

What Every Public Agency Should Know About Prevailing Wages

Presented by: Deborah Wilder, President

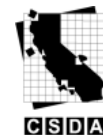
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California Special Districts Association
Districts Stronger Together



California Prevailing Wages

- Thresholds
 - California
 - \$1,000
 - Construction “Works of Improvement”
 - Lease Arrangements
 - Special public assistance
 - Exceptions- LCP small ticket projects
 - Charter Cities



Prevailing Wages

- Who is covered?
 - Workers on the project
 - Owners, partners- depends on State or DB
- What type of work is covered?
 - Onsite construction work
 - Onsite inspection-CA and some states only
 - Trucking- on haul/off haul- special rules



Prevailing Wages

- Selecting the Proper Determination
 - California - www.dir.ca.gov
 - Determinations issued twice a Year
 - February and August
 - Location of Project
 - Bid Advertisement Date is Controlling
 - Agency must file DAS-13 <http://www.dir.ca.gov/DAS/DASForm13.pdf>

**STATE OF CALIFORNIA – DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS**

TO: California Department of Industrial Relations
Division of Apprenticeship Standards
P.O. Box 420803
San Francisco, CA 94142

FROM: AWARDING BODY

**EXTRACT OF
PUBLIC WORKS CONTRACT AWARD**

CA

A CONTRACT TO PERFORM PUBLIC WORKS UNDER LABOR CODE SECTION 1777.5 HAS BEEN AWARDED TO:

1. NAME OF GENERAL CONTRACTOR		2. CONTRACTOR'S LICENSE NO	
3. MAILING ADDRESS (STREET NUMBER OR P.O. BOX)		4. CITY	
		5. ZIP CODE	6. TELEPHONE NUMBER
7. ADDRESS OR LOCATION OF PUBLIC WORKS SITE (INCLUDE CITY AND/OR COUNTY)			
8. CONTRACT OR PROJECT NUMBER		9. DOLLAR AMOUNT OF CONTRACT AWARD	
10. FIRST ADVERTISED BID DATE MONTH DAY YFAR (MM/DD/YYYY)		11. IS THIS A DESIGN-BUILD PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
12. STATE CONSTRUCTION BONDS <input type="checkbox"/> YES <input type="checkbox"/> NO SOURCE _____		13. WILL YOU OPERATE A DIR APPROVED LCP FOR THIS PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
14. STARTING DATE (ESTIMATED OR ACTUAL) MONTH DAY YEAR (MM/DD/YYYY)		15. COMPLETION DATE (ESTIMATED OR ACTUAL) MONTH DAY YEAR (MM/DD/YYYY)	
16. TYPE OF CONSTRUCTION (HIGHWAY, SCHOOL, HOSPITAL, ETC.)		17. <input type="checkbox"/> NEW CONSTRUCTION <input type="checkbox"/> ALTERATIONS	
18. CLASSIFICATION OR TYPE OF WORKER (CARPENTER, PLUMBER, ETC.) THAT WILL BE EMPLOYED BY THE CONTRACTOR(S)			
19. Is language included in the Contract Award to effectuate the provisions of Section 1777.5, as required by the Labor Code?..... <input type="checkbox"/> YES <input type="checkbox"/> NO Is language included in the Contract Award to effectuate the provisions of Section 1776, as required by the Labor Code?..... <input type="checkbox"/> YES <input type="checkbox"/> NO			
20. SIGNATURE		21. TITLE	22. DATE
23. PRINTED OR TYPED NAME		24. TELEPHONE NUMBER	

Duplication of this form is permissible



Other States

- Selecting the Proper Determination
 - Issued by a state once or more each year
 - May be adopted from DB rates
 - May be determined on a project by project basis
 - May be issued based on local surveys and wage information

Prevailing Wages

- More than Just Wages

- Subject to ** increases

- Overtime

- CA after 8 hours in one day or 40 in a week

- Maryland after 120 hours in a day

- Oregon special rules for 4-10s or default to 5-8s





Prevailing Wages

- More than Just Wages
 - Special Rates may apply for Saturday, Sunday and Holidays. (with some exceptions)
 - Some states list all applicable holidays
 - Some states recognize holidays based on specific crafts
 - Shift Work
 - Some trades in some states recognize and require premium pay for shift work (swing shift or graveyard)



Prevailing Wages

- Paying Correct Wage/Fringe Amount
 - Base Wage Rate Must be Paid on Paycheck
 - Benefits paid to or “for the benefit of” the employee (PW 26)
 - Training Contribution Must be Paid to Proper Fund. (PW 26 or CAC 2)

Prevailing Wages

- Subsistence and Travel

- Remote Sites

- Sites more than 50 miles

from Place of Business or Employee's Home

Remember that each trade classification may have different travel and subsistence requirements and these can even differ by county.





Prevailing Wages

- Jurisdictional Disputes
 - Agency may be able to determine the proper wage classification of work being performed.
 - In CA, this decision by the Awarding Body will NOT be overturned by the DIR unless it is erroneous
 - Other States can sometimes adopt classifications and wage rates from neighboring counties



Certified Payrolls

- Signature of officer, supervisor or responsible manager (electronic submission)
- Kept weekly (can be paid semi-monthly in some states, but must be paid weekly for any federally funded project)
- ALL workers on project must be paid prevailing. i.e. owners, partners have exemptions in some states (not CA) and under DB.
- Walking supervisors and onsite clerical exempt.

Apprenticeship Requirements

- California

- Legislative Directive on the Employment of Apprentices.

- DAS-140

- DAS-140 to be submitted at the beginning of work on the jobsite.

- 10 days after signing contract or before starting work on project (whichever is first).





Apprenticeship Requirements

- DAS-142
 - Request to Train Apprentices
 - Presumptive Compliance if DAS-142 Form is Used.
- Training Contributions
 - Paid to approved apprenticeship committee
 - Paid to State (CAC2)
 - Paid to employee ONLY when it is NOT an apprenticeable craft.



Apprenticeship

- Other States
 - Most all require apprentices be actively enrolled in local State approved programs
 - Some State programs also have automatic BAT (U.S. Dept. of Labor- Bureau of Apprenticeship Training) approval (not CA)



Penalties

- California

- Labor Code 1775- wage violations
 - \$50 per day per worker (cumulative)
 - May be reduced for first offenders who make good faith mistakes
- Labor Code 1776- (paperwork penalty)
 - \$25 per day per worker



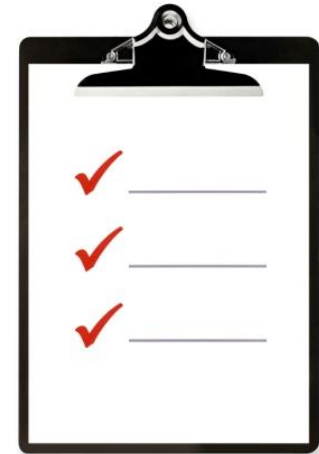
Penalties

- Labor Code 1777.7 - Apprenticeship
 - \$100-\$300 per day of violations (enforced by Division of Apprenticeship Training)
- Labor Code 1813 - Overtime
 - \$25.00 per day per worker (cumulative)
- Liquidated Damages for Wages left unpaid 60 days after Notice to Withhold or Notice of Intent to Withhold
- Debarment- 1-3 years per violation

Prevailing Wage Document Recap

- Paperwork Requirements

- Certified Payrolls
- Fringe Benefit Form- PW 26
- DAS-140
- DAS-142
- CAC2 or equivalent





Special Determinations

- In California, an Awarding Body has the right to request a special wage classification and determination on a single project basis when there is no wage classification/determination which adequately addresses the type of work being performed.
 - Must be requested and obtained prior to the advertisement of bid.

Federal and State Combined Funding

- Federal Funding and ARRA projects
 - Requires additional monitoring and auditing for which you can:
 - Do on your own
 - OR*
 - Hire a Third Party LCP



Additional ARRA Requirements

- Mandatory Disclosure
- Buy American Act
- Davis-Bacon
- Whistleblower Protections
- Workforce Reporting
- Your Obligation to Audit
- Quarterly Reporting





Davis-Bacon Requirements

- Mandated language in bid specifications and contracts
 - Language mandated by Code of Federal Regulations
 - Contractor MUST include language in all subcontracts
- Wage Determination MUST be included with bid specification
 - No reference to website or incorporation by reference
 - Website must be checked 10 days prior to bid for any potential increases and appropriate addendum issued
 - <http://www.wdol.gov>

Failure to comply makes agency liable for higher wage rates and can risk funding.



Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

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[FAQs](#) | [User Guide](#) | [Help](#) |

Service Contract Act

- [Selecting SCA WDs e98](#)
- [Archived WDs](#)
- [WDs due to be revised](#)

Davis-Bacon Act

- [Selecting DBA WDs](#)
- [Archived WDs](#)
- [WDs due to be revised](#)

Related Information

- [Agency Labor Advisors Library](#)
- [DOL Wage and Hour Website](#)

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

Browse by [state/territory](#)

OR

View the latest [modifications and additions](#) to the Davis-Bacon Database.

View the [modifications or additions](#) to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.

View [Archived Wage Determinations](#)

By Selection criteria beginning with:

State:

County:

Construction Type: (Types of Construction Under DBA)

WD Number:



E-GOV

NTIS

USA.gov



Davis- Bacon Prevailing Wage

- Verification of contractor's eligibility to work
 - Check Debarment List
- Certified payrolls
 - Wages MUST be paid weekly
 - Verification of classification and wages
 - Classification for DBWD may be different than State
 - Proof of fringe benefit payments



Davis-Bacon Prevailing Wage

- I-9 forms (E-Verify)
- Copies of collective bargaining agreements
- Verification of Apprentices
 - “Certification” of all apprentices by Bureau of Apprenticeship Training (BAT) program and verification of supervision and ratios



Special Determinations

- An Agency may request a special wage determination be issued on a project by project basis if requested prior to the start of the project.
- Davis-Bacon has a special provision to request an omitted wage classification by filing form SF 1444 after the project has begun.

Jobsite Visits and Postings

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

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

WH 1321 (Revised April 2009)

- **Periodic Jobsite Interviews**
 - Verifying work performed and wages paid
 - Once within 2 weeks of first payroll submission
 - Once within two weeks of estimated contract completion date
 - For every contract and subcontract.
- **Postings**
(In English and Spanish or other language)
 - **Davis Bacon**
 - **ARRA Whistleblower**



Posting Requirements

Know Your Rights Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009 ¹ provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse of Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

¹ Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5



Workforce Reporting

- New Hires v. Retained Hires
 - Field and office/support staff
 - For contractor, agency and consultants
 - Converted to FTEs
 - Required quarterly on 10th day following close of quarter



ARRA audits

- Payrolls
- Fringes
- Collective Bargaining Agreements
- BAT Certificates
- Posters <http://www.recovery.gov/Contact/ReportFraud/Documents/WhistleblowerPoster.pdf>
- Jobsite interviews
- I-9s (or E-Verify)



Questions?

Thank You

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