

***CHAPTER 19 – LABOR COMPLIANCE**

19-1 GENERAL

Contractors' employees working on public works construction Projects, whose duties are manual or physical in nature, must be paid at least the applicable prevailing wage rates (hourly base wage rate plus hourly fringe benefits) specified in the Contract for the trade classification of Work they are performing.

When a Project is covered under the State's Bureau of Labor and Industries (BOLI) Prevailing Wage Rate (PWR) law and uses federal funds, the Project will be subject to both the state PWR law and the federal Davis-Bacon and Related Acts (DBRA) at the same time. Even if the Project is funded solely with federal funds, the Project is subject to both State PWR and federal requirements.

For Projects subject to both State and federal prevailing wage rate laws, BOLI will follow federal guidance for the definition of "Site of the Work" and to determine when prevailing wages are due to material delivery personnel.

The Project Manager (PM) monitors labor compliance on Agency Projects subject to prevailing wage rate law (DBRA and/or BOLI PWR law). For guidance and determinations relating to "Site of the Work" and material delivery personnel contact ODOT's Labor Compliance Officer (LCO). For consultant managed Projects, contact ODOT's Consultant Project Manager (CPM) or Local Agency Liaison (LAL) for assistance.

19-2 PREVAILING WAGE RATE LAWS and GOVERNANCE

(a) Federal Davis Bacon and Related Acts (DBRA) and the State's Bureau of Labor and Industries Prevailing Wage Rate (BOLI PWR) Law

1. Covered Work and Wage Rate Determinations

The U.S. Department of Labor (US-DOL) periodically conducts wage surveys to determine prevailing wages as required by the DBRA and Code of Federal Regulations (CFR 29 Labor).

BOLI conducts annual surveys to determine prevailing wages consistent with Oregon Revised Statutes (ORS 279C) and Oregon Administrative Rules governing BOLI and public works contracting.

* All Marked Text Updated August 2016

All federally funded Projects on the National Highway System are covered by DBRA and prevailing wage rates must be paid to Contractor's employees performing duties that are manual or physical in nature on the Project worksite. DBRA prevailing wage rates may not apply to Federal Aid Projects that are off the National Highway System or to Projects that are totally funded with State dollars. These Projects are covered by BOLI PWR law and the appropriate wage rate determination is specified in the Contract.

For Projects subject to both State PWR and federal regulations, Contractors and Subcontractors must pay the higher (hourly base wage rate plus hourly fringe benefit) of either the DBRA or the BOLI wage rate determination for the trade classification of Work being performed.

Effective January 1, 2011, a public agency may use a single date to establish both the State prevailing wage rate and the applicable federal prevailing wage rate for Contracts subject to both BOLI PWR law and the Davis-Bacon Act. The applicable wage rate determinations are specified in the Contract.

A wage estimating tool is available to assist in establishing the correct prevailing wage, fringe, and zone pay rates and for use when reviewing certified payroll reports. Wage information can be found by Contract number in ODOT's Electronic Contract Files at: [\\scdata2\oper\ContractElectronicFiles](#)

For consultant managed Projects, contact ODOT's Consultant Project Manager or Local Agency Liaison for assistance.

2. Potential Wage and Hour Violations

The public contracting Agency is responsible for investigating wage and hour related claims and potential violations for Projects covered by both DBRA and BOLI PWR law. If the PM's office becomes aware of a potential violation, contact should be made to the Contractor to validate information and attempt to correct any wage and hour related issues. Written correspondence to the Contractor is recommended, with copies to ODOT's Labor Compliance Officer and the Project file. If a remedy is not achieved at this level, the issue is escalated to the LCO.

BOLI is responsible for enforcement of the State's PWR law. If violations are found BOLI has authority, under ORS 652.230, to file a claim against the Contractor's bond for wages owed employees.

During an investigation, BOLI will request information from the contracting Agency including certified payroll reports, the Contractor's Surety and bond information, and the Inspector's Daily records to begin the BOLI investigation. The PM should provide this information to BOLI promptly. ODOT's LCO is the primary point of contact for

BOLI and US-DOL inquiries, investigations, and coordinates requests for Project records with the PM's office.

19-3 ROLES AND RESPONSIBILITIES

Contractor's and Subcontractor's employees performing manual or physical labor on a prevailing wage covered Project must be paid prevailing wages for the trade Work they are performing as specified in the Contract. If employees are paid a prevailing wage Contractors and all Subcontractors must submit certified payroll reports (Forms [WH-38](#), [WH-347](#), or any form with identical wording and information) including the signed certification/statement of compliance page.

The PM monitors labor compliance over the course of the Project and approves final labor compliance acceptance at Project completion.

This Section is divided into three parts based on the roles and responsibilities of the Contractor, PM and the LCO.

(a) The Contractor

1. Required Postings

Each Contractor is required to post all of the following documents in an accessible place at the Project Site:

- US-DOL WH-1321 Poster "Employee Rights Under the Davis-Bacon Act".
- Prevailing wage rates (hourly base wage rate plus hourly fringe benefits), and applicable zone pay...
- Information on fringe benefit plans or program details, and how to access those benefits.
- A regular Work schedule (Days of the week and number of hours per Day).
- Prevailing Wage Complaint link to BOLI's website listed below.

All forms and posters required are available electronically and can be found at:

www.wagehour.dol.gov

www.oregon.gov/BOLI

2. Work Schedule

Contractors must give employees and the PM a regular Work week schedule (Days of the week) and Work shift hours (beginning and ending hours per Day) in writing before beginning Work on the Project. If a Contractor fails to give written notice of

the employee's schedule then the Work schedule is presumed to be a 5-Day, 8-hours per Day Work schedule.

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

If the Contractor has a 4-10 Work schedule and requires its employees to Work on a fifth Day, the Work schedule for those employees for that week **reverts to a 5 day 8 hours per day work schedule**, and overtime must be paid based on the 5 day Work schedule. This is not considered a change in the regular Work schedule.

Example: The Contractor has a Work schedule of 4-10s, Monday-Thursday. Employees worked 10 hours each Day. Employees also Work for two hours on Friday. The Work schedule reverts to a 5 day 8 hour per day schedule, resulting in two hours of overtime due each Day Monday-Thursday, and no overtime on Friday.

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

The Work schedule cannot be changed back and forth to avoid paying 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 of the week worked are not changed.

Note: If a trade union's collective bargaining agreement (CBA) applies and has different overtime provisions, the provisions in the bargaining agreement will take precedence over both state and federal PWR law governing overtime.

3. Classification

The Contractor must pay each employee for the trade classification of Work the employee is performing.

If the employee is working in more than one trade classification the Contractor may elect to pay either:

- The prevailing wage rate for the hours worked per each classification, or
- The higher of the two classification wage rates for the total hours worked.

4. Total Base Wage Rate

The “total base wage” is the base wage rate plus applicable fringe benefits, either paid as cash to the employee or into a program or plan. Overtime must be paid at the rate of one and one half times the hourly base rate plus applicable zone pay or

$$((\text{hourly base rate} + \text{hourly zone pay}) \times 1.5) + \text{hourly fringe rate.}$$

5. Fringe Benefits

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

The Contractor may pay fringe benefits as cash to the employee for time worked 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 considered a fringe benefit.

For overtime calculations the base wage rate is used at one and one half times without fringe benefit amounts included. If fringe benefits are paid as cash to the employee, when the amount of fringe is removed from the wage rate, the wage rate used for overtime calculations must be at least equal to the prevailing wage rate specified on the wage determination for that trade classification.

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).

6. Zone Pay

The Contractor must pay zone pay as required in the Contract.

Zone pay is typically measured from the mid-point of the Project to the nearest base point referenced in the wage rate determination for the trade classification.

If the employee is working in multiple zones the Contractor may elect to pay either:

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

7. Overtime

The Contractor must pay each employee at the proper overtime rate for all overtime worked. ORS 279C.540 specifies overtime requirements for all public works Projects. There are only two exceptions:

- If a trade union's collective bargaining agreement (CBA) applies and has different overtime provisions, the provisions in the bargaining agreement will take precedence over both state and federal PWR law governing overtime.
- For employees who work for Indian-owned businesses on Indian reservations, 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 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 Saturdays, Sundays, six legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day).

If the established four Day Work schedule is not followed due to weather, scheduling, or other circumstances then that week's Work schedule reverts to a five Day Work schedule, and overtime is owed for any hours worked over eight in any Day during that week.

When an employee works in more than one trade classification and earns more than one base rate of pay during the Day, and overtime is owed, then the overtime must be calculated and 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.

8. Monitoring Labor Compliance

The Contractor monitors labor compliance for itself and all of its Subcontractors by:

- Reviewing Subcontractor's certified payroll reports for errors or potential wage and hour concerns or violations. Address all concerns to the Subcontractors promptly.

- Withholding 25% of any amount earned by a Subcontractor if the Subcontractor does not submit, does not submit timely, or does not provide corrected or revised certified payroll reports as required in 00170.65(a) and ORS 279C.845.
- If a Subcontractor does not pay the proper wages, fringe benefits, zone pay, or overtime owed, the Contractor is obligated and responsible to pay a Subcontractor's employees if a Subcontractor fails and/or refuses to properly pay its employees.

Note: For Design-Build Projects subject to the DBRA and/or BOLI PWR law, the Contractor and all Subcontractors are required to provide the same documents and meet the same requirements for labor compliance as described above.

(b) Project Manager (PM)

The PM monitors labor compliance over the course of the Project, and approves final acceptance of labor at Project completion.

The PM reviews and compares certified payroll reports to verify base wage rates, fringe benefits, zone pay, and overtime calculations are being paid and reported correctly. Any errors or concerns should be addressed with the Contractor promptly for correction or revision.

The PM is responsible to:

- Conduct employee wage interviews, typically every six months, with the Contractor's and Subcontractor's employees to validate wages paid, fringe benefits, proper classification of Work, and overtime paid on federal aid Projects covered by DBRA (CFR 29 Labor).
- Review and compare certified payroll reports with Inspector Daily reports and Employee Interview reports to check the classification of Work being performed, wages paid, and Subcontractors working on-site to anticipate certified payroll reports that are required.
- If errors or deficiencies are found in reviewing certified payroll reports, require the Contractor to correct the error and submit a revised or supplemental certified payroll report with corrections made including a new signed certification/statement of compliance page.
- If Contractor's employees are due additional wages and/or fringe benefits, zone pay, or overtime pay, proof of payment to the employee is required to validate the correct wages have been paid. A copy of a cancelled check, money order, or bank deposit slip will provide adequate proof the error has been corrected and the employee has been paid properly.

Retain the original submitted certified payroll report, the corrected/revised certified payroll report, proof of employee payment, and any other wage related correspondence in the Project files.

- Withhold 25% of any amount earned by the Contractor if the Contractor does not submit, doesn't submit timely, or doesn't provide corrected or revised certified payroll reports as required by 00170.65(a) and ORS 279C.845.
- Submit all certified payroll reports for the Contractor and Subcontractor(s), Employee Interview Reports, and related wage and hour documentation, and the [Project Manager's Labor Compliance Certification, form 734-1734](#) for final labor compliance documentation. Refer to [Chapter 37 – Submittal of Final Project Documentation](#).

For Design-Build Projects subject to the DBRA and/or BOLI PWR law, the PM responsibilities for monitoring labor compliance and performing certified payroll review are the same as described above.

(c) Labor Compliance Officer (LCO) – Contract Administration

The Labor Compliance Officer (LCO) is responsible to:

- Attend Pre-Construction Conferences to address labor compliance requirements as requested by the PM's office.
- Monitor labor compliance by reviewing payroll reports, employee interview reports, and inspector daily logs in the PM's office, local agency Project offices, and consulting firms for consultant managed Projects.
- Provide program-level technical expertise to PM staff and Contractors.
- Identify and provide training as scheduled or requested.
- Conduct investigations of wage and hour related complaints.
- Track complaints and remedies for trending and training opportunities.
- Perform random audits on the total labor program for overall compliance.
- Primary point of contact for BOLI and US-DOL.
- Technical resource to ODOT staff and industry partners.

19-4 CERTIFIED PAYROLL REPORTS

(a) Contractor Reporting Requirements

On Federal Aid Projects, Contractors and Subcontractors must pay the higher of either the Davis-Bacon Act or the BOLI prevailing wage rates for the type of Work being performed. The Contractor must submit certified payroll reports to the PM office on a weekly basis.

On State funded Projects the Contractor must pay the appropriate BOLI prevailing wage rate specified in the Contract and submit weekly certified payrolls once a month by the 5th of the month.

For both State funded and Federal Aid Projects, each payroll must include a certified statement/statement of compliance using either of the following forms or any form developed with the identical wording on the certification/compliance statement.

- Federal Payroll Form [WH-347](#) for federal funded/Davis-Bacon Projects, or
- BOLI Payroll Form [WH-38](#) for State funded/BOLI Projects and/or federal funded/Davis-Bacon Projects.

Each certified payroll must have:

- A signature of a company official or agent who pays wages or supervises payment of wages to workers employed on the Project on the certification/compliance page.

- Name, address, and an employee's identification number (this may be the last four digits of the employee's social security number).
- Trade classification of Work, group number when applicable, 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 of fringe benefits contributed to a bona fide fringe benefit party, program or plan.
- Name of party, program or plan and type of fringe benefit provided.
- Hourly rate of fringe benefits paid to employee as cash equivalent.
- Net amount paid.

Note: Certified payrolls are Project-specific. A certified payroll report must show regular and overtime hours for one project only. If an employee works on multiple projects each project will require a separate certified payroll report.

Certified Payroll Reports must be returned to the Contractor for revision if they include employees' full Social Security numbers. (Report only the last four digits or some type of employee identifier).

(b) PM Review of Certified Payroll Reports

The PM is responsible to review the Certified Payroll Reports to verify all the required information has been submitted and the Statement of Compliance/Certification has been signed.

Return any Certified Payroll Reports to the Contractor for revision if they include employees' full Social Security numbers.

- Check proper wage payment by comparing information on the certified payroll reports to the base wage, fringe contribution, and zone pay from the appropriate wage rate determination or wage estimating tool.
Check that benefit plans are specified on the certified payroll reports or specified as fringe paid as cash to the employee.
- Address any wage and hour discrepancies with the Contractor promptly.
- Request corrected certified payroll reports and proof of payment if wages are owed.
- Compare certified payroll reports to Employee Interview reports and Inspector Daily records to identify errors or inconsistencies in the trade classification(s) of Work.

(c) Apprentices and Trainees

Refer to [Chapter 18 – Workforce and Small Business Equity Programs](#), OJT/ Apprenticeship section for additional information.

(d) Apprentices

Apprentices are registered with the BOLI Apprenticeship and Training Division. The Joint Apprenticeship & Training Committee (JATC) monitors the 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.

(e) Trainees

Trainees are not registered with a JATC. Contractors must pay each trainee performing manual labor on the Project Site the appropriate prevailing wage for the type of work performed.

19-5 EMPLOYEE INTERVIEW REPORTS (Form 734-3475)

Employee wage interviews are required on Projects covered by DBRA (CFR 29 Labor) and are intended as a cross check to verify the trade classification of Work the employee is performing and wage rate being paid for that Work.

At least once every six months the PM's office will interview random employees of each Contractor that worked on the Project within that period of time. Record the information on the [Employee Interview Report, form 734-3475](#).

If an employee works in more than one trade classification, the PM or staff reviewing the certified payrolls should verify that the employee is paid under the appropriate trade classifications for Work performed. The PM or Inspector should inform staff reviewing the certified payrolls about employees who Work in more than one occupational classification and should be noted on the Employee Interview Report when interviewing employees.

19-6 LABOR COMPLAINTS AND INVESTIGATIONS

Wage and hour related issues may be identified through:

- Certified payroll report review and monitoring.
- Employee wage interviews.
- Employee complaints.
- A trade union representative, union or labor advocate (e.g., Fair Contracting Foundation).
- A formal filed complaint either to the PM, LCO or to BOLI..

The PM is considered the first level of review and response for issues relating to wage and hour concerns, complaints, and potential violations. If labor related issues cannot be resolved at the PM level, the PM escalates the issue to the LCO.

When the contracting 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, 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 is maintained with the corrected certified payrolls showing that employees were properly paid.

If the Contractor failed to properly pay its employees and the Agency had to request that BOLI pay the employee directly (through the Contractor's payment bond), the PM should document this in the required Contractor Performance Evaluation. *Refer to [Chapter 34 - Contractor Performance Evaluation](#).*

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.

19-7 PM'S LABOR COMPLIANCE CERTIFICATION ([Form 734-1734](#))

When the Contractor has completed all Work on the Project Site and has submitted all final certified payrolls, the PM will prepare the payroll documentation for semi-final. Once the PM determines the final payroll documentation is complete, the PM will accept the labor compliance documentation.

If the Project has an Establishment Period (planting or seeding), the PM will review the remaining payrolls associated with this Work. Once the PM determines that the payroll documentation is complete, the PM will accept the remaining labor compliance documentation.

Upon final acceptance of the labor compliance, the [Project Manager's Labor Compliance Certification, form 734-1734](#) is prepared by the PM office, and signed by the PM.

NOTE: If there are no certified payrolls associated with the Establishment Period Work, the PM should include the following notation on the signed Labor Compliance Certification form: *"No Establishment Period Payrolls"*.

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

- Contractor and Subcontractor Certified Payroll Reports including signed Statements/Certification of Compliance.
- Original Employee Interview Reports.
- Either the original or copy of the PM Labor Compliance Certification form.

The PM includes the labor compliance documentation along with quantity and quality documents according to the procedure outlined in [Chapter 37 – Submittal of Final Documentation](#).

19-8 RELEASE OF PUBLIC RECORDS

Any person may request to look at or obtain copies of certified payrolls or other records on public works Projects. Most Project records, including certified payrolls, are considered public records. Full social security numbers should not be listed on the certified payroll reports, if they are this information is considered sensitive and must be redacted before the certified payroll record(s) will be released.

The procedures set forth in the [ODOT Records Manual](#) for responding to Public Records Requests shall be followed for public records requests for certified payroll reports and the release of these records.

Requests for labor related documents made by other government agencies should be sent to ODOT's Labor Compliance Officer (LCO) for response and tracking.

19-9 PREVAILING WAGE FOR TRUCK DRIVERS

(a) Owner-Operators

The term "owner/operator" only applies to the owner/operator of a truck. An owner/operator of a truck is not entitled to prevailing wages. For all Projects, an owner/operator of a truck must, prior to providing trucking services, comply with the requirements of 00170.65(4).

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.

The PM will perform "spot checks" on all owner/operators performing Work on the Project to validate owner/operator status. Each owner/operator provided truck shall clearly display the name of the owner/operator on the side of the truck. Truck drivers not meeting the criteria of an owner/operator must be reported on the Contractor's certified payroll and be paid prevailing wage.

(b) Non-Owner/Operators of trucks (Commercial Suppliers) are entitled to prevailing wages for the following:

- Time spent transporting Materials or supplies between a facility that is deemed part of the Site of Work and the actual construction site.
- Time spent transporting a 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). This includes time spent waiting to load or unload, but not recognized as 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 the Work loading and/or unloading Materials and supplies if such time equals 20% or more of the work week. This includes time spent waiting to load or unload, but not recognized as lunch or other rest breaks.

(c) Non-Owner/Operators of trucks (Commercial Suppliers) are *not* entitled to prevailing wages for the following:

- 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

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 reasonably be said to be dedicated to the Project and included in the Site of the Work.

For Projects subject to both State and federal PWR laws, BOLI will follow federal definition [[29 CFR subtitle A, part 5.2\(l\)\(1-3\)](#)] for the term “Site of the Work”.

For Projects subject to State prevailing wage rate laws, the term “Site of the Work” is defined in OAR 839-025-0004(25).

For guidance and determinations relating to “Site of the Work” contact ODOT’s LCO for assistance.