

Davis-Bacon Act Manual

City of Santa Barbara

Community Development Block
Grant Program



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City of Santa Barbara

Community Development Block Grant Davis-Bacon Act Manual

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Davis Bacon Act Prevailing Wage Instructions

INTRODUCTION

Construction work that is financed in whole or in part with federal Community Development Block Grant (CDBG) funds must adhere to certain federal labor standards requirements, primarily the Davis-Bacon Act. This manual describes the policies and procedures set forth by the City of Santa Barbara and must be followed when undertaking construction projects with CDBG funds to ensure compliance with federal labor laws and requirements.

For full information on Davis-Bacon Compliance see “*Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum*” The guide and addendum are available on the Web at: <https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/>

APPLICABLE LABOR LAWS AND REQUIREMENTS

The labor laws that apply to CDBG-funded construction work include the following:

Davis-Bacon Prevailing Wages - The Davis-Bacon Act (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when any construction work over \$2,000 is financed in whole or in part with CDBG funds. It requires that workers on a CDBG-funded project receive no less than the prevailing wages being paid for similar work in the same area.

The **Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers’ pay be permissible, and that contractors maintain and submit weekly payrolls.

The **Contract Work Hours and Safety Standards Act** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty. Current penalties can be found at <https://www.dol.gov/agencies/whd/government-contracts/cwhssa#cmp>

- **The Davis-Bacon Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week, regardless of contract amount.**

Equal Employment Opportunity - Contracts over \$10,000 are subject to Executive Order 11246 which prohibits employment discrimination by Federal contractors and subcontractors and federally-assisted construction contractors and subcontractors.

- Contractors with 50 or more employees and contracts over \$50,000 require the submission of a SF-100 form (EEO-1).

PRECONSTRUCTION

Prior to construction City Community Development Department (CDD) staff will provide the following forms, which must be completed by the general contractor and any subcontractors, and returned to CDD staff.

Exhibit A - CERTIFICATION OF UNDERSTANDING AND AUTHORIZATION

This form designates an employee of the contractor/subcontractor as the Payroll Officer that is authorized to sign the Certified Payrolls for the duration of the project.

Exhibit B - CERTIFICATION FOR APPLICABLE FRINGE BENEFIT PAYMENTS
Use this form to list any **bona-fide** Fringe Benefits paid by the employer, if any. Fringe Benefit amounts must be listed in an hourly rate, see side bar for guidance.

A bona-fide plan is one that is in compliance with IRS and Department of Labor regulations. Bona-fide plans include company contributions to retirement accounts (401(k) or pension), medical, vision, dental, and life insurance. Check with the Department of Labor to see if they qualify as bona-fide fringe benefit contributions under prevailing wage laws.

Fringe benefits do not include employer contributions or payments required by other federal, state, or local law, such as FICA (Federal Insurance Contributions Act), workers' compensation, or unemployment compensation. Additionally, a bona-fide plan must meet the following stipulations:

1. Fringe benefit contributions must be made to a third-party trust or plan;
2. Contributions must be made regularly, not less often than quarterly, usually on a monthly basis.

Employers that do not provide Fringe Benefits on behalf of the employee must check the box at the bottom of the Exhibit.

CALCULATING FRINGE BENEFITS

How would I determine the hourly rate for a company paid health insurance benefit?

You can ONLY take credit for the amount the company actually pays and not any contribution made by the employee. You will need to make the following calculations for each individual employee.

Example 1: Jackson, who is a Laborer Group 1, has a health insurance premium of \$300 per month and the company pays the entire premium.

- \$300 per month x 12 months = \$3,600 per year annual premium,
- \$3,600 annual premium divided by 2080 hours = \$1.73 per hour health Insurance contribution.

Example 2: Jackson, who is a Laborer Group 1, has a health insurance premium of \$300 per month, the company pays 80% and employee pays 20%.

- \$300 per month x 12 months = \$3,600 per year annual premium,
- \$3,600 annual premium x 80% = \$2,800 company contribution,
- \$2,800 divided by 2080 hours = \$1.35 per hour health insurance contribution by employer.

Exhibit C – PROJECT WAGE RATE SHEET

This is a condensed version of the Wage Determination. Use this sheet to list the applicable Wage and Fringe Benefit amounts for each job classification that will be used on this project. This sheet must be posted on the job site so that it is visible to all workers. A separate copy must be provided to CDD staff.

Exhibit D - MINORITY BUSINESS CONTRACT AND SUBCONTRACT ACTIVITY

This form is required to obtain information that the City has to provide to the Department of Housing and Urban Development (HUD).

Exhibit E – LIST OF SUBCONTRACTORS

This form is to be filled out by general contractor if any subcontractor will be used on this job. If any subcontractors are added during the project, this form must be revised. It is the GENERAL CONTRACTOR'S RESPONSIBILITY to ensure all subcontractors are paying the correct wages.

All exhibits must be filled out completely and the originals returned to City CDD staff.

You will not be authorized to begin construction until these forms are submitted to the City and are reviewed and approved by CDD staff.

CDD will also provide “Notice to Employees” signs in English and Spanish. They are to be posted on the job site, along with a copy of the Wage Rate Sheet (Exhibit C) in a location visible to all workers so that employees know what they are supposed to be earning on this project.

PAYING PREVAILING WAGE

Wages must be paid according to the Wage Determination provided in contract/bid specifications and must be, at minimum, the sum of the Base Rate and Fringe Benefit. If the classification needed for the project cannot be found in the Wage Determination, you must contact CDD staff.

State of California Department of Industrial Relations (DIR) Prevailing Wages do not apply to these projects unless they are higher than the Davis-Bacon rates. In such cases, the higher rate shall be paid.

Wages apply to all laborers and mechanics on the CDBG-funded job site¹, including subcontractors and sole proprietors (see owner/operators guidance next page). Working foremen who spend more than 20% of their time performing mechanic or laborer duties are also due Prevailing Wages. Wages do not apply to workers whose duties are primarily administrative, executive or clerical.

The use of apprentices is allowed but they must be in an approved program, further guidance is on the next page.

Overtime pay

An employee who performs work on both federally funded projects and commercial work in the same workweek must receive overtime pay for hours worked in excess of 40 hours during that week. Overtime hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

¹ The site of work is defined as the physical place or places where the CDBG-funded construction work will occur, and any other site established specifically for the performance of the same project (including manufacturing sites).

Owner/Operators

HUD guidance on self-employed laborers or mechanics, i.e. owner/operators, is detailed on in HUD letter LR-96-01, see appendix. In sum, the following applies to owner/operators:

Owners working *with* a crew (a crew is at least one other person who is not a partner or part owner) only must report their name, work classification including the title “owner” and daily total hours worked on the Certified Payroll. They do not need to report their hourly rate or wages earned and can certify their payrolls. This exception does not mean that owner/operators are not entitled to Prevailing Wage.

Owners working *without* a crew (and without a partner or part owner) must report their name, work classification including the title “owner”, daily total hours worked, hourly rate of pay and wage payment. They cannot self-certify their payrolls, and instead their payrolls must be certified by the “responsible employer”. For a subcontractor a responsible employer will be the general contractor. If there is only a general contractor (which is owner w/o crew), then the contracting agency is the responsible employer. Owner/operators do not need to report deductions.

Apprentices

Apprentices are permitted when they are employed and individually registered in a bona-fide apprenticeship program registered with the U.S. Department of Labor Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau.

Contractors wishing to use apprentices on a Davis-Bacon project are required to submit to CDD staff a Certification Letter issued by the apprentice’s sponsor, the apprentice’s payscale and allowable ratio of apprentices to journeymen. Computer printouts from the California Department of Industrial Relations Division of Apprenticeship Standards are not acceptable forms of certification.

State Prevailing Wage vs. Davis-Bacon

CDBG-funded projects are subject only to Davis-Bacon Act rules. Any payroll forms or documents from a state prevailing wage program cannot be submitted in lieu of any Davis-Bacon Act forms.

The Davis-Bacon Act has a provision that if a state has its own prevailing wage laws, the higher of either state or federal wages be paid for comparable work classifications. This applies even if the project is only federally funded. For example if California prevailing wages for a carpenter are higher than the ones listed on the Davis-Bacon wage determination, the state wages shall be paid to the worker, and will be reported on a Davis-Bacon payroll form. CDD staff will provide the California prevailing wage rates for comparison purposes.

California work classifications cannot be substituted for Davis-Bacon classifications.

CERTIFIED PAYROLLS

Wages paid to employees are reported on a Certified Payroll form WH-347. A sample Certified Payroll form is provided, see appendix.

The use of form WH-347 is mandatory, and no substitutes may be submitted. A Certified Payroll must be completed for each week worked, even if workers are paid bi-weekly. The week ending day shall be the same day every week.

Each payroll form must be completely filled out front and back. The first payroll for this project shall be labeled “initial” under the “Payroll No.” box, including those submitted by subcontractors, and each subsequent payroll shall be numbered. The last payroll shall be labeled “final”. Employers are not required to submit reports for weeks during which no work was performed at the site of work, provided that the payroll reports are numbered sequentially or that the employer has provided written notice that its work on the project has been suspended.

The prime contractor should review each subcontractor’s payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for O/T violations. All the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments, and protect itself from financial loss should underpayments occur.

Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records—such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments—for a Davis-Bacon project for at least three years after the project is completed. The prime contractor must keep a complete set of all the payrolls for every contractor (including subcontractors) for at least three years after completion of the project.

On each payroll the number of withholding exemptions and all deductions shall be reported. Two blank column headings are provided on the payroll form for any deductions that are not FICA or Tax Withholdings. Any deductions listed under the “Other” column must be identified in writing.

Loans and garnishments can be deducted if a signed employee-authorization letter stating the amount to be withheld, term, and, if applicable, balance due, is submitted to CDD staff prior to submittal of the initial payroll.

Statement of Compliance

Page two of the Certified Payroll is the statement of compliance. It must be completed. The dates listed must correspond with the dates on page one of the form. The form must be signed by the authorized representatives listed on Exhibit A.

The payrolls must be submitted on a regular basis to City staff at the address listed on page 2 of this booklet. **ONLY ORIGINAL CERTIFIED PAYROLLS WILL BE ACCEPTED.** The general contractor is responsible for ensuring that all subcontractors have filled out the payroll form correctly and that the proper wages are being paid.

Staff will review the payrolls to ensure completeness and that the proper wages are being paid. CDD will NOT authorize any payment to a contractor if payrolls have not been submitted or if any errors are not corrected.

NO PAYMENT SHALL BE AUTHORIZED TO CONTRACTORS OR SUBCONTRACTORS THAT FAIL TO PAY THE PROPER PREVAILING WAGE

Underpayment

If CDD staff determines that the proper wages have not been paid by any of the contractors, including subs, the general contractor will be notified in writing. Thirty (30) days will be allowed to correct underpayments and make restitutions.

A correction payroll shall be submitted and will contain the following:

- Reflect the period of time for which restitution is due;
- List each employee, and work classification, to whom restitution is paid;
- Total number of work hours that were underpaid;
- The adjustment wage rate (the correct Prevailing Wage rate minus the amount already paid);
- Gross amount of restitution due, deductions and net pay;
- Fully completed and signed Statement of Compliance.

5% retention will be held from the contract amount to ensure all paperwork is received and wages are paid properly. The retention is released 35 days after the project's Notice of Completion is filed.

The City of Santa Barbara reserves the right to withhold payment of funds beyond 35 days to contractors who fail to comply with all federal, state, and local regulations pertaining to federally funded construction projects.

Restitution payments can be made from the contract if employer refuses to pay the restitution amount. CDD staff will report non-compliant contractors to the HUD Office of Labor Relations. Refusal to make wage restitutions, falsified certified payrolls, payment of kickback wages are grounds for debarment by the U.S. Department of Labor.

Appendix

1. Owner/Operator Guidance
2. Sample Certified Payroll