


**U.S. Department of Labor**

Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

**SEP 22 2005**

## MEMORANDUM NO. 199

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

FROM: ALFRED B. ROBINSON, Jr.   
Deputy Administrator

SUBJECT: Suspension of the Davis-Bacon Act and the Related Acts in Louisiana,  
Mississippi, Alabama, and Florida

On September 8, 2005, President Bush signed a proclamation suspending the Davis-Bacon Act in the areas seriously affected by the devastation resulting from Hurricane Katrina. The suspension proclamation, which can be accessed through the White House Web site at <http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>, was issued pursuant to section 6 of the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and also applies to various related acts as well as any executive order, proclamation, rule, regulation, or other directive requiring Davis-Bacon wage determinations.

This suspension covers all parishes in the State of Louisiana, all counties in the State of Mississippi, the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter and Washington in the State of Alabama, and the counties of Broward, Miami-Dade, and Monroe in the State of Florida. In the event that a single contract/project requires construction work in areas covered by the suspension as well as other areas not covered by the suspension, the Davis-Bacon provisions must be applied to the work performed outside of the suspended area(s).

The suspension applies to all contracts entered into on or after September 8, 2005, and will remain in force until otherwise provided. Therefore, as of September 8, 2005, agencies should not request wage determinations or obtain Davis-Bacon wage determinations from [www.wdol.gov](http://www.wdol.gov) for contracts to be performed exclusively in the suspended areas.

In the case of projects assisted under the National Housing Act, the applicable date is the beginning of construction or the initial endorsement of the mortgage, whichever occurs first. Thus, if either construction began or the initial endorsement occurred before September 8, 2005, the Davis-Bacon labor standards provisions would be applicable to the project. In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, the applicable date is the beginning of construction or the execution of the

agreement to enter into a housing assistance payments contract. Thus, if either of these two events occurred before September 8, 2005, the Davis-Bacon provisions would apply to the project. With respect to projects undertaken pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self Determination Act of 1996, where there is no contract award, the applicable date is the start of construction.

Contracts awarded before September 8, 2005, are not impacted by this suspension, and the determined rates apply to all covered work performed on such contracts. Thus, subcontractors to such prime contracts are subject to Davis-Bacon provisions irrespective of the date of the subcontract. The provisions of the Davis-Bacon and related Acts and the regulations for enforcement of the contract requirements, including the conformance provisions for adding additional classifications and wage rates, continue to apply to such contracts.

Pursuant to the Department of Labor Regulations, 29 C.F.R. Part 3, and the delegations of authority, Secretary's Order 4-2001 and Employment Standards Order No. 2001-01, contractors on contracts for which the President's proclamation suspended the Davis-Bacon and related Acts provisions are exempt from the regulatory requirement in section 3.3(b) to submit a weekly statement with respect to the payment of the wages (i.e., the Copeland Act certified payroll reporting requirements in 40 U.S.C. 3145). The Anti-Kickback provisions of the Copeland Act contained in 18 U.S.C. 874 and the regulations governing payroll deductions in 29 C.F.R. Part 3 will continue to apply.

Agencies should remind their contractors that the recordkeeping requirements of the Fair Labor Standards Act (FLSA) will apply to any employer covered by that Act. The FLSA requires that the records include certain identifying information about the employee and data about the hours worked and the wages earned.

The Contract Work Hours and Safety Standards Act (CWHSSA) overtime provisions apply to contracts in excess of \$100,000 that may require or involve the employment of laborers and mechanics, including guards and watchmen (1) upon a public work of the United States, or any territory, or of the District of Columbia; (2) to other such contracts to which the United States or any agency or instrumentality thereof, any territory or the District of Columbia is a party; or (3) to contracts for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof, under statutes of the United States providing wage standards for such work. The application of CWHSSA does not depend on the application of the Davis-Bacon Act. Therefore, the Department has determined that CWHSSA continues to apply to contracts in excess of \$100,000 in the same manner as before the suspension of the Davis-Bacon and related Act provisions. The overtime requirements of the FLSA also continue to apply. Similar to CWHSSA, the FLSA requires the payment of no less than time and one-half a non-exempt employee's regular rate of pay for hours worked over 40 in a workweek.

Pursuant to Department of Labor Regulations, 29 C.F.R. Part 5, section 5.5 (a), the contracting officer is required to insert in full in any covered solicitation or contract for

construction the clauses listed in section 5.5. See also Federal Acquisition Regulations at 48 C.F.R. 22.407. Section 5.5(a) of 29 C.F.R. Part 5 permits modification of the contract clauses to meet the particular needs of an agency, provided that such modifications are first approved by the Department of Labor. Therefore, with respect to those contracts affected by the Presidential suspension of the Davis-Bacon and related Acts, the Department hereby allows the omission of the labor standards clauses from the affected contracts with the exception of certain clauses listed below that are necessary to enforce the provisions of the Copeland Act and CWHSSA.

29 C.F.R. Part 5, section 5.5(a)(2) *Withholding.*

29 C.F.R. Part 5, section 5.5(a)(5) *Compliance with Copeland Act requirements.*  
modified as follows:

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 C.F.R. Part 3 which, with the exception of 29 C.F.R. Part 3, section 3.3, are incorporated by reference in this contract.

29 C.F.R. Part 5, section 5.5(a)(6) *Subcontracts.* modified as follows:

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. Part 5.5(a) as applied herein and such other clauses as the (write in the name of the Federal agency) may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all applicable contract clauses in 29 C.F.R. 5.5.

29 C.F.R. Part 5, section 5.5(a)(7) *Contract termination: debarment.*

29 C.F.R. Part 5, section 5.5(a)(8) *Compliance with Davis-Bacon and Related Act requirements.*

29 C.F.R. Part 5, section 5.5(a)(9) *Disputes concerning labor standards.*

29 C.F.R. Part 5, section 5.5(a)(10) *Certification of eligibility.*

29 C.F.R. Part 5, sections 5.5(b) *Contract Work Hours and Safety Standards Act* and 5.5(c) in their entirety.

We recommend that the corresponding clauses of the Federal Acquisition Regulations be omitted or incorporated accordingly.

Questions regarding the implementation of the suspension proclamation should be directed to William Gross at (202) 693-0569.



**U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division**

September 2005

**Employment & Wages under Federal Law during Natural Disasters & Recovery**

The Wage and Hour Division (WHD) of the U.S. Department of Labor enforces a variety of worker protection laws, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). WHD is furnishing answers to some basic questions to ensure that in this critical time individuals are paid properly for work they perform.

The FLSA is the federal law of most general application concerning wages and hours of work. The FLSA requires employers to pay covered, non-exempt employees no less than the federal minimum wage of \$5.15 an hour for all hours actually worked and overtime at the rate of at least one and one-half times an employee's regular rate of pay for all hours actually worked in excess of 40 in a week. These requirements are not subject to waiver during natural disasters and recovery efforts.

- 1. Many employees worked during the week prior to the storm, but businesses are now closed and many records are destroyed. How do those employees receive their last paycheck and how much must they be paid under federal law?**

The FLSA requires payment of at least the full minimum wage and overtime compensation due a covered employee for the hours that the employee worked. If a last paycheck has been delayed because of Hurricane Katrina and an employee has questions about the FLSA, the employee should call the WHD toll-free help line at 1-866-4US-WAGE (1-866-487-9243).

- 2. How many hours is an employer obligated to pay an hourly-paid employee who works a partial week because the employer's business closed as a result of the storm?**

The FLSA generally applies to hours actually worked. It does not require employers who are unable to provide work to employees due to a natural disaster to pay non-exempt employees for hours the employees would have otherwise worked.

- 3. Can workers receive unemployment compensation while they are out of work?**

For information about unemployment insurance and disaster unemployment assistance, call the Department of Labor's Employment Training Administration at 1-866-4-USA-DOL (1-866-487-2365) or visit America's Service Locator at [www.servicelocator.org/hurricane\\_katrina\\_info.htm](http://www.servicelocator.org/hurricane_katrina_info.htm).

- 4. If individuals volunteer to a public agency, are they entitled to compensation?**

Individuals who volunteer their services to a public agency (such as a state, parish, city or county government) in an emergency relief capacity are not considered employees due compensation under the FLSA if they:

- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. The volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services; and,

- Offer their services freely and without coercion, direct or implied; and,
- Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

**5. If individuals volunteer to a private not-for-profit organization, are they entitled to compensation?**

Individuals who volunteer their services in an emergency relief capacity to private not-for-profit organizations for religious or humanitarian objectives, without contemplation or receipt of compensation, are not considered employees due compensation under the FLSA. However, employees of such organizations may not volunteer to their employers to perform on an uncompensated basis the same services they are employed to perform.

**6. What can employers do to help their employees who wish to volunteer in disaster relief activities?**

Employers may offer employees paid leave for time spent volunteering to assist with disaster relief efforts. Employers who maintain leave banks can also allow employees to donate leave to the leave bank and then award the donated leave to other employees who, in turn, use the leave to volunteer relief services. The FLSA does not regulate the provision or use of a leave bank.

**7. If a governmental authority "calls up" workers from private businesses, who is responsible for paying those workers?**

Individuals summoned to engage in national disaster rescue/recovery efforts by Federal, state or local governments pursuant to statutory authority are employees of such governments while so engaged. The employee's regular employer is not liable for FLSA minimum wage or overtime payments as a result of work performed for the government.

Where employers are requested to furnish their services, including their employees, for disaster relief under Federal, state or local general police powers, the employer's employees will be considered employees of the government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the FLSA.

**8. As new workers are hired during the recovery, are employers required to verify an employee's work eligibility status and complete Form I-9, Employee Eligibility Form?**

The Department of Homeland Security announced it will not sanction for 45 days after September 6 employers that hire Hurricane Katrina victims who are unable to provide documentation required for an I-9. Thus, if a person does not have the necessary required forms of identification as a result of Hurricane Katrina, an employer can still hire that person. Employers must still complete the I-9 with as much information as possible and note complete information is not available due to the hurricane.

**ADDITIONAL INFORMATION**

For more information regarding the Fair Labor Standards Act, visit the Wage and Hour Division Web site at [www.wagehour.dol.gov](http://www.wagehour.dol.gov) or call our toll-free help line, available 8 a.m. to 8 p.m. eastern time, at 1-866-4US-WAGE (1-866-487-9243). The FLSA statute appears at 29 U.S.C. § 201 *et seq.*



**U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division**

September 2005

**Guidance on the Suspension of the Davis-Bacon and Related Acts in Areas  
Impacted by Hurricane Katrina**

The Wage and Hour Division (WHD) of the U.S. Department of Labor administers and enforces the provisions of the Davis-Bacon Act and related labor standards statutes, the Copeland "anti-kickback" Act, and various other statutes including the Fair Labor Standards Act (FLSA). This document provides answers to some basic questions following the suspension of the Davis-Bacon and related Act provisions, as well as portions of the Copeland Act, in areas affected by Hurricane Katrina to assure individuals of continued labor standards protections.

- 1. If hurricane related construction is performed in a State or county other than those listed in the President's proclamation, will the Davis-Bacon wage rates apply?**

Yes. This suspension only applies to construction performed in the parishes in the State of Louisiana; counties in the State of Mississippi; the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter and Washington in the State of Alabama; and the counties of Broward, Miami-Dade, and Monroe in the State of Florida. If a single contract or project requires construction work in areas covered by the suspension as well as areas not covered by the suspension, the Davis-Bacon provisions must be applied to the work performed outside of the suspended area(s).

- 2. How long will the suspension last?**

The suspension will remain in force until rescinded by the President.

- 3. If a construction contract was awarded before September 8, is it covered by the Davis-Bacon labor standards?**

Yes. If a contract was awarded before September 8, the Davis-Bacon provisions continue to apply to the project. Contracts awarded before September 8 are not affected by this suspension, and the determined rates apply to all covered work performed on such contracts. Subcontractors on prime contracts awarded before September 8 are subject to Davis-Bacon provisions regardless of when the subcontract was awarded.

- 4. Will contractors have to submit certified payroll records?**

No. Contractors performing construction work on contracts affected by suspension of the Davis-Bacon and related Acts provisions have been exempted from the regulatory requirement to submit certified payroll records for the work performed in the affected areas. The "anti-kickback" provisions of the Copeland Act and the regulations governing payroll deductions continue to apply.

5. If contractors on federally-funded or assisted construction contracts are exempt from the certified payroll requirements, do they have to maintain payroll records?

Yes. The recordkeeping requirements of the FLSA will apply to any employer covered by that Act. The FLSA requires that the records include certain identifying information about the employee and data reflecting the hours worked and the wages earned.

6. What other related federal labor laws apply?

All other laws continue to provide labor standards protections for workers in the affected areas.

The Contract Work Hours and Safety Standards Act overtime provisions, which require the payment of time and one-half an employee's basic hourly rate, continue to apply to certain contracts in excess of \$100,000.

The minimum wage, overtime, and child labor provisions of the FLSA apply to covered employers and employees in the same manner as before the suspension. The FLSA requires employers to pay covered non-exempt employees no less than the federal minimum wage for all hours actually worked and overtime at no less than one and one-half times an employee's regular rate of pay for all hours actually worked in excess of 40 in a week.

The FLSA also regulates the hours in which individuals under age 16 may be employed and the Secretary of Labor's Hazardous Occupations Orders identify 17 non-agricultural occupations or industries banned for minors under age 18. The Department of Labor's *YouthRules!* Web site, [www.youthrules.dol.gov](http://www.youthrules.dol.gov), provides information for employers, young workers and parents about youth employment, the jobs minors may perform and the hours they may work. The Web site includes a video seminar entitled "*Youth Working in Construction*" that provides valuable and easy to understand information on the rules for teens working in the construction industry.

Federal labor laws administered by other agencies such as the Occupation Safety and Health Administration may apply. Additional information can be found on the Department's Web site: [www.dol.gov](http://www.dol.gov).

#### ADDITIONAL INFORMATION

For more information regarding the Davis-Bacon Act and the Fair Labor Standards Act, visit the Wage and Hour Division Web site at [www.wagehour.dol.gov](http://www.wagehour.dol.gov) or call our toll-free help line, available 8 a.m. to 8 p.m. eastern time, at 1-866-4US-WAGE (1-866-487-9243). Wage determination and other Davis-Bacon related information may also be obtained at the Wage Determination On-Line Web site at [www.wdol.gov](http://www.wdol.gov).