

## CHAPTER 19 – LABOR COMPLIANCE

### 19-1 GENERAL

Employees whose duties are manual or physical in nature who are working on Agency public works construction projects must be paid no less than the applicable prevailing wage rate (wages and benefits) specified in the Contract for the work they perform.

Some employees may not be covered by the prevailing wage rate. (See discussion under Section 19-2(a) below)

The Project Manager (PM) must monitor labor compliance on all Agency projects to ensure that all employees affected by the Project prevailing wage rate receive proper payment for work performed.

Some facts about the Davis Bacon and Related Acts (DBRA) and the Bureau of Labor and Industries (BOLI) prevailing wage rates are:

#### **(A) DBRA Prevailing Wage Rates**

The U.S. Department of Labor (US-DOL) periodically conducts wage surveys to determine prevailing wages.

DBRA prevailing wage rates are not required on off-system Federal-Aid projects or projects that are purely state-funded.

The Agency is responsible for resolving allegations of wage violations on projects that specify the DBRA prevailing wage rates when the complaint is received by the Agency. The Agency may involve other state or federal agencies as needed, or if fraud may be involved.

#### **(B) BOLI Prevailing Wage Rates**

BOLI conducts annual wage surveys to determine prevailing wages.

BOLI prevailing wage rates are required on all Agency construction projects.

BOLI is responsible for resolving allegations of wage violations on projects that specify the BOLI prevailing wage rates. BOLI is also responsible for resolving complaints on projects first advertised after December 31, 2005 that specifies DBRA prevailing wage rates when the complaint is received by BOLI. In all cases, the Agency will often be asked to provide assistance.

**(C) Projects subject to both DBRA and BOLI Prevailing Wage Rates**

For public works projects first advertised for bid on or after January 1, 2006, that are subject to both the DBRA and the BOLI prevailing wage laws, Contractors and Subcontractors must pay the higher of either the DBRA or the BOLI prevailing wage entitlement for the type of work being performed.

**19-2 ROLES AND RESPONSIBILITIES**

**(A) All Prime Contractors and Subcontractors**

The Prime Contractor and all Subcontractors are required to inform their employees and the PM of their regular work schedule (days of the week and number of hours per day) in writing, before beginning Work on the Project. Contractors may provide the schedule at the time of hire, prior to starting Work on the Contract, or by posting the schedule at the work site, along with the prevailing wage rate and fringe benefit information. If a Contractor fails to give written notice of the workers' schedule, the work schedule will be presumed to be a five-day eight-hour schedule. Refer to Section 19-4 – Work Schedule.

In addition to the regular work schedule, each Contractor must post, at the work site, in a conspicuous place, accessible to all employees:

- Prevailing wage rates;
- Zone pay;
- Fringe benefit amounts, including disposition if not paid in cash, benefit plan or program details, and how to access those benefits;
- US-DOL WH-1321 Poster “Notice to All Employees Working on Federal or Federally-Financed Construction Projects”; and
- ODOT Form 734-2547, “Prevailing Wage Complaint”.

The Contractor and all Subcontractors whose employees are entitled to prevailing wages must provide certified payrolls, through the Contractor, to the PM at the frequency specified in the Contract.

Contractors must pay employees prevailing wages for all time that they are required to be at the work site, whether or not they are performing duties during that time. Employees are not required to be paid for the break taken to consume a meal. For instance, an employer must pay flaggers, or similar workers, for all time that they are required to be at the work site, other than meal break. This is true even though the Agency will not pay under the flagging bid item for some of that time because no flagging work is being performed.

The following employees must be paid according to the specified prevailing wage rates and reported on certified payrolls:

- All workers employed on a public works project performing duties which are manual or physical in nature as opposed to mental or managerial in nature. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory, or clerical duties.
- Apprentices may be paid at less than the prevailing wage rate as allowed by their Joint Apprenticeship and Training Committee (JATC).
- Owners, managers, and supervisors who spend more than 20% of their workweek performing work that is manual or physical in nature on the Project.
- Members of a survey crew who spend more than 20% of their workweek performing work that is manual or physical in nature on the project as opposed to mental or managerial in nature.
- For employees operating trucks involved in Project-related work, refer to requirements in [Exhibit 19\(A\)](#).
- For employees that are working at a Material source or site of work other than the Project Site, refer to requirements in [Exhibit 19\(B\)](#).

The following employees are **not** covered by the required prevailing wage rates and are **not** to be reported on certified payrolls:

- Employees involved in the production and stockpiling of Material for use, or future use, on another Project, whether the production and stockpiling is all of or only part of the Project.
- Employees that are performing duties considered professional in nature (owners, managers, supervisors, surveyors, testing technicians, clerical staff, etc.) who spend 20% or less of their workweek performing duties which are manual or physical in nature.
- Truck drivers who are excluded from prevailing wage rates as discussed in [Exhibit 19\(A\)](#).
- Employees at sites of work or Material sources who are excluded from prevailing wage rates as discussed in [Exhibits 19\(B\)](#).
- Owner-operators of owner-operated trucks are not entitled to prevailing wages, and are not required to submit certified payrolls. As specified in 00170.65(e), owner-operators are required to submit substantiating documentation to prove their status as an owner-operator. The PM must perform “spot checks” on all owner-operators to confirm their status ([See Exhibit 19\(A\)](#)).

**(B) The Contractor:**

- Is responsible for the labor compliance of itself and all Subcontractors on the Project.

- Must ensure that each Subcontractor complies with the prevailing wage rates applicable on the Project.
- Must submit certified payrolls for their employees.
- Must review each Subcontractor's payroll for compliance and submit to the PM.
- Must withhold 25% of any amount earned by a Subcontractor if the Subcontractor does not turn in its certified payroll reports as required. See 00170.65(a) and ORS 279C.845.
- Is responsible for unpaid wages and fringe benefits owed to all employees on the Project. This means that the Contractor is also responsible to a Subcontractor's employees if a Subcontractor fails and/or refuses to properly pay its employees.

*On Design-Build projects, the Design-Builder's responsibilities for labor compliance for itself and its Subcontractors are no different than those listed above for the Contractor.*

**(C) The PM:**

- Is responsible for administering labor compliance, conducting wage interviews with employees, and reviewing and comparing certified payrolls and other documentation.
- Is responsible for comprehensive review of all certified payrolls for accuracy and completeness in accordance with the Agency's [Payroll Review Process](#) (See Exhibit 19(C)). This policy and the accompanying [Certified Payroll Checklist for Project Managers and Contractors](#) (See Exhibit 19(D)), can be found on the Office of Civil Rights (OCR) website at:  
<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>.
- Will take appropriate action to resolve known or alleged improper payments to employees.
- For any errors or deficiencies in wage and benefit payments found, require the Contractor to correct the error or deficiency and provide a revised or supplemental certified payroll to document the correction. To verify that the payment deficiency has been properly resolved, the PM will also require the Contractor to provide proof of payment to each affected employee for the supplemental payment. Proof of payment can take the form of a copy of a cancelled check, money order, or bank deposit slip; receipt for amount of the additional wages signed by the employee; or proof of mailing via certified or registered mail of the additional wages to the employee. Maintain this documentation within the certified payroll file to show that employees were properly paid.
- Must withhold money from the progress estimate payment for wages and benefits that have not been properly paid to an employee(s), if the Contractor does not rectify the situation in a timely manner.
- Must withhold 25% of any amount earned by the Contractor if the Prime Contractor does not turn in its certified payroll reports as required by 00170.65(a) and ORS 279C.845.

- Will bundle and send certified payroll packages to the Labor Compliance Officer (LCO) at the completion of the plant establishment period (if applicable), and at Project close out for final sign off. [*Refer to Chapter 37 – Submittal of Final Project Documentation*]

Certified payroll packages should be sent by traceable means (UPS, Certified Mail, etc.).

*The PM responsibilities for administering labor compliance and performing certified payroll reviews on Design-Build projects are no different than those listed above.*

#### **(D) ODOT Office of Civil Rights (OCR)**

All forms and posters required by OCR administered programs are available electronically and can be found on the OCR home page at:

<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>.

The OCR Civil Rights Specialist (CRS) will:

- When requested by the PM, attend the Pre-Construction Conference to address labor compliance and Affirmative Action programs.
- Periodically monitor labor compliance by conducting quarterly audits.
- Provide assistance to the PM with labor compliance issues.
- Identify training needs.

The OCR LCO will:

- Perform the final review and acceptance of Labor Compliance at the completion of the plant establishment period (if applicable), and at Project close out, and will send the required labor compliance documentation to the Construction Section. [*Refer to Chapter 37 – Submittal of Final Project Documentation*]
- Provide labor compliance training for PM, Consultant, and Contractor staff responsible for the review of certified payrolls.
- Provide technical program-level assistance to PMs, Consultants, and Contractors when requested.

### **19-3 RELEASE OF PUBLIC RECORDS**

The Fair Contracting Foundation, unions, or other organizations/persons may request to look at or obtain copies of certified payrolls or other records. Most of the Project records, including certified payrolls, are considered to be public records, and the PM should comply with the requests. Some information on the certified payrolls, however, should not be divulged such as social security numbers. In responding to such

requests, the policy set forth in ODOT Policy ADM 07-01, Records Management and the procedures set forth in the ODOT Records Manual shall be followed. Both are available on the ODOT Records Management website at:

<http://intranet.odot.state.or.us/ssb/bss/rmds/records.htm>

Other documents, such as those of an advisory nature within ODOT, may not be public records and should not be furnished. [*Refer to Chapter 12 - Project Records*]

## **19-4 WORK SCHEDULE**

Contractors must give employees their regular work schedule (days of the week and number of hours per day) in writing, before beginning Work on the Project, at the time of hire, whenever the work schedule is changed, or by posting the schedule in a prominent place accessible to all employees at the work site.

The Contractor's work schedule determines when an employee must be paid at the overtime rate for work performed. The Contractor can choose from the following allowed work schedules:

- Five days, eight hours per day (5-8s), Monday through Friday
- Four consecutive days, ten hours a day (4-10s), Monday through Thursday
- Four consecutive days, ten hours a day (4-10s), Tuesday through Friday

If the Contractor has a 4-10s work schedule and requires their employees to work on a fifth day, the work schedule for those employees for that week **reverts to a 5-8s schedule**, and overtime must be paid based on the reverted work schedule. (This is not considered a change in work schedule).

**Example:** Contractor has a work schedule of 4-10s, Monday-Thursday. Employees worked 10 hours each day. Employees also work for two (2) hours on Friday. The work schedule reverts to a 5-8's schedule, which results in two (2) hours of overtime each day Monday-Thursday, and no overtime on Friday.

This guideline is contained in the BOLI [Prevailing Wage Rate Law Handbook](#), which is available electronically on the BOLI website at:

[http://www.oregon.gov/BOLI/WHD/PWR/W\\_PWR\\_Pwrbk.shtml](http://www.oregon.gov/BOLI/WHD/PWR/W_PWR_Pwrbk.shtml)

If an employer questions this regulation, refer them to BOLI's Wage and Hour Division.

If the Contractor notifies their employees, and the PM, that the work schedule on the Project is 4-10's, yet the certified payrolls show consistent work hours on the fifth day, the Contractor is not adhering to the 4-10's work schedule. The PM must notify the

Contractor that they are considered to be on a 5-8's work schedule and must pay overtime based on the 5-8's work schedule.

The Contractor may elect to employ crews or individuals on different work schedules.

The Contractor may change its stated work schedule for the Project provided that the affected employees and the PM are notified of the change prior to its occurrence, and then only if the change in schedule is intended to be permanent for the remainder of the construction season. The work schedule cannot be changed back and forth to avoid overtime. A change in work shift (for example, day shift to night shift) is not considered a change in work schedule as long as the days worked is not changed.

If the Contractor is party to a collective bargaining agreement, they may have work schedule flexibility that supersedes state law. When this exemption is claimed, the Contractor must provide a copy of the agreement to the PM for verification and inclusion in the payroll file.

## **19-5 CERTIFIED PAYROLLS**

### **(A) Contractor Reporting Requirements**

On Projects specifying Davis-Bacon prevailing wage rates, the Contractor must submit weekly certified payrolls on a weekly basis. Each certified payroll must include the certification shown in Section V.2.d in form FHWA-1273, which is included in the Contract.

On Projects specifying BOLI prevailing wage rates, the Contractor must submit weekly certified payrolls no less than monthly. The PM must receive these certified payrolls no later than the 5th of each month.

The certified payrolls, including the BOLI prevailing wage rates, may be submitted on the form included in the BOLI prevailing wage rate document included in the Contract, or may be submitted in a similar format including similar information and the required certification.

The certified payroll form must correlate to the project's funding source:

- Federal Payroll Form WH-347 for federally-funded/Davis-Bacon projects, or
- BOLI Payroll Form WH-38 for state-funded/BOLI projects.

These forms are available electronically, and can be found on the Office of Civil Rights home page at <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>. However, the BOLI Payroll/Certified Statement Form WH-38 (Rev 12/06 or later) was specifically designed to meet all requirements of both Oregon prevailing wage law and the federal Davis-Bacon Act, and is strongly recommended for use on all Agency Contracts.

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Contractors are not required to use a specific form; however, the Contractor must provide all the required information and the certification statement verbiage must be identical to that of the recommended form, be signed, and submitted with the Contractor's certified payroll.

The certified payroll must contain the following information for all employees:

Name	
Address	Only required to be submitted once, unless changed
Last four digits of the employee's social security number	Only required to be submitted once, unless changed
Work classification and applicable group number, and/or apprenticeship percentage level	
Hours Worked	
Hourly rate of pay	
Hourly overtime rate of pay	
Gross amount earned including other prevailing wages and non-prevailing wages earned	
Deductions	
Hourly rate contributed to a bona fide fringe benefit party, program or plan	
Name of party, program or plan and type of benefit provided to a bona fide party, program or plan	Required on every payroll for projects where BOLI prevailing wage rates apply
Hourly rate of fringe benefits paid to employee as cash equivalent	
Net amount paid	

**Note:** Certified payrolls are Project-specific. This means that a certified payroll must show regular and overtime hours for one (1) Project only. If an employee worked on more than one (1) public works Project, that employee and time worked must be shown on a certified payroll for each Project.

Each certified payroll must have an original signature of a company official or agent who pays or supervises payment of persons employed on the Project.

Each certified payroll must state the disposition of the fringe benefits, whether they are paid to the employee or have been placed in a bona fide party, program, or plan.

The Contractor must ensure that certified payrolls are submitted for their own employees and all Subcontractors to the PM in a prompt and timely fashion.

If the Contractor fails to submit their payroll and certified statement forms as required, the PM must withhold 25% of any amount earned by the Contractor until the required payroll and certified statements have been submitted.

If a first-tier Subcontractor fails to submit its payroll and certified statement forms as required, the Contractor must withhold 25% of any amount earned by the Subcontractor until the required payroll and certified statements have been submitted.

### **(B) Review of Certified Payrolls by the PM**

The PM is responsible for reviewing the certified payrolls to ensure that all Contract labor requirements are fulfilled in accordance with the Agency's Certified Payroll Review policy.

The PM may use checklists or other methods to monitor and ensure that the Contractor is submitting accurate and complete certified payrolls on time for themselves and all Subcontractors. A Certified Payroll Checklist for PMs and Contractors can be found on the OCR Web site at <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>.

To minimize flipping back and forth between the Contract and the certified payrolls, the PM should consider developing a prevailing wage rate worksheet. An example worksheet is available on the OCR Web site at <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/>.

When certified payrolls contain an employee identified as an apprentice, the PM should request documentation from the Contractor to verify an individual's status as an apprentice (usually a dispatch slip).

Verify proper payment by comparing information on the certified payroll to the wages, zone pay, and benefits specified in the prevailing wage rate determination included in the Contract.

Certified payrolls should be compared to Employee Wage Interviews and Inspector Daily Records to identify possible inconsistencies in classification of employees and/or missing certified payrolls.

If the employer pays the fringe benefits to the employee, the payroll must show payment of an hourly amount no less than the sum of the base wage, zone pay (if applicable), and fringe benefits (at the appropriate straight time or overtime rates).

If a discrepancy in wages, zone pay, overtime, or fringe benefits is found, address it immediately to ensure that previous wages paid are corrected as well as all future payments. The PM must work with the Contractor to resolve all deficiencies.

The person reviewing each payroll should indicate the payroll items checked and should sign/initial and date each payroll reviewed.

Refer to Section 19-8 regarding the PMs Labor Compliance Certification which the PM is required complete and submit at the end of the plant establishment period (if applicable), and at the end of the Project.

### **(C) Base Wage and Zone Pay**

#### **1. Base Rate**

The Contractor must pay each employee, for each classification of work performed, especially if the employee is performing work in more than one classification, at the wage rate specified in the prevailing wage rate included in the Contract. See Section 19-5(e) below regarding reduced rates for apprentices and trainees.

#### **2. Zone Pay**

The Contractor must also pay zone pay as required by the prevailing wage rate included in the Contract. The PM must determine the correct zone pay. The PM should request assistance from the LCO if needed.

The method to determine zone pay usually differs between work classifications and between classification groups.

Zone is measured along existing roadways from the center of the Project to the nearest base point referenced in the wage determination for the work classification, except:

- If the wage for a work classification is based on work locales that may involve several counties in each locale (such as for electricians), and the Project includes work in more than one work locale, determine the correct zone rate for each work locale. Determine the proper zone by measuring from the nearest base point to the center of the Project located in that work locale. The Contractor must pay the proper wage and zone pay for the location that the work is done.
- If a project has a no-work zone of one (1) mile or more, and the Project involves multiple zone areas, determine the proper zone for each work area based on the distance from the center of each portion of the Project to the nearest base point. The Contractor must pay the zone pay appropriate for each work area.

For these situations, the Contractor may elect to pay either:

- The highest of all the zone rates for all Work on the Project, or
- The appropriate zone rate for Work performed in each zone

### **3. Total Base Wage**

For the purpose of calculating the wage rate for overtime, the “total base wage” is the base wage rate plus applicable zone pay. Overtime must be paid at the rate of 1.5 times the “total base wage.” Also refer to the discussion on overtime in Section 19-5(f) below.

#### **(D) Fringe Benefits**

The Contractor must pay fringe benefits to each employee, for all time the employee works, as specified in the prevailing wage rate included in the Contract.

For overtime, calculate the base wage at the time and a half rate before including the fringe benefit amounts.

The Contractor may pay fringe benefits as part of the paycheck or other pay for Work performed, or may put the fringe benefits into bona fide pension, health, insurance, vacation, or other appropriate programs.

Paying lodging expenses or per diem for travel is not a fringe benefit.

The Contractor may not reduce the wage or fringe benefit for any payment that the Contractor is required by federal, state, or local law to make, such as workers compensation, unemployment compensation, or social security contributions.

Each certified payroll must contain the hourly fringe benefit amount and must indicate whether the fringe benefits are paid to the employee or are being placed in appropriate programs. In addition, for those Projects subject to BOLI prevailing wage laws, the certified payroll must also contain name of the fringe benefit program.

If fringe benefits are not paid to the employee, the fringe benefit amounts must be paid irrevocably to a trustee or third party under a bona fide program, and the Contractor must make those payments regularly and not less often than quarterly. The PM may request the names and locations of the appropriate programs as necessary and each employee must be able to obtain that information.

#### **(E) Apprentices, Trainees, and Reduced Wages/Fringe Benefits**

Refer to *Chapter 18 - Affirmative Action Programs*, OJT/Apprenticeship section for additional information.

## **1. Apprentices**

Apprentices are registered with the BOLI Apprenticeship and Training Division. The Joint Apprenticeship & Training Committee (JATC) monitors their wages and level of apprenticeship.

The Contractor may pay reduced wages to apprentices as allowed by the applicable JATC.

The PM should request documentation from an employer to verify an individual's status as an apprentice (usually a dispatch slip).

## **2. Trainees**

Trainees are not registered with a JATC. Contractors must pay each trainee the prevailing wage rate for the Project.

## **(F) Overtime**

The Contractor must pay each employee at the proper overtime rate for all overtime worked.

ORS 279C.540 specifies overtime requirements for all Projects. There are only two (2) exceptions:

1. Employees covered under a Collective Bargaining Agreement when different overtime requirements are included in the appropriate Collective Bargaining Agreement. When this exception is claimed, the Contractor must provide a copy of the agreement to the PM for verification and inclusion in the payroll file.
2. Employees who work for Indian-owned businesses on Indian reservations (for those, overtime is specified in the federal Contract Work Hour & Safety Standards Act (CWHSSA), and must be paid for all work performed over 40 hours in a work week).

The Contractor must pay overtime when:

- Work is performed in excess of eight (8) hours in a day and 40 hours in a week when the work schedule is five consecutive days, Monday through Friday, or
- Work is performed in excess of 10 hours in a day and 40 hours in a week when the work is four consecutive days (either Monday-Thursday or Tuesday-Friday), and

- Work is performed on Saturday, and the legal holidays listed in ORS 279C.540 (Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day)

If an employee works on more than one project in a 24-hour period, the hours worked are cumulative, and the Contractor must pay overtime for work beyond eight (8) or ten hours per day, dependent upon their permanent work schedule, regardless of where the work was performed.

If the established 4-day work schedule is not followed due to weather, scheduling, or other circumstances, then that week's work schedule reverts to a 5-day work schedule, and overtime is owed for any hours worked over eight in any day during that week.

The Contractor may not "bank" overtime hours and then redeem them as straight time on other days. If the Contractor requires an employee to work beyond the established work schedule, it must pay the employee overtime for the additional time.

When an employee earns more than one (1) base rate of pay during the day, and overtime is owed, then the overtime must be paid based on either a weighted average of the hourly base rates earned, or all the overtime for that day must be paid at the highest rate worked.

## **19-6 EMPLOYEE WAGE INTERVIEWS**

The PM must periodically interview employees on Projects that include DBRA prevailing wage rates to help monitor labor compliance; however, they are recommended on Projects that include BOLI prevailing wage rates as well.

At least once each six (6) months, interview random employees of each Contractor that worked on the Project within that period. Record the information on [Employee Interview Report, form 734-3475](#) (See Exhibit 19(E)).

During the interview, ask each interviewed employee what classification of work the employee is performing and what the employee is being paid for that work. Each employee must receive proper pay for each classification of work performed. If an employee performs work in more than one classification such as laborer, carpenter, cement mason, ironworker, etc., the employee must be paid at the appropriate rates specified in the projects prevailing wage rate for the time worked in each classification for all straight time hours worked.

If an employee works in more than one classification, the PM or staff reviewing the certified payrolls should verify that the employee is paid under the appropriate classifications for work performed. The PM or Inspector should alert the person reviewing the certified payrolls about employees who work in more than one

classification and may also note that information on the Employee Interview Report when interviewing employees.

The PM or staff should also compare the certified payroll with information included on the Employee Interview Report and the work being performed by the employer, and mentally analyze whether the employer is paying the proper classification(s) for the work.

## **19-7 LABOR COMPLAINTS AND INVESTIGATIONS**

The PM may become aware of a wage or labor problem from many sources including:

- The employee wage interview process may identify possible improper pay to an employee.
- The employee may complain about improper payment. The employee may provide needed information on the [Prevailing Wage Complaint, form 734-2547](#).
- A representative of a union trade may complain about improper payment of employees. The representative may interview employees on the Project and may request copies of certified payrolls for the Project.
- The Fair Contracting Foundation, which also represents labor, may complain, similar to the union trade representative.

If the PM has reason to question whether an employee received adequate payment for work performed, the PM must take the action needed to resolve the issue and have the proper payments made. Contact the LCO or the CRS for assistance, if needed.

BOLI has authority, under ORS 652.230, to file a claim against the Contractor's bond for unpaid wages. That claim, however, must be filed within 180 Calendar Days after the person claiming the unpaid wages last worked on the Project. If the PM is aware of a claim for unpaid wages, and it is approaching 180 Calendar Days since that person last worked on the Project, contact the LCO.

If the Contractor failed to properly pay its employees and the Agency had to have BOLI pay the employee directly, the PM must address that in the required Prime Contractor Performance Evaluation. [*Refer to Chapter 34 - Contractor Performance Evaluation*]

## **19-8 PM'S LABOR COMPLIANCE CERTIFICATION (Form 734-1734)**

When the Contractor has completed all Work on the Project Site except for plant establishment work, or has completed all plant establishment work, and has submitted all associated payrolls, the PM must compile the following and submit to the LCO:

- Original, signed [PM's Labor Compliance Certification, form 734-1734](#) (See Exhibit 19(F)):
  - **Box #1** must be checked when all Work, with the exception of plant establishment, has been completed.
  - **Box #2** must be checked when all Work, including plant establishment, has been completed.  
**NOTE:** If there are no certified payrolls associated with the plant establishment work, the PM must provide an explanation why no labor was performed and include the following notation on the signed Labor Compliance Certification form: *"No Plant Establishment Payrolls"*.
- All certified payrolls. Each certified payroll should indicate the items that the PM or staff has checked.
- All original [Employee Interview Reports, form 734-3475](#).

If a Subcontractor has completed all of its Work on a Project and requests to have its retainage returned by the Contractor, the Contractor must submit a request for Early Release of Retainage to the PM. The PM must process the request according to the procedure outlined in *Chapter 37 – Submittal of Final Documentation*.



## PREVAILING WAGE FACT SHEET FOR TRUCK DRIVERS

Davis-Bacon and Related Acts  
U.S. Department of Labor Regulations 29 CFR Part 5.2(j)  
U. S. Department of Labor Davis-Bacon Resource Book 11/2002  
DBRA Compliance Principles  
Oregon Prevailing Wage Rate Law  
Oregon Bureau of Labor & Industries (BOLI)

### **Owner/Operators of trucks are never entitled to prevailing wages.**

As specified in 00170.65(e), for all Projects, prior to providing trucking services, owner/operators of trucks must submit the following information to the Contractor:

- Copy of driver's license
- Driver's name
- Vehicle identification number
- Copy of vehicle registration
- Motor vehicle license plate number
- Motor carrier plate number
- Copy of ODOT Motor Carrier A-1 Permit

Each owner/operator provided truck shall clearly display the name of the owner/operator on the side of the truck.

The Project Manager (PM) will perform "spot checks" on all owner-operators performing Work on the Project to validate their status as an owner-operator. Any truck driver not meeting the criteria of an owner-operator, must show up on the Contractor's certified payroll and be paid the prevailing wage rate.

The term "owner/operator" only applies to the owner/operator of a truck. Owner/operators of other types of equipment, such as bulldozers, scrapers, backhoes, cranes, drilling rigs, etc., must receive prevailing wage rates and comply with certified payroll requirements for all Work performed at the Project site.

### **Non-Owner/Operators of trucks are entitled to prevailing wages for:**

- Time spent transporting Materials or supplies between a facility that is deemed part of the Site of the Work and the actual construction site.
- Time spent transporting portion(s) of the building or Work between a site established specifically for the performance of the Contract or Project where a

significant portion of such building or Work is constructed and the physical place(s) where the building or work called for in the Contract(s) will remain.

- All time spent on the Site of the Work for performing Work other than truck driving (mechanic, laborer, etc.).
- Projects subject to Davis Bacon prevailing wage rates when:
  - Time spent on the Site of the Work loading and/or unloading Materials and supplies if such time is more than *de minimis* (15 minutes). Includes time spent waiting to load or unload, but not recognized lunch or other rest breaks. For the purpose of entitlement to prevailing wages, each trip stands alone and multiple trips on the same day are not combined (for example, 6 10-minute trips would not entitle the driver to 60 minutes of prevailing wages).
- For projects subject to BOLI prevailing wage rates when:
  - Time spent on the site of work loading and/or unloading Materials and supplies if such time equals 20% or more of their workweek. Includes time spent waiting to load or unload, but not recognized lunch or other rest breaks.

Site of the Work is defined as: “*where the actual construction takes place and will remain when completed as well as any adjacent or virtually adjacent site where a significant portion of the Work is being done, provided that such site is established specifically for the performance of the Contract or Project*”.

**Non-Owner-Operators of trucks are not entitled** to prevailing wages for:

- Time spent driving off the Site of the Work, such as at a commercial supply facility.
- Time spent driving between a Davis-Bacon job and a commercial supply facility while off the Site of the Work.
- Projects subject to Davis Bacon prevailing wage rates when:
  - *De minimis* time spent on the Site of the Work, such as less than 15 minutes spent on the Site of the Work merely to pick up or drop off Materials or supplies.
- For projects subject to BOLI prevailing wage rates when:
  - Time spent on the Site of the Work loading and/or unloading Materials and supplies equals less than 20% of their workweek.
- Time spent driving between prevailing wage rate projects, or between prevailing wage projects and private projects. (Truck drivers may be paid an agreed rate of pay for such activities).

## **“SITE OF THE WORK” FACT SHEET**

Site of the Work is limited to the physical place or places where the construction called for in the Contract will remain when Work on it has been completed, and other adjacent or nearby property used by the Contractor or Subcontractor in such construction which can be reasonably be said to be included in the Site of the Work.

Except as noted below, fabrication plants, mobile factories, batch plants, borrow plants, job headquarters, tool yards, and similar facilities are part of the Site of the Work provided they are dedicated exclusively, or nearly so, to the performance of the Contract or Project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities, which are established by a supplier of Materials for the Project after the opening of Bids, shall be deemed to be dedicated exclusively to the performance of the Contract or Project.

Not included in the Site of the Work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a Contractor whose locations and continuance in operation are determined wholly without regard to a particular Contract or Project.

In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial Supplier or materialman which are established by a supplier of Materials for the Project before opening of Bids and not on the Project Site, are not included in the Site of the Work. Such permanent, previously established facilities are not part of the Site of the Work, even when the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a Contract or Project.



## **Payroll Review Process**

### **The Contractor will:**

- Ensure all Subcontractors receive a copy of the Certified Payroll Checklist.
- Submit certified payrolls to the Project Manager for their employees and all Subcontractors:
  - Weekly for Federally funded Davis-Bacon projects.
  - Monthly by the 5<sup>th</sup> of each month for state-funded BOLI projects.
- Review all Subcontractor payrolls prior to submission to the ODOT Project Manager.
- Correct identified, unacceptable errors and resubmit revised payrolls within one (1) month to the Project Manager.
- Direct Subcontractors to correct identified unacceptable errors and resubmit revised payrolls within one (1) month to the Project Manager.

*[Refer to the ODOT Construction Manual, Chapter 19 - Labor Compliance]*

### **The Project Manager will review payrolls within one (1) month of submission by the Contractor for accuracy and completeness.**

- Ensure all prime Contractors receive a copy of the Certified Payroll Checklist.
- Review payrolls for accuracy and completeness:
  - Every item on the first payroll of every Contractor shall be reviewed thoroughly for accuracy and completeness.
  - A thorough review of each payroll will continue until acceptable payrolls are submitted.
- Once acceptable payrolls are being received, a monthly review will be performed on one (1) payroll for each Contractor working on the Project.
  - Every item on the payroll will be reviewed.
  - Recommend a different week be selected each month.
  - Payroll reviews can be spread out throughout the month to prevent workload conflicts.
- Payrolls with inaccurate, incomplete, or missing information that could affect pay and/or fringe benefits cannot be accepted, (Classification, group number, apprentice percentage, hours worked, fringe benefits information, rates of pay, overtime, deductions, etc.) and will be returned to the Contractor within one (1) month of submission for correction and resubmission.
- Contractors will be notified of errors that do not affect pay and/or fringe benefits and directed to correct on future payrolls.
- Payrolls without unacceptable errors will be considered accepted and not reopened for review without cause.

*[Reference 29 CFR 5.6 (a)(3) and 29 CFR 5.5 (a)(1)(i); ORS 279C.840); OAR 839-025-0035; and the ODOT Construction Manual, Chapter 19 – Labor Compliance]*

**The ODOT Office of Civil Rights (OCR) will perform quarterly audits of the payroll review process and provide technical assistance and training:**

- During routine visits to the Project Managers Offices, the Regional Civil Rights Specialists will:
  - Perform a quarterly audit of each office to ensure compliance and identify training needs.
  - Review one (1) weekly payroll of one (1) Contractor randomly selected from current projects.
  - Prepare an OCR Quarterly Audit Report during each visit and provide copies to the Project Manager and the Labor Compliance Officer.
  - Review previous audit reports to ensure corrective actions have been taken.
  - Provide technical assistance and identify training needs.
  
- The OCR Labor Compliance Officer will:
  - Assist in the quality assurance process.
  - Review Payroll Review Reports.
  - Provide detailed program technical expertise to ODOT staff and Contractors.
  - Make on-site visits to the Project Managers offices by invitation or when determined necessary.
  - Develop, coordinate, and provide training to Project Managers' staff and/or regions as needed.
  - Conduct investigations of Prevailing Wage Complaints.
  - Perform final sign-off of projects.

**The Agency will:**

- Include the Payroll Review Checklist in all Pre-construction Conference packets.
- Ensure that all Contractors have received a copy of the Payroll Review Checklist.

## Certified Payroll Checklist for Project Managers and Contractors

**Every Contractor and Subcontractor on a Prevailing Wage covered project must file certified payrolls with the contracting agency.**

- Certified payrolls are prepared and submitted to the Project Manager:
  - Weekly for Federally funded/Davis-Bacon projects.
  - Monthly by the 5<sup>th</sup> business day of each month for state-funded/BOLI projects.
- If the Contractor does not submit certified payrolls as required, the Project Manager must withhold 25% of the monthly progress estimate for the Contractor in addition to any other required retainage.
  - Once certified payrolls are submitted, the Project Manager is to pay the amounts withheld within 14 days.
- Subcontractors' certified payrolls are prepared and submitted to the Contractor for review and subsequent forwarding to the Project Manager.
  - Weekly for federally funded/Davis-Bacon projects.
  - Monthly by the 5<sup>th</sup> of each month for state-funded/BOLI projects.
- If a first-tier Subcontractor does not submit certified payrolls as required, the Contractor must withhold 25% of the monthly progress estimate for the Subcontractor in addition to any other required retainage.
  - Once certified payrolls are submitted, the Contractor is to pay amounts withheld within 14 days.

[Reference: FHWA 1273 V. 2.c.; 29 CFR 5.5(a)(3)(ii)(A); ORS 279.354; OAR 839-025-0010, and SB 477]

- Upon completion of the project, final payrolls will be submitted to the Office of Civil Rights (OCR) for final acceptance accompanied by a Labor Compliance Certification signed by the Project Manager.
  - Payrolls will only be re-opened for review by OCR for valid reasons (wage complaint or other evidence of possible problems).

[Refer to the ODOT Construction Manual, Chapter 19 - Labor Compliance]

## Required Elements of a Certified Payroll

**(Every payroll must contain all required elements unless noted otherwise)**

### 1. Name, Employee Identification Number for each Employee

- Full name on each payroll
- Address on the first payroll ONLY, and subsequent payrolls only if changes occur
- Employee identification number, which must include the last four digits of the employees Social Security number.

The Contractor and Subcontractor shall maintain the full social security number and current address of each covered worker, and must provide them to the Agency upon request.

[Reference: FHWA-1273 V.2. b.; 29 CFR 5.5(a)(3)(i); ORS 279.354(1); and OAR 839-025-0010 (1) & (2)]

### 2. Trade Classification and applicable group number on every payroll. Apprentices are to be identified by the classification apprenticed to and percentage level.

[Reference: FHWA-1273 V.2. b.; 29 CFR 5.5(a)(3)(i); ORS 279.354(1); and OAR 839-025-0010 (1) and (2)]

### 3. Day of the week and Corresponding Date on every payroll.

[Reference: FHWA-1273 V.2. b.; 29 CFR 5.5(a)(3)(i); ORS 279.354(1); and OAR 839-025-0010 (1) and (2)]

### 4. Number of straight time hours worked on this project only - each day on every payroll.

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

### 5. Number of overtime hours worked on this project only - each day on every payroll.

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

### 6. Total straight time hours worked during the week on this project only – on every payroll.

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

### 7. Total overtime hours worked during the week on this project only - on every payroll.

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

### 8. Base Hourly Rate of Pay on every payroll.

- Base Hourly Rate = base wage + zone pay + fringe benefits paid in cash.
- Base Hourly Rate paid must equal or exceed the combined amount stipulated in the applicable wage determination

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

### 9. Overtime Hourly Rate of Pay on every payroll.

- Overtime Hourly Rate = (1.5 times base rate, which includes zone pay) + fringe benefits paid in cash on federally-funded/Davis-Bacon projects.

[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]

**10. Hourly Fringe Benefit Amount paid as wages to employee on every payroll.**

- This is to be reported separately on State-funded/BOLI projects only. It is included in the Base Hourly Rate of Pay on federally-funded/Davis-Bacon projects.

*[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]*

**11. Gross Amount Earned during the week on this project.**

- In addition, federally-funded/Davis-Bacon projects require a separate amount be recorded for total gross wages earned on all other PWR and non-PWR projects worked during the week.

*[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]*

**12. Deductions (FICA, Fed, State, Etc) should be reflective of the specific project.**

- Any Deduction designated as “Other” will have an explanation at least on the first relevant payroll.

*[Reference FHWA 1273 IV 1.a., V 2.d.; 29 CFR 3.5, 3.6, 5.5(a)(3)(ii)(B)(2); ORS 279, 651]*

**13. Net Wages equal Gross Amount Earned minus deductions.**

*[Reference FHWA 1273 V.2b; 29 CFR 5.5(a)(3)(i); OAR 839-025-0010]*

**14. Hourly Amount of Fringe Benefits paid to a benefit plan, fund, or program.**

*[Reference the BOLI Prevailing Wage Rate Laws, Certified Payroll, Responsibilities of the Contractor, and Certified Payroll Form]*

**15. Name of Benefit Plan, Fund, or Program**

- The name of the Benefit Plan, Fund, or program, where fringe benefits are contributed must be listed on the first payroll the employee works and subsequent payrolls when changes occur. (State funded/BOLI related projects only)

*[Reference the BOLI Prevailing Wage Rate Laws, Certified Payroll, Responsibilities of the Contractor, and Certified Payroll Form]*

**16. Certification Page/Statement**

- Must be attached to every payroll
- Must be signed
- Note: If project contains federal funds, and the BOLI Payroll/Certified Statement Form WH-38 (Rev 12/06) is used, two signatures are required.
- Must correlate to the project’s funding source. (Federal Payroll Form WH-347 for Federally-funded/Davis-Bacon projects or BOLI Payroll Form WH-38 for State-funded/BOLI projects).
- BOLI Payroll/Certified Statement Form WH-38 (Rev 12/06) was specifically designed to meet all requirements of both Oregon prevailing wage law and the federal Davis-Bacon Act and is recommended.
- Contractors are not required to use a specific form; however the Contractor must provide all the required information and the certification statement must be signed and submitted with the Contractor’s payroll.

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- On all projects first published for bid on or after January 1, 2006, a statement identically duplicating the verbiage on the BOLI Payroll/Certified Statement Form WH-38 (Rev 12/06) is recommended.
- On Davis-Bacon projects first published for bid prior to January 1, 2006, a statement identically duplicating the verbiage on the Federal Certification statement form is acceptable.
- On state projects first published for bid prior to January 1, 2006, BOLI will accept the Federal Certification Page/Statement if the following words are added above the signature: "I have read this certified statement, know the contents thereof and it is true to my knowledge."

[Reference: FHWA 1273 IV 1. c.; 29 CFR 3.3 (b); 29 CFR 5.5 (a)(3)(ii)(B); ORS 279C.845); OAR 839, 025-0010; BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Certified Payroll, Certified Payroll Form]

## General Information & Common Problems

### 1. Prevailing Wage Rate Comparison:

- For all projects first published for bid on or after January 1, 2006 where federal funds are included, the Contractor shall compare the wage rate and fringe benefits of each classification of employee, to both the Oregon (BOLI) and Davis-Bacon prevailing wages and pay the higher of the two.

[Reference: Oregon Standard Specifications 00170.65(b); ORS 279C.838; OAR 839-025-0035(1); and BOLI Prevailing Wage Rate Laws - Contractor Responsibilities, Payment of Prevailing Wages]

### 2. Overtime:

- All federally-funded/Davis-Bacon and state-funded/BOLI projects are subject to the State of Oregon overtime regulations. Only two exceptions exist:
  - 1) Employees covered under a Collective Bargaining Agreement that contains overtime requirements. The Collective Bargaining Agreement provisions shall apply and a copy of the agreement must accompany the payrolls.
  - 2) Employees who work for Indian-owned business on Indian Reservations. Overtime is paid for all hours worked over 40 in a work week.

[Reference: Oregon Standard Specifications 00170.65(b); FHWA 1273 IV. 1.c.; ORS 279.316; ORS 279C.540; BOLI Prevailing Wage Rate Laws - What Projects Are Covered by PWR Laws?, No Joint Jurisdiction with Federal Government]

- Overtime is calculated at (1 1/2 times base hourly rate) + fringe benefits paid in cash. (Base Hourly Rate = base wage + applicable zone pay.)
- Overtime is paid for all weekends, Sundays, and designated holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). BOLI defines the weekend as: 12:01 a.m. Saturday through 11:59 p.m. Sunday.

[Reference: ORS 279C.540, OAR 839-025-0050 and OAR 839-025-0004 (12)]

- Overtime is due for all hours over 8 in a work day when working a 5-8 schedule
- Overtime is due for all hours over 10 in a work day when working a 4-10 schedule
- Overtime is due for all hours over 40 in a work week.
- When an employee working a 4-10 schedule works a 5<sup>th</sup> week day, that employee's work schedule for that entire week reverts to a 5-8 schedule. Accordingly any hours worked by that employee over 8 in a work day during that week are due overtime wages. This may happen occasionally but repeated occurrences could lead to a permanent change to a 5-8 schedule.
- If an employee earns more than one base rate of pay for the day/week, then the daily/weekly overtime owed, in addition to the regular straight time wages, is based on the highest hourly base rate earned or a weighted average of all hourly base rates earned.

[Reference: Oregon Standard Specifications 00170.65; ORS 279C.540; OAR 839-025-0050(2)(a); OAR 839-025-0004(2), OAR 839-025-0034; BOLI's Prevailing Wage Rate Laws - Responsibilities of the Contractor, Overtime. and BOLI Prevailing Wage Rate Laws Appendix D]

### 3. Work Schedules:

BOLI defines work schedule to be one of three choices:

- 5-8 hour days Monday through Friday

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- 4-10 hour days Monday through Thursday
- 4-10 hour days Tuesday through Friday

[Reference: ORS 279C.540); OAR 839-025-0050 and OAR 839-025-0034; BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Overtime]

- BOLI requires that schedule changes be intended as permanent (or seasonally permanent). One work schedule change per construction season is acceptable.
- OAR 839-025-0034; BOLI Prevailing Wage Rate Laws, Appendix F, Establishing a Work Schedule, (4).
- BOLI allows an individual to have an independent schedule (this requires appropriate written notification of schedule change and posting of schedules).

[Reference: ORS 279C.540); OAR 839-025-0050 and OAR 839-025-0034; BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Overtime]

**4. Correlate the Worker Classification and Day on the Work Site with the Employee Interview (Project Manager Only)**

[Reference 29 CFR 5.6 (a)(3) and 29 CFR 5.5 (a)(1)(i); ORS 279C.840); OAR 839-025-0035; The ODOT Construction Manual, Chapter 19 - Labor Compliance].

**5. Is the appropriate apprentice to journey level ratio being adhered to and are the appropriate apprentice wages being paid?**

[FHWA-1273 IV 4.; 29 5.2 (n)(1); 29 5.5 (a)(4); 29 CFR (a) (4)(i); OAR 839-025-0035(8) and (9); OAR 839-025-0060; OAR 839-025-0065; BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Apprentices and Trainees]

**6. Owner/Operator Classification/Designation only applies to Trucking Contractors.**

[Reference: Oregon Standard Specifications 00170.65(e); USDOL Davis-Bacon Resource Book, DBRA Compliance Principles, Page 7; BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Owners, Managers, and Supervisors]

**7. Owners of non-trucking companies, managers, and supervisors working more than 20% of a 40 hour work week performing direct labor or working in a trade must be paid at least the prevailing wage rates and benefits for the classification and group number of the trade in which they are working and must be included on the certified payroll.**

[Reference: 29 CFR 5.2 (m); USDOL Davis-Bacon Resource Book, DBRA Compliance Principles, Page 3; OAR 839-025-0035(2), (3)and (5); BOLI Prevailing Wage Rate Laws, Responsibilities of the Contractor, Owners, Managers, and Supervisors]



# EMPLOYEE INTERVIEW REPORT

(Wage Compliance on Federal-Aid Projects)

PROJECT NAME CONSTRUCTION MANUAL FORM EXAMPLE	CONTRACT NO. C12345
CONTRACTOR OR SUBCONTRACTOR Subcontractor - Excavation Specialists	F.A. NO. X-STP-S001(2)
INTERVIEWER Phil Dirt	INTERVIEW DATE June 11, 2009

EMPLOYEE NAME	WORK CLASSIFICATION	HOURLY WAGE RATES			CURRENT DUTIES AND REMARKS
		STATED BY EMPLOYEE	FROM CONTRACTOR PAYROLL	FROM WAGE DETERMINATION SCHEDULE	
Jerry Jones	Truck Driver, Group 1	\$26.40	\$26.40 + Fringe	\$26.40 + \$11.91	Drives water truck and dump truck
Pat Smith	Truck Driver, Group 3	\$27.00	\$27.10 + Fringe	\$26.65 + \$11.91	Drives dump truck, over 10 cyd
BJ Johnson	Laborer, Group 1	\$24.25	\$24.25 + Fringe	\$23.12 + \$11.07	Stake Chaser
Sandy Shores	Operator, Group 3	\$33.00	\$33.15 + Fringe	\$32.62 + \$10.25	Loader Operator

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