Wage and Hour Division

Davis-Bacon Wage Determination Conformance Request Guide, September 2021

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September 28, 2021

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What are the Davis-Bacon and Related Acts?

The Davis-Bacon and Related Acts (DBRA) require payment of local prevailing wages to construction workers performing work on federally funded construction projects. The Davis-Bacon Act (DBA) applies to each federal government or District of Columbia contract in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and requires that contractors and subcontractors pay their laborers and mechanics employed under such contracts no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The DBA's prevailing wage provisions also apply to "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of Related Acts include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act. The Wage and Hour Division (WHD) of the U.S. Department of Labor administers the DBRA.

What is a Davis-Bacon prevailing wage?

The Davis-Bacon prevailing wage is the combination of the basic hourly wage rate and any fringe benefits rate listed for a specific classification of workers in the applicable Davis-Bacon wage determination. The contractor's prevailing wage obligation may be met by either paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.

What is a wage determination?

A wage determination is the list of basic hourly wage rates and fringe benefit rates for each classification of laborers and mechanics ("labor classification") in a predetermined geographic area for a particular type of construction. WHD conducts surveys of local wages to determine the prevailing wage rates that are included in wage determinations.

There are two types of wage determinations: general determinations and project determinations.

General Wage Determinations

A general wage determination reflects wage rates determined by WHD to be prevailing in a specific geographic area for a certain type of construction and does not expire.

General Davis-Bacon wage determinations are published online at www.sam.gov and are available for contracting agencies to incorporate into covered contracts and for contractors to post at the job site of covered projects.

Project Wage Determinations

A project wage determination is issued at the request of a contracting agency and is applicable to the named project only. These typically expire 180 calendar days from the date of issuance.

Project Wage Determinations must be requested by the agency by submitting SF-308. While uncommon, if you believe you may need a project wage determination, please consult with WHD.

What are the types of construction represented in wage determinations?

Wage determinations are issued for four types of construction categories: building, residential highway, and heavy.

Building construction includes the construction, alteration, or repair of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies and the associated installation of utilities and equipment, as well as incidental grading and paving.

Residential construction includes the construction, alteration, or repair of single family houses, townhouses, and apartment buildings of no more than four stories in height and all incidental work, such as site work, parking areas, utilities, streets, and sidewalks.

Highway construction includes the construction, alteration, or repair of roads, streets, highways, runways, parking areas and most other paving work not incidental to building, residential, or heavy construction.

Heavy construction includes projects that cannot be classified as Building, Residential, or Highway. Heavy construction is often further distinguished on the basis of the characteristic of particular projects, such as dredging, water and sewer lines, dams, major bridges, and flood control projects.

For more information, please refer to All Agency Memoranda (AAM) 130 and 131.

How do I read a wage determination?

An understanding of the wage determination helps contracting officers and contractors identify and understand the wages and benefits required to be paid to laborers and mechanics on the contract. The following is a brief guide for reading a wage determination:

1. Identify the geographic area. Typically, the state and the county or counties covered by the wage determination are noted at the top of the wage determination. It is critical to use the correct wage determination for the geographic area where the project will be performed.
2. Identify the construction type. The construction type will be listed at the top of the wage determination (Building, Residential, Highway or Heavy).
3. Identify the proper labor classification(s). Labor classifications, not individual tasks, are listed on wage determinations. It is, therefore, vital to understand the scope of the project and the labor classifications that are necessary for the work to be performed.
4. Understand the labor classification identifier. The labor classification identifier provides information about how the prevailing wage was calculated:

   Those that begin with "SU" denote a prevailing wage that is not based exclusively on union wage rates.

   Example: For identifier **SULA2018-007 05/13/2018**

   SU = the prevailing wage rate is based on a weighted average of survey data
   LA = the state, in this example, Louisiana
   2018 = the year of the survey
   007 = internal number used for producing the wage determination
   05/13/2018 = the survey completion date for the labor classifications and rates under that identifier

   Those that begin with "UAVG" indicate that while no single union rate prevailed for those labor classifications, the average is based upon only union wage data.

   Example: For identifier **UAVG-OH-0010 08/29/2014**

   UAVG = the prevailing wage rate is a weighted union average rate
   OH = the state, in this example, Ohio
   0010 = internal number used for producing the wage determination
   08/29/2014 = the survey completion date for the labor classifications and rates under that identifier

   Those that begin with anything other than "SU" or "UAVG" indicate that a CBA-based rate prevailed.

   Example: For identifier **PLUM0198-005 07/01/2020**

   PLUM = the prevailing wage rate is based on a Plumbers union collective bargaining agreement.
   0198 = the local union (or district council where applicable)
   005 = internal number used in producing the wage determination
   07/01/2020 = the effective date of the most current negotiated (CBA) rate

5. Understand the labor classification as well as wage rates and fringe benefits. On a wage determination, several labor classifications may be listed under a labor classification identifier indicating that these separate labor classifications are based on the same survey or CBA. Each labor classification has a wage rate and employer-provided bona fide fringe benefits rate listed with it on the wage determination.

   Example:

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BRMA0003-004 02/01/2021
                                    Rates          Fringes
TILE FINISHER.....................$ 42.57           32.00
TILE SETTER.......................$ 54.69           35.79
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6. Note other relevant information including the application and effect of executive orders related to hourly minimum wages. Some wage determinations may include requirements based on Executive Orders. For example, Executive Order 13658 requires a minimum wage for workers on covered federal contracts. An Executive Order may be referenced at the top of the determination or after the labor classifications.

What is a conformance?

In limited circumstances, when there is no appropriate labor classification on the applicable general wage determination, WHD may add or "conform" a new class of laborer or mechanic and a wage rate to a published wage determination for a specific contract. A conformance may only be granted when certain criteria are met.

First, a conformance is granted by WHD **only when the type of work needed for a project is *not* performed by a labor classification *already* listed on the applicable wage determination.**

Second, the purpose of the conformance process is not to create new construction classifications but to determine the prevailing wage for standard construction classifications when they are missing from the applicable wage determination, often as the result of low participation in a Davis-Bacon wage survey. Therefore, the conformed labor classification must be one that is actually used in the area by the construction industry.

Finally, if WHD grants a conformance, the wage rate selected will be one that bears a "reasonable relationship" to the existing wage rates on the applicable wage determination. As explained in AAM 213, this generally involves a comparison of the proposed wage rate, including any fringe benefits, to the wage rates for similar labor classifications on the wage determination.

How do I know if I need a conformance?

Understanding the wage determination is key to determining whether you need a conformance. Compare labor classifications on the wage determination with the anticipated work to be performed. Conversation between the contracting agency, contractors and WHD will help identify any potential missing labor classifications. ***Typically, the labor classifications***

listed on the wage determination include the work being performed on a Davis-Bacon covered contract.

The scope of work performed by a labor classification will depend on local area practice. Therefore, if it is unclear whether a labor classification on the wage determination performs the work in question, it may be helpful to consult WHD and/or local construction industry stakeholders.

When the type of worker that performs the work needed on your project is listed on the general wage determination, you should not request a conformance.

When do I need to request a conformance?

Only after reviewing the wage determination and identifying a missing labor classification needed to perform the work on the project should you seek a conformance. ***Please note, wanting to pay a lower wage rate rather than the prevailing wage listed is not grounds for a conformance request.*** Laborers and mechanics are required to be paid the prevailing wage for the labor classification of work actually performed.

The following examples discuss whether a conformance is needed in common scenarios involving the types of work performed on federal contracts. Please note that, in some instances, the scope of work performed by these labor classifications may differ based on local practice, and a different conformance outcome may be warranted. When determining whether a conformance is required, it is important to review the applicable wage determinations and, if needed, consult WHD and/or local stakeholders.

Examples:

Broadband: A large infrastructure contract has been funded to promote rural broadband and Davis-Bacon applies due to the funding source.

Q: Do you need to seek a conformance?

A: No, "broadband" is not a labor classification. Typically, a broadband infrastructure project will include the labor classifications for power equipment operators, general laborers, and electricians; if the necessary labor classifications are listed on the wage determination, you do not need to seek a conformance.

Weatherization Carpenter: A large infrastructure contract has been funded to provide weatherization services to residential homes and Davis-Bacon prevailing wage rates apply due to the funding source. Such work is typically performed by carpenters and the wage determination contains a carpenter classification.

Q: Do you need to seek a conformance because the work is called weatherization?

A: No, the required work is typically performed by carpenters, a labor classification included on the wage determination.

Window Seal Worker: The project requires that windows be sealed to create a sound barrier. The wage determination lists a glazier classification.

Q: Do you need to seek a conformance?

A: No, sealing windows is incidental to window repair and window installation, which is covered by the glazier classification.

Mechanical Insulator: The project requires that the mechanical system of a large industrial facility be insulated to prevent heat damage. The wage determination lists the Heat and Frost Insulator classification.

Q: Do you need to seek a conformance?

A: No, the work to be performed typically falls under the Heat and Frost Insulator classification listed on the wage determination.

Bricklayer: The project requires a decorative masonry wall. The wage determination includes a bricklayer classification with a prevailing wage rate based on a union collective bargaining agreement. The contractor is not party to the union agreement.

Q: Do you need to seek a conformance?

A: No, the prevailing rate for the needed labor classification that is listed on the wage determination applies regardless of the union/non-union affiliation of the contractor.

Low-voltage Wiring: The project includes installing audio and video cables throughout a building. The wage determination includes an electrician classification with a union prevailing wage, but does not include a low-voltage electrician classification. The local electrical union identified on the wage determination does not perform low-voltage electrical work.

Q: Do you need to seek a conformance?

A: Yes, the work at issue does not fall within a published labor classification on the wage determination.

Boilermaker: An industrial project includes the retrofitting of a coal fired generator to burn clean fuel. The wage determination does not include a boilermaker classification and this work is not within the scope of work of any other labor classification on the wage determination.

Q: Do you need to seek a conformance?

A: Yes, the work at issue does not fall within a published labor classification on the wage determination.

How do I request a conformance?

If you have identified that a conformance is likely required, WHD recommends the following steps for contracting agencies:

1. Work with the contractors and other affected parties to help develop the conformance request.

   Provide the conformance request form (SF-1444 or similar) to the contractor. Instructions on how to complete the form are printed on the form. The SF-1444 can be downloaded from www.sam.gov. (See Resources below)

   As part of the conformance request, you will need to provide information about the work to be performed on the project, the requested labor classification, the duties to be performed by that labor classification and a recommended wage rate. It may be helpful to consider the input of affected parties, including the prime contractor, subcontractor, union representatives, and workers.

2. Ensure the request meets the conformance criteria to ensure that:

   - The type of work to be performed is not performed by a labor classification already listed on the applicable wage determination;
   - The requested labor classification is one actually used in the area by the construction industry; and
   - The recommended wage rate bears a "reasonable relationship" to other wage rates in the wage determination, specifically those from the same category of classifications and sector of industry as the proposed classification. (See AAM 213 for further guidance on the "reasonable relationship" analysis).

3. Submit conformance request for WHD review and approval, including the following:

   - The applicable wage determination;
   - The completed SF-1444 (or similar), including all required signatures;
   - A written detailed description of the work to be performed by the requested classification; and
   - Any related documentation and agency recommendation.

   Email the completed SF-1444 (or similar) and supporting materials to: WHD-CBACONFORMANCE_INCOMING@dol.gov.

What happens after I submit the conformance request to the Wage and Hour Division?

Once you have submitted your conformance request, WHD staff conducts a thorough review of the requested conformance before final approval or denial. Generally, the process includes the following steps:

1. The conformance request is received by WHD and assigned to a WHD analyst.
2. The WHD analyst works with the requesting contracting officer to ensure that the request includes all necessary information.
3. The WHD analyst reviews the conformance request and:
   - Confirms that the wage determination does not include the requested labor classification;
   - Researches the local area practice, if necessary, to verify the appropriate labor classification; and
   - Determines whether the proposed wage rate bears a "reasonable relationship" to the existing wage rates in the applicable wage determination.
4. The WHD supervisor reviews and finalizes a written response to the conformance request.
5. The Contracting Officer that submitted the request is sent the written response approving or denying the conformance.

Resources:

General

General DBRA information:

- https://www.dol.gov/agencies/whd/government-contracts/construction
- https://www.dol.gov/agencies/whd/government-contracts/construction/faq.

Forms:

- Download Form SF-1444: Request for Authorization of Additional Classification and Rate. Use this form to request a conformance from WHD.
- Download Form SF-308: Request for Wage Determination and Response to Request. Use this form to request a project wage determination.

Applicable Regulations:

- 29 C.F.R. § 5.5(a)(1)(ii): Provides regulatory criteria for a conformance and sets forth conformance procedures.

Guidance:

- AAM 130 and 131: Provide guidance on the categories of construction for which WHD issues WDs.
- AAM 213: Provides guidance on the application of the DBRA requirement that wage rates for additional or "conformed" classifications bear a "reasonable relationship" to the wage rates in that wage determination.

Contact WHD:

WHD is here to help ensure that contracting agencies and contractors understand how to comply with the Davis-Bacon Act requirements and to ensure that federal construction dollars are used to pay laborers and mechanics the wages they are entitled to under the law.

- For specific questions related to wage determinations or conformances, please contact RhonTia S. Thomas-Johnson, Chief, Branch of Construction Wage Determinations, at Thomas.RhonTia@dol.gov, or
- Email us at WHD-CBAConformance_Incoming@dol.gov.