established before the opening of bids for the project.

WAGES & FRINGE BENEFITS

In the Davis-Bacon Act, the term “wages” or “prevailing wages” includes:

- The Basic Hourly Rate (BHR)
- Contractor’s contribution made to a 3rd party or trustee pursuant to a bona fide fringe benefit (FB) fund plan or program
- The rates of costs the contractor reasonably anticipates in providing bona fide fringe benefits where certain conditions are met
- The wage decision fringe benefit obligation may be satisfied by:
 - Payment the BHR and FB in Cash
 - Contribute payments to a bona fide plan
 - Any combination of the two

4 PHASES OF ENFORCEMENT

1. Bid Package Preparation
2. Pre-Construction Activities
3. On-Site Inspections
4. Records Review

PRE-CONSTRUCTION ACTIVITIES

- Obtaining an applicable wage rate
- Including the wage determination in the bid package
- Include appropriate labor standards provisions
- Checking contractor for eligibility
- Conducting a pre-construction meeting
- Adding job classifications

OBTAINING WAGE DETERMINATIONS

- <http://www.wdol.gov>
- This website provides a single location to use in obtaining appropriate Service contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations
- The wdol.gov website also provides direct access to the DOL's "e98" website to submit a request for a SCA WD

SELECTING THE CORRECT WAGE DECISION

- The term “wage decision” includes the original decision and any subsequent decisions modifying, superseding, or correcting the provisions of the original decision.
- A wage decision is a schedule of work classifications and wage rates that represent the *minimum* rates that must be paid.
- For Davis-Bacon related activities, the DOL established four broad categories of work which may have varying wage requirements:
 - Residential – less than 4 stories
 - Building – exceeding 4 stories or commercial usage
 - Highway
 - Heavy

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19

SELECTING THE CORRECT WAGE DECISION

Types of wage decisions:

- **General wage decisions:** Most Davis-bacon wage decisions are “General Wage Decisions”. The official website for listing of general decisions is www.wdol.gov.
- **Project Wage Decisions:** Issued for project specific work. Wage decision may include multiple trades. Factors effecting the wages included in the decision are:
 - Geographic location
 - Nature of Work

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20

WAGE DETERMINATIONS & BID DOCUMENTS

- Failure to Include Wage Determination – Requires Corrective Action by awarding agency. The DOL may issue a WD after contract award in this scenario
- Use of Wrong Determination – Does not relieve the PHA or the Contractor from Labor Standards Requirements. The agency can either re-solicit or negotiate an appropriate change order
- Posting of Wage Determination – A copy of the applicable wage decision shall be posted by the prime contractor at the site of work in a place accessible to the workers. A copy of poster WH-1321, Employee Rights Under Davis-bacon, with appropriate contact information, must also be posted at the job site
- Determining Contractor Eligibility: Two website sources to check. Print copy of search for files
 - www.Hud.gov/enforce (HUD excluded list)
 - <https://www.sam.gov/portal/SAM/#1> (GSA Debarred list)

INCLUDE APPROPRIATE LABOR STANDARDS PROVISIONS

HUD has 4 forms containing Davis-Bacon labor standards provisions applicable to various HUD programs:

1. **HUD 2554, Supplementary Conditions for Construction** – HUD administered projects including FHA-insured multi-family development, Section 202/811 and Section 8
2. **HUD 4010, Federal Labor Standards Provision** – CPD programs including CDBG, Section 108, DEDI/BEDI, and HOME
3. **HUD 5370, General Conditions of the Contract for Construction** – Public Housing Programs
4. **HUD 5370-EZ, General Conditions for Small Construction /Development Contracts** – Public Housing Programs.

Additionally, 5369C, Representations and Certifications of Offerors Form also makes eligibility and labor standards references

HUD 5370; GENERAL CONDITION LABOR STANDARDS REFERENCES

- Article 5 - Pre-construction Conference
- Article 27 - Payments
- Article 40 - Section 3 Clause
- Article 45 - Examination and Retention of Records

HUD 5370; GENERAL CONDITION LABOR STANDARDS REFERENCES

- Article 47 – Labor Standards
 - a) Minimum Wages
 - b) Withholding of Funds
 - c) Payrolls and Basic Records
 - d) Apprentices
 - e) Compliance with Copeland Act
 - f) Termination: Debarment
 - g) Compliance with Davis-Bacon Act
 - h) Labor Standards Disputes
 - i) Certification of Eligibility
 - j) Contract Work Hours and Safety Standards Act

HOLDING A PRE-CONSTRUCTION CONFERENCE TO EXPLAIN LABOR STANDARDS

2 Goals of a Pre-construction Conference as it Relates to Labor Standards:

1. To get funds they have earned released on time and in full
2. To avoid violating labor standard provisions

To ensure effectiveness in labor standards pre-con presentations:

- Familiarize contractors with each provision
- Explain what the provision means
- Answer questions and explain reporting requirements

PRE-CONSTRUCTION CONFERENCE SAMPLE AGENDA

1. Sign in of Attendees
2. Acknowledgment of Minutes
3. Discussion on the Lines of Communication
4. Review of W/MBE and Section 3 Requirements
 - a. Use of W/MBE Owned Enterprises
 - b. Resident Employment Compliance
 - c. Section 3 Reporting Requirements

HUD has a booklet entitled “A Contractor’s Guide to Prevailing Wage Requirements” that is an excellent handout for pre-con meetings

PRE-CONSTRUCTION CONFERENCE SAMPLE AGENDA

5. Labor Standard Requirements
 - a. Filling out HUD 347/348 Payroll Forms
 - b. Review of Wage Rate Decision
 - c. On-Site Interviews (HUD 11)
 - d. Posting Requirements
 - e. Apprentice Participation
 - f. Disputes and Appeals

PRE-CONSTRUCTION CONFERENCE SAMPLE AGENDA

6. Contract Requirements
 - a. Review of General Conditions
 - b. Review of Special Conditions
 - c. Other Requirements
 - d. Shop Drawing Approval Schedule
 - e. Jobsite Security and Safety
 - f. Jobsite Cleanup
 - g. Establish Construction Progress Meeting Schedule
 - h. Review Progress Schedule
 - i. Review HUD 51000
 - j. Permits

PRE-CONSTRUCTION CONFERENCE SAMPLE AGENDA

7. Housing Authority Procedures
 - Contract Payment Process and Requirements
 - Change Order Processing
 - Site Inspections
 - Disputes and Claims
 - Contract Close-Out Procedures
8. Review of Subcontractors
9. Discussion of Plans and Specifications
10. Execution of Contract and Schedule Notice to Proceed

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29

RECAPPING THE PRE-CONSTRUCTION CONFERENCE LABOR STANDARDS AGENDA

- Filling Out Payroll Forms
- Review of Wage Decision
- On-Site Interviews
- Posting Requirements
- Apprenticeship Participation
- Disputes and Appeals
- Prime Contractor Responsibilities

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30

CONDUCTING WAGE INTERVIEWS

- PHAs are responsible for conducting on-site interviews with all trades and laborers and record the information gathered.
- HUD-11, Record of Employee Interview, is the recommended form to use
- The goal should be to interview at least 10% of each trade on the job site
- Use of “risk analysis” techniques/targeted interviews

CONDUCTING WAGE INTERVIEWS

- **Confidentiality.** Each employee interviewed shall be informed that the information given during the interview is confidential, and that his/her identity will only be disclosed with the prior written consent of the employee.
- **Place and timing of interview.** All employees working on the site of the project shall be made available during working hours for interview by authorized representatives. The interview shall be conducted on the premises at a place that shall permit privacy for the employee; and of duration that causes the least amount of disruption to the on-going work.
- **Completeness of information gathered.** The inspector shall ensure that all of the information requested on the HUD-11 interview form is complete and accurately reflects the project identification, date of interview and employee statements
- **Observations and comments of the interviewer.** The on-site observations of the inspector are important, especially where underpayments are indicated. The inspector shall make note of his/her observations on the job site, particularly with respect to the duties actually performed by the employee and any tools used.

CONDUCTING WAGE INTERVIEWS

- **HUD-II comparison to CPRs.** The HUD-IIs shall be compared to the corresponding CPR during regular project CPR reviews. The result of the comparison, including any discrepancies, shall be noted in the space provided for the payroll examiner's comments. The payroll examiner shall sign and date each HUD-II at the completion of such comparison.
- **Targeted interviews.** Where spot-check reviews and/or the comparison of HUD-IIs to CPRs indicate that underpayments may exist, it is appropriate to target interviews to particular trades or the employees of certain employer(s).

PAYROLL REVIEW

Weekly Payrolls:

- Each Contractor and subcontractor shall submit weekly payrolls for each work week from the time work is started until project completion
- Not required when no work performed
- Numbered sequentially

Note: All payroll corrections required must be done by the contractor

COMMON PROBLEMS / ISSUES THAT MAY SURFACE DURING PAYROLL REVIEW

- **Timely Submissions:** DOL regulations require prompt submittal of payroll forms. Generally within one week after the close of the payroll period.
- **Payroll Format:** Employers are encouraged, but not required to use Payroll Form WH-347. Employers may use substitute formats provided that it contains all the required information and is accompanied by the Statement of Compliance contained on page 2 of the WH-34.
- **Incomplete Data on Payroll:** If information is missing, i.e. rates of pay, classification, gross earnings, deductions, etc., the contractor shall be required to submit a corrected payroll.
- **Wage Rates:** Compare the wage rate to the payrolls to ensure minimum rates are being paid
- **Confirm apprentices certifications**
- **Compare info from HUD I I interviews to payroll data**
- **Payrolls must bear original signature of the owner or authorized representative (get authorization in writing)**

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35

PAYROLL REVIEW

Working Subcontractors-must be a bona fide, legitimate company in order to be considered a sub-contractor. Otherwise, they must be listed as employees of the prime contractor. To determine if the sub is a legitimate sub-contractor, verify the following:

- Telephone Listing?
- License?
- Liability Insurance, Worker's Comp Insurance?
- Federal Tax I.D. Number?

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36

NON-COVERED WORKERS

- Supply and Installation Contracts – not covered by wage decision
- Summer Youth Employment – not covered by wage decision
- Non- Covered Classifications:
 - Project Superintendent
 - Project Engineer
 - Project Foreman (Less than 20% of their time working with tools of the trades)

LABOR STANDARDS ENFORCEMENT

Ensure Compliance and Enforcement by:

- Job Inspections
- Postings
- Wage Interviews
- Payroll Review:
 - Addresses and Social Security Numbers
 - Classifications and Wage Rates
 - Computations and Deductions

PERMISSIBLE PAYROLL DEDUCTIONS

- Ones Made in Compliance with Federal, State and Local Laws
- Bona Fide Prepayments
- Court Ordered
- Established Funds:
 - Medical Insurance
 - Pension, Insurance
 - Union Vacation, savings plan, etc.

PAYROLL CERTIFICATION REVIEW

- Original Signatures
- Submitted weekly for all weeks
- Address and Worker ID Number
- Completeness
- Correct Classifications and Wages
- Correct Overtimes Calculations
- Reasonable Deductions
- Addresses Fringe Benefit Payments
- Consistency with HUD II Interview Info
- Proper Apprenticeship Certification

RESTITUTION FOR UNDERPAYMENT

- Notification to the Prime Contractor
- Corrected Certified Payrolls
- Employee Signatures
- Reporting Requirements for \$1000 or more
 - Refer cases to the HUD Labor Relations Officer where an investigation may be warranted
 - As necessary, impose escrow requirements for labor standards violations and/or CWHSSA liquidated damages liabilities as appropriate

COMMON INDICATORS OF FALSIFICATION & WILLFUL VIOLATIONS

- PHA's are to perform "spot-checks" of certified payroll reports(CPRs) and related documents in order to monitor the compliance status of employers engaged on projects covered by prevailing wage requirements. Spot-checks are intended to disclose obvious, face-of-the-record violations and, more importantly, to detect evidence of willful violations and payroll falsification.
- In many of the more egregious noncompliance cases, the violating employer will attempt to conceal underpayments on payroll reports by falsifying the data. HUD has chosen to focus particularly on falsification because such conduct by employers, generally, involves substantial amounts of wage underpayments and may lead to debarment, and criminal prosecution or fines for willful violations and/or making false statements.

COMMON INDICATORS OF FALSIFICATION & WILLFUL VIOLATIONS

- **Ratio of Laborers to Trades Workers** - Except for concrete, landscaping and similar trades, the ratio of laborers to mechanics should not exceed 1 : 1. A higher ratio of laborers to mechanics normally indicates misclassification.
- **Too Few of Irregular Hours** - Most workers are employed on a regular 40 hour per week basis. CPRs that consistently reflect less than 40 hours per week for all or certain groups of employees, or that reflect erratic work schedules indicate that the hours may have been reduced to give the appearance of compliance.
- **Discrepancies in Wage Computation** - CPRs that reflect frequent discrepancies in wage computations, e.g., gross wage payments in round numbers (\$400/week) computed from an uneven hourly wage rate (\$15.67/hour), indicate that the employees may be working on a piece rate basis, or at an even (e.g., \$15/hour) wage rate.
- **Extraordinary Deductions** - Unexplained or unusually high deductions may indicate that employees are being required to kick-back a portion of their earnings. While this would indicate willful violations, it does not necessarily indicate falsification.

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43

LABOR STANDARDS RECORD KEEPING

- HUD does not prescribe a specific file system for labor standards. HUD expectation is that the filing system used demonstrates that the PHA/CD agency has successfully carried out its labor standards responsibilities. At a minimum, the files should evidence that:
 - Met the general requirements of 1344.1
 - Properly applied prevailing wage requirements
 - Verified eligibility of prime contractor prior to contract award
 - Conducted CPR spot checks, interviews and other enforcement actions
 - Document action taken for violations or discrepancies
 - Submittal of required DOL reports

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44

LABOR STANDARDS REPORTING REQUIREMENTS

The DOL regulations at 29 CFR Part 5,5.7 requires the submission of two types of labor standards enforcement reports. These enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the Davis-Bacon and Related Acts:

- **Semi-annual enforcement report-** HUD 4710. The form and instructions are available online at HUD Clips. The HUD 4710 is on screen fillable and can be transmitted to HUD electronically.
- **Case driven enforcement reports-** Where underpayments by a contractor or subcontractor total \$1,000 or more, and/or there is reason to believe that labor standards violations are aggravated or willful, an enforcement report shall be prepared and submitted to the HUD Labor Relations staff.

SEMI-ANNUAL_ENFORCEMENT_REPORT_- HUD 4710

- HUD 4710

CONTRACT TERMINATION: LABOR STANDARDS VIOLATIONS

- Whenever a contract is terminated because of violations of DBRA labor standards, a report must promptly be submitted to the Department of Labor.
- The report must include the name and address of the contractor or subcontractor whose contract has been terminated; and the name and address of the contractor or subcontractor, if any, who will complete the work; the contract number and the amount; and a description of the work performed. This report/notice must be submitted within 30 days of contract termination.

HELPFUL WEBSITES

Related Web Sites

- List of Parties Excluded from Federal Procurement and Non-Procurement Programs (Debarred List) <https://www.sam.gov/portal/SAM/#1>
- DOL Davis-Bacon and Related Acts Homepage <http://www.dol.gov/whd/contracts/dbra.htm>
- Davis-Bacon Wage Decisions <http://www.wdol.gov/>
- DOL Field Operations Handbook (Chapter 15) <http://www.dol.gov/whd/FOH/index.htm>
- HUD Handbook 1344.1 http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441

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