

***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. DBRA prevailing wage rates are required on all on-system projects which are federally 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 which are not subject to DBRA prevailing wage rates, or both DBRA and BOLI prevailing wage rates.

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.

*** All Marked Text Updated October, 2010**

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

All public works projects which were first advertised for bid on or after January 1, 2006 and which contain DBRA prevailing wage rates 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 Section 19-9: Prevailing Wage Fact Sheet for Truck Drivers.
- For employees that are working at a Material source or site of work other than the Project Site, refer to requirements in Section 19-10: "Site of the Work" Fact Sheet.

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

- 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 Section 19-9: Prevailing Wage Fact Sheet for Truck Drivers.
- Employees at sites of work or Material sources who are excluded from prevailing wage rates as discussed in Section 19-10: "Site of the Work" Fact Sheet.
- 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 Section 19-9).

(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. This process and the accompanying Certified Payroll Checklist for Project Managers and Contractors, 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 may also require the Contractor to provide proof of payment to each affected employee for the supplemental payment.
- The Agency does not typically require proof of payment to resolve errors or deficiencies on certified payrolls. However, when an investigation conducted by the Agency to resolve a prevailing wage complaint determines that employees are owed additional wages and/or fringe benefits, proof of payment **is required**. Proof of payment can be in 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. This information must be maintained with the certified payrolls showing 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 contact the applicable OCR Field Coordinator at project closeout and at the completion of the plant establishment period (if applicable), for final review and acceptance of the labor compliance documentation in accordance with the Agency's Labor Compliance Expectations policy, which can be found on the OCR website at:

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

[Refer to [Chapter 37 – Submittal of Final Project Documentation](#)]

If labor compliance documents are sent to the OCR Field Coordinator for review, the documents must 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 Field Coordinator 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 in the PM's office. *Having the PM's send the documents to the Field Coordinator for review is highly discouraged!*
- Provide assistance to the PM with labor compliance issues.
- Identify training needs.
- Perform the final review and acceptance of Labor Compliance in the PM's office at the completion of the Project and at completion of the plant establishment period (if applicable) in accordance with the agency's Labor Compliance Expectations policy which can be found on the OCR website at:

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

The OCR Labor Compliance Officer (LCO) will:

- Provide program-level technical expertise to PM staff and Contractors.
- Make on-site visits to PM offices as scheduled or required.
- Develop, coordinate and provide training to PM and Contractors staff individually and regionally as scheduled or required.
- Conduct investigations of prevailing wage complaints.
- Perform random audits on the total labor program for overall compliance.

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 procedures set forth in the ODOT Records Manual shall be followed. The Manual is 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

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 or federally-funded/Davis-Bacon projects.

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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/forms.shtml>. 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.

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, on the first payroll on which the employee appears
The employees full social security number (for projects first advertised for bid prior to January 18, 2009), or the last four digits of the employee's social security number (for projects first advertised for bid on or after January 18, 2009).	Only required to be submitted once, on the first payroll on which the employee appears, for projects where Davis-Bacon wage rates apply.
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/labor/labor.shtml>.

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/labor/labor.shtml>.

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 normally 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](#):

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 EMPLOYEE INTERVIEW REPORT <small>(Wage Compliance on Federal-Aid Projects)</small>		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 CONTRACT OR 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

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.
- 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.
- Prevailing wage complaints can be filed with the Project Inspector, the PM, or the Labor Compliance Program Manager by using the Prevailing Wage Complaint, form 734-2547, which can be found on the OCR website at:

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

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.

When the Agency conducts an investigation to resolve a prevailing wage complaint and it is determined that employees are owed additional wages and/or fringe benefits, proof of payment **is required**. Proof of payment can be in 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. This information must be maintained with the certified payrolls showing that employees were properly paid.

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](#)]

When a formal prevailing wage complaint is filed with the Agency, final labor cannot be accepted and retainage cannot be released until the complaint is resolved.

When a formal prevailing wage complaint is filed with BOLI or any other enforcement agency, retainage may be released and final labor may be accepted by the Agency unless the investigating agency requests the retainage be held.

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 will coordinate with the OCR Field Coordinator for a final review and acceptance of the labor compliance documentation. The final review should take place in the PM's office. Upon final acceptance of the labor compliance documentation by the OCR Field Coordinator, the [PM's Labor Compliance Certification, form 734-1734](#) will be filled out by the PM, and signed by both the PM and OCR Field Coordinator.

The Labor Compliance Certification needs to be marked as follows:

- **Box #1** must be checked when all Work, with the exception of plant establishment, has been completed, or
- **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"*.

The PM will submit the following labor compliance documentation, in separate pads, with the final Project quality and quantity documentation to CAU:

- Contractor and Subcontractor Payrolls and Wage Certification Statements. Each payroll should indicate the items that were checked by the PM or staff.
- Original Employee Interview Reports
- Either the original, or copy of the PM Labor Compliance Certification form, determined as follows:

If the Project does not have plant establishment (PE) work:

- 1) If the Project quality and quantity documentation has not yet been submitted to CAU, the PM will forward the original, signed Labor Compliance Certification form to the CAU, but the actual labor compliance documentation will remain in the PM's office until submittal of the final Project quality and quantity documentation. A copy of the Labor Compliance

Certification form is retained in the PM office with the labor compliance documentation and submitted with the final Project documentation. Do not hold up submittal of the final quality and quantity documentation while waiting for acceptance of the labor compliance documents! Submit all documents as a complete package only if the labor compliance is accepted before the quality and quantity documentation is ready for submittal.

- 2) If the quality and quantity documentation has already been submitted, the PM will submit the original Labor Compliance Certification form and labor compliance documents to CAU as a separate package.

If the Project has plant establishment (PE) work:

- 1) If the quality and quantity documentation has not yet been submitted to CAU, the PM will submit the Labor Compliance Certification form as directed in 1) above for the main Project labor compliance documentation. The main Project labor compliance includes all certified payrolls with the exception of PE payrolls. At the completion of the PE period, the PM will submit to CAU a separate, original, signed Labor Compliance Certification form for the PE payrolls and will file a copy with the PE payrolls. The PE payrolls will then be added to the main Project labor compliance documents and submitted with the final Project documentation.
- 2) If the quality and quantity documentation has already been submitted, the PM will submit to CAU a separate, original, signed Labor Compliance form, along with the PE certified payrolls, upon completion of the PE work.

19-9 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.
- All Projects subject to 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.
- 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).

19-10 “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.