

Chapter Overview

A vast array of rules and regulations fall under labor standards. These rules are in place to protect the rights of those individuals participating in the construction of federally funded projects.

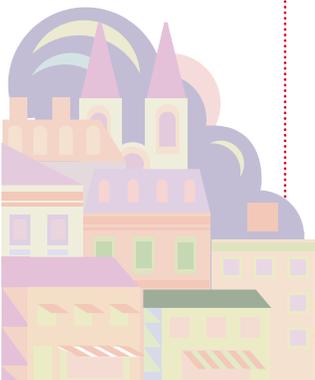
This chapter will discuss the following labor standard topics:

- Davis Bacon Wage Rates
 - Apprenticeship Programs
 - Force Account Work
- Payroll Reports
- Fringe Benefits
- Overtime
- Copeland Anti – Kickback Act
- Miscellaneous Labor Standard Requirements
 - Pre-Construction Conference

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Applicable Regulation Summary

- Reg** **Davis Bacon Act (DBA):** This Act provides that contracts in excess of \$2,000, to which the federal government is a party for the construction, alteration, and/or repair, must contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.
- Reg** **Contract Work Hours and Safety Standards Act (CWHSSA):** This Act provides that all overtime hours must be compensated at a rate not less than one and one half times the regular basic rate of pay.
- Reg** **Copeland "Anti-Kickback" Act:** This Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the federal government, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. This Act also provides for the submission of weekly certified payroll reports by all contractors and subcontractors, as well as the maintenance of records for a period no less than three (3) years.
- Reg** **Fair Labor Standards Act (FLSA):** This Act governs such matters as federal minimum wage rates and overtime. These standards are generally applicable to all labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBA requirements and the CWHSSA.
- Reg** **29 CFR Parts 1, 3, 5, 6 and 7:** The US Department of Labor has published regulations corresponding to DBA, CWHSSA and Copeland Act administration and enforcement at 29 CFR 1, 3, 5, 6 and 7. Part 1 explains how the US Department of Labor establishes and publishes DBA wage determinations and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions related to Davis Bacon Act wage rates and the responsibilities of contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the wage appeals board.

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Responsible Party

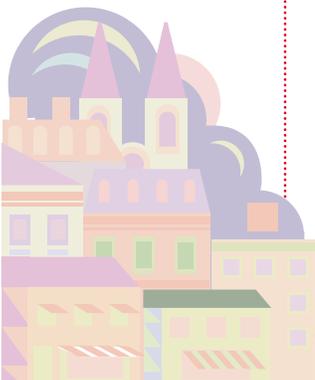
Once the grant is awarded, the Grantee needs to designate a Labor Standards Officer whom is an accredited grant administrator. Notify Grant Services of this person's name and address. Please use **FORM 1 of the Labor Standards Section** for notification.

Once this form has been submitted to the Grant Services' Labor Standards Specialist, the Grantee's Labor Standards Officer will need to forward a copy of the **Federal Construction Contract Provisions** (including HUD Form 4010) and the applicable **Davis Bacon Wage Decision**, to the design architect/engineer to include in the bid specifications.

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Davis Bacon Wage Rates

The most significant regulation listed under the labor standards category is the Davis Bacon Act. This Act was adopted to guarantee that workers on federally-funded construction projects receive no less than the prevailing wages as determined by the US Department of Labor for that locality.



Davis Bacon wage rates apply to all CDBG construction, alteration or repair contracts over \$2,000. Both the prime contractor(s) and his/her sub-contractor(s) are subject to paying Davis Bacon wages to his/her employees. The only exemptions from Davis Bacon are as follows:

- Rehabilitation or new construction contracts on residential property that contains less than eight (8) units.
- Individuals classified as an **apprentice** may be paid less than the prevailing wage rate. However, the apprentice must be registered in a bona fide apprenticeship program approved by the US Department of Labor through its Bureau of Apprenticeship and Training or recognized by the State Apprenticeship Council. Prior to any work performed by the apprentice on the job site, **copies of the apprenticeship certification must be obtained** for the labor standards file.
- Any regular employee of the state or a political subdivision may work at less than the prevailing wage rate. This is known as **force account work**. **For example**, a town may receive CDBG funds to construct a new water line and the town feels its own employees can handle the construction. In this event, the town employees would work for their regular hourly rate that may be less than the prevailing wage rate.

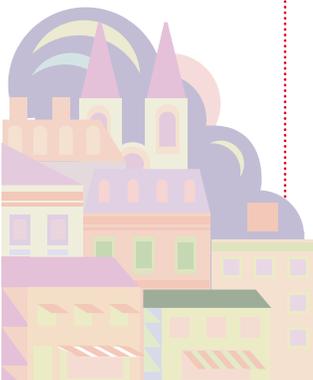


If the Grantee would like to utilize the force account work option, the Grantee should reference IC-36-1-12-3 and contact Grant Services' Labor Standards Specialist prior to beginning any construction work.

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Davis Bacon Wage Rates *Continued*

If the Grantee's project circumstances are not subject to an exemption, Davis Bacon wage rates must be utilized. To obtain a copy of the wage decision, the Grantee must complete the following steps:

Steps to Follow

1. **Request Wage Decision:** Complete and mail a Request for Wage Decision to the Grant Services' Labor Standards Specialist. Upon receipt, the Grant Services' Labor Standards Specialist will forward the applicable provision to the Grant Administrator. The wage decision must be included in the bid specifications. Please use **FORM 2 of the Labor Standards Section** for the request.
2. **10-Day Wage Verification:** Because the US Department of Labor continually monitors the economic conditions of the construction contracting discipline, the wage rates are subject to change. It is essential that the Grantee verify the most current rates are being utilized. To do this, the Grantee must forward a 10-day Wage Verification form to the Grant Services' Labor Standards Specialist 10 days prior to the bid opening. Please use **FORM 3 of the Labor Standards Section** for verification.

In the event the wage decision has been modified, the Grant Services' Labor Standards Specialist will send the Grant Administrator a copy of the new wage decision. A copy of this new wage decision must be immediately forwarded to the Grantee's engineer/architect. The engineer/architect will need to send it to all potential bidders (plan holders) no less than 72 hours prior to the bid opening.



Please Note: The wage decision will remain valid for 90 days after the bid opening. In the event the project is not awarded within 90 days after the opening, the Grantee must contact the Grant Service's Labor Standards Specialist and utilize the wage decision that is valid on the date the construction contract(s) are executed.

3. **Final Wage Rate Compliance:** During the construction phase of the project, the Grantee's Labor Standards Officer will need to check the contractor's weekly payroll reports. Upon the completion of the construction activities, the Grantee must submit a Final Wage Rate Compliance form. Please use **FORM 4 of the Labor Standards Section** for compliance.

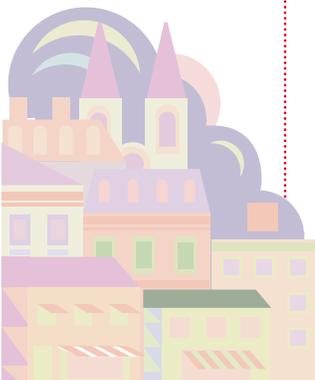


If any discrepancies are found, the Grantee needs to take immediate action to resolve the issue(s). All payments to the contractor should be withheld until the contractor rectifies the situation. If the contractor fails to make restitution, the Grantee will be held responsible for the additional payments owed to the contractor's employees.

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Davis Bacon Wage Rates Continued

Additional Information

The Davis Bacon wage rate provisions also apply when CDBG funds are used to purchase equipment that requires installation and the installation involves more than an incidental amount of construction work. For example, CDBG funds are used to purchase a press that needs to be professionally installed. The contract for the press installation is over \$2,000 and thereby entitles the installation workers to Davis Bacon wage rates.



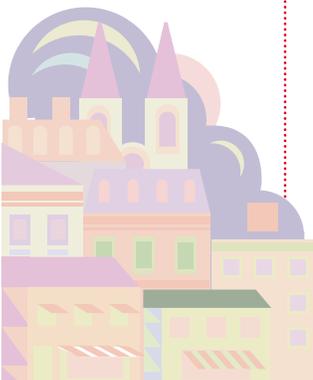
Please Note: When using the \$2,000 amount to trigger Davis Bacon, HUD looks at the total project amount. For example, If a \$500,000 building is being built and a subcontractor is doing landscape work for \$1,500, he is still subject to Davis Bacon even though his contract amount is under \$2,000.

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If the contractor plans to utilize a **work classification** that is **not listed on the wage decision**, the Labor Standards Officer must request an “additional classification and wage rate.” The request must be made in writing and sent to the Grant Service's Labor Standards Specialist. The request must identify the work classification that is missing and the work that the new classification will perform. If possible, the Labor Standards Officer should recommend a wage rate, which would usually be the rate typically paid to employees performing the same kind of work within that area. The Grant Service's Labor Standards Specialist will assign a conforming wage rate for the new classification or make a request for an additional classification to the US Department of Labor. The Labor Standards Officer will be notified in writing of the decision and the prime contractor must post the notification on the job site with the wage decision.



Payroll Reports

The contractor/sub-contractor may submit his/her payroll reports on the **standard payroll report** form, or he/she may use a computerized printout with an attached **Statement of Compliance** form. Both of these forms **require the original signature of the contractor/subcontractor**.

(A copy of the payroll forms and filing instructions can be found in the **Pre-Construction Conference Packet**.)

The Certified Payroll Report must clearly identify hours worked on the project for the reporting period. Gross wages from this job and from all other jobs worked during the week must be reported in the gross amount earned column. Deductions listed are to be based on the gross amount earned so that the net amount due to the employee corresponds with the payroll check issued to the employee.

The contractor/subcontractor must also **number and date his/her payroll reports**. The first week work is performed, the payroll report must be dated and marked "initial." The contractor/subcontractor is required to submit a payroll report for each consecutive week until the project is complete. The last payroll report must be dated and marked "final."



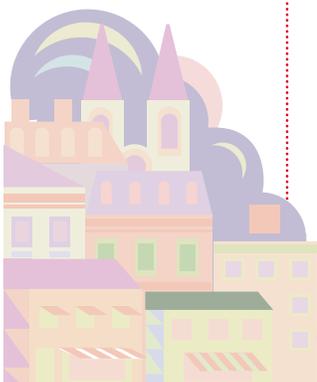
Please Note: "No Work" payrolls must be submitted whenever there is a temporary break in the work on the project. **For example**, If the construction firm is not needed on the project for a few weeks but will be returning to the job site at a later date, the contractor would still be required to submit weekly payroll reports for the weeks he/she was not on site by simply indicating that "No Work" was performed on the payroll report.

In order to assist the Grantee with the monitoring of the payroll reports, a monthly payroll report summary may be maintained. **FORM 5 of the Labor Standards Section** may be utilized for this summary.

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Fringe Benefits

In the event the contractor is paying his/her employees' fringes in cash, the amount of fringe benefits due should be added to the amount of the base wage with the total amount due reflected in the hourly rate column on the certified payroll report. The contractor should also mark the certified payroll report in Part 4(b)-where fringe benefits are paid in cash.

In some instances, the applicable hourly fringe benefit amount may not be reflected on the payroll form. This circumstance may arise if the contractor/sub-contractor has a bona fide fringe benefit plan for his/her employees. In this case, the contractor should mark the certified payroll report in Part 4(a)-where fringe benefits are being paid into an approved plan.

The Grantee's Labor Standards Officer must obtain verification from the contractor/sub-contractor of his/her fringe benefit program and amounts. (If the contractor/subcontractor has union employees, a copy of the union benefit page will suffice.) **In addition to the verification, the prime contractor and all sub-contractors are required to complete a Wage/Fringe Benefit Certification form.** Please use **FORM 6 of the Labor Standards Section** for certification. This completed form, signed by an officer of the company, must be forwarded to the Grant Services' Labor Standards Specialist prior to requesting the first drawdown of grant funds.

Grant Services recognizes the following as bona fide fringe benefit plans:

- Health, life or other similar insurance.
- Pension or retirement contributions recognized by the Internal Revenue Service (IRS).
- Expenses of recognized apprenticeship or other training programs.



Please Note: Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation.

The Grantee's Labor Standards Officer will need to verify that the fringe benefit amount being paid to the employee is **equal to or greater than the amount specified in the Davis Bacon wage provision.** To do this, the Grantee's Labor Standards Officer will need to take the yearly total amount paid in fringes and divide it by 2080 hours; this will determine the hourly fringe benefit amount being paid.

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Fringe Benefits *Continued*



If the contractor's total wage plus fringe benefits package equates to less than the total wage plus fringe benefits amount specified in the Davis Bacon wage decision, the difference should be paid directly to the employee as part of his/her weekly check. **For example:** ABC Construction pays \$3,000 per year to Redline Insurance for John Smith. They also contribute \$5,000 per year to a 401K plan for John. ABC's yearly fringe benefit contribution on John Smith is \$8,000. On an hourly basis, this equates to \$3.85 (\$8,000/2,080 hours per year). The specified fringe benefit amount according to the applicable wage decision for John's classification is \$5.20. Therefore, ABC Construction will need to add the difference of \$1.35 (\$5.20 - \$3.85) to John's hourly rate. This difference should be indicated on John's weekly payroll report and check.

Overtime

All employees that work over 40 hours in a week on the CDBG funded project are eligible for overtime pay. **For example:** An employee may work 55 hours one week (45 at the CDBG job site and 10 at another non-federal job site). The five (5) additional hours worked on the CDBG job site are subject to Davis Bacon wages at time and one half where as the additional 10 hours at the other site are subject to overtime at the contractor's regular hourly rate.



Please Note: Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

Copeland Anti-Kickback Act

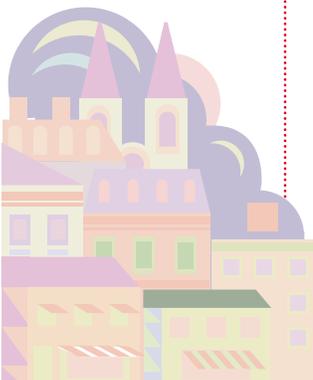
The Copeland Anti-Kickback Act requires:

- No contractor/subcontractor may coerce or intimidate any employees to take less than their determined rate and/or give back any of their wages.
- All contractor/subcontractors must keep accurate payroll records and maintain his/her records for a minimum of three (3) years. However, the State of Indiana requires that records be maintained for a period of five (5) years.
- No contractor/subcontractor may pay his/her workers with an I.O.U., equipment, or other form of barter. All payments must be direct in the form of a weekly check written to the employee.

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Miscellaneous Labor Standard Requirements

To complete the labor standards file, the Grantee's Labor Standards Officer is responsible for making sure that each of the following tasks are completed:

Steps to Follow

1. **Bid Specification Completion:** Give the project architect/engineer a copy of the **Federal Construction Contract Provisions**, along with a copy of the applicable wage decision, to include in the bid specifications. (The wage decision is obtained from the Grant Services' Labor Standards Specialist.)
2. **Contractor Verification:** Prior to bid award, verify that all contractors bidding on the project are not listed in the "Parties Excluded from Federal Procurement Programs", published by the US General Services Administration. To check contractors' status, submit the Contractor Verification form to the Grant Services' Labor Standards Specialist. Please use **FORM 7 of the Labor Standards Section** for verification.
3. **Notice of Contract Award:** Once the Grantee has received its **Release of Funds**, it may award the contract and submit the Notice of Contract Award form to the Grant Services' Labor Standards Specialist. Please use **FORM 8 of the Labor Standards Section** for notification.
4. **HUD 4010 Form:** Make sure that a copy of the Federal Labor Standards Provisions HUD 4010 is physically attached to each construction contract; both the prime contractor and sub-contractor. (A copy of this form is included in the **Federal Construction Contract Provisions**.)
5. **Pre-Construction Meeting:** Prior to the start of construction, the Grantee's Labor Standards Officer will need to schedule and conduct a Pre-Construction Meeting. The purpose of this meeting is to outline once again all of the applicable labor standard rules and regulations that apply on the job. The Grant Services' Labor Standards Specialist should be notified of the meeting no less than 10 days prior to the date. Please use **FORM 9 of the Labor Standards Section** for notification.

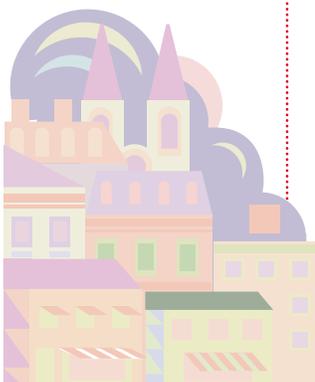


Please Note: A "**Pre-Construction Conference Packet**" containing the information to be explained at the Pre-Construction Conference is provided upon this CD-Rom. A copy of the **signed acknowledgement of receipt of the rules, procedures, and requirements** regarding a construction contract between the Grantee and contractor, found within the contents of the packet, must be forwarded to the Grant Services' Labor Standards Specialist along with a copy of a **sign-in sheet and minutes of the meeting**.

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Steps To Follow *Continued*

6. **Miscellaneous Forms:** The Grantee's Labor Standards Officer will need to collect the following documents from the contractor/sub-contractor within 10 days of the contract award:

- Contractor Certification
- Sub-Contractor Certification
- Copy of the OFCCP Subcontract Notification for subcontracts over \$10,000

(These forms are included in the **Federal Construction Contract Provisions**.)

7. **Start of Construction:** After the contract has been awarded and the Pre-construction Conference held, the Grantee's Labor Standards Officer must obtain the date construction will begin for the prime contractor. When that date has been confirmed, the "Notice to Start Construction" form must be submitted to the Grant Services' Labor Standards Officer.

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8. **Postings at Construction Site:** Make sure the contractor displays the following posters and documents at the construction site:

- Notice to All Employees Working on Federally Funded Projects
- Federal IOSHA poster
- Federal Polygraph poster
- Copy of the Applicable Davis Bacon Wage Decision

(The posters are mailed out with the Davis Bacon wage decision to the Labor Standards Officer. Copies of the posters are also included in the **Federal Construction Contract Provisions**.)

9. **Employee Interviews:** Throughout the construction phase, the Grantee's Labor Standards Officer will need to interview 10% of each class of employees working on the job. Interviews should be obtained from the employees of the prime and sub-contractor(s). These interviews should be performed at the beginning of the job and throughout its completion. These interview forms must be checked against the certified payroll reports for job classification and rate of pay. **Please use FORM 10 of the Labor Standards section for the interviews.** (A copy of the interview form is also included in the **Federal Construction Contract Provisions**.)

10. **Final Inspection/Project Completion:** Once construction is completed and the proposed improvement is functioning as intended, a copy of the Final Inspection/Project Completion report must be forwarded to the Grant Services' Labor Standards Specialist. Please use **FORM 11 of the Labor Standards Section** for notification.

