

DAVIS-BACON

**WAGE AND
PAYROLL
REQUIREMENTS**

CRD/August 2008

TABLE OF CONTENTS

A.	Special Provisions	1
B.	Site of the Work Definition.....	2
C.	Payment of Predetermined Minimum Wage.....	7
D.	Counting and Reporting Time	8
E.	Overtime Hours.....	11
F.	Fringe Benefit Payments.....	11
G.	Payroll Deductions	14
H.	Payroll Requirements	17
I.	Concrete Saw Operator Classifications.....	21
J.	Core Sampling Classifications	21
K.	Dowel Basket and Dowel Bar Placement Classifications	22
L.	Joint Sealing Classifications	22
M.	Line Construction and Electrician Classifications.....	22
N.	Mechanic, Greaser, Oiler Classifications	24
O.	Pipelayer Classifications	25
P.	Truck Driver Classifications.....	25
Q.	Water Spraying Equipment Classifications	30
R.	Welder Classification	30
S.	Exemptions from DBRA Coverage.....	31
T.	Conformance Process	35
U.	Child Labor Laws	36
V.	Unclaimed Paychecks.....	37
W.	Employees Hired Through Temporary Employment Agencies	37
X.	Bulletin Boards	38
Y.	Labor Compliance Job-Site Interviews	39
Z.	NDDOT Civil Rights Division Personnel	40

EXHIBIT 1 INSTRUCTIONS AND LINKS TO PAYROLL FORMS i
 INSTRUCTIONS FOR COMPLETING PAYROLL FORM WH-347..... i
 PAYROLL – Form WH-347 and Statement of Compliance v
EXHIBIT 2 CONFORMANCE PROCESS vi
 SAMPLE LETTER TO NDDOT vi
 REQUESTS FOR ADDITIONAL CLASSIFICATIONS AND WAGE RATES vii
 CLASSIFICATION & WAGE RATE REQUEST..... viii

DAVIS-BACON WAGE AND PAYROLL REQUIREMENTS

The following is a summary of the wage and payroll requirements under the Davis-Bacon and Related Acts (DBRA):

A. Special Provisions

1. Under DBRA, all persons employed on or working upon the site of the work of a federally funded highway construction contract must be paid the wage rates and fringe benefits determined by the Secretary, U.S. Department of Labor (USDOL), to be prevailing in the area of the project. In addition, DBRA requires that certain labor standards provisions be specified in the contract awarded to the successful bidder and that the applicable Davis-Bacon wage rate decision also be included in the contract documents. Consequently, all federally-aided highway construction contracts contain the following special provisions:
 - a. Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 – Rev. 3-94) outlines contractor requirements relating to wages, payrolls, and compliance statements:
www.fhwa.dot.gov/programadmin/contracts/1273.cfm
 - b. Labor Rates from U.S. Department of Labor specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction:
<http://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm>
2. Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.
3. Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, the entire contract is considered federally funded and is subject to DBRA. Therefore, Davis-Bacon wage rates must be paid and payrolls must be generated and submitted for all portions or segments of the contract.

B. Site of the Work Definition

1. The definition for site of the work has undergone many changes due to challenges to the USDOL's interpretation of DBRA. The courts have significantly narrowed the definition previously used. In January 2001, the USDOL released the following new definition modifying 29 CFR 5.2(j)(l):

"The site of the work definition includes material or supply sources, tool yards, job headquarters, etc., in the site of the work only where they are dedicated to the covered construction project and are adjacent or virtually adjacent to the location where the building or work is being constructed."
2. The new definition applies to all federal-aid projects let to contract (not awarded) after January 19, 2001.
3. Also changed is:

"The regulatory definition of construction to provide that the off-site transportation of materials, supplies, tools, etc., is not covered unless such transportation occurs between the construction work site and a dedicated facility located adjacent or virtually adjacent to the construction site."
4. The key is dedicated to the job site and adjacent or virtually adjacent to the location where the work is being constructed. The North Dakota Department of Transportation (NDDOT) has defined virtually adjacent as a pit or batch plant (concrete or asphalt) whose boundary is located within one-half mile of the closest right of way boundary to the project. The distance is measured as one-half mile from the boundary to the pit or batch plant site (concrete or asphalt) to the closest project boundary, as the crow flies, not to the middle of the project.
5. The federal regulations further define site of the work as:
 - a. "I(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project."
 - b. "I(2) Except as provided in paragraph I(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided

they are adjacent or virtually adjacent to the site of the work as defined in paragraph I(1) of this section."

- c. "I(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of work as stated in paragraph I(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract."

6. Supplying and Hauling Material

- a. If the boundary to a pit or batch plant site (concrete or asphalt) is located more than one-half mile from the closest right of way boundary to the project, DBRA does not apply. It does not matter when the project was let to contract (not awarded) because the pit or batch plant site (concrete or asphalt) is more than one-half mile away.
- b. If the boundary to a pit or batch plant site (concrete or asphalt) is located one-half mile or less from the closest right of way boundary to the project,
 - (1) DBRA does not apply if the pit or batch plant site (concrete or asphalt) has been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).
 - (2) DBRA does apply if the pit or batch plant site (concrete or asphalt) has not been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).

- c. The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mix concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are activities not covered by DBRA. This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site. Such bona fide material suppliers are not considered contractors under DBRA. Thus, their employees are not due Davis-Bacon wages, and payrolls are not required. What constitutes a sufficient quantity of sales to the general public depends on the circumstances in each case, but must be more than mere token sales.
- d. The supplier must be able to demonstrate that he or she has routinely been selling to the general public from the aggregate source and that the pit was opened for that use, not for the federal-aid project in question. In other words, if they are normally considered a supplier but they opened the pit just for the federal-aid project, and the pit is located one-half mile or less from the closest right of way boundary to the project, they would be considered a subcontractor and not a supplier. Consequently, Davis-Bacon wages would be due and payrolls would be required.
- e. If DBRA does apply to a pit or batch plant site (concrete or asphalt), the employees who perform tasks directly related to producing the product are covered, including the truck drivers who haul the materials from the pit or batch plant site (concrete or asphalt) to the project, regardless of whose payroll they appear on.
- f. It does not matter who owns the pit, who is crushing, or who is producing the product. What matters is whether the site is dedicated to the covered construction project and is adjacent or virtually adjacent to the project.
- g. In addition, it does not matter if the pit is a state-optioned pit. If the pit is located more than one-half mile from the closest right of way boundary to the project, DBRA does not apply.

- h. If rubble or other material is hauled from a project to a location designated in the plans and specifications for the project, DBRA does apply. If no location is designated in the plans and specifications, and the truck drivers are hauling the rubble or material from the project to a location determined to not be a site of the work, DBRA does not apply.

- i. Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, Davis-Bacon wage rates must be paid and payrolls must be generated and submitted for all portions or segments of the contract. Consequently, the principles described above apply to pits and batch plants (concrete or asphalt) used for the contract or project. For example:
 - (1) A contract has three portions or segments, of which two are federally funded and one is strictly state funded.

 - (2) There is a two and one-half-mile gap between the state funded portion or segment and the next closest federally funded portion or segment.

 - (3) Material is being hauled from a pit site located less than one-half mile from the closest right of way boundary to the state funded portion or segment.
 - (a) Because two of the portions or segments are federally funded, the entire project is viewed as federally funded.

 - (b) Since the pit site is located less than one-half mile from the closest right of way boundary to the state funded portion or segment;
 - i. DBRA does not apply if the pit site has been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).

- ii. DBRA does apply if the pit site has not been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).
 - (4) DBRA applies to anyone working adjacent (within one-half mile) to the boundaries of the project site, generally at a pit or batch plant site (concrete or asphalt).
 - (5) If material is hauled from that same pit site to any one of the other two portions or segments, which are not adjacent to the pit site, DBRA still applies because the portions or segments are looked at as a whole.
- j. There are times when, at the end of a project, NDDOT adds another mile or two to the project through the issuance of a change order. If it was previously determined that the boundary to a pit or batch plant site (concrete or asphalt) was located more than one-half mile from the closest right of way boundary to the project; but the added segment brings the boundary to the pit or batch plant site (concrete or asphalt) within one-half mile of the project boundary:
- (1) Those employees working on the additional segment under the change order would be due Davis-Bacon wages, and payrolls would be required.
 - (2) Those employees hauling from and working at the pit or batch plant site (concrete or asphalt) under the change order would be due Davis-Bacon wages, and payrolls would be required only if the pit or batch plant site (concrete or asphalt) was not open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).
- k. If it is unclear whether a pit or batch plant location (concrete or asphalt) is considered a site of the work, contact the NDDOT Civil Rights Division for a ruling. [See Section Z (page 40) for address and phone numbers.]

C. Payment of Predetermined Minimum Wage

1. All employees working on the site of the work of a federally funded highway construction contract must be paid unconditionally and not less often than once a week.
2. Therefore, the contractor must establish a fixed workweek (Sunday through Saturday for example) and a weekly payday (such as Friday, or the preceding day should such payday fall on a holiday). Any deviation from this schedule may indicate the contractor is attempting to circumvent the overtime requirements. [See Section E (page 11) for information concerning the payment of overtime hours.]
3. Employees must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. [See Section F (page 11) for information concerning fringe benefit payments.]
4. Only payroll deductions authorized by law, or permitted under the regulations issued by the Secretary, USDOL, may be made from an employee's weekly paycheck. [See Section G (page 14) for information concerning payroll deductions.]
5. The payment must be computed at wage rates not less than those contained in the Davis-Bacon wage rate decision incorporated into the contract, regardless of any contractual relationship that may be alleged to exist between the contractor, its subcontractors, and their employees.
6. Employees must be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill, except those employees enrolled in approved apprenticeship and on-the-job training programs.
7. Apprentices and trainees must be paid at not less than the rate specified in the registered or approved program for the apprentice's or trainee's level of progress, expressed as a percentage of the journeyworker-level hourly rate specified in the applicable Davis-Bacon wage rate decision. Apprentices and trainees must also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. [See Section F (page 11) for information concerning fringe benefit payments.]
8. If an employee performs work in more than one job classification during a single payroll period and the classifications require different wage rates,

the employee must be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicates which of the hours were included in the periods spent in each classification of work. The contractor may then pay not less than the rate specified in the Davis-Bacon wage rate decision incorporated into the contract for the job classification that describes each type of work performed. Contractors must keep accurate records of such periods of work and ensure the employee is paid at the correct rate for periods of work performed in each job classification.

9. If an employee's job classification is doubtful, contact the NDDOT Civil Rights Division for a ruling. [See Section Z (page 40) for address and phone numbers.]
10. If the job classification is known but is not included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, must be conformed after the contract has been awarded. [See Section T (page 35) for information concerning the conformance process.]

D. Counting and Reporting Time

1. An employee's time starts for the day whenever he or she does any of the following in any sequence:
 - a. Checks in to get instructions for the day;
 - b. Loads, services, or does preventive maintenance on equipment;
 - c. Cleans any part of the equipment; and
 - d. Drives or rides in a company vehicle or drives a piece of equipment to the project site. This includes truck drivers who transport equipment to and from the project site or site of the work and to and from the home office site.
2. An employee's time ends for the day after any of these same duties are performed at the end of the day.
3. For the time spent performing the above duties, employees must be paid at least the federal minimum wage (currently \$5.85 per hour). Davis-Bacon wages are due when the employee reaches a federal-aid project or site of the work. For example:

- a. An employee spends 1 hour each morning getting ready to go to and/or driving to the site of the work and 1 hour each day returning from the site of the work. While at the site of the work, he or she works 8 hours each day, Monday through Friday (10 hours each day for a total of 50 hours). The salary paid while off the site of the work is \$10.00 per hour while the salary paid at the site of the work is \$20 per hour. Overtime is paid at a rate of one and one-half times the applicable rate for all hours worked in excess of 40 hours per week.
 - b. The above employee would have worked 40 hours at the applicable regular rate of pay from Monday through Thursday. The employee is entitled to 8 hours at \$10.00 per hour (2 hours each day times 4 days) and 32 hours at \$20.00 per hour (8 hours each day times 4 days).
 - c. For Friday, the employee would be entitled to 2 hours at \$15.00 per hour ($\10.00×1.5) and 8 hours at \$30.00 per hour ($\20.00×1.5).
4. Truck drivers who have reached the project site or site of the work but are waiting to be loaded must also be paid Davis-Bacon wages for their waiting time.
 5. Truck drivers are not due Davis-Bacon wages when transporting equipment to and from the home office site, or a project site not covered under DBRA, to and from a project site that is covered under DBRA. Truck drivers are due Davis-Bacon wages only when transporting equipment from one project to another when both projects are covered under DBRA.
 6. Rounding Time
 - a. Rounding time is permitted under DBRA. For example:
 - (1) Seven minutes or less is dropped; 8 minutes through 22 minutes is 15 minutes; 23 minutes through 37 minutes is half an hour; etc. To be allowed, rounding must be fair for both the employer and the employee.
 - (2) Under the system outlined above, an employee may gain a few minutes one day and lose a few minutes another day.

- b. Rounding is allowed but is not required. Actual minutes may be used rather than rounding.
- c. Rounding to a number greater than the nearest 15 minutes is not allowed. In other words, rounding to the nearest half hour is not permitted.
- d. Contractors should keep in mind that rounding to the nearest 15 minutes causes the break between 7 and 8 minutes. Under this concept, some contractors do not allow employees to record the 15 minutes until the full 15 minutes have been worked. This is a violation.

7. Breaks

- a. There is no federal law covering breaks.
- b. There is a state law which says, "On shifts exceeding five (5) hours and which consist of two (2) or more employees, there shall be a thirty (30) minute, uninterrupted break made available to employees who desire such a break. Collective bargained provisions will prevail over provisions of the Wage Order."
- c. If employees want a break, state law says they must be given one. Also, employees must generally be paid for meal periods unless the following conditions exist:
 - (1) The period is at least 30 minutes long;
 - (2) The employee is completely relieved of duties; and
 - (3) The employee can leave his or her work post, although he or she can be required to remain on the company premises.
- d. Rest periods and coffee breaks of 20 minutes or less are generally required to be counted as hours worked. Payment for break periods over 20 minutes depends on whether or not the employee is free to pursue his or her own activities.
- e. NDDOT does not enforce the state law on breaks. Any problems or questions should be addressed to the North Dakota Department of Labor (328-2660; or in-state toll-free: 1-800-582-8032; or email: labor@nd.gov).

8. Timecards

- a. There are no mandatory formats or procedures for employees to report their daily and weekly hours worked. Generally, it is the employee's responsibility to complete a daily or weekly timecard and to submit it to their project supervisor on a timely basis.
- b. Federal regulations only require that contractors keep accurate records of periods of work and ensure that employees are paid at the correct wage rate for the periods of work performed in each job classification.
- c. When an employee's timecard contains an error, NDDOT strongly recommends any changes made to the timecard be initialed and dated by both the supervisor, or other company official, and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.

E. Overtime Hours

Overtime must be paid for all hours worked in excess of forty hours per workweek. Overtime is paid at one and one-half times the basic hourly rate for the job classification as shown in the Davis-Bacon wage rate decision incorporated into the contract. [See Section F (page 11) for instructions on how to compute overtime when fringe benefits are required.]

F. Fringe Benefit Payments

1. When hourly fringe benefits are listed on the Davis-Bacon wage rate decision, they may be paid in the following manner:
 - a. Making payments in the amount of the required fringe benefits to an established program, funded or unfunded. Funded programs are those programs in which the payments are irrevocably made to a trustee or a third person, i.e., the program is established separately from the contractor's own organization, such as Blue Cross/Blue Shield. Unfunded programs are those in which the fringe benefit payments are made directly to a program provided from the general assets of the contractor's organization, such as vacation programs.
 - b. Making payments to the employee in the amount of the required fringe benefits.

- c. A combination of the above methods.
2. For example, assume the Davis-Bacon wage rate decision provides that an employee is entitled to a basic hourly wage of \$15.00 per hour plus \$2.50 per hour for health and welfare and \$2.50 per hour for a pension or retirement program. The employer may do any one of the following:
- a. Pay not less than \$15.00 per hour to the employee, plus make payments to established health and welfare and pension programs in amounts which total not less than \$5.00 per hour for either health and welfare or for pension, or for both.
 - b. If the payments made by the employer to health and welfare or pension programs, or to both programs, is greater than the combined total of \$5.00 per hour, the excess may be applied toward the \$15.00 basic hourly wage rate, i.e., the employer could satisfy the obligations by paying an hourly wage rate of \$14.00 plus \$6.00 per hour in fringe benefits. However, an employee's basic hourly wage can never fall below the lowest established laborer rate contained in the Davis-Bacon wage rate decision. In addition, overtime compensation must be computed on the \$15.00 basic hourly wage rate contained in the Davis-Bacon wage rate decision regardless of any collective bargaining agreement, for example:

Hours 1-40	Hours over 40
\$14.00 + \$6.00 x hours	\$14.00 + \$7.50 (\$15.00 ÷ 2) + \$6.00 x hours

- c. Pay not less than \$15.00 per hour to the employee, plus pay an additional \$5.00 per hour to the employee for fringe benefits (the employee would receive a straight-time rate of \$20.00 per hour).
- d. Pay not less than \$15.00 per hour to the employee, plus an additional payment of \$2.50 per hour to the employee, plus a contribution of \$2.50 per hour to either health and welfare or pension programs. In this example, the employer is combining the methods discussed above. This method could be used in those cases where an employer provides some, but not all, of the fringe benefits set forth in the Davis-Bacon wage rate decision.

3. The cost of transportation and board and lodging is considered as payment of travel expenses properly reimbursable by the employer and incurred for its benefit. Such payments are not considered bona fide fringe benefits within the meaning of DBRA, are not part of the employee's wages, and do not constitute board, lodging, or other facilities customarily furnished which are deductible from the predetermined wage pursuant to Regs 3.5(j).

NOTE: 3.5(j) is in reference to Section 3(m) of the Fair Labor Standards Act. According to USDOL, board, lodging, or other facilities customarily furnished which are deductible from the predetermined wage are rare and do not apply to the highway construction industry.

4. It is the contractor's choice whether the fringe benefits are paid into an approved plan, directly to the employee, or a combination of partial payment directly to the employee and partial payment to a plan.
5. To convert the annual cost of a particular fringe benefit to an hourly cash equivalent, the following formula may be used:

Divide the annual cost of the fringe benefit by the total number of working hours to which the cost is attributable (52 weeks per year times 40 hours per week equals 2,080 hours). For example, if the annual cost to the employer for a pension program is \$5,000 per employee, divide 5,000 by 2,080. This equals a cash equivalent of \$2.40 per hour.

6. Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the Davis-Bacon wage rate decision, is not calculated at time and one-half when figuring the overtime rate. For example, if an employee's basic hourly rate is \$15.00 per hour plus \$5.00 per hour in fringe benefits, and the employee works 50 hours in one week, the employee would be entitled to 50 hours at \$20.00 per hour (basic hourly rate plus fringe benefit amount) and 10 hours at \$7.50 per hour (one-half of the basic hourly rate of \$15.00).
7. Fringe benefits for electricians and line construction workers are different from power equipment operators and truck drivers. For example, as of April 13, 2007, the prevailing rate for a lineman is \$27.59 plus \$4.75 and 28% or \$40.06 per hour ($\$27.59 \times .28 = \$7.72 + \$27.59 + \$4.75 = \40.06). [See Section H, paragraphs 3, b and c (pages 17-18), and Section M

(page 22) for additional information concerning electrician and line construction classifications.]

8. Apprentices and trainees must be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. If the apprenticeship or training program does not specify or mention fringe benefits, apprentices and trainees must be paid the full amount of fringe benefits listed in the wage rate decision for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprenticeship classification, fringe benefits must be paid in accordance with that determination. If that is the case, trainees must receive the same fringe benefits as apprentices.
9. NDDOT's on-the-job training program specifies that on-the-job trainees be paid full fringe benefits.

G. Payroll Deductions

1. Only deductions authorized by law may be made from an employee's weekly paycheck. Authorized payroll deductions include:
 - a. Federal and state withholding income taxes, federal social security taxes, and worker's compensation.
 - b. Sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest and in such a manner as to give the employee complete freedom of disposition of the advanced funds. NDDOT strongly recommends that any advanced payment of wages be documented, signed, and dated by the employer and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.
 - c. Amounts required by court process to be paid to another, unless the deduction is in favor of the employer, or any affiliated person, or when collusion or collaboration exists.
 - d. Contributions made on behalf of the employee to funds established by the employer or representatives of its employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care; pensions or annuities on retirement; death benefits; compensation for injuries, illnesses, accidents, sickness,

or disability, or for insurance to provide any of the foregoing; or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the employees, their families, and dependents providing, however, that the following standards are met:

- (1) The deduction is not otherwise prohibited by law.
 - (2) The deduction is either voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is not:
 - (a) A condition either for the obtaining of or for the continuation of employment; or
 - (b) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the employer, or any affiliated person, in the form of commission, dividend, or otherwise.
 - (4) The deduction shall serve the convenience and interest of the employee.
- e. Contributions made on behalf of the employee toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- f. Deductions requested by the employee to enable him or her to repay loans to, or to purchase shares in, credit unions organized and operated in accordance with federal and state credit union statutes.
- g. Deductions voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- h. Deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

- i. Deductions to pay regular union initiation fees and membership dues, not including fines or special assessments; provided, however, a collective bargaining agreement between the employer and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- j. Deductions not more than for the reasonable cost of board, lodging, or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and 29 Code of Federal Regulations Part 531. When such deductions are made, the additional records required under 29 Code of Federal Regulations Part 516.25(a) must be kept. (USDOL has indicated these instances are rare and do not apply to the highway construction industry.)
- k. Deductions for the cost of safety equipment of nominal value purchased by the employee as his or her own property and personal protection in his or her work, such as safety shoes, safety glasses, safety gloves, and hard hats:
 - (1) If such equipment is not required by law to be furnished by the employer;
 - (2) If such deduction is not violative of the Fair Labor Standards Act or prohibited by other law;
 - (3) If the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him or her and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person; and
 - (4) If the deduction is either:
 - (a) Voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
 - (b) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.

- I. Deductions for which the employer has applied and received permission to make from the Secretary, USDOL, Washington, D.C.
2. Deductions specifically prohibited include:
 - a. Deductions from an employee's wages to pay for damage caused by the employee to company equipment, such as trucks, or for the theft of company property.
 - b. Deductions for the cost of lost or destroyed clothing and other items issued to the employees for use in performing their jobs.
 - c. Deductions for purchasing, renting, and laundering protective clothing, coveralls, etc., where the use of such clothing is required either by the employer or the nature of the job.
3. In addition, the practice of docking an employee a stated period of time or money (other than for the actual time lost) for being late for work, failing to punch a time clock, or other violation of an employment rule is considered a kickback, rebate, or unlawful deduction.

H. Payroll Requirements

1. Weekly payrolls and basic records relating thereto must be maintained by the prime contractor and each subcontractor during the course of the work of a federally funded highway construction contract for all employees working at the site of the work.
2. Payrolls are not required for employees working on state funded only contracts or for employees working at locations considered not to be a site of the work of a federally funded contract.
3. There is no mandatorily prescribed format for contractor payrolls. However, all contractors must uniformly complete payrolls using the job classifications found in the Davis-Bacon wage rate decision incorporated into the contract. For example:
 - a. Laborers must be listed as Laborer and either Group 1, 2, 3, or 4. Unacceptable terms are Laborer, General Laborer, Unskilled Laborer, Semi-skilled Laborer, and Skilled Laborer.
 - b. When electrical work is performed on or within a commercial building only, such as a rest area, the job classification Electrician

must be used. Any other electrical work on a federal-aid highway construction project is covered by line construction. Electrician rates are listed in the Davis-Bacon wage rate decision by county. Consequently, the county in which the project is located must also be included after the job classification Electrician.

- c. Line construction workers must be listed as either Lineman, Cable Splicer, Line Equipment Operator, or Groundman. Use of the term Journeyworker standing alone is unacceptable. [See Section F, paragraphs 7-9 (pages 13-14), and Section M (page 22) for additional information concerning electrician and line construction classifications.]
 - d. Power equipment operators must be listed as Power Equipment Operator and either Group 1, 2, 3, 4, 5, or 6. Listing the type of equipment operated after the group number is optional but not required.
 - e. Truck drivers must be listed as either Single-axle Truck, Tandem- or Tri-axle Truck, Tandem- or Tri-axle Semi, Lowboy, Off Road Heavy Duty End Dump, or Euclid. [See Section P (page 25) for additional information concerning truck driver classifications.]
4. In addition, all payrolls must contain:
- a. The employee's full name, address, and social security number;
 - b. The employee's correct job classification or classifications;
 - c. The employee's hourly wage rate or rates (regular and overtime) and, where applicable, fringe benefits;
 - d. The daily and weekly hours worked in each job classification, including actual overtime hours worked;
 - e. Total earnings;
 - f. Itemized deductions made; and
 - g. Actual or net wages paid.
5. The contractor must ensure that all employees are included on the weekly payroll and that the employees are properly classified and properly paid.

6. Each payroll submitted must be accompanied by a completed Statement of Compliance (formerly U.S. Department of Labor Form WH-348) signed by the contractor, or his or her agent who pays or supervises the payment of the persons employed under the contract. The Statement of Compliance certifies that:
 - a. The payroll contains the information required to be maintained and that such information is correct and complete;
 - b. The persons employed on the contract during the payroll period have been paid the full weekly wages earned without rebate, either directly or indirectly, and that no deductions have been made, either directly or indirectly, from the full wages earned other than the permissible deductions set forth in the regulations; and
 - c. Each employee has been paid not less than the applicable wage rate and fringe benefits, or cash equivalent, for the classification of work performed as specified in the applicable Davis-Bacon wage rate decision incorporated into the contract.
7. For the convenience of contractors, USDOL has made available a payroll form which includes the Statement of Compliance on the reverse side. Payroll Form (WH-347) may be purchased directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. [See Exhibit 1 for samples of Payroll Form \(WH-347\), the Statement of Compliance](#) (formerly WH-348), and instructions for completing both forms.
8. An electronic version of Payroll Form (WH-347) can also be accessed through the following Internet link:
<http://www.dol.gov/esa/forms/whd/wh347instr.htm>
 - a. The instructions will appear first. Left click on [WH-347 \(PDF\)](#) directly under Instructions for Completing Payroll Form, WH-347 to get the payroll form.
 - b. To get the Statement of Compliance on the reverse side of the payroll form, left click on the right arrow (Next Page) at the bottom of the screen.

- c. Adobe Acrobat Reader® version 5 or later is needed to view, fill out, and print PDF forms, which may be downloaded for free at: www.adobe.com/products/acrobat/readstep2.html
 - d. To save the completed forms on a workstation, use the "Save As" method to save the file. For example, move the cursor over the PDF link described in paragraph 8, a (page 19) and right click. This will cause a menu to be displayed, from which the proper save option may be selected—depending upon which browser is being used:
 - For Microsoft IE users, select Save Target As.
 - For Netscape Navigator users, select Save Link As.
 - e. Once the proper save option has been selected for the browser being used and the file has been saved to the location specified, go to the program menu and start the Adobe Acrobat Reader®. Once open, locate the PDF file that was saved and open (right click) it directly in Acrobat®.
9. NDDOT requires that all contractors working on federal-aid highway construction contracts in North Dakota use the [Statement of Compliance \(formerly WH-348\) included in Exhibit 1](#) or the electronic version available through the Internet link described in paragraph 8 (page 19). (Some states have modified the form to include other requirements under their state law, which do not pertain to North Dakota.)
 10. The contractor must furnish, to the project manager-engineer (NDDOT, city, county, or consultant), at least one copy of the payroll for each week in which any contract work is performed. This copy of the payroll is placed in the project file that is sent to NDDOT when the contract is finalized. Except as noted in paragraph 13 of this section (page 21), whether additional copies are required will be at the NDDOT district management's discretion. Consequently, check with the project manager-engineer (NDDOT, city, county, or consultant) to determine if more than one copy is required.
 11. Payrolls and compliance statements are due within seven calendar days after the regular payment date of the payroll period.

12. Prime contractors are responsible for the submission of payrolls by all subcontractors. This includes ensuring timely submittal and reviewing the payrolls for completeness and accuracy before furnishing a copy to the project manager-engineer (NDDOT, city, county, or consultant). When there are problems, the prime contractor should be working with the subcontractor to resolve the issues. This is not the responsibility of the project manager-engineer (NDDOT, city, county, or consultant).
13. On a cyclical basis, USDOL conducts a wage survey to determine the prevailing wages being paid in the state on federally funded highway construction projects. For this reason, NDDOT districts and city, county, and consultant engineers will be asked to request and retain an additional copy of all weekly payrolls issued for such projects. At the end of the season, the payrolls are forwarded to the NDDOT Civil Rights Division for submission to USDOL in Dallas, Texas.
14. All payroll records must be maintained and preserved by the contractor for a period of three (3) years following the completion and final acceptance of the project. In addition, the payroll records must be made available, at the request of the Federal Highway Administration (FHWA); the Secretary, USDOL; and NDDOT, at any time during that period.

I. Concrete Saw Operator Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes a Concrete Saw (power operated) under the Power Equipment Operator Group 5 and a Concrete Saw Operator under the Laborer Group 2. An employee who walks behind a concrete saw is considered a Group 2 Laborer, and an employee who rides a concrete saw is considered a Group 5 Power Equipment Operator. It does not matter what size the engine is or whether it is self-propelled.

J. Core Sampling Classifications

1. Some federal-aid concrete projects, mainly on the interstate and major expressways, now contain a separate bid item for cored samples (specification 950, code 9700). An employee who cuts the core samples is considered a laborer and must be paid not less than the appropriate Davis-Bacon wage for Group 1 Laborers (similar to drill runner tender). For example:

To cut the cores, the contractor employee stands alongside a trailer on which the coring machine is mounted. The coring machine is powered by a generator and has a metal bit. The employee spins a wheel to drill up and down. The employee does not ride the machine. The core sample is taken out and laid along the roadway for an NDDOT employee to pick up. NDDOT personnel perform the actual testing.

2. The employee driving the truck that is pulling the trailer would receive the wages of a truck driver for the type of truck being driven as described in Section P (page 25).

K. Dowel Basket and Dowel Bar Placement Classifications

Contractor employees placing dowel baskets and dowel bars on federal-aid concrete pavement projects are considered laborers and must be paid not less than the appropriate Davis-Bacon wage for Group 4 Laborers (Reinforcing Steel Setters/Tiers).

L. Joint Sealing Classifications

1. Contractor employees performing joint sealant work on a federal-aid project are considered laborers and must be paid not less than the appropriate Davis-Bacon wage for Group 4 Laborers (similar to powderman, gunite and sandblast, and nozzleman). For example:

The employees operate an air compressor and tar kettle (hot pour sealant) mounted in the box of a pickup. The pickup also pulls a trailer on which an air compressor and silicone drums with a pump are mounted. The employees use a sandblasting nozzle to clean the joints before the sealant is applied. Either a hot pour or a silicone sealant is applied with a nozzle. Before the silicone sealant is applied, backer rod is placed into the cracks.

2. The employee driving the pickup would receive the wages of a Group 1 Laborer (Light Truck and Pickup Driver) as described in Section P (page 25).

M. Line Construction and Electrician Classifications

1. When electrical work is performed on or within a commercial building only, such as a rest area, the job classification Electrician must be used. Any other electrical work on a federal-aid project is covered by line construction. The following types of electrical construction are considered line construction:

- a. Pole line construction (whether built of wood, metal, or other material); digging and backfilling of holes for poles or anchors (by hand or mechanical equipment); and the handling, assembling, or erecting of all materials, including the guying, stringing of conductors, or other work necessary, on through to the ultimate completion of such pole line work.
 - b. Highway lighting systems and motor vehicle traffic controls (traffic signals, flashing beacons, etc.). Handled in the same manner as pole line construction.
 - c. Electrical underground construction, including placing of fish wires, the pulling of cables or wires through such raceways, and the splicing of such conductors.
 - d. Underground construction, including excavation, trenching, and installation of raceways or ducts; construction of manholes, transformer vaults, and hand holes; backfilling; installation of fish wire; and pulling, splicing, and laying of wire or cables installed in raceways, ducts, or direct burial.
 - e. Underground construction, including apparatus and fixtures on public property such as street lighting, highway lighting, lines, or equipment.
2. This includes not only new installation work but also the repair, maintenance, or dismantling of all above structures, lines, or equipment.
 3. The job classifications and duties performed in line construction are:
 - a. Lineman - Responsible for all aerial work performed, whether from a bucket or by the use of belts and climbers. May perform any underground work, including but not limited to: installing duct work, raceway, pulling cables or wires, installing direct burial cable or wires, junction boxes, terminating cable or wire, setting poles, and assembling lights or signals.
 - b. Cable Splicer - In addition to the same duties as lineman, may be required to splice and terminate high voltage cable and multi-conducted cable when special procedures or kits are required to accomplish the task.

- c. Line Equipment Operator - Operates any equipment needed to complete the project, including but not limited to: backhoe, front-end loader, trencher, and hole auger.
 - d. Groundman - Performs basic laborer work such as hand excavation; assists in pouring cement, site cleanup, etc.; and assists other crafts while they are performing aerial work.
4. See Section F, paragraphs 7-9 (pages 13-14), and Section H, paragraphs 3, b and c (pages 17-18), for additional information concerning electrician and line construction classifications.

N. Mechanic, Greaser, Oiler Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes mechanics, greasers, and oilers under the following Power Equipment Operator groups:

1. Group 2: Master Mechanic

The employee supervises five or more mechanics employed on the same project.

2. Group 3: Mechanic or Welder, Heavy Duty

The employee operates a service truck used in the repair and maintenance of equipment, using mechanics' tools, welding equipment, and hoists.

3. Group 4: Truck Mechanic

The employee operates a smaller service truck used in the repair and maintenance of equipment, without the use of welding equipment and hoists.

4. Group 4: Greaser

The employee operates a self-contained service truck used in greasing equipment and adding fluids such as gas and oil.

5. Group 5: Oiler

The employee assists the operating engineer of a track or truck crane by greasing and oiling the crane while the operating engineer runs it.

O. Pipelayer Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes pipelayers under the following laborer groups:

1. Group 1: Pipe Handler

The employee loads and unloads pipe from a truck, box car, etc. When unloading, the employee stockpiles the pipe only.

2. Group 2: Multiplate Pipelayer, Culvert Pipelayer

The employee places galvanized pipe and some PVC (plastic pipe) into trenches and assembles. The employee may also work with 6- and 8-inch PVC sanitary sewer pipe.

3. Group 3: Bottom Man (sanitary sewer, storm sewer, water, and gas lines)

The employee is lowered into a tunnel, well, or caisson (elongated box that is put into a sewer—no water runs through) with a bucket and cleans out the bottom of the hole making it wider or ready for concrete pouring. The employee cleans out loose dirt.

4. Group 4: Pipelayer (sanitary sewer, storm sewer, water, and gas lines)

The employee places special, low pressure type pipe into trenches and assembles. The employee may also work with some 18- to 48-inch reinforced concrete pipe and some 24- to 60-inch reinforced concrete storm sewer pipe.

P. Truck Driver Classifications

1. An employee driving a pickup around a federal-aid project or site of the work to load, deliver, or transport materials is considered a Group 1 Laborer (Light Truck and Pickup Driver) and must be paid not less than the appropriate Davis-Bacon wage.

2. An employee driving a pickup on a federal-aid project or site of the work that has an air compressor or a generator mounted in its box, or that is pulling a trailer mounted with an air compressor or a generator, would receive the wages of a Group 1 Laborer (Light Truck and Pickup Driver).

3. An employee driving any other type of truck on a federal-aid project or site of the work that has equipment mounted in its box, or on a trailer or a wagon being pulled by the truck, is considered a truck driver and must be paid not less than the appropriate Davis-Bacon wage, including fringe benefits, for the type of truck being driven. For example:
 - a. An employee driving a tandem-axle truck with a water tank mounted on the back of the truck would receive the wages of a Tandem- or Tri-axle Truck Driver.
 - b. An employee driving a semi that is pulling a water tank mounted on a wagon or a trailer would receive the wages of a Tandem- or Tri-axle Semi Driver.
4. An employee operating a tractor or a modified scraper on a federal-aid project or site of the work that is pulling a water tank mounted on a wagon or a trailer is considered an equipment operator and must be paid not less than the appropriate Davis-Bacon wage, including fringe benefits, for the Power Equipment Operator group under which the tractor or scraper falls.
5. An employee driving a pickup carrying a signal or message board behind or ahead of other equipment on a federal-aid project or site of the work is considered a Pilot Car Driver and must be paid not less than the appropriate Davis-Bacon wage.
6. Zone Pay
 - a. On November 9, 2007, the following zone pay was added to the Davis-Bacon wage rate decision for highway construction in North Dakota concerning the truck driver classifications only:
 - (1) Zone A
69 miles or less from Bismarck, Fargo, and Dickinson – free zone.
 - (2) Zone B
70 miles or more from Bismarck, Fargo, and Dickinson – add \$1.00.
 - (3) The mileage shall be determined by the actual odometer readings from the contractors' base location.

- b. The intent was 69 miles or less and 70 miles or more from the location base (for example: Bismarck, Fargo, Dickinson).
- c. Because the zone pay was met with great resistance, the Teamsters Local entered into a Memorandum of Agreement, effective January 1, 2008, which eliminated the zone pay and increased the wages by \$1.00 per hour for all truck driver classifications.
- d. The new adjustments to the wage rates were published by the U.S. Department of Labor on January 18, 2008. Because NDDOT received an advanced copy of the adjusted wage rates on January 7, an addendum was issued for the January 18 bid opening implementing the adjusted wage rates. Consequently, the zone pay only applies to those federally-aided highway construction projects let to contract on November 16, 2007. Refer to the Davis-Bacon wage rate decision incorporated into the contract and any addendum issued thereto.
- e. For those federal-aid contracts that contain the zone pay, NDDOT will require and enforce the following:
 - (1) When applicable, \$1.00 will be added to the basic hourly rate only.
 - (2) Mileage will be determined by the actual odometer readings from the contractor's home office location.
 - (3) The zone pay will apply to those truck drivers working directly upon the federal-aid project or at a pit or batch plant site (concrete or asphalt) whose boundary is located within one-half mile of the closest right of way boundary to the project (as the crow flies) and has not been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).

7. Subcontractors

- a. If the prime contractor is using subcontractors for hauling, whether on a federal-aid project or not, approved Prime Contractor's Request to Sublet (SFN 5682) forms and subcontract agreements between the prime contractor and the subcontractors are required

prior to performing any hauling. The Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 – Rev. 3-94) must also be included in the subcontract agreements because it contains more than just the labor standards provisions. This applies to all tiers of subcontracts.

- b. If the prime contractor is using subcontractors for hauling on a federal-aid project or site of the work, the labor standards provisions and the applicable Davis-Bacon wage rate decision must be incorporated into the subcontract agreements. The subcontractors must pay their employees the proper Davis-Bacon wage rates, including applicable fringe benefits, and provide weekly payrolls. This applies to all tiers of subcontracts.

8. Truck Owner-Operators

- a. Bona fide owner-operators of trucks only are not covered under DBRA. However, when hauling on a federal-aid project or site of the work, the owner-operator must appear on either the prime contractor's or the subcontractor's payrolls as:
 - (1) Owner-operator's name, address, and social security number with the notation owner-operator after the name.
 - (2) Vehicle identification number or license plate number of the vehicle being driven.
 - (3) Truck number being used on scale tickets and haul sheets.
 - (4) Neither the hours worked nor the wages paid need be shown.
- b. The actual owner-operator must drive the truck at all times. If, for any reason, he or she does not drive the truck, even for a short period of time, the replacement driver must be paid Davis-Bacon wages, including fringe benefits, and must appear on project payrolls showing the hours worked and the wages paid.
- c. The prime contractor is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and payrolls as required and monitoring and verifying the status of all truck owner-operators working on a federal-aid project or site of the work either directly for the prime

contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor must request and verify the following:

- (1) Owner-operator's name.
- (2) Valid commercial driver's license.
- (3) Vehicle registration in the owner-operator's name.
- (4) Current vehicle license number.
- (5) Truck number that will or is being used on scale tickets and haul sheets.
- (6) Copies of any signed lease or rental agreements for owner-operator trucks. The lease must be between the driver and a reputable dealership (i.e., Nelson International, Inc., Peterbilt of Fargo, Inc., W.W. Wallwork, etc.); not the driver and the prime contractor or the driver and a subcontractor on the project.

9. Equipment Owner-Operators

- a. Owner-operators of other types of equipment are considered employees under DBRA. Consequently, they must be paid the correct Davis-Bacon wage, including fringe benefits, and be included on payrolls showing the hours worked and the wages paid.
- b. When a contractor pays an equipment owner-operator a lump sum amount, it may be difficult to determine whether the owner-operator was paid the correct hourly wage. If a wage dispute ensues, USDOL suggests that NDDOT:
 - (1) Research the open market for the rate required to rent the same piece of equipment by the hour;
 - (2) Multiply that figure by the total number of hours the owner-operator worked;
 - (3) Figure the wages the owner-operator should have been paid based on the total number of hours worked and the required rate of pay (straight time, overtime, and fringe benefits);
 - (4) Add the two figures together; and

(5) Compare the total to the lump sum amount.

- c. If the total is substantially greater than the lump sum amount, the owner-operator would be due the difference.

Q. Water Spraying Equipment Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes Water Spraying Equipment, Self-propelled under the Power Equipment Operator Group 5. This is a piece of equipment that is not being pulled by another piece of equipment or a truck. If an employee:

1. Is driving a tandem-axle truck with a water tank mounted on the back of the truck, the employee would receive the wages of a Tandem- or Tri-axle Truck Driver.
2. Is driving a semi that is pulling a water tank mounted on a wagon or a trailer, the employee would receive the wages of a Tandem- or Tri-axle Semi Driver.
3. Is operating a tractor or a modified scraper that is pulling a water tank mounted on a wagon or a trailer, the employee would receive the wages of the Power Equipment Operator group under which the tractor or scraper falls.

R. Welder Classification

1. The Davis-Bacon wage rate decision for highway construction in North Dakota states: "Welders receive rate prescribed for craft performing operation to which welding is incidental." In the case of welders employed on structural projects during pile driving operations, NDDOT has determined:
 - a. The carpenter rate will apply when an actual carpenter is working with the welder (not a person classified as a foreman who has carpentry skills).
 - b. The crane operator rate will apply when it is the only other skilled craft present during the welding.
2. Whatever rate is chosen must be used for the life of the project. For example, if the crane operator rate is used and all the piling is in place and the crane has left, those individuals who later weld ice nose angle or rebar on the piling should continue to receive the crane operator rate. This

would be so even though an actual carpenter is also present on the project.

S. Exemptions from DBRA Coverage

1. The Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 – Rev. 3-94), which is included in every federal-aid highway construction contract and is further required to be included in all subsequent subcontract agreements, states in part:

"All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR Part 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers or mechanics."

2. In addition, Title 29, Code of Federal Regulations, Part 5.2(m) states:

"The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Title 29, Part 541, are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent."

3. Title 29, Part 541, includes the following definitions for Executive Employees:

a. "Business Owners

The term employee employed in a bona fide executive capacity in Section 13(a)(1) of the Act also includes any employee who owns at least a bona fide 20 percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

b. Management

Generally, management includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandise to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures."

4. In consideration of the foregoing, NDDOT requires:

a. Company Owners

Those individuals who own at least 20 percent of the company (prime contractor or subcontractor) and who perform the work of a laborer or mechanic are not due Davis-Bacon wages and do not have to appear on project payrolls.

b. Supervisory Personnel

(1) As a general rule, those employees who work in a supervisory capacity are not covered under DBRA. However, the mere fact that an employee is called a working supervisor does not necessarily mean the worker is not a

laborer or mechanic as defined under DBRA (one who performs manual labor) and is, therefore, subject to the provisions of DBRA.

- (2) If a person employed in a supervisory capacity performs the work of a laborer or mechanic more than 20 percent of the time in any given workweek, he or she is subject to the provisions of DBRA during the periods while so employed as a laborer or mechanic. Consequently, he or she must be paid the proper Davis-Bacon wage rate, including applicable fringe benefits, for the job classification of work performed.
- (3) In either case, the supervisor must be listed on the payroll. When the supervisor performs nonmanual labor, only the notation salaried need be shown. When the supervisor performs manual labor more than 20 percent of the time, the proper job classification, hours, and wage rate information must be included on the payroll.

c. Surveyors, Gravel Testers, Technicians, Scale Operators

- (1) Contractor employees working in the capacity of surveyors, gravel testers, quality control technicians (testing and/or laboratory technicians), and scale operators (operating a scale and a computer) are not laborers or mechanics within the definition of DBRA (one who performs manual labor) and are, therefore, not covered. They are not due Davis-Bacon wages and do not have to appear on project payrolls.
- (2) The above includes bituminous mix testers, bituminous pavement inspectors, bituminous mix controllers, and aggregate testers as defined in the NDDOT Transportation Technician Qualification Program (TTQP).

d. Field Office Employees

Contractor employees whose duties are primarily administrative, executive, or clerical in nature are not considered laborers or mechanics within the definition of DBRA (one who performs manual labor). Those duties include, but are not limited to, bookkeeping; recordkeeping; inspecting; operating computers; receiving, reviewing, and otherwise handling material invoices; collecting scale tickets and haul sheets; collecting oil samples from transport

tankers; transferring oil from transport tankers to storage tanks and from storage tanks to haul trucks and distributors; flushing hoses, pumps, and distributor spray bars; etc. These employees are not due Davis-Bacon wages and do not have to appear on project payrolls.

e. Traffic Control Signing

A sign supplier who delivers and installs the construction signs on a project is considered a material supplier if, after the initial installation, the prime contractor or subcontractor maintains the signs on the project and assumes the responsibility of relocating the signs on a day-to-day basis. Bona fide material suppliers are not covered under DBRA. Thus, their employees are not due Davis-Bacon wages and payrolls are not required.

f. Owner-Operators

(1) Owner-operators of trucks only are not covered under DBRA. However, if the prime contractor or subcontractor is using truck owner-operators for hauling on a federal-aid project or site of the work, they must appear on either the prime contractor's or the subcontractor's payrolls as:

- (a) Owner-operator's name, address, and social security number with the notation owner-operator after the name;
- (b) Vehicle identification number or license plate number of the vehicle being driven;
- (c) Truck number being used on scale tickets and haul sheets;
- (d) Neither the hours worked nor the wages paid need be shown.

(2) Owner-operators of other types of equipment are considered employees under DBRA. They must be paid the correct Davis-Bacon wage, including applicable fringe benefits, and must be included on the prime contractor's or subcontractor's payrolls showing the hours worked and the wages paid.

g. Utility Relocations, Adjustments, and Accommodation

Whenever federal-aid funds are included in utility work, DBRA applies to only that work which is included as part of an NDDOT-let contract. DBRA is not applicable to utility-let contracts, including continuing contracts

h. Relatives

There are no exceptions from coverage under DBRA on the basis of family relationships, or for relatives who are performing the work of laborers or mechanics. They must be paid the appropriate Davis-Bacon wage for the job classification of work performed and must be included on the payroll.

T. Conformance Process

1. When a job classification is not included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, must be conformed after the contract has been awarded. This means the contractor must submit a proposed job classification and base hourly rate, plus any fringe benefits, to the NDDOT Civil Rights Division for approval. Included with the contractor's request must be the following supporting documentation:
 - a. Copies of payrolls issued for the project or other projects located in the area showing the current rate of pay and fringe benefits, where appropriate, for the job classification in question; or
 - b. If the contractor belongs to a union, a copy of the current collective bargaining agreement showing the required rate of pay and any appropriate fringe benefit amounts for the job classification in question and the project area; and
 - c. Statements by the employees involved concerning whether they agree or disagree with the proposed job classification and wage rate, including fringe benefits where appropriate; or
 - d. If the employees are unknown, a statement to that effect.
2. [See Exhibit 2 for additional information concerning the conformance process](#), including:
 - a. A sample letter to NDDOT requesting a job classification and wage rate determination;

- b. The federal requirements; and
- c. The Classification & Wage Rate Request Employee Information (SFN 50043 – Rev. 08/2006) form developed by NDDOT for providing the employee statements.

U. Child Labor Laws

- 1. There are federal and state child labor laws:

- a. Prohibited Employment – State Law

State child labor provisions establish a minimum age of 14 to be employed and regulate the employment of teens ages 14 and 15. Generally, persons age 14 and 15 are required to file an Employment and Age Certificate (work permit) with the North Dakota Department of Labor, are limited in the hours they can work, and are prohibited from performing certain types of work. Prohibited work includes construction work other than cleaning, errand-running, moving, stacking, and loading or unloading materials by hand.

- b. Prohibited Employment – Federal Law

Federal child labor laws further limit the types of work that can be performed by teens 14 and 15 years of age and prohibit teens ages 16 and 17 from working in certain occupations the USDOL deems to be hazardous. Hazardous work includes:

Manufacturing and storing of explosives; driving a motor vehicle and being an outside helper on a motor vehicle; coal mining; logging and sawmilling; power-driven woodworking machines; exposure to radioactive substances; power-driven hoisting apparatus; power-driven metal-forming, punching, and shearing machines; mining, other than coal mining; meat packaging or processing (including the use of power-driven meat slicing machines); power-driven bakery machines; power-driven paper-product machines; manufacturing brick, tile, and related products; power-driven circular saws, band saws, and guillotine shears; wrecking, demolition, and shipbreaking operations; roofing operations; and excavation operations.

2. When federal and state child labor provisions differ, the more stringent standard prevails and must be followed. For example, if federal law prohibits a type of employment that is allowed under state law, the federal law would apply and the work would be prohibited.
3. In consideration of the foregoing, the following will apply to highway construction:
 - a. Individuals age 14 and 15 may not work in any construction or repair jobs.
 - b. Individuals age 16 and 17 may perform only non-hazardous work (laborer or grunt work).
 - c. Individuals age 18 and older may perform any job, whether hazardous or not.
4. If it is found that an under-aged individual was employed, he or she must be shown on the payrolls and be paid Davis-Bacon wages for the time worked.

V. Unclaimed Paychecks

If, for any reason, a contractor is unable to deliver a paycheck to a current or former employee, the money must be turned over to the Unclaimed Properties Division of the North Dakota State Land Department. The Unclaimed Properties Division makes every effort to reunite the money with its rightful owner or with the rightful owner's heirs. The procedure for turning over unclaimed property to the State Land Department can be found on their Web site at www.land.state.nd.us. Contact Linda Fisher at lfisher@nd.gov or 328-2800 for needed assistance.

W. Employees Hired Through Temporary Employment Agencies

1. Employees, such as flaggers, who are hired through temporary employment agencies must be paid not less than the appropriate Davis-Bacon wage and must appear on either the contractor's payroll or the temporary employment agency's payroll. Since the temporary employment agency is the employer, it is treated as a subcontractor in the same way a company providing traffic control services would be treated.
2. The contractor must acknowledge joint employment and either put the employee on its payroll or require the employment agency to generate a certified payroll. If the employee has a wage grievance, the employee would file against the employment agency.

3. According to USDOL, no subcontract agreement between the contractor and the temporary employment agency is required. Therefore, no Prime Contractor's Request to Sublet (SFN 5682) is required. However, NDDOT cautions prime contractors and subcontractors that any agreement they have with a temporary employment agency should clearly indicate that the employees must be paid full Davis-Bacon wages, including fringe benefits where applicable. Any additional charges or fees to be paid to the temporary employment agency must be above and beyond the required Davis-Bacon wages. If an employee has a wage grievance, the prime contractor will be held ultimately responsible for compliance with DBRA. This means if the wages cannot be recouped from the temporary employment agency, the prime contractor will be held responsible for paying the wages.

X. Bulletin Boards

1. The following must be displayed in a prominent place at a federal-aid project or site of the work where they are easily accessible to all employees and other interested parties:
 - a. Poster Board (DOT 3350 – Rev. 03/2003) which contains the minimum wage poster (provided by NDDOT), or its equivalent, and
 - b. Davis-Bacon wage rate decision incorporated into the contract.
2. In addition, Equal Employment Opportunity (EEO) posters and notices are required to be displayed at a federal-aid project or site of the work. These posters and notices are also contained on the poster board provided by NDDOT. EEO requirements are included with the labor standards provisions incorporated into the contract as Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 – Rev. 3-94):
www.fhwa.dot.gov/programadmin/contracts/1273.cfm
3. Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster board and Davis-Bacon wage rate decision.
4. Three-ring binders may be used in place of bulletin boards only if the contractor is on the project for less than one week (seven calendar days); or if the contractor is extremely mobile on the project, for example: paint

stripers, guardrail installers, fencers, etc. However, contractor employees must feel comfortable in accessing the information in the three-ring binder.

5. Another allowable method for complying with bulletin board requirements is for the contractor to provide individual copies of their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure to all employees at the beginning of each construction season and to all new employees hired throughout the remainder of the year. However, the contractor must keep written documentation, including signatures of employees, and be able to produce the documentation upon request. The other posters and notices must then be discussed at periodic EEO meetings held throughout the year. Again, documentation must be kept to verify that this information is being brought to the attention of the employees.

Y. Labor Compliance Job-Site Interviews

1. Systematic spot interviews with the contractor's project employees may be conducted by the project manager-engineer (NDDOT, city, county, or consultant), or a representative of the contracting agency (NDDOT). The interviews are used to determine whether the Davis-Bacon wage rate decision and other labor standards provisions of the contract are being fully complied with, and that there is no misclassification of employees.
2. Each prime contractor and subcontractor will have job-site interviews conducted on at least one federal-aid project in each NDDOT district annually.
3. All answers and statements made by the employees, whether orally or in writing, are treated as confidential. An employee's identity will not be disclosed to the contractor without the employee's written consent.
4. A good cross-section of the contractor's project employees will be selected for interviews. Selection criteria will include race, sex, job classification, and age. One minority, one nonminority, and one female in each trade, job classification, or occupation will possibly be interviewed.
5. Contractors must allow their employees to be interviewed.

Z. NDDOT Civil Rights Division Personnel

For further information or assistance, contact either of the following:

Deb Igoe, Director digoe@nd.gov	Phone:	701-328-2576
--	--------	--------------

Jackie Lipp, Civil Rights Officer jlipp@nd.gov	Phone:	701-328-2605
---	--------	--------------

Civil Rights Division North Dakota Department of Transportation 608 East Boulevard Avenue Bismarck, ND 58505-0700	Fax:	701-328-1965
--	------	--------------

**EXHIBIT 1 INSTRUCTIONS AND LINKS TO PAYROLL FORMS
U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION**

INSTRUCTIONS FOR COMPLETING PAYROLL FORM WH-347

General: The use of the WH-347 payroll form is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their federal or federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and Related Acts.

This form meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefit provisions. Under this amended law, the contractor is required to pay not less than the fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes, and provides for the contractor's representation in the statement of compliance (formerly WH-348) on the rear of the payroll that he or she is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1 – Name, Address, and Social Security Number of Employees: The employee's full name and Social Security Number must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless the address changes.

Column 2 – Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3 – Work Classifications: List classification(s) descriptive of the work actually performed by employees. Consult the classification and minimum wage schedule set forth in the contract specifications. If additional classifications are deemed necessary, see the contracting officer or agency representative. Employees may be shown as having worked in more than one classification, provided an accurate breakdown of the hours so worked is maintained and shown on the submitted payroll by use of separate line entries.

Column 4 – Hours Worked: On all contracts subject to the Contract Work Hours Standards Act, enter as overtime hours all hours worked in excess of 8 hours per day and 40 hours per week.

Column 5 – Total: Self-explanatory.

Column 6 – Rate of Pay, Including Fringe Benefits: In the straight time box, list the actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See Fringe Benefits below. In the overtime box, show the overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See Fringe Benefits below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standards Act of 1962. In addition to paying not less than the predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs, or shall pay as cash in lieu of fringes, amounts predetermined as fringe benefits in the wage decision made part of the contract. See Fringe Benefits below.

FRINGE BENEFITS – Contractors Who Pay All Required Fringe Benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his or her employees just as he or she has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he or she is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(c).

Contractors Who Pay No Fringe Benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and one-half on cash paid in lieu of fringes, the overtime rate shall not be less than the sum of the basic predetermined rate, plus the half-time premium of the basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he or she is paying fringe benefits in cash directly to his or her employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4 (c), Exceptions: Any contractor who is making payment to approved plans, funds, or programs in amounts less than what the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he or she is paying, to each such employee for all hours (unless otherwise provided by applicable determination) worked on the federal or federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on Contractors Who Pay No Fringe Benefits for computation of overtime rate.

Column 7 – Gross Amount Earned: Enter gross amount earned on this project. If part of the employee's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the federal or federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/\$120.00.

Column 8 – Deductions: Five columns are provided for showing deductions made. If more than five deductions should be involved, use the first 4 columns; show the balance of deductions under the Other column; show the actual total under the Total Deductions column; and in the attachment to the payroll, describe the deductions contained in the Other column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his or her weekly gross wage, but indicate that deductions are based on his or her gross wages.

Column 9 – Net Wages Paid for Week: Self-explanatory.

Totals: Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment of 5 years, or \$10,000.00 fine, or both. Accordingly, the party signing this required statement should have knowledge of the facts represented as true.

Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the Deductions column above, state "See Deductions column in this payroll." See paragraph entitled Fringe Benefits above for instructions concerning filling out paragraph 4 of the statement.

PAYROLL – Form WH-347 and Statement of Compliance

www.dol.gov/esa/forms/whd/wh347instr.htm

EXHIBIT 2 CONFORMANCE PROCESS

SAMPLE LETTER TO NDDOT

Date

Ms. Deborah J. Igoe, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Dear Ms. Igoe:

Subject: Job Classification and Wage Determination For
Project _____ (number) _____
_____ County

I am hereby requesting a wage determination for (classification) on the above referenced project. I am proposing a base rate of \$._____ per hour (with no/plus \$. in) fringe benefits. Enclosed is documentation supporting this request.

If you have any questions, contact me at (telephone number).

Sincerely,

(name)

(title)

ri
Enclosures

REQUESTS FOR ADDITIONAL CLASSIFICATIONS AND WAGE RATES

Criteria for the approval of additional classifications and wage rates are set forth in the Code of Federal Regulations, Title 29, Part 5, Subpart A, Section 5.5 (a) (1) (ii). Section 5.5 (a) (1) (ii) (A) states:

"The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination."

Section 5.5 (a) (1) (ii) (B) further states:

"If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and will so advise the contracting officer, or will notify the contracting officer within the 30-day period that additional time is necessary."

The U. S. Department of Labor's policy in conforming a job classification and wage rate is:

1. If the proposed classification is a skilled craft, the proposed rate cannot be less than the lowest rate already established for a skilled job classification in the wage determination.
2. Exceptions to the skilled job classifications are the Power Equipment Operator, Truck Driver, and Electrician groups.
3. If the established rate for a skilled job classification varies between counties, the proposed rate cannot be less than the established rate for the county in which the project is located.
4. If the established rate for a skilled job classification includes a fringe benefit amount, the proposed rate does not have to specify an amount for fringe benefits. The fringe benefit amount could be added to the hourly wage. In other words, the proposed rate must be equal to or higher than the total of the established hourly rate plus the amount designated for fringe benefits.

NOTE: Requests for Additional Classifications and Wage Rates should be made prior to commencement of work on the contract. For necessary forms and procedures, contact:

Deborah J. Igoe, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
Telephone: (701) 328-2576 Fax: (701) 328-1965
Email: digoe@nd.gov

**CLASSIFICATION & WAGE RATE REQUEST
EMPLOYEE INFORMATION
North Dakota Department of Transportation, Civil Rights Division
SFN 50043 (Rev. 08-2006)**

To access SFN 50043, click on the following:

www.dot.nd.gov/forms/sfn50043.pdf