



Davis-Bacon Labor Standards Protecting Construction Workers' Rights

February 2, 2016 (revised 9/13/2017)

Training Agenda

- ❖ Labor laws
 - ❖ Application triggers and how they work
- ❖ Bids
 - ❖ Language and requirements
 - ❖ Proposing wage approvals -- DOL Memo 213
 - ❖ Which worker classifications require special attention
- ❖ Construction Contracts
 - ❖ Language and HUD Mandates
- ❖ Stumbling Blocks and Benefits



Labor laws - HOME and 811 PRA

- ❖ Applies to project repair, alteration, (paint and decorating), reconstruction or new construction
- ❖ Enforced when 12-federally assisted units are under **ONE** construction contract
- ❖ Protects the rights of all construction workers on-site
- ❖ Governed by the Department of Labor Wage and Hour division
 - ❖ Enforced by the HUD Labor Enforcement Office



Labor Laws

- ❖ **Davis Bacon Act (DBA)**
 - ❖ **Davis Bacon Act and Related Acts (DBRA) – HUD funded projects**
- ❖ **Copeland Act**
- ❖ **Contract Work Hours and Safety Standards Act (CWHSSA)**
- ❖ **Fair Labor Standards Act (FLSA)**



Who is responsible for what?

HUD ?	Owner?
Subrecipient?	Prime Contractor?
General Contractor?	Subcontractor(s)?
Lower-tier Subs?	Independent Contractor?
Superintendents?	

Answers

HUD: **Power** to enforce

Owner: **Responsible** for all hired contractors

Subrecipient (TDHCA): **Enforces** compliance via Contract

Prime Contractor: **Accountable** for on-site compliance

General Contractor: same as “Prime”

Subcontractor(s): **Required** to comply

Lower-tier Subs: **Required** to comply

Independent Contractor: **Must comply** with DBRA, FMLA and IRS


Superintendents: **Exempt** unless works 20% or more workweek

What should I know about the Davis Bacon Act (DBA)?

- ❖ **Threshold** \geq \$2,000
 - ❖ **What does this mean? TDHCA Construction Contract triggers DBRA mandates on all on-site contracts**
 - ❖ **Who does this apply to? ALL hired contractors**
- ❖ Is “site based”
- ❖ Applies to all *laborers and mechanics*
- ❖ Requires payment of minimum prevailing wages and includes fringe benefits for specific workers

Davis Bacon Act (DBA) continued...

- ❖ Requires *weekly pay* (7-day workweek) and payment of over-time
- ❖ Requires maintenance of labor records for *three years after construction completion*
- ❖ General Contractor (Prime) responsible for **all** on-site enforcement, resolution of violations and assessed penalties



What should I know about the Copeland Act?

- ❖ Prohibits the kickback of fees, wages, commissions or gifts by *contractors* or *employees* to work at project
- ❖ Enforces *weekly submission* of payrolls
- ❖ Regulates allowable and disallowed payroll deductions
- ❖ Enforces construction contract prevailing wage payment provisions

What about the Contract Work Hours and Safety Standards Act (CWHSSA)?

- ❖ Applies to construction contracts \$100,000 or more
- ❖ **Enforces** over-time (OT) payment of 1.5 times basic prevailing hourly wage for all hours worked in excess of 40/hrs in workweek (7-days)
- ❖ Imposes penalty and payment of ***\$25 liquidated damages*** per worker, per day for unpaid OT hours
 - ❖ All CWHSSA penalty checks are sent to TDHCA , who in turn, forwards to HUD to deposit in US Treasury

What about the Fair Labor Standards Act (FLSA)?

- ❖ Establishes basic minimum wage and overtime standards for **all** workers, not just construction workers
- ❖ **National** current minimum wage is **\$7.25 hour**, applies to TDHCA HOME/811 contracts
 - ❖ **Effective 2016**, Executive Order 13658 requires **\$10.10 hour** minimum wage payment for all construction work **directly contracted with Federal entity**
- ❖ Regulates employment of minors, independent contractors and discrimination based on sex

Hourly Wage Coverage

Rule	Requirement
DBA/DBRA	All workers who work on Project <ul style="list-style-type: none">• wage plus fringe benefits• paid weekly
FLSA	For nonexempt workers <ul style="list-style-type: none">• Minimum wage (\$7.25)
Copeland Act	Enforces <ul style="list-style-type: none">• DBA weekly pay mandates

Overtime: More than 40 hours/week

1.5 times hourly wage

DBA/DBRA	Required for <ul style="list-style-type: none">• All construction workers• Supervisors doing trade work in excess of 40hrs in workweek• Independent Contractors
FLSA	Nonexempt workers
CWHSSA	Penalties for OT nonpayment: <ul style="list-style-type: none">• Liquidated Damages• Restitution Pay

Pay Workers Weekly

DBA/DBRA	Requires (every 7) days
Copeland Act	Enforces –DBA pay mandates Penalties
CWHSSA	Enforces OT Penalties

Deductions from Paychecks

Copeland Act

Deductions

- Allowable
- Disallowed
- Worker approval

FLSA

Nonexempt workers

Differences between Rules

DBA/DBRA	DOL administers applies to federally-funded construction
FLSA	Applies to <ul style="list-style-type: none">•Independent Contractors•Youth employment•Gender discrimination
CWHSSA	Employer Out-of-Pocket Penalties <ul style="list-style-type: none">•\$25/day/worker for pay errors•On-site safety infractions

What belongs in a Bid?

- ❖ Ensure ALL bid solicitations state: Project has federal award and is subject to Davis Bacon Act prevailing wage mandates and federal labor laws.
- ❖ Include Department of Labor “laborer and mechanic” prevailing wage mandates in **all** bid packages.
- ❖ Require list of worker classifications needed and *hourly wage* paid.

What belongs in a Bid?

- ❖ Obtain published General Wage Determination (GWD) by Project County location
 - ❖ <http://www.wdol.gov/dba.aspx>
- ❖ Compare bid worker classification and wage and GWD
 - ❖ Can pay more but not less than GWD
- ❖ For worker classifications NOT listed
 - ❖ Require DOL approval
- ❖ Wage must comply with **DOL Memorandum No. 213 “median” wage mandates**



Wage Proposals by Category

(DOL Memorandum No. 213)

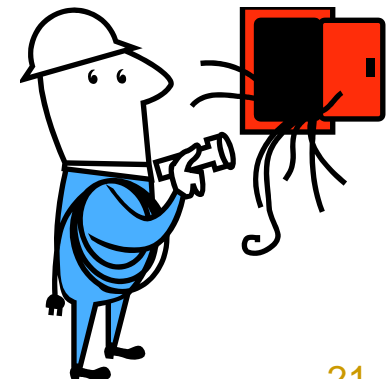
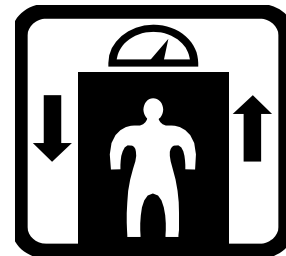
- ❖ Effective **March 22, 2013**
- ❖ Must group workers by four categories:
 - ❖ Laborer
 - ❖ Trade
 - ❖ Operator (Heavy Equipment)
 - ❖ Truck Driver
- ❖ Propose wage specific to worker category

What belongs in a Bid

- ❖ Pay special attention to contractors who use “**apprentices**” or “**piece workers**”
 - ❖ All “**apprentices**” require DOL Education Training and Administration (DOL-ETA) approval.
 - ❖ All “**piece workers**” must be paid DOL prevailing wage and over-time if work exceeds 40 hours in 7-day workweek.

Which trades have apprentices?

- ❖ Laborers
- ❖ Carpenters
- ❖ Plumbers
- ❖ Painters
- ❖ Electricians
- ❖ Drywall Installers
- ❖ Elevator Workers
- ❖ Landscapers
- ❖ Heavy Operators
- ❖ Asbestos Workers



What belongs in a Bid

- ❖ **Additional “special” classifications**
 - ❖ **Classifications that include “fringe benefit” payment**
 - ❖ **Union Workers**
 - ❖ **Contractors who use “apprentices” approved by Trade Licensing Schools**
 - ❖ **Independent contractors (self-employed)**
 - ❖ **Supervisors who work on-site not just supervise**
- ❖ **Ensure contractors factor in work that may/will require over-time pay**



Caution

- ❖ TDHCA locks in prevailing wage mandates **prior to construction** not during bids
 - ❖ Contract execution
 - ❖ Most current prevailing wages **WILL** apply
- ❖ **Why do you think this is?**
 - ❖ Prime is identified at Application and typically not subject to federal bid mandates
 - ❖ Prime is *accountable* for on-site labor standards enforcement

What belongs in a construction contract?

- ❖ **Verify Contractor is eligible to receive federal award **prior** to contract award/signing**

- ❖ www.SAM.gov

- ❖ **HUD Fed Labor Standards Provisions (HUD 4010)**

- ❖ http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olrform

- ❖ **DOL General Wage Determination prevailing wages**

Construction contract includes:

- ❖ Requirement that all hired subcontractors and lower-tiers comply with wage and federal labor laws
- ❖ Requirement to use DOL Wage and Hour Payroll – form 347 or TDHCA approved payroll
 - ❖ <http://www.dol.gov/whd/forms/>
- ❖ Certification by contractor agreeing to comply with Davis-Bacon requirements

Most Common Errors

- ❖ Not screening contractor eligibility on www.SAM.gov
- ❖ Federal Labor Provisions and DOL wages are not incorporated in all bids and contracts
- ❖ Failure to inform lower-tier subs of Davis-Bacon requirements
- ❖ Failing to comply with DOL-ETA apprentice certifications
- ❖ Failure to include Piece Workers required GWD and Over-time pay in bids

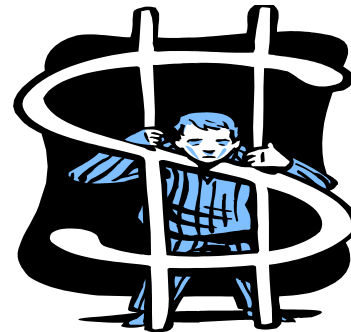
Failure to comply can result in:

❖ **Out of pocket expenses**



❖ **Termination of Contract**

❖ **Debarment**





HUD Labor Standards and Enforcement website

- ❖ **HUD Forms and Guidance**

- ❖ **Fed Labor Standards Provisions
(HUD 4010)**

- ❖ **State and Contractor Guides:**

- http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement



DOL websites

Federal Labor Laws and Forms website

<http://www.dol.gov/whd/>

DOL Wage Determination Page – Texas
Counties

<http://www.wdol.gov/dba.aspx>

Contact Information

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