

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



Rescinded by #125  
and is under study -  
If are subcontractors  
must pay.

MEMORANDUM NO. 123

TO: ALL GOVERNMENT CONTRACTING AGENCIES OF THE FEDERAL  
GOVERNMENT AND THE DISTRICT OF COLUMBIA

SUBJECT: REPORTING AND PAY REQUIREMENTS FOR SUBCONTRACTORS WHO ARE  
THEMSELVES PERFORMING THE WORK OF LABORERS AND MECHANICS

The statutory language of the Davis-Bacon Act makes it clear that Congress intended that individuals performing the work of laborers and mechanics on construction sites be guaranteed the prevailing wage rate "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics. . ."

Therefore, when officers/owners of a subcontractor corporation, partnership, or proprietorship, are themselves performing the work of laborers and mechanics, the prime contractor must pay them weekly an amount equal to at least the applicable prevailing wage for the hours worked in the specific classification and list them on his certified payroll records in accordance with section 5.5(a) (3) of the Regulations, 29 CFR Part 5, Subtitle A.

In other words, the subcontractor who is a bona fide independent contractor, who himself performs the work of a laborer or mechanic on a project subject to the Davis-Bacon and Related Acts, may occupy a dual role under this law. In certain situations, he is simultaneously a laborer or a mechanic who must be carried on the prime contractor's payrolls and paid by the prime contractor for his work at not less than the rate predetermined by the Secretary of Labor for that classification and also, an employer who must live up to his obligations under the law for any laborers and mechanics he himself may employ.

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Employer

When  
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comes in

Of course, it would be permissible under the Davis-Bacon Act to deduct from the subcontractor's contract payments any straight time wages which the prime contractor has paid to him in accordance with the requirements of the Davis-Bacon Act. However, if the subcontractor himself is performing work under a contract also subject to the Contract Work Hours and Safety Standards Act, which provides for time and one-half over eight hours in a day or 40 hours in a week, overtime payments due him may not be deducted from the