

Payroll/Wage Requirements Summary

The Davis-Bacon Act requires payment of locally prevailing wages and fringe benefits to laborers and mechanics employed on Federally funded contracts totaling \$2,000 and any related contracts regardless of value. All other Equal Employment Opportunity (EEO) provisions apply to Federal-aid construction contracts and any related contracts totaling \$10,000 or more (Form FHWA 1273 Section II).

WAGES

- The Davis-Bacon Act requires contractors and subcontractors to pay workers unconditionally and not less often than once a week
- Workers shall be paid the appropriate wage rate and fringe benefits indicated on the Wage Determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 & 5 of Section IV of the Form FHWA 1273 (apprentices & trainees).
- The Prime Contractor is responsible for ensuring that Federal wage requirements and the Required Contract Provisions are communicated and fulfilled by all contractors. In carrying out this obligation, the Prime will ensure that the Wage Schedule and all required Provisions are incorporated into every subcontractor and lower-tier subcontractor contract.
- The Davis-Bacon Act only applies to laborers/mechanics employed by a contractor or subcontractor on the **“site of work.” Anyone performing “physical work” on site is subject to Davis-Bacon Act payroll/wage requirements.**

FRINGE BENEFITS

- Contractors must pay their workers, at least, the minimum “prevailing wage.” The two components of the prevailing wage are the base hourly rate and the fringe rate.
- Payments will either be paid in cash or through contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis Bacon Act (40 U.S.C. 276a). Contractors may take a credit for the hourly costs of fringe benefits provided to each worker by completing and attaching a Fringe Benefit Breakout Sheet (per worker) to each payroll, where the prevailing wages (base rate and fringe) were not paid in cash.
- 29 CFR 5.23 – The Statutory Provision states: The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program **will be communicated in writing to the laborers and mechanics.**

WORK CLASSIFICATIONS

- Work classifications must be specific. If you are classifying your people under one of the classifications already in the wage schedule, your classifications must mirror those classifications exactly in order to avoid confusion. **Payrolls that reflect just “operator” will be returned for correction.** There are many different types of operators and rates are different. As such, you must clearly indicate the equipment being operated. Even if you pay the highest rate for all equipment classes worked in, the specific equipment must be indicated and broken out on payrolls.
- **Welders:** Requests for Additional Work Classifications are generally not needed for welders. Welding is commonly considered incidental to the work of employees for whom classifications are issued. Thus, it is appropriate for welders to be classified in the same classification as the employees who are performing the duties to which the welding work is incidental.

REQUESTING ADDITIONAL WORK CLASSIFICATIONS

- A “Request for Additional Work Classification” must be submitted when the required work classification and prevailing wage have not been stipulated on the wage schedule. A sample request has been provided with this packet. For assistance in completing this form, please contact the NH DOT Office of Federal Compliance at (603) 271-2467.

NOTE: NHDOT forwards Requests for Additional Work Classifications to US DOL as soon as they are received. The US DOL typically takes from 1 - 2 months to respond. It is imperative to submit Requests for Additional Work Classifications as soon as possible. Contractors can begin using additional work classifications at the proposed rates upon submitting requests.

SPLIT CLASSIFICATIONS

- Workers performing work in multiple classifications must be compensated at the rate specified for each classification for the time actually worked therein. Contractors that do not keep accurate time records and pay according to the work performed in each classification must pay a rate equal to or greater than the classification of work demanding the highest rate.
- Workers must be shown on the payrolls once for each classification worked and paid the minimum hourly rate stipulated in the wage schedule.

MAINTAINING ACCURATE TIME RECORDS

- Contractors must maintain accurate daily time sheets for all employees (including superintendents/foremen). Time cards/sheets should reflect the **hours worked by each employee and the number of hours worked in each classification**. Employees must be paid no less than the minimum hourly rate for the classification of work performed. Particular attention should be given to the classification of work that constitutes work over 40 hours per week for appropriate overtime computations.

WORKING IN MULTIPLE COUNTIES

- Some projects have multiple counties and wage rates for the same work classification can vary, sometimes hugely. As such, the county where work is performed must be indicated on payrolls. The only exception to this rule is when a company elects to pay the highest rate for all classifications work is performed in.

ATTENTION: Contractors found not to have paid employees accordingly to the above requirements shall pay restitution at a rate equal to or greater than the classification of work demanding the highest rate, for all hours worked in each pay period where a violation occurred.

WORKING SUPERVISORS

Salaried superintendents and forepersons are not considered laborers or mechanics. They should be shown on the payroll with no rate of pay listed. However, when a superintendent or foreperson performs within a classification, such as a laborer, carpenter, ironworker, or equipment operators, more than 20% of the workweek, Davis-Bacon provisions apply. Companies must then show all payroll data, including the classification and rate of pay that satisfies the pay requirements for the classification of work performed.

RESTITUTION POLICY

- Whenever an underpayment has been identified, the contractor is required to make restitution to the employee or employees in accordance with NH DOT Office of Federal Compliance guidelines. Restitution via a subsequent company certified payroll, or a revised payroll, is not allowed unless specifically approved by the NH DOT Office of Federal Compliance. The procedures are as follows:
 - a. Complete and sign an OFC Form 8, Employee Pay Restitution Worksheet. A separate worksheet is needed for each worker, one OFC Form 8 for each pay week involved. Worksheets are “project specific.” Please do not include pay data/hours from another project.
 - b. Provide a copy of the restitution check. A single check can be used for multiple pay periods.
 - c. Provide a signed copy of the Employee Restitution Affidavit” that has been properly witnessed.
- Contractors can fax or mail their completed OFC Form 8 worksheets, copies of checks, and Employee Restitution Affidavits to the NH DOT Office of Federal Compliance at (603) 271-8048.
- If restitution resulted from a Field Audit discrepancy, Prime Contractors must collect and forward all required documents to the NH DOT Office of Federal Compliance on or before the audit due date.
- Please indicate “Self Identified” on the top of OFC Form 8 (worksheets) in those cases the underpayment was identified by the company.

NOTE: Contractors can fax or mail their completed worksheets (and copies of checks) to the Office of Federal Compliance. If restitution resulted from a Field Audit discrepancy, companies must send proof of restitution to the Federal Compliance Officer on or before the due date indicated on the Field Audit Report.

APPRENTICESHIP TRAINING REGISTRATION (No Exceptions!)

- Companies who have Apprentices on payrolls must provide a copy of the U.S. Department of Labor Apprenticeship Agreement (ETA 671) with each payroll, as applicable. Questions regarding apprenticeship registration should be referred to the local US DOL Bureau of Apprenticeship and Training at (603) 225-1444.

PAYROLLS AND PAYROLL RECORDS

- Each contractor (prime, subcontractor, or lower-tier subcontractor) shall furnish, each week in which any contract work is performed, to the resident engineer (or collection authority), a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Form FHWA 1273, Section IV, Paragraphs 4 and 5). The payroll submitted shall set out accurately and completely all of the information required to be included in accordance with Form FHWA 1273, Section V, Paragraph 2b. This information may be in any form desired as long as the payroll meets the above requirements. It is recommended that the Optional Form WH-347, or similar, be used. The WH-347 is available in a variety of different formats and can be obtained free of charge from the NHDOT Office of Federal Compliance. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

ATTENTION: Progress payments will be withheld when payrolls have not been submitted according to the above requirements.

- **Payroll Instructions:** We have recently completed a set of payroll instructions for SIDE A and SIDE B of the payroll. Below is a link to these instructions. Please disseminate these instructions and include them with each subcontract, and lower-tier contract, along with the Federal certifications/Required Contract Provisions.
 - ❖ **Side A:** <http://www.nh.gov/dot/org/projectdevelopment/construction/laborcompliance/documents/OFCForm4-PayrollInstructionsSIDEA.doc>
 - ❖ **Side B:** http://www.nh.gov/dot/org/projectdevelopment/construction/laborcompliance/documents/OFCForm4-PayrollInstructions_sideb.doc
- **Statement of Compliance:** Each Statement of Compliance (side b above) must be completed in its entirety and have an **original signature**. While the form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment for 5 years or \$10,000 fine or both. The person signing this document must be a principal owner, an officer of the company (appointed in writing), and/or pay or supervise the payment of the persons employed under the contract.

IMPORTANT: Companies must check 4a or 4b of the payroll certification. Contractors must list “Exceptions” indicated by 4c, as stated in the Payroll Instructions for SIDE B.

- Contractors and subcontractors must maintain payrolls and basic records relating to the job for a period of 3 years from the date work is completed.
- HR/Payroll personnel should review all subcontractor/lower-tier payrolls to ensure accuracy and completeness **prior** to sending them to the Prime Contractor HR/Payroll person. The HR/Payroll personnel should also check the Work Classifications used on payrolls to ensure that they appear exactly as stated on the Wage Schedule. A “Request for Additional Work Classification” must be submitted for work not covered by the Wage Schedule.
- Contractors can take credit for the hourly costs of fringe benefits provided to each worker by completing and attaching a Fringe Benefit Breakout Report (per worker) to each payroll, where the prevailing wages (base rate and fringe) were not paid in cash.

NOTE: Prime Contractors should review subcontractor payrolls for discrepancies/completeness prior to sending them to the Contract Administrator at the job site.

STATEMENT OF COMPLIANCE

Each payroll must include a Statement of Compliance (payroll certification). SIDE B of the Payroll Form (OFC Form 4) shall satisfy this requirement. If a company uses a computer-generated payroll, SIDE B must be completed and attached.

If you have any questions, please contact the NH DOT Office of Federal Compliance at: (603) 271-2467