

TAB C

**DAVIS-BACON LABOR STANDARDS
CONTRACT STIPULATIONS**

(29 CFR 5.5, also reiterated at 48 CFR 52.222-6 through 52.222-15)

Definition 29 CFR 5.2(f)

The term “**labor standards**” means the requirements of:

- The Davis-Bacon Act
- The Contract Work Hours and Safety Standards Act
- The Copeland Act
- The prevailing wage provisions of the Davis-Bacon related Acts
- Regulations, 29 CFR 1, 3 and 5, which govern the administration and enforcement of the DBA and DBRA

29 CFR 5 requires contracting agencies to include in any DBA/DBRA covered construction contract the specified labor standards requirements. Normally these requirements are found in the contract under the heading “**Davis-Bacon Act**” or “**labor standards**” or “**prevailing wage requirements**” or “**federal requirements**” and include:

1. **Minimum wages** - All laborers and mechanics employed or working upon the **site of work** must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the “conformance process” set forth at 29 CFR 5.5(a)(1). The laborers and mechanics working on the site of work must be **paid weekly**.
2. **Withholding** - The federal agency or the loan or grant recipient shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay the full amount of wages required by the contract. (The processing of monies so withheld is discussed further in the “Withholding” section of this book.)

- 3(a) **Maintaining basic payroll records** - The contractor must maintain basic payroll records during the course of the work and preserve them for three years. Such records shall contain:
- Name of each worker
 - Address
 - Social security number
 - His or her correct classification
 - Hourly rates of wages paid
 - Daily and weekly number of hours worked
 - Deductions made and actual wages paid
 - Contractors employing apprentices or trainees under approved programs must have written evidence of the registration of the apprenticeship program and certification of the trainee program, copies of the individual registration forms of the apprentices and trainees, and written evidence of the applicable ratios and wage rates.
- (b) **Submission of certified payroll records** - The contractor must submit **weekly** a copy of all payrolls to the contracting agency. The payrolls submitted must set out accurately and completely all of the basic payroll information listed above.
- The payroll information may be submitted in any form desired. Optional payroll form WH-347 is available (from the Government Printing Office, (202) 512-1800, and at 48 CFR 53.303-WH-347). The payroll information also is available on Wage and Hour website at:

<http://www.dol.gov/esa/forms/whd/index.htm>
 - The prime contractor is responsible for the submission of the certified payrolls to the contracting agency (including for all subcontractors on the project).
 - Each payroll submitted must be accompanied by a "Statement of Compliance" as required by the Copeland Act and 29 CFR

Part 3. (A form for this purpose is available on the reverse of Optional form WH-347.)

- The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution. Thus, the contractor is put on notice in the contract itself that criminal prosecution could result if falsified payrolls are submitted to the government.
 - The contractor or subcontractor must make the payroll records available for inspection, copying, or transcription by authorized representatives of the contracting agency or the DOL, and must permit such representatives to interview employees during working hours on the job.
 - If the contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.
 - Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action.
- 4(a) **Apprentices** - Apprentices are permitted to work at less than the predetermined rate **only** when **all** of the following conditions are met:
- Employed pursuant to and **individually registered** in a bona fide apprenticeship program registered with the U.S. DOL, Bureau of Apprenticeship and Training (BAT), or with a state apprenticeship agency recognized by BAT. (**Note - the program itself must be registered and the apprentice must be individually registered in the program**).
 - The allowable **ratio** of apprentices to journeymen **on the job site** in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.
 - Labor standards for apprentices also have requirements for how to pay fringe benefits and provide for portability of apprenticeship programs.

- The labor standards specify that if a contractor violates any of the provisions, then the person considered to be an apprentice must receive the full amount of the applicable prevailing wage rate for the classification of work performed.
- (b) **Trainees** - Trainees are permitted to work at less than the predetermined rate only when all of the following conditions are met.
- Employed pursuant to and **individually registered** in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT). (**Note: State agency approval of trainee programs is not recognized for DBRA purposes.**)
 - The **ratio** of trainees to journeymen **on the job site** shall not be greater than permitted under the plan approved by the Employment and Training Administration.
 - Labor standards for trainees also have requirements for how to pay fringe benefits.
 - There is no portability of a trainee program from one locality to another.
5. **Copeland requirements** - All contractors must comply with the Copeland Act requirements and the requirements in 29 CFR Part 3, which prohibits kick-backs and sets forth rules concerning deductions from employees' wages.
6. **Subcontracts** - The labor standards provisions require the contractor to insert the labor standards clauses in any subcontract. This clause further stipulates that the prime contractor shall be responsible for compliance by any subcontractor with the labor standards requirements in the contract. In effect, the prime contractor is ultimately responsible for the payment of the back wages.
- Note:** A definition for subcontractor is not found in the regulations. A subcontractor is any person (other than an employee) or firm who has agreed, either verbally or in writing, to perform any of the work required under the contract.
7. **Contract termination and debarment** - Debarment means that a firm and its responsible officers, and firms in which they have an interest (or substantial interest for related Act cases) are not

permitted to work on covered contracts for three years. If a contractor violates any of the labor standards requirements, the contractor may be terminated from the contract and/or debarred.

8. All **rulings and interpretations** of the DBRA issued in 29 CFR Parts 1, 3 & 5 are incorporated by reference in the contract.
9. **Disputes** under the contract relating to the Davis-Bacon labor standards requirements must be submitted to the DOL for resolution pursuant to the Secretary of Labor's authority under Reorganization Plan No. 14 of 1950, and 29 CFR Parts 5, 6 and 7.
10. **Certification of eligibility** - By entering into the contract, the contractor certifies that no person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts, i.e., not debarred.
 - This labor standards clause further stipulates that no part of the contract shall be subcontracted to any person or firm debarred.
 - The penalty for making false statements about eligibility for government contract work can be criminal prosecution.