



Significant Changes to the Davis-Bacon Act

The U.S. Department of Labor (DOL) has updated the Davis-Bacon Act (DBA) prevailing wage rules in ways that will undoubtedly increase labor-related costs for federal contractors. The changes will go into effect on October 23, 2023.

Claims costs to repair damaged property will increase on federally funded projects, which means deductibles will be exhausted more quickly.

Generally, the DBA requires contractors and subcontractors who work on federally funded projects to pay their laborers and mechanics at least the prevailing wage and fringe benefits received by similar workers in the same geographic area. The DOL has the authority to determine the methodology used to set and apply those rates based on its localized wage surveys.

This year's most significant change relates to the prevailing wage rate calculation itself. It continues to be the wage rate paid to 50% or more of the workers in a specific job classification in that local area (most often a county). In a departure from current policy, however, there's a new second step in the process. If that 50% rate doesn't exist or can't be determined, the prevailing wage is equal to the rate paid to 30% or more of the local workers in that job classification. If that secondary calculation still isn't possible, a weighted average approach is used to determine the prevailing wage rate. The addition of that second step is likely to increase prevailing wages in many regions since unionized workers make up between 30% and 50% of the workforce in many local jurisdictions.

CURRENT POLICY

- + Prevailing wage rate paid to 50% or more of the workers

IF 50% DOESN'T EXIST OR CAN'T BE DETERMINED

- + Prevailing wage is equal to the rate paid to 30% or more of the workers

IF 30% CAN'T BE DETERMINED

- + A weighted average is used to determine wage rate for workers



OTHER ELEMENTS IN THE NEW RULE WILL ALSO LIKELY INCREASE CONSTRUCTION LABOR COSTS:

- + If projects are substantially modified, or a new period of performance is established after the contract award (including subsequently awarded options), wage rates must be modified to reflect any DBA prevailing wage updates since the time of original contract.
- + In some cases, the DOL will have the option to adopt state or local "Little Davis-Bacon" prevailing wage rates.
- + The definition of "area" for purposes of defining a worker population can be expanded beyond a county, depending on the project. In fact, if data for a county is insufficient, the DOL can base the prevailing wage rate on data from nearby counties without regard to whether the two counties are similarly rural or metropolitan.
- + The compliance burden is shifted to contractors if a government agency contract fails to note the applicability of the DBA prevailing wage requirement.
- + The DBA now covers "secondary construction sites," those off-site locations where a significant portion of the building or work is constructed, provided that such construction is for specific use in that building or work.
- + Contractors must pay DBA prevailing wages to delivery drivers for their onsite time related to deliveries if such time is not *de minimis*.

See the DOL's compilation of [frequently asked questions](#) for more information on these points.



WHAT THIS MEANS FOR YOU

- + These DBA changes could result in elevated payrolls, increasing workers' compensation premium costs.
- + Higher labor costs will impact on the contract value when setting the builder's risk limits.

CONTACT YOUR BROKER TO LEARN MORE ABOUT HOW THE DAVIS-BACON ACT COULD IMPACT YOUR ORGANIZATION.