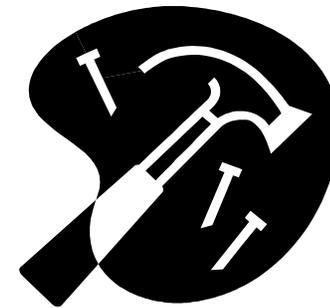


Davis-Bacon Act (DBA)



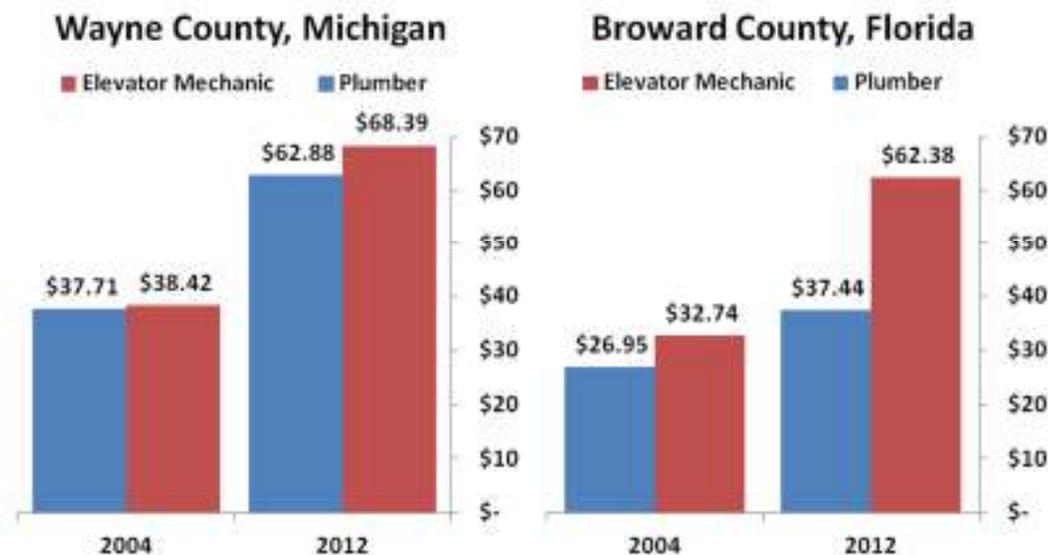
Under the American Recovery and
Reinvestment Act of 2009
"ARRA"

Jay Nathwani

Training Objectives

- Review Original Act
- Summarize Recovery Act Requirements

Davis-Bacon Prevailing Wages (and Fringe Benefits) for Construction Workers, 2004-2012



Source: Wage Determinations Online, DOL

ARRA -- PL- 111-005

- Effective February 2009
- Economic stimulus package intended to provide a “jump start” to the U.S. economy in wake of the economic downturn
- Worth about \$787 billion
- Includes federal tax cuts, expansion of unemployment benefits, and other provisions



Davis-Bacon Act

- Originally passed in 1931 under the Herbert Hoover Administration
- Initiated to ensure fair treatment of workers during the Depression
- Named after sponsors of the bill
 - James Davis (Senator – PA)
 - Robert Bacon (Representative- NY)

A wide-angle photograph of a city skyline at night, with numerous skyscrapers illuminated against a dark sky. The lights from the buildings reflect on the water in the foreground. The text "Title 29 CFR Parts 1, 3,5,6,7 and 8" is overlaid in white on the upper portion of the image.

Title 29 CFR Parts 1, 3,5,6,7 and 8

Who is covered?

- The Recovery Act Davis-Bacon requirements apply to all entities (Commercial, Non-Profit, Universities, Tribal Organizations) who:
 - Receive Federal funding (e.g., a Financial Assistance award) under the Recovery Act (See Section 1606 of ARRA)
 - Perform work on federal construction OR federally assisted contracts in excess of \$2,000
 - Employ Contractors and Subcontractors for constructions activities

<http://www.dol.gov/whd/recovery/AAM207.pdf>



WAGE RATE REQUIREMENTS

- ARRA Section 1606

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Requirements

- Prevailing wage is **the combination of the basic hourly rate and any fringe benefits** listed on the Department of Labor (DOL) wage determination website.
- The contractor **must pay at least** the prevailing wage published by DOL.
- Payment can be made by cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.
- Payment must be based on **all construction hours worked on the site** of the work.
- With an approved apprenticeship program, apprentices or trainees may be compensated less than the prevailing wage rates for their profession. **Some exceptions to be taken into consideration.**

Requirements (cont.)

- Contractors and subcontractors are required to pay covered workers weekly.
- Contractors must maintain **weekly certified payroll** records.
- Contractors must post the applicable Davis-Bacon wage determination with the [Davis-Bacon poster \(WH-1321\)](#) on the job site.
- Wage determinations are published on the Wage Determinations On Line ([WDOL](#)) website

Employer Responsibilities

- Pay laborers and mechanics no less than the prevailing wage rates and benefits in the area
- Pay employees weekly and maintain weekly payroll records
 - Signed by a person authorized to supervise the payment of wages/benefits
- Request an additional wage classification if none is listed for the type of work in the county where work is being conducted.



Employer Responsibilities

- Pay overtime to employees if the prime contract is over \$100,000
- Post the Davis-Bacon wage determination poster at work-site
- Flow down requirements to sub-recipients and subcontractors.



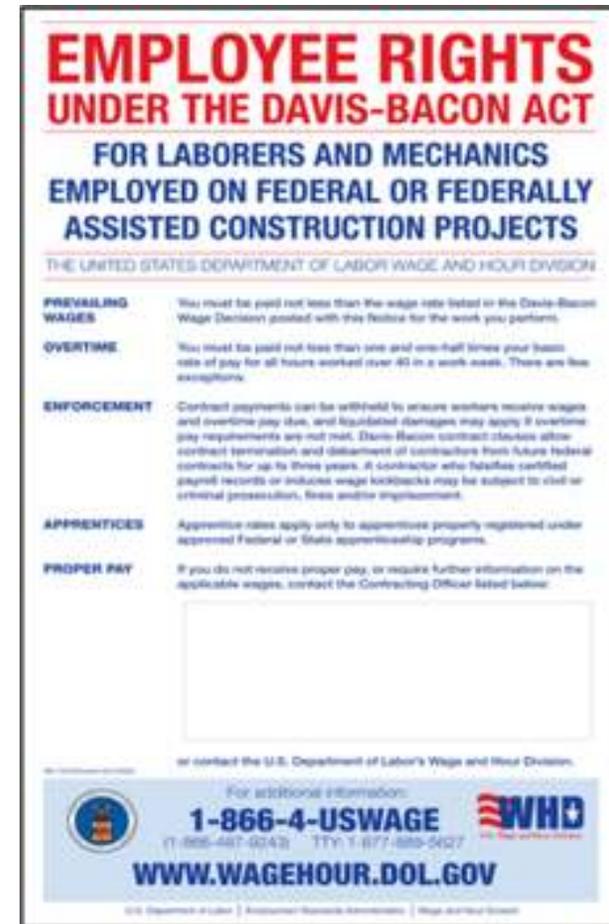
Davis-Bacon Act Issues

- Misclassification of laborers and mechanics.
- Failure to pay the full prevailing wages, including fringe benefits, for all hours worked (including overtime hours).
- Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day.
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified payrolls weekly.
- Failure to post the Davis-Bacon poster and applicable wage determination.

- Contracting agency has primary responsibility for routine enforcement of DBA compliance
 - Quarterly project monitoring and certified payroll review
 - Annually conduct employee interviews
 - Deal with violations while they are current and manageable
 - Follow through with a demand for compliance or refer to DOL
- DOL has final statutory authority for enforcement and interpretations
 - Violations that indicates willful intent
 - Violations that include falsifications of records
 - Violations that are repetitive

Best Practices

- Post the Davis-Bacon wage determination poster at work-site
- Know the prevailing wage rates and benefits are in your area / geography. Check with the Wage and Hour Division



Prevailing Wages

- DBA prevailing wage rates can be found on the DOL website at <http://www.wdol.gov/>.
- Click on the link “Selecting DBA WDs.” This will take you to the page where you can look up the wage requirements by county as well as construction type.
- If there is not an applicable wage classification category for the type of work being done on your project, please begin the process for a “Request for Additional Wage Classification Category.”

Steps to obtain additional wage classification requests

- An Awardee will work with their subcontractor and completes the required form (SF-1444), available at [http://contacts.gsa.gov/webforms.nsf/0/BD4C92A05177FD9C85256A2600553378/\\$file/SF%201444.pdf](http://contacts.gsa.gov/webforms.nsf/0/BD4C92A05177FD9C85256A2600553378/$file/SF%201444.pdf).
 - The proposed wage, fringe rates and descriptions of work for the laborers and mechanics of the subcontractor should be entered in the form and signed by you and a subcontractor representative.
- The form should then be sent to the DOE Grants Management Specialist assigned to your award.
- DOE will coordinate the request with the DOL.

Applicability to Drilling

- The Department of Labor definition of “construction” includes drilling, other interpretations indicate that the DBA does not apply to drilling for purposes of ONLY extracting data and information (i.e. slim hole, preliminary work not “incidental” to any construction project).
- DBA does apply to all projects where the drilling is made in anticipation of construction/energy production, even if Federal funding is not used to fund the anticipated construction in the future.
- All Geothermal projects funded by the Recovery Act must comply with DBA; the only exception would be if the funds are used for gathering preliminary information.

- Key Resources:

- Prevailing Wage Information <http://www.wdol.gov>
- Davis Bacon Act Compliance
<http://www.dol.gov/compliance/laws/comp-dbra.htm>
- Davis Bacon Act Desk Guide
http://www1.eere.energy.gov/wip/pdfs/doe_dba_desk_guide.pdf

Questions?

Questions

