

**LABOR COMPLIANCE  
PROGRAM DOCUMENT  
LAWS, REGULATION, AND RESPONSIBILITIES**

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## Acronyms & Definitions

The following is a list of acronyms and definitions used throughout this document.

ACRONYM	DEFINITION
ATD	Apprenticeship & Training Division (of BOLI)
BAT	Bureau of Apprenticeship & Training (of US DOL)
BOLI	Bureau of Labor & Industries
CA	Copeland Act
CFR	Code of Federal Regulations
CWHSSA	Contract Work Hours Safety Standards Act
DBA	Davis Bacon Act <i>(There is a distinction between the DBA and DBRA. DBA applies only to direct federal contracting and DBRA applies to federally assisted contracts)</i>
DBRA	Davis Bacon & Related Acts
ESA	Employment Standards Administration (of BOLI)
FHWA	Federal Highway Administration
FLSA	Fair Labor Standards Act
GPO	Government Printing Office
Little Davis-Bacon	Nickname for state prevailing wage laws
OJT	On-the-Job Training
PCA	Walsh-Healey Public Contracts Act
PWR	Prevailing Wage Rate (State or Federal)
SCA	McNamara-O'Hara Service Contract Act
USDOL	U. S. Department of Labor
WH	Wage and Hour (of BOLI)
WHD	Wage and Hour Division (of US DOL)

# **Davis Bacon & Related Acts (DBRA)**

## **Purpose**

To protect communities and workers from the economic disruption caused by competition rising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

## **Requirements**

DBRA requires the payment of local prevailing wages and fringe benefits to all laborers and mechanics employed on the work site at least once a week.

Employees must be paid the prevailing wage rate regardless of any contractual arrangement, e.g., an independent contractor or owner-operator relationship.

## **Criteria**

Congress has extended Davis-Bacon prevailing wage requirements to other laws - referred to as related acts - which provide federal assistance for construction. The Federal Aid to Highways Acts is the related act that requires payment of prevailing wages according to the Davis-Bacon Act.

- DBRA regulations apply to public works contracts in excess of \$2,000
- DBRA applies to laborers and mechanics of contractors and subcontractors
- Laborers and mechanics must have access to the wage scale posted at the job site
- The wages and fringe benefits on public works projects are determined through surveys conducted by the U.S. Department of Labor and by collective bargaining agreements when union wages prevail in an area
- The public contracting agency receiving federal funds is responsible for enforcing the laws and ensuring compliance by all contractors
- The U.S. Department of Labor gets involved when violations of DBRA rise to the level of fraud, or intentional violation of the law

## **Definitions**

Public work includes the construction, alteration, and/or repair (including painting and decorating), of public buildings or public works within the geographic limits of the U.S.

Site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

Laborers and mechanics include at least those workers whose duties are manual or physical in nature (including workers who use tools or are performing the work of a trade) as distinguished from mental or managerial. Laborers and mechanics include apprentices, trainees, and helpers. (DBRA coverage does not extend to watchmen or guards who are covered under CWHSSA, or to workers whose duties are primarily administrative, executive, or clerical)

# **Contract Work Hours and Safety Standards Act (CWHSSA)**

## **Purpose**

This law was enacted in 1962 to consolidate many “eight hour” laws that provided for overtime pay after eight hours in a day on federal construction contracts. It also provided for overtime pay after 40 hours a week.

## **Requirements**

CWHSSA requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 in a workweek. Effective January 1, 1986, the daily (eight-hour) overtime requirement was eliminated. Therefore, the Fair Labor Standards Act (FLSA) and CWHSSA requirements are the same.

## **Criteria**

CWHSSA covers most federal contracts that require or involve the employment of laborers or mechanics. In addition to laborers and mechanics, the act also specifically covers guards and watchmen.

CWHSSA applies to DBRA contracts in excess of \$100,000.

CWHSSA is self-executing. The failure to include CWHSSA stipulations in a contract does not preclude its application.

CWHSSA has no job site limitation. If an employee performs part of the construction work at the job site and part of the work at the shop, the statute applies to all hours of the contract work.

In addition to back wages for unpaid overtime hours, CWHSSA also requires an assessment of liquidated damages at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation.

Funds can be withheld to ensure payment of back wages.

Debarment may be initiated.

## **Applicability**

ODOT projects are covered under State of Oregon overtime laws. The contract reference for this can be found in 00170.65 Minimum Wage and Overtime Rates for Public Works Projects. Overtime will be discussed in detail later in this document.

## **Copeland Act (CA)**

### **Purpose**

The Copeland Act prohibits “kickbacks” of wages and back wages. CA prohibits trying to induce any person working on a federally funded or assisted construction project to give up any part of the compensation to which he/she is entitled.

### **Requirements**

The Copeland Act requires contractors on DBRA covered projects to submit weekly a “statement of compliance” (certifying that the contractor has paid the required wages). Falsification of the certified payroll as well as inducing employees to kickback wages is a criminal violation and can result in a \$5,000 fine, five years in prison, or both. The act also regulates payroll deductions from wages.

### **Criteria**

The following deductions are allowed under the Copeland Act:

- Social security, federal, or state withholding taxes
- Bona fide prepayment of wages
- Court ordered payments
- Contributions to a fringe benefit plan, provided law does not prohibit the deduction. The deduction is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
- Purchase of U.S. savings bonds when voluntarily authorized
- Repayment of loans or to purchase shares in a credit union
- Voluntarily authorized contributions to organizations such as the Red Cross, United Way, or similar charitable organizations
- Union initiation fees and membership dues provided the collective bargaining agreement provides for such deductions
- Reasonable costs of board, lodging, or other facilities meeting the requirements of FLSA
- Cost of safety equipment purchased by the employee if such equipment is not required by law or other regulation to be furnished by the employer. This is allowable as long as FLSA or other law does not prohibit the deduction, and if the cost on which the deduction is based does not exceed the actual cost to the employer.

### **Definitions**

The Secretary of Labor approves payroll deductions whenever all of the following conditions are met:

- The contractor does not make a profit or benefit directly or indirectly from the deduction
- Law does not otherwise prohibit the deduction
- Either the employee voluntarily consents to the deduction in writing in advance of the time that the DBRA work is performed or the deduction is provided under the terms of a bona fide collective bargaining agreement
- The deduction serves the convenience and interest of the employee

## **Walsh-Healey Public Contracts Act (PCA)**

### **Purpose**

This act provides labor standards for employees working on federal contracts over \$10,000 for the manufacturing or furnishing of goods, supplies, articles, or equipment.

### **Requirements**

PCA establishes minimum wage, overtime, and safety and health standards. It also prohibits employment of children under 16 and convict labor. The DBA applies to PCA contracts that require more than an incidental amount of construction work.

### **Criteria**

Examples of contracts requiring PCA and DBA include:

- Contracts for the supply of a security system that requires replacement of existing conduit, laying cable, and/or tearing out and replacing walls. Such elements of a supply contract may constitute more than an incidental amount of construction.
- Contracts for the supply and installation of permanent shelving attached to a structure. This may require bolting to floors, walls, and/or ceilings, or modification of walls, floors or ceilings to accommodate the shelving. Such elements may also involve more than an incidental amount of construction.

## **McNamara-O'Hara Service Contract Act (SCA)**

### **Purpose**

The SCA closes the gap in labor standards protection between supply contracts subject to PCA and construction contracts subject to DBA. It also removes wages as a bidding factor in the competition for federal service contracts.

### **Requirements**

The SCA requires the payment of prevailing wages and fringe benefits for service employees working on contracts over \$2,500. It also requires the payment of FLSA minimum wage (\$5.15 per hour) for contracts of \$2,500 or less.

### **Coverage**

Most contracts entered into the U.S. or the District of Columbia in excess of \$2,500 for the furnishing of services through the use of service employees. The contract must contain the SCA labor provisions (29 CFR 4.6). Unlike DBRA, the U.S. Department of Labor has sole enforcement authority for SCA. Types of SCA covered projects include:



- Security and guard services
- Janitorial services
- Cafeteria and food services
- Support services at Government installations
- Research and development

## **Statutory Exemptions**

The SCA does not apply to the following:

- Contracts for construction, alteration and/or repair of public buildings or public works
- Work performed under the provisions of the Walsh-Healey Public Contracts Act
- Contracts for the carriage of freight by vessel, airplane, bus, etc., where published tariff rates are in effect (mail-haulers are not exempt)
- Any contract for the furnishing of services by radio, telephone, telegraph or cable companies, subject to the Communications Act of 1934
- Contracts for public utility services, including electric power, water, steam, and gas
- Employment contracts providing for direct services to a federal agency by an individual or individuals
- Contracts with the U.S. Post Service to operate postal contract stations

## **Fair Labor Standards Act (FLSA)**

### **Purpose**

The Fair Labor Standards Act's (FLSA) basic requirements are:

- Payment of the minimum wage
- Overtime pay for time worked over 40 hours in a workweek
- Restrictions on the employment of children

There are a number of employment practices that the FLSA does not regulate. For example, the FLSA does not require:

- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- Pay raises or fringe benefits
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Pay stubs or "W-2"s

### **Characteristics**

Businesses involved in this industry are engaged in the activities of new construction or reconstruction. The repair or renovations of existing commercial and/or residential structures, as well as roadway and bridge construction, are also part of this industry. The following work activities are included in the construction industry: painting, sandblasting, tuckpointing, roofing, guttering, spouting, water well drilling, installation of flooring, and landscaping.

## Coverage

A business in the construction industry must have two or more employees and have an annual sales volume of \$500,000 or more to be subject to the law. Individual coverage applies to employees whose work regularly involves them in commerce between states ("interstate commerce"). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

## Requirements

Employers who are covered under the FLSA must comply with the record keeping requirements of Regulations, 29 CFR Part 516.

Also, an employer must establish a workweek (7 consecutive 24-hour periods) and must pay overtime when hours worked exceed 40 in the workweek. The practice of paying overtime only after 80 hours in a bi-weekly pay period is illegal since each workweek stands alone.

For non-exempt employees, covered employers must pay the Federal minimum wage and time and one half the regular rate of pay for time worked over 40 hours in a workweek.

These businesses must also be aware of the potential for violations of the Child Labor requirements of the FLSA. This is especially critical due to the dangerous nature of both the work performed and the tools used in this industry.

If the employer performs work on a federally financed project or a project in which the Federal government has provided assistance in financing the project, a different and somewhat stricter set of labor standards applies. Typically this would require that employees performing on such contracts be paid a "prevailing wage rate."

The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

## Typical Problems

- Failure to record all hours actually worked to include time spent before or after the shift
- Shorting of hours by using terms such as down time or rain delay
- Failure to compensate for meal breaks where the employee is not completely relieved of all duties to enjoy uninterrupted time for the meal
- "Banking" of overtime hours or payment of overtime in the form of "comp time"
- Failure to combine the hours worked for overtime purposes by an employee in more than one job classification for the same employer within the same workweek
- Failure to segregate and pay overtime hours on a workweek basis when employees are paid on a bi-weekly or semi-monthly basis
- Failure to pay for travel from shop to work-site and back

## **Record Keeping**

### **What Records Are Required?**

Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number
2. Address, including zip code
3. Birth date, if younger than 19
4. Sex and occupation
5. Time and day of week when employee's workweek begins
6. Hours worked each day
7. Total hours worked each workweek
8. Basis on which employee's wages are paid (e.g., "\$6 an hour", "\$220 a week", "piecework")
9. Regular hourly pay rate
10. Total daily or weekly straight-time earnings
11. Total overtime earnings for the workweek
12. All additions to or deductions from the employee's wages
13. Total wages paid each pay period
14. Date of payment and the pay period covered by the payment

### **What About Timekeeping?**

Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

### **Employees on Fixed Schedules**

Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

### **How Long Do I Retain Records?**

Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions,

computations, or transcriptions. The records may be kept at the place of employment or in a central record office.

## **ODOT Contracting Language**

### **Overview**

There are three areas of specifications in ODOT contracts pertaining to Labor Compliance. These are:

- Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273)
- Prevailing Wage Determination (this will be either BOLI or DBRA)
- Section 00170—Legal Relations and Responsibilities

### **FHWA 1273**

Section IV of these provisions describes the requirements for the payment of predetermined minimum wages on ODOT projects. The overtime language in the FHWA 1273 does not apply on ODOT projects. See section on Overtime in this document.

The FHWA 1273 is attached as **Exhibit A**.

### **Prevailing Wage Determination**

DBRA or BOLI prevailing wage determinations will be included in each contract. Prior to bidding, only BOLI wages are included in the bidding documents (also known as the blue book). DBRA projects will have a note directing the bidder to the ODOT Technical Services web site where they can download the most current Davis-Bacon wage rates.

The Technical Services web site address is:

<http://www.odot.state.or.us/techserv/roadway/specs/davisbacon.htm>

The Specifications Unit at ODOT is responsible for determining which set of PWR (state or federal) belongs in an ODOT contract.

A sample DBRA wage determination is attached as **Exhibit B**.

A sample BOLI wage determination is attached as **Exhibit C**.

### **Section 00170 - Legal Relations and Responsibilities**

This section of the contract contains modifications to the Standard Specifications either by supplemental or modified provisions. Section 00170.65 is titled Minimum Wage and Overtime Rates for Public Works Projects.

Section 00170.65 of a federal-aid construction contract is attached as **Exhibit D**.

## **Responsibilities**

### **U.S. Department of Labor**

The US DOL is responsible for uniform and effective DBRA enforcement among federal procuring agencies under US DOL coordination. This federal agency is responsible for:

- Determining prevailing wages
- Issuing regulations and standards to be observed by contracting agencies
- Oversight function with independent authority to conduct investigations

### **Oregon Department of Transportation**

ODOT as a public contracting agency has day-to-day enforcement responsibilities. This includes the following activities:

- Ensuring the incorporation of DBRA contract stipulations and appropriate wage determinations in DBRA covered contracts
- Ensuring that the DBRA poster and the applicable wage determinations are posted at the site of the work
- Reviewing certified payrolls in a timely manner
- Conducting employee interviews
- Conducting investigations, as appropriate and forwarding refusal to pay and/or debarment consideration cases to the US DOL's Wage and Hour Division for action
- Submit enforcement reports and semi-annual enforcement reports to the US DOL

Public contracting agencies cannot contract out responsibility for the enforcement of the DBRA requirements. Federal contracting agencies are responsible for seeing that grant recipients who have contracting responsibilities properly enforce DBRA.

### **Prime Contractors**

#### **CFR 29, Part 5, Section 5.5**

- Prime contractors are responsible for the submission of payrolls by all subcontractors
- Prime contractors shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5

To achieve this, ODOT holds its prime contractors responsible for:

- Providing subcontractors with the wage determination applicable on the public works project
- Reviewing their subcontractors' payrolls for compliance.
- Paying subcontractor employees wages, back wages, or fringe benefits if the subcontractor fails and/or refuses to do so

### **All Employers**

- All employers on public works projects must inform their employees and the agency in writing of the work schedule. If a contractor does not notify its employees and the agency of the work schedule, the agency will assume a work schedule of five days, eight hours per day and will enforce compliance accordingly.

- All employers on public works projects must inform their employees of the wages and fringe benefits. Employees should know what hourly and fringe benefit rate they earn for the work they perform.

## **Compliance Assistance**

### **Prevailing Wages**

Prevailing wage is made up of two interchangeable components:

- Basic hourly wages
- Fringe benefits (FBs)

Prevailing wages may be satisfied by:

- Paying wages and FBs in cash
- Contributing payments to a bona fide plan
- Any combination of the two

When calculating overtime, the employer may not use a figure lower than the base wage stated in the wage determination for the overtime rate.

### **Site of the Work**

The definition for “site of the work” is set forth in regulations, Title 29 of the Code of Federal Regulations, at 29 CFR Part 5.2(l). The regulations were revised in January 2001. DBRA applies only to workers on the “site of the work.” Site of the work is defined as follows:

- Limited to the physical place or places where the construction remains after work has been completed.
- Any other site where a significant portion of the building or work is constructed provided such site is established specifically for the contract.

Site of the work also includes fabrication plants, mobile factories, batch plants, borrow pits, tool yards, headquarters, etc., provided they:

- Are located adjacent or virtually adjacent to the “site of the work” described above, and
- Are dedicated exclusively or nearly so to the performance of the contract or project

### **Truck Drivers**

Truck drivers are covered in the following circumstances:

- Drivers of a contractor or subcontractor for the time spent working on the site of the work
- Drivers of a contractor or subcontractor for the time spent loading or unloading on the site if such time is more than de minimis
- Drivers transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site
- Drivers transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain

Truck drivers are not covered in the following instances:

- Material delivery truck drivers while off the site of the work
- Drivers of a contractor or subcontractor traveling between a commercial facility and a DB job when they are off the site of the work
- Drivers whose time spent on the site of the work is de minimis, such as only a few minutes at a time to merely pick up or drop off materials or supplies

In addition, the US DOL has an enforcement position with respect to bona fide owner-operators of trucks that are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation "owner-operator." This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

## **Apprentices and Trainees**

Apprentices and trainees are two categories of laborers and mechanics not listed on a wage determination. Such categories are permitted on DBRA projects and can be paid less than the journeyman rate when:

- The individual is registered in an approved apprenticeship or trainee plan
- Paid the percentage specified in the approved plan of the basic hourly rate required by the wage determination
- The ratio of apprentices/trainees to journeyman on the job site meets the allowable ratio specified in the approved plan (If a contractor exceeds the allowable apprentice to journeyman ratio, the apprentice who is last hired in excess of the ratio must be paid full prevailing wages.)
- Fringe benefits are paid in accordance with the approved plan. If the plan does not specify FBs, apprentices/trainees are paid the full amount of FBs listed in the wage determination.

## **In-House Training Programs**

Under ODOT's On-the-Job Training (OJT) special provisions, contractors are allowed to develop their own training programs for review and approval by ODOT and FHWA. The following criteria must be met prior to approval:

- The training program is written and submitted on a contractor's letterhead
- The training program does not exceed 2,000 hours
- The training program spells out the number of hours to be trained in each major work category
- The training program identifies on what classification the reduced wages are based on
- The training program outlines the percent of journeyman rate the trainee will receive pursuant to 23 CFR, Subpart A, Appendix B. The percentages are listed in the CFR as 60 percent for the first half of the training period; 75 percent for the third quarter of the training period; and 90 percent for the last quarter of the training period. For a 2,000 hour training program, this will translate to:
  - 0 through 1,000 hours is paid at 60 percent
  - 1,001 through 1,500 hours is paid at 75 percent
  - 1,501 through 2,000 hours is paid at 90 percent
- The contractor shall furnish a copy of the training program to the trainee
- The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed

It is critical that the contractor abide by all procedural regulations listed above in order to pay reduced wages to the trainee. If a contractor does not submit requests in a timely manner and does not receive approval prior to the trainee beginning work, they will be required to pay the trainee the full amount of prevailing wages.

## Helpers

Helpers may be employed only if:

- Duties are clearly defined and distinct from laborers and journeymen
- Helpers are prevailing in the area
- They are not in an informal training program
- The helper classification is listed on the applicable wage determination, or approved by the US DOL as an additional classification

Laborers only handle materials for carpenters, cement masons, bricklayers, and plasterers. All other trades handle their own material, and should not be classified or paid as laborers or as a “helper.”

## Certified Payrolls—DBRA

The certified payroll/statement of compliance can be found at the U.S. Department of Labor’s web site. The form is called WH-347.

Statements and payrolls must be submitted weekly on federal-aid projects. Certified payrolls must contain the following information on the first payroll on which each employee appears. Afterward, the address and SSN only need appear if there is a change in this information:

- Name
- Address Required once unless changed.
- Social security number Required once unless changed.
- Work classification
- Hours worked
- Rate of pay
- Gross amount earned
- Deductions
- Net amount paid

In addition, the fringe benefit amount paid into a plan or to the employee in cash should be evident for each classification of work.

## Statement of Compliance

The Statement of Compliance is found on the back of the WH-347 form. This statement must accompany each weekly payroll with an original signature.



## **Exemptions**

Only the following types of individuals are exempt from the Fair Labor Standards Act which means they receive no overtime and no minimum wage: Executive, Administrator, Professional, Outside Salespersons. As exempt, these types of individuals do not have to be shown on certified payrolls.

## **Certified Payrolls—BOLI**

The certified payroll/certified statement can be found at the Oregon Bureau of Labor and Industries web site. The form is called WH-38.

Weekly payrolls and certified statements must be submitted monthly (by the 5<sup>th</sup> of each month) on state projects. Certified payrolls must contain the following information on the first payroll on which each employee appears. Afterwards, the address need only appear if there is a change in this information:

- Name
- Address
- Number of hours worked each day by each worker
- Pay rate
- Work classification
- Gross amount paid to the worker
- Amount contributed to any party, plan, or program for fringe benefits and the type of benefit provided

To meet filing requirements, the employer must sign the certified payroll to confirm that the information is true and complete. Unsigned reports do not satisfy the filing requirement. Submitting false or incomplete information may be the basis for civil penalties or debarment.

## **Multiple Work Classifications**

If an employee works in more than one classification, the contractor or subcontractor must carefully track how much time is spent doing each type of work. Contractors and subcontractors must pay employees the applicable prevailing rate for the hours they spend in each work classification. If the contractor's records do not clearly show the time spent in each classification, the contractor must pay the worker at the highest classification rate for all hours worked.

## **Composite Work Crews**

Union employers may establish composite work crews as described in their collective bargaining agreements. Not all trades allow composite work crews—for instance, the Ironworkers have no such provisions. If a contractor claims they have a composite work crew, the following needs to be determined:

Is the contractor a union shop employer? If not, then they cannot have a composite crew.

Under Article VIII of the Master Labor Agreement for Cement Masons, the paragraph discussing Composite Crew states: "Employers may establish for a project or job a crew or crews known as a

“composite” which shall consist of the required crafts in such proportions as are respective to the type of work to be performed. In performing its work, the “composite crew” shall be allowed relaxation from strict craft jurisdiction, provided the employees from each craft are assigned to their craft’s jurisdiction as far as practical and possible, but not inconsistent with the provision of the agreement.

The aforementioned provision shall be arranged at a pre-job conference or subsequent meetings of the employer and crafts involved. Any disagreement over this provision may be appealed to the chief representatives of the respective five crafts and the association.”

## **Classification**

Contractors must pay employees based on the work they perform on the job and not based on the employer’s classification of the individual.

### Laborers

Laborers only handle materials (tenders) for Carpenters, Cement Masons, Bricklayers (known as hod carriers), and Plasterers. All other trades handle their own material.

A description of the laborer’s trade was not provided by the union.

### Carpenters

Build and dismantle all types of concrete forms, including shoring necessary for overhead formwork with a variety of materials. Install pre-cast concrete members including walls, beams, decks, etc. Install all types of inserts, weld plates, etc., except reinforcing bars in concrete structures. Build and/or repair wood bridges or trestles.

Install safety handrails, build temporary access ramps, ladders, work decks, and erect all multi-craft scaffolds. Layout, frame, sheath, insulate, seal and side all types of buildings, industrial plants and other structures using a variety of natural or composite materials. Install wallboard, ceilings, raised access floors, manufactured wall systems, office partitions, doors, hardware, cabinets, trim, paneling and all decorative finish materials.

### Electricians

The following description is from the BOLI wage determination booklet. The Electricians Union did not provide a description.

Install, in new construction or reconstruction, electrical wiring, equipment and fixtures. Insure that work is in accordance with relevant codes. This includes all inside wiring or cable splicing and may read blueprints.

### Cement Masons

Cement Mason work consists of the rodding, floating, and finishing of surfaces to remove imperfections on freshly poured concrete, for example floors, sidewalks, curbs, roads, and bridges. Cement Masons’ work includes finishing, hand chipping, patching, grouting, end pointing, screed

setting, plugging, filling bolt holes, dry packing, and any dry finish process including sacking or rubbing. Additionally, Cement Mason work includes setting curb and sidewalk forms, or any form one board high, which retains concrete, planks, stakes, lines, grades, operation of curb machines, and setting string line for slip forms. It also includes the grinding or bushing of concrete when done as preparatory to patching or when done to produce a finished concrete product.

Composition worker includes the installation of epoxy systems and other resinous toppings and power machine installation. It also includes Cement Mason on suspended, swinging and/or hanging scaffolding. An epoxy system includes the preparation and installation of any epoxy coating regardless of method.

Note: Concrete/cement laborers, see Laborers classification.

### Power Equipment Operator

Operating Engineer actually covers three occupations: equipment operator, mechanic (heavy-duty repairer) and construction/ building surveyor (technical engineer).

The equipment operator uses machinery to move earth and materials on all types of construction projects. In addition to operating the dozers, backhoes, trenching machines, excavators, rollers, asphalt/ concrete machines to build buildings of all sizes, dams, bridges, airports and highways, they operate the cranes that dredge rivers and lakes as well as place materials in building, bridge and dam construction.

The heavy-duty repairer is just what the name implies. They are the individuals who keep all the heavy equipment running whenever there is a breakdown or routine maintenance required. They often are the people who fuel the equipment and see that all fluid levels are within acceptable range. Heavy-duty repairers also perform a significant amount of work in metal fabrication and welding.

Technical engineers are the individuals who lay out the construction project according to the specifications and details in the building or construction project plans and blueprints. Their responsibilities are to accurately setup, control and monitor these critical specifications throughout all phases of the project. Techs use state of the art surveying equipment including satellite positioning, geodimeters and lasers to assure accuracy and precision of measurements and all calculations required verifying that everything is where it is supposed to be.

### Ironworkers

Ironworkers are involved in erecting commercial and industrial buildings, as well as bridges and other structures requiring the installation of structural steel, precast concrete and other metals used in construction.

An Ironworker reads and understands all blueprint drawings taken from original architectural and engineering drawings to assemble, install, hoist, erect and adjust all structural ironwork, precast and reinforcing concrete material, ornamental and miscellaneous metal work on industrial, commercial and institutional construction structures.

Training includes trade related math, blueprint reading, usage of hand and power tools, structural ironwork, hoisting and rigging, reinforcing ironwork, ornamental ironwork, curtain wall installation, welding and burning equipment and concrete reinforcing.

Ironworkers erect the structural framework for high rise buildings, bridges, power plants and towers. They place reinforcing steel in concrete forms for roadways, foundations, and structures and erect the aluminum fascia on high rise window walls. They perform renovations and seismic upgrade/retrofitting of all the above-mentioned work. Tools of the trade include: wrenches, connecting bars, tape measures, levels, jacks, arc welders, welding torches and oxy-acetylene torches.

## **WAGES**

### **Employee Wage Interviews**

Employee wage interviews must be completed with every employer on a public works project at six-month intervals. The purpose of the wage interviews is to capture the type of work an individual is performing and to compare the amount of wages stated by the employee to the wages listed in the contract. Discrepancies in the rate of pay can be identified and corrected through the use of employee wage interviews.

Employee wage interviews can also help identify misclassification of employees. For example, a laborer performing the work of a cement mason must be paid the prevailing wage for all hours performing the work of a cement mason.

Employee wage interviews are required on federal-aid projects, and encouraged on state funded projects.

### **Wage Surveys**

Wage surveys are conducted both by the U.S. Department of Labor and by the Oregon Bureau of Labor and Industries. The wage surveys are voluntary and results determine what wages in each classification will prevail in an area. The minimum monetary wages and fringe benefits to be paid are established based on what is prevailing in the locality. A rate is determined to prevail where a single rate is paid to a majority (50 percent or more) of the workers in the same class in a particular locality. If a single rate is not paid to the majority of workers in a locality, statistical measurements such as the median (a point in a distribution where 50 percent of the surveyed workers receive that or a higher rate and 50 percent receive a lesser rate) or the mean (average) are used to establish prevailing wage rates.

US DOL surveys are not conducted on a regular schedule. Oregon's employers were last surveyed by the US DOL in 1997-98 and the results were published in 2002. Oregon is scheduled to be surveyed again in 2003.

BOLI conducts annual surveys of employers and publishes its wage determinations twice a year.

## Wage Determinations

The lists of wages in ODOT contracts are called wage determinations. They can be either federal or state wages. The following is a discussion of a DBRA wage determination.

The first page of a wage determination will give a General Decision Number that is coded such as, "OR010017." It will list the decision number that is being superseded. Other information that will be listed on the first page includes:

- State: Oregon
- Construction Type: HEAVY, HIGHWAY
- County(ies): STATEWIDE
- Modification Number and Publication Date (this lists when the wages were last modified and the publish date)

The coding within a wage determination can tell you whether or not a union rate prevails in the area of work. Classifications that begin with "SU" identify the prevailing rate as non-union. The following is a list of common abbreviations for union trades listed as prevailing in the wage determination:

- CARP = United Brotherhood of Carpenters and Joiners of America (carpenters, millwrights, piledrivermen, soft floor layers, divers)
- ELEC = International Brotherhood of Electrical Workers (electricians, communication systems installers, and other low voltage specialty workers)
- ENGI = International Union of Operating Engineers (operators of various types of power equipment)
- IRON = International Association of Bridge, Structural, and Ornamental Iron Workers
- LABO = Laborers' International Union of North America
- PAIN = International Brotherhood of Painters and Allied Trades
- PLAS = Operative Plasterers' and Cement Masons' International Association of the United States and Canada (cement masons, plasterers)
- TEAM = International Brotherhood of Teamsters

If you see one of the above abbreviations, such as LABO, followed by numerical/alpha coding, this tells you that the wages listed are union.

## Compensation—Base Wage, Fringe, Zone Pay

Characteristics of a wage determination include listing of Zone Pay, Rates, and Fringes. In addition, there are descriptions of work classifications that typically portray the type of work under groupings.

### Base Wage

The base wage is found in the wage determination under the heading "Rates." In the example for Laborers, the following amounts under "Rates" are the base wage amounts for each group of Laborer.

LABO0003F 06/01/2000

Rates

Fringes

ZONE 1:

LABORERS (SEE FOOTNOTE C)

GROUP 1	20.44	7.90
GROUP 2	20.93	7.90
GROUP 3	21.30	7.90
GROUP 4	21.61	7.90
GROUP 5	17.98	7.90

Zone Differential (Add to Zone 1 rates):

Zone 2 - \$0.65

Zone 3 - 1.15

Zone 4 - 1.70

Zone 5 - 2.75

ZONE 1 – All jobs or projects located within 30 miles of the respective City Hall

ZONE 2 – More than 30 miles and less than 40 miles from the respective City Hall

ZONE 3 – More than 40 miles and less than 50 miles from the respective City Hall

ZONE 4 – More than 50 miles and less than 80 miles from the respective City Hall

ZONE 5 – More than 80 miles from the respective City Hall

## **Fringe Benefits**

Fringe benefits are listed in the wage determination as “Fringes” and must be paid for all hours worked. Cash wages paid in excess of basic hourly rate may be used to offset, credit, or satisfy the FB’s obligation. Examples of bona fide fringe benefit programs include:

- Life insurance
- Health insurance
- Pension
- Vacation
- Sick leave
- Holiday

Contributions to a fringe benefit plan must be made irrevocably by a contractor or subcontractor to a trustee or third party pursuant to a bona fide fund, plan, or program. These contributions must be made no less often than quarterly, and credit cannot be taken for those employees ineligible to participate in the plan.

## **Zone Pay**

Zone pay is added to the basic rate of pay depending upon the mileage from a base point (city hall) to the center of the construction project. Zone Pay increases the basic rate of pay on an hourly basis.

Base wage + Zone Pay = New Base Rate for calculating overtime.

Zone pay is a union bargained right, and the purpose is to balance the inequity of living expenses of an employee working in remote areas versus a metropolitan area. When union rates prevail in an area, zone pay will be listed, and zone pay will be applicable when the project is beyond a set number of miles from the city hall of base point cities. The following language is from a union agreement regarding zone pay:

“It is agreed that for the purpose of determining the proper wage scale under this Agreement: All job or project locations shall be computed (determined) on the basis of road miles (emphasis added) and in the following manner. A mileage measurement will start at the entrance to the respective city hall, facing the project (if possible), and shall proceed by the normal route (shortest time-best road) to the geographic center on highway, railroad, and street construction projects (end of measurement). On all other project contracts, the geographical center where the major portion of the construction work is located shall be considered the center of the project (end of measurement).”

## Work Schedule

Employers must establish a work schedule on ODOT projects. There are only three choices of work schedules that will be critical to know when reviewing payrolls for compliance with overtime law. These work schedules are:

- 5/8 Schedule (This is a five-day, eight-hour work week, Monday through Friday. Overtime is due for any hours worked beyond 8 hours in a day, or 40 in a week.)
- 4/10 Schedule, Monday through Thursday (This is a four-day, ten-hour work week of four consecutive days, Monday through Thursday. Overtime is due for any hours worked beyond 10 hours in a day. If a contractor works employees on a Friday, the work schedule (for purposes of calculating overtime) reverts automatically to a 5/8 schedule for those employees and for that work week.)
- 4/10 Schedule, Tuesday through Friday (This is the only other 4/10 option available and the criteria are the same as above.)

Contractors may have different crews or individuals working different work schedules as long as the employee and ODOT have been notified in writing of the work schedules. Work schedules cannot be changed unless the change is intended to be permanent. Changing work schedules to avoid overtime is prohibited.

## Overtime

Federal overtime law is not applicable on ODOT projects. Oregon law replaces the CWHSSA regulations (see Section 00170.65 of contract). According to ORS 279.334(1), workers employed on PWR covered projects must be paid overtime for hours worked on Saturdays and on legal holidays (Sundays, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day) and for hours worked over 40 in a week. If an employer has established a regular four-day work schedule of Monday through Thursday, or Tuesday through Friday, then overtime is due for any hours worked over 10 in a day. For all other schedules, or if a 4-day schedule is not followed due to weather, scheduling or other circumstances, overtime is owed for any hours worked after eight in a day for that week. If, however, a collective bargaining agreement applies and has different overtime provisions, the provisions in the bargaining agreement will govern.

Overtime pay is 1.5 times the hourly base rate. The fringe rate does not have to be paid at time and a half. Zone pay, however, must be included in the base rate when calculating overtime. See section regarding Zone.

Hourly overtime rate = (1.5 x base rate) + hourly fringe amount

## Calculating Overtime

The following are examples of calculating overtime for a variety of work schedules.

### Five-day, eight-hour Schedule

	<b>M</b>	<b>T</b>	<b>W</b>	<b>T</b>	<b>F</b>	<b>Totals</b>
Hours Worked	12	12	12	12	10	58
Straight Time Hours	8	8	8	8	8	40
Overtime Hours	4	4	4	4	2	18

### Four-day, ten-hour Schedule

	<b>M</b>	<b>T</b>	<b>W</b>	<b>T</b>	<b>Totals</b>
Hours Worked	12	12	12	12	48
Straight Time Hours	10	10	10	10	40
Overtime Hours	2	2	2	2	8

If the employer works on the 5th day, in this case on Friday, the employer's work schedule reverts back to a 5/8 schedule with daily overtime due after 8 hours for that week, and for those employees who worked the 5th day. The same would be true if the contractor's 4/10 schedule was Tuesday-Friday, work on Monday would revert the schedule back to a 5/8 schedule for that week, and for those employees who worked the 5th day.

The following is an example of how to calculate overtime from the wage determination. The following is shown as printed in an actual wage determination and the bold figures are being used as the example.

LABO0003F 06/01/2000

	Rates	Fringes
ZONE 1:		
LABORERS (SEE FOOTNOTE C)		
GROUP 1	20.44	7.90
GROUP 2	20.93	7.90
<b>GROUP 3</b>	<b>21.30</b>	<b>7.90</b>
GROUP 4	21.61	7.90
GROUP 5	17.98	7.90

Zone Differential (Add to Zone 1 rates):

Zone 2 - \$0.65

Zone 3 - 1.15

**Zone 4 - 1.70**

Zone 5 - 2.75

ZONE 1 – All jobs or projects located within 30 miles of the respective City Hall

ZONE 2 – More than 30 miles and less than 40 miles from the respective City Hall

ZONE 3 – More than 40 miles and less than 50 miles from the respective City Hall

ZONE 4 – More than 50 miles and less than 80 miles from the respective City Hall

ZONE 5 – More than 80 miles from the respective City Hall

BASEPOINTS:



ALBANY  
BEND  
EUGENE  
KLAMATH FALLS  
PORTLAND  
THE DALLES

ASTORIA  
BURNS  
GRANTS PASS  
MEDFORD  
ROSEBURG

BAKER CITY  
COOS BAY  
HERMISTON  
PENDLETON  
SALEM

The example being illustrated is for determining correct payment of wages for a Laborer Group 3, working in a Zone 4 project.

Base Rate:	\$21.30
Zone Pay:	<u>1.70</u>
	\$23.00 (New Base Rate)
Fringes:	<u>7.90</u> (add in hourly)
	<u>\$30.90</u> (straight time rate)
Overtime rate:	\$34.50 (\$23.00 x 1.5)
Fringes:	<u>7.90</u> (add in hourly)
	<u>\$42.40</u> (overtime rate)

## **Prevailing Wage Complaints/Investigations**

PWR complaints and investigations are conducted by ODOT and are prompted by various sources. PWR complaints usually come from employees who are not being paid appropriately, or complaints can be filed on behalf of employees by a third part such as a union or the Fair Contracting Foundation. ODOT personnel may discover irregularities with PWR regulations through employee interviews, problems with certified payrolls, or through informal complaints from employees.

ODOT's investigation responsibilities include:

- Confirming that DBRA stipulations and wage determinations are correctly included in its contracts
- Determining the correctness of classifications
- Determining proper wage and fringe benefits for the classification of work performed were paid
- Determining appropriate contributions to a bona fide FB plan
- Determining appropriate journeyman/apprentice ratio is correct
- Determining correct overtime payment

## Forms

### **Project Manager's Labor Compliance Certification (Form 734-1734)**

The purpose of this form is to document the number of payrolls collected during the life of a project. The form will disclose the name of the prime and all subs, the number of payrolls submitted by each firm, and the number of employee interviews conducted by the ODOT inspector.

The purpose of the project manager's signature is to confirm that the payrolls have been reviewed for compliance and are being submitted for final labor acceptance. The payrolls and the form and then shipped to that project manager's OCR Field Coordinator for final review.

### **Request for Release of Retainage for Subcontracted Work (Form 734-2510)**

The purpose of this form for the Labor Compliance Program is to document the work of a subcontractor has been completed on the project. Prior to release of retainage for a subcontractor, their certified payrolls must be reviewed and accepted by ODOT. The OCR Field Coordinator will review the payrolls, the Form 734-2510, and the Project Manager's Labor Compliance Certification form. When accepted the OCR Field Coordinator will forward the entire package to Contract Administration Unit.

## How to Review a Certified Payroll

**Step 1 - Set up a tracking system.** How does a project manager's office keep track of the number of employers working on our public works project? A spreadsheet form can assist in managing the documentation of who worked on the project and when the work was performed in order to know whether ODOT has received all of the certified payrolls required on the project. The employee wage interviews can also be tracked with this method.

**Step 2 - Reviewing the actual payroll.** The recommended method for reviewing payrolls is to compare the wages reported on the certified payroll against the wages in the contract. Reviewing the first two or three payrolls from all contractors will generally allow you to gain a comfort level with the payrolls and whether each employer is paying his employees correctly.

### Short Cuts:

- Network with other PM offices to see if they have electronic or other short cut methods for reviewing payrolls. These short cuts can save a lot of time and energy. Some of the most effective are also the simplest: a cut and paste of the wages from the contract that's used when the payrolls come in. This allows PM staff to have one sheet to reference instead of constantly flipping through the brown book.
- When a payroll discrepancy is found, mark it or highlight it directly on the payroll. Write a letter to the prime contractor to get the correction needed. Noting and addressing errors and corrections early in the process will save countless hours of trying to resolve payroll problems several months or years down the road.
- When reviewing the first two or three payrolls completely, use a colored pen to place a check mark against the figures you are approving. Initial the bottom of the page and put the date

down. Auditors will look for this type of “homework” evidence when auditing the labor program. It will also save others who have to look at the payroll from reviewing work you’ve already completed.

- Don’t review every payrolls for every employer. Once you have reached a comfort level with the certified payrolls, do spot checks. What is a spot check? A random look at payrolls throughout the life of the project. New classifications of work being performed on the job would warrant a spot check—a contractor may be paying all his original laborers and carpenters accurately. Now the contractor has equipment operators on the job. Check to be sure the new classification of work is being paid appropriately. Wage interviews with contractor employees will also prompt a spot review.