



CCI Davis-Bacon Q&A

Q: Are lodging and transportation reimbursements required by the Davis-Bacon Act (DBA)?

A: DBA requirements apply to laborers and mechanics employed directly on the site of work. For example, the DBA does not cover time that an employee spends at a home office, picking up supplies, or traveling to the work site. However, lodging and transportation expenses are covered under the DBA in certain situations when an employer sends an employee to perform a job at a location outside of normal daily commuting distances. The DBA applies to these situations when, as a practical matter, the employee can only return to his or her home on weekends. The employee's lodging costs at the distant location and transportation costs to travel between his or her home and worksite are considered expenses that are properly reimbursable by the employer and incurred for its benefit. See Department of Labor (DOL) Field Operations Handbook, Section 15f19 at http://www.dol.gov/whd/FOH/FOH_Ch15.pdf. Such payments are not considered bona fide fringe benefits within the meaning of the DBA, are not part of the employees' wages, and do not constitute board, lodging, or other facilities customarily furnished, which would be deductible from the predetermined wage pursuant to 29 CFR § 3.5(j).

Q: Does the DBA cover foremen?

A: Foremen are generally not covered under the DBA, unless they are working foremen (i.e., doing construction work). The DBA covers working foremen or supervisors who regularly spend more than 20% of their time performing the duties of a laborer or mechanic on the site of the work and do not meet the exemption criteria under 29 CFR Part 541 for the hours spent performing the construction work. These working foremen or supervisors must be paid at no less than the appropriate wage rate for the classification of the work being performed. See 29 CFR § 5.2(m). The DBA does not cover non-construction hours spent by a supervisor or foreman directing the work of others or performing other non-manual work such as timekeeping or reporting.

Q: Who deals with issues of subcontractor inadequate pay – the prime recipient or the contractor (i.e., if the recipient reviews payrolls and finds issues with subcontractor pay, does the recipient contact the subcontractor or does the recipient require the contractor to contact the subcontractor)?

A: The prime recipient is responsible for the full compliance with the DBA of all employers, including that of the contractor and any subcontractors. The prime recipient is also responsible for ensuring that all relevant labor clauses are included in any subcontract under an award. See 29 CFR § 5.5(a)(6). The prime recipient is also responsible for ensuring that restitution is paid. Typically, if inadequate issues involve the subcontractor, the subcontractor will make restitution payments and furnish the required documentation to the prime recipient through the prime contractor.

Q: Are signed .pdf's of payroll and certifications sent by email acceptable?

A: No. DBA payroll reports may be certified and submitted electronically. However, recipients may not simply submit these reports as e-mail attachments or by fax. These methods are comparable to photocopies and are not acceptable submissions. Weekly certified payrolls may be submitted electronically with proper use of electronic signatures. These are digital signatures, which are ONLY available through an electronic payroll system. If a contractor completes Payroll Form (WH-347) and the Statement of



Compliance (formerly WH-348) online, they MUST be printed out and hand signed. *See, e.g.*, Transcript from DOL Wage and Hour Division, Prevailing Wage Conference, "Davis Bacon Act – Part Two," Oct. 4, 2011, <http://www.dol.gov/dol/media/webcast/20111004-whd/20111004-whd-transcripts-2.htm>.

Several vendors offer products to manage electronic payroll certification, submission, compliance, and retention for the purpose of meeting DBA requirements. Several contracting agencies report using these products and find them to be acceptable for these purposes. However, DOL has not endorsed any particular product.

Q: What if 'restitution' is not able to be paid within 30 days? For example, if fringe benefits were collected by the 'home' union (county) and needs to be transferred to the union in the county in which the work was performed, it is almost impossible to complete the process within 30 days.

A: While the employer/prime contractor is allowed 30 days to correct the underpayments, there are no time constraints (i.e., 30-day limitation) placed on restitution or payments to employees.

Q: If a correction to Form WH-347 is required, would the recipient have to maintain the original and the adjusted certified payroll form for the same period?

A: Yes.

Q: Is it the responsibility of the prime contractor to provide subcontractor data to the recipient? Or, should the subcontractor reply directly to the recipient?

A: The prime contractor is responsible for the submission of the certified payrolls to the recipient (including for all subcontractors on the project).

Q: Should every contractor and every jobsite employee be given a labor standards interview form?

Contractors and workers should not be given the labor standards interview form (SF-1445) to fill out. The grantee must periodically conduct interviews with the construction workers on the job site to capture observations of the work being performed, the workers' views on the hours they work, the type of work they perform, and the wages they receive. Information gathered during the interviews is recorded on SF-1445. The grantee should conduct a minimum of one employee interview per contractor and sub-contractor during the beginning and ending of the project. For example, if a recipient has one contract and five subcontractors, the recipient should, at a minimum, interview one employee at each of the six companies during the early stages of the project and one different employee at each of the six companies towards the end of the project. Recipients should conduct additional interviews as they deem them necessary. Recipients must maintain all records from the required interviews.

Q: Is installing alarm systems (e.g., cameras and sensors) covered by the DBA?

A: Assuming that all other DBA conditions are met (i.e., contract size), the answer is yes. Davis-Bacon coverage includes installing a security system or an intrusion detection system. Often the job classification for such workers for wage determinations falls under electrician and/or communications system installer or technicians.