



**COMMERCIAL INSURANCE**

**EMPLOYEE BENEFITS**

**PERSONAL INSURANCE**

**RISK MANAGEMENT**

**SURETY**

## **THE DAVIS-BACON AND SERVICE CONTRACT ACTS**

**What Government Contractors Need to Know**

## WHAT GOVERNMENT CONSTRUCTION CONTRACTORS NEED TO KNOW

Federal government construction contracts for buildings and public infrastructure represent approximately 20% of all construction projects in the U.S. and engage 25% of the country's construction workers at any given time.<sup>1</sup> Federal spending for contracted goods and services totaled \$1.1 trillion in 2022.<sup>2</sup>

This volume of work gives the federal government considerable leverage to dictate contract terms, including the compensation a contractor must provide its people working on those jobs. Two federal acts do precisely that:

1. **THE DAVIS-BACON ACT**, relating to federal contracts for the construction, replacement and repair of public buildings and public works.
2. **THE SERVICE CONTRACT ACT**, relating to federal contracts for service-related work.<sup>3</sup>



## AN OVERVIEW OF THE DAVIS-BACON ACT

The Davis-Bacon Act (DBA), adopted in 1931 and amended many times since, requires construction contractors and subcontractors working under a federal contract valued at \$2,000 or more to pay their laborers on that project no less than the local “prevailing wage.” The Wage and Hour Division (WHD) of the Department of Labor (DOL) determines prevailing local wages based on an annual survey of contractors, subcontractors and labor unions regarding the cash wages and fringe benefits paid to workers in approximately 20 trades within four categories of construction.

**Construction companies engaged in the public sector contract work arena should not only be aware of the Davis-Bacon Act, the Service Contract Act and similar state laws, but also consider critical wage and benefits strategies that can help them comply in the most cost-effective way.**

The DBA’s provisions also apply to “Related Acts,”— projects in which a federal agency supports a state or local construction project through grants, loans, loan guarantees or insurance programs.

Additionally, roughly half the states have adopted their own prevailing wage laws (commonly referred to as “Little Davis-Bacon” provisions) that establish wage requirements for state-funded construction projects. These prevailing wage levels do not necessarily reflect the DOL’s determinations, and their minimum contract thresholds usually exceed the DOL’s \$2,000 level.



## AN OVERVIEW OF MCNAMARA-O’HARA SERVICE CONTRACT ACT

Passed in 1965, the Service Contract Act (SCA) creates a similar prevailing wage program for service-related work performed under federal contracts. Employers with federal contracts for services such as programming, maintenance, accounting and others must pay their employees no less than the local prevailing wage, a rate determined through a similar DOL WHD survey program.

In contrast to the DBA, the SCA’s mandates apply to contracts of more than \$2,500. Legislation was introduced in the U.S. Senate in 2023 to increase that threshold to reflect inflation since 1965 and require inflation-related adjustments annually moving forward.

## STRATEGIES FOR COMPLYING WITH FEDERAL PREVAILING WAGE LAWS

The DOL presents DBA and SCA prevailing wages as a combination of base wages and fringe benefits calculated on a per-hour basis. Contractors have several options for offering the fringe benefit portion – through cash wages, within a bona fide fringe benefits plan or through a combination of both.

### Fringe Benefits - Definition of "Bona Fide" <sup>4</sup>



#### **SPECIFIED**

*Written & Communicated*

Covered employees must understand how the obligation is being spent and how to access the benefits.



#### **SPECIFIC TO EACH EMPLOYEE**

*Accounting Credit*

Directly to the benefit of the skilled worker.



#### **IRREVOCABLE**

*Payment to third-party or trust*

Contributions must be "fully-funded" the funds must leave the employer's accounts (except for PTO).



#### **HOURLY BASIS**

*Accounting Credit*

Weekly payroll reporting form WH347.

A DBA or SCA contractor is faced with three important fringe benefit- and compensation-related decisions:

1. What portion of the fringe benefit compensation will they provide through a bona fide benefits plan versus a cash payment added to the employee's wages?
2. What fringe benefits, such as medical, dental, vision and retirement plans, will they offer to employees?
3. What platform will they use to effectively enroll employees, allocate funds to individual plans and display to employees how funds were utilized to pay for their fringe benefits?

The first two considerations are addressed in more detail on the following page.

## THE ADVANTAGE OF PROVIDING BENEFITS THROUGH A BONA FIDE BENEFITS PLAN

Many construction companies opt to pay employee fringe benefits in cash. In these cases, however, that payment is subject to employer payroll-related taxes, which can increase total payroll costs by 25% or more. With labor costs representing 20-40% of total construction project costs,<sup>5</sup> even a marginal reduction in payroll costs can result in significant savings on a multi-year DBA or SCA contract.

### Comparison of Fringe as Wages vs. Benefits: Laborer <sup>6</sup>

| Pay Fringe in Paycheck |                | Pay Fringe to "Bona Fide" Plan |                |
|------------------------|----------------|--------------------------------|----------------|
| Base Wage              | \$30.00        | Base Wage                      | \$30.00        |
| Fringe                 | \$10.00        |                                |                |
| Total Wage             | \$40.00        | Total Wage                     | \$30.00        |
| Payroll Burden (25%)*  | \$10.00        | Payroll Burden (25%)*          | \$7.50         |
|                        |                | Fringe to "Bona Fide" Plan     | \$10.00        |
| <b>Bid Cost</b>        | <b>\$50.00</b> | <b>Bid Cost</b>                | <b>\$47.50</b> |

\* Payroll burden % shown for illustrative purposes only



## OFFERING AN INDUSTRY-SPECIFIC BENEFITS PACKAGE

Given the tight labor market and high turnover rates among hourly workers, it is critical that DBA construction and SCA service companies offer the right package of employee benefits that meets the needs and reflects the demographics of their team members.

Employee benefits are not a one-size-fits-all consideration. What is important to a Silicon Valley startup will not be the same for a large construction contractor in New Mexico. Wellness programs, fitness centers and student loan repayments may not be salient to the construction contractor as a robust health savings account (HSA) program and other benefits that reduce an employee's out-of-pocket costs.

Industry-leading fringe benefit packages should be determined based on location, scope of work and employee skill sets and structured to help a company not only attract but retain the best workforce.

Offering the right benefits plan can help companies maintain the kind of low turnover and consistent employee performance that reduces costs so the organization can bid more aggressively on government contracts and be more profitable overall.

**If you are a DBA or SCA contractor, or if you want to begin pursuing these business opportunities, talk to an IMA representative to learn about industry-specific benefit package options and the financial advantages of offering those items through a bona fide employee benefits program.**



### SOURCES

- 1 <https://ij.org/case/brazier-construction-co-inc-v-reich/>
- 2 [https://www.usaspending.gov/explorer/object\\_class](https://www.usaspending.gov/explorer/object_class)
- 3 <https://www.ebacon.com/sca/what-is-the-difference-between-davis-bacon-and-service-contract-act/>
- 4 <https://contractorsplan.com/complete-solution/benefits-administration/total-fringe>
- 5 <https://gobridgit.com/blog/how-to-calculate-construction-labor-cost/>
- 6 Comparison of Fringe as Wages vs Benefits: Laborer, courtesy of The Contractors Plan

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