

## Table of Contents

### Section II – Labor Standards, Federal Aid Construction Contracts

#### Chapter 6 – Federal Labor Regulations

Federal Labor Regulations.....	97
Davis Bacon and Related Acts.....	97
Contract Work Hours and Safety Standards Act.....	99
Copeland Act.....	101
Fair Labor Standards Act.....	103
Local Agency Information.....	105

#### Chapter 7 - Certified Payroll Requirements

Certified Payrolls.....	107
USDOL Payroll Form WH347.....	109
Contractor Wage Compliance Statement – CDOT Form 118.....	111
Wage Decisions.....	115
Executive Exemption under the Fair Labor Standard Act.....	117
Wage Conformance.....	121
Fringe Benefits.....	125
Deductions.....	129
Overtime.....	131
Truck Drivers.....	133
General Information.....	133
Owner/Operators of Trucks.....	135
Site of Work.....	137
Other Classifications.....	139
CDOT Payroll Checking Procedures.....	141



# Federal Labor Regulations

## Davis Bacon and Related Acts

### (DBRA)

The Davis Bacon Act, originally enacted in 1931 was the first minimum wage act. In 1964, the Act was expanded to include the payment of fringe benefits. The Act is included on all federally assisted contracts in excess of \$2,000 and requires the payment of not less than the federally required predetermined wages. Since 1931, Congress has extended the Davis-Bacon prevailing wage requirements to some 60 related Acts, which provide federal assistance for construction through loans, grants, loan guarantees, and insurance. This includes local agency projects that receive federal funding from CDOT. The full text of DBRA can be found in 29 Code of Federal Regulation (CFR) 5.5.

DBRA is contained in the *FHWA 1273 - Required Contract Provisions, Federal-Aid Construction Contracts, Section IV, Davis-Bacon & Related Act Provisions*. The provisions refer to the weekly payment of required minimum wages, fringe benefits and payment without deductions for rebates for all hours worked. The only exception to the basic hourly rate and fringe benefit identified in the wage decision is for apprentices and trainees. The training plan, as submitted by the Contractor will state the wage rates for the apprentice and/or the trainee (see On the Job Training section for more information).

The prevailing wage decisions are included in the contract special provisions and the payment of contract wages is required to all laborers and mechanics on the project. This is regardless of the contractual relationship, which may allege to exist between the contractor and the laborer and/or mechanic. The wage decision shall be posted on the project site bulletin board and be readily assessable to all employees on the project. The Federal and Colorado minimum wage posters must also be posted on the project bulletin board.

Other required posters can be found on:

<https://www.codot.gov/business/bidding/bulletin-board-postings>

The term "wages" include:

- The basic hourly rate of pay
- Any contribution irrevocably made by a Contractor/subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program

- The rate of costs to the Contractor/subcontractor which may be reasonably anticipated to provide those fringes by an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected

Laborers and mechanics are defined in 29CFR 5.2 as *“those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial.”* DBRA requires that laborers and mechanics must be classified and compensated according to the work they perform. For those who perform work in more than one classification must be compensated at the rate for each classification or at the highest rate for all hours worked. The competency of the laborer or mechanic is not relevant. All laborers and mechanics shall be paid the minimum contract wages.

DBRA, Contract Work Hours and Safety Standards Act (CWHSSA) and Fair Labor Standards Act (FLSA) require that all hours in excess of 40 hours per week be paid. The laborer and/or mechanic shall be paid one and one-half times the basic rate of pay. Fringe benefits are hour for hour.

DBRA provisions state that contract payments can be withheld in sufficient amounts to cover the under payment of the contract wages. If the contractor continues to fail to compensate the laborers and mechanics on the project, estimate payments will be suspended until compliance is achieved.

Full text of the DBRA requirements can be found in 29CFR 5 in the USDOL website:

<http://www.dol.gov/whd/index.htm>

## Contract Work Hours and Safety Standards Act (CWHSSA)

Contract Work Hours and Safety Standards Act (CWHSSA) requires contractors and subcontractors with covered contracts (if your contract contains DBRA wages, your contract contains CWHSSAA) to pay laborers and mechanics employed in the performance of the contracts 1.5 times their basic rate of pay for all hours worked over 40 in a workweek. The basic rate of pay cannot be less than the contract wage rate, the Federal or State minimum wage or the straight time rate that is being paid.

CWHSSA applies to a normal workweek, which is a fixed and regular occurring period of 168 consecutive hours. The workweek does not have to follow a calendar week. If an employee in a single workweek works two or more different types of classifications for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates.

CWHSSA does not contain any provision for paying fringe benefits rate at 1.5 times the basic fringe benefit rate for overtime hours. Fringe benefits shall be paid hour for hour for all hours worked. Overtime wages cannot be waived. CWHSSA also provides coverage to guards and watchmen who are not covered by DBRA.

Since the Contractor is liable for all contract wages and can be held liable for all unpaid wages, contractors who are found to be in violation may be subject to fines, imprisonment, or both. Intentional violations are misdemeanors and may be punished by a fine not to exceed \$1,000 or by imprisonment for not more than six months, or both. Overtime wage violations may result in the assessment of liquidated damages in the sum of \$10 per calendar day per employee. CDOT may withhold from estimate payments sufficient funds to cover back wages and the liquidated damages.

Full text of the CWHSSA requirements can be found in 29CFR 5.5 in the USDOL website:

<http://www.dol.gov/whd/index.htm>



## Copeland Act

The Copeland Act is also known as the "Anti-Kickback" act. First enacted in June of 1934, the Act governs the deductions allowed on contracts subject to Federal wage standards. Contractors and subcontractors are not allowed under the Act to deduct from the wages owed to laborers and mechanics by force, intimidation or threat any monies due other than for those deductions allowed by law.

This act is to aid in the enforcement of the Davis-Bacon wage provisions. It requires Contractors and subcontractors to submit a weekly statement regarding the wages paid, defines what payroll deductions are allowed and delineates the method of payment of the wages. The Act contains regulations regarding the submittal of a weekly certified statement of wages paid for the prior week. The submittal must be within 7 days of the regular payment date and must be executed by the Contractor or subcontractor, or by an authorized officer or employee of the Contractor or subcontractor who supervised the payment of the wages.

Payrolls and basic records shall contain the complete and accurate name, address, classification, rate of pay, daily and weekly hours worked, deductions, and actual wages paid to the employees.

Certified payrolls submitted to CDOT shall contain all of the above information except that full social security numbers and home addresses shall not be included. Certified payrolls shall only include an unique identifying number for each employee (the last 4 digits of the employee's social security number - 29 CFR 5.5(a)(3)(ii)(A)). Payroll records shall be maintained for a period of three years after project completion and made available to CDOT, FHWA, and/or USDOL upon request.

Deductions for payroll taxes, fringe benefits, cash advancements or any voluntary deduction that serves the employee is allowed by the Act. Cash advancement must be made in such a manner that the employee has complete freedom to dispose of the funds, and must be made without discount or interest.

Payment of wages must be made in cash or negotiable instruments payable upon demand.

The Act provides violators of this provision may be fined \$5,000 or imprisoned up to 5 years.

For the full text of the Copeland Act, see 29 CFR part 3.



## Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) was first enacted in 1938. This Act established a minimum wage, overtime, record keeping, and youth employment standards.

The Federal government has established a minimum wage requirement, as has the State of Colorado. On any project not covered by the DBRA wage requirements, the minimum wage required on the project will be the higher of the Federal or State minimum wage.

FLSA requires an overtime rate of 1.5 times the basic rate of pay for all hours over 40 hours in a workweek.

Typically, the most common question received is regarding travel time. If an employee is required to report to a specific location (employer's main office) for transportation to the project site, the employee may be covered by FLSA (minimum wage). A rule of thumb for FLSA and travel time is, if the employee is engaged to wait, the employee is covered by FLSA. In addition, travel time may be compensable if the employee is required to travel during normal working hours on a non-normal workday (a weekend). Travel time hours will count in the total 40 hour workweek.

The second question is whether the Per Diem is considered a fringe benefit or an expense of the employer. Per Diem expense may be allowed by the employer when the employee cannot reasonably return to their home at the end of the normal workday.

Enforcement of FLSA remains with the USDOL. CDOT will refer all complainants to the USDOL for investigation.



## Local Agency Information

Local agencies that administer federally funded contracts via CDOT are responsible for enforcement of the various labor regulations and standards per the FHWA 1273. The local agency must collect and monitor certified payrolls. They must also interview Contractor and subcontractor employees as required.

CDOT's Local agency manual is available as a resource. The most current version is dated 2006.

Contracts that are located on local roads or rural minor collectors may be exempt from the payment of the predetermined wages per FHWA 1273, section IV and V. The exemption is based on the functional classification of the road. A local agency checklist located in the local agency manual can help determine if the project is exempt. Project personnel may also verify confirmation of Davis Bacon wages from the Contract/Labor Compliance subject matter expert.



## Certified Payrolls

On a Federally funded project, the Contractor and all subcontractors are required to maintain and submit weekly certified payrolls. CDOT requires an original certified payroll to be submitted to the Project Engineer. Subcontractor payrolls are to be submitted to the Contractor for review prior to submittal to CDOT.

**Laborers and mechanics must be paid unconditionally, not less than once a week and without subsequent deduction or rebate on any account.** Certified payrolls shall be delivered to the Project Engineer within seven days of the payroll payment date. Contractors are responsible for ensuring subcontractor compliance. If a subcontractor fails to pay the required wages, the Contractor will be held responsible for the payment of those wages.

Contractors or subcontractors have the option to use USDOL Form WH 347 - Payroll. All other formats must replicate for this standard form.

The Form WH 347 is available at the USDOL website:

<http://www.dol.gov/whd/forms/wh347.pdf>

Payrolls and the basic records shall be maintained by the Contractor and subcontractor during the work and for a period of three years after project completion for all employees engaged on the project. The basic records maintained at the Contractors home office, shall contain the full name, address, and social security number of each employee on the project; their correct classification; their hourly rate of pay, including the rates for any fringe benefits; daily and weekly number of hours worked; any deductions; and the actual wages paid. In addition, any information pertaining to any fringe benefits shall also be maintained for the same period.

The Contractor shall establish a basic seven-day workweek. Once established, the chosen workweek must remain the same throughout the life of the project. A typical standard workweek is Sunday through Saturday.

Certified payroll record submittals must contain the following information as required by USDOL:

1. The employee's full name and unique identifying number (employee identification number or last 4-digits of the employee's social security number). Contractors may require that subcontractors submit full addresses and social security numbers for the Contractor's records. All records, no matter the Contractor or subcontractor shall be produced upon the request of USDOL and/or CDOT.

2. CDOT's 4 digit classification code(s) and USDOL's corresponding classification(s) from the wage decision the employee worked.
3. The employee's hourly wage rate, fringe benefit rate and where applicable, the overtime hourly rate. The wage rate shall include rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents per FHWA IV 1(B)(1).
4. The daily and weekly hours worked in each classification, including actual overtime hours worked. The hours reported on certified payrolls are hours worked in each classification on the project only. **Note: Hours and classifications are reported regardless of how contractor is paying.**
5. Gross wages earned for the week for both the project and off site work. This is the gross wage amount recorded on the employee's pay stub for the full week.
6. Itemized deductions made. This includes taxes, any benefits paid for through payroll deductions, garnishments (if applicable) and any other deductions made. "Other" deductions must be explained. There must be sufficient detail included on the payroll or the certificate of compliance to verify each deduction as allowable. Supporting documentation may be necessary for some deductions.
7. Net wages paid. Net wages include all wages paid to the worker for the week, whether project related or for private or other government work. This amount must match the check issued to the employee for the week. Cancelled checks may be requested.

Names of owners, superintendents, and non-working foremen must appear on the payrolls only when working on site. However, should CDOT or the USDOL determine that the salaried employee does not meet the criteria for exemption; back wages may be required of the employer. (See the Executive Exemption under FLSA.)





## Contractor Wage Compliance Statement

### CDOT Form 118

All certified payrolls must be submitted with an attached CDOT Form 118 - Certificate of Compliance. The current form is dated March 2007 and previous editions are obsolete. There are two pages to the certification. The first page is CDOT's requirement for administrative purposes and the second page is the USDOL required certification language. Both pages must be completed.

Payrolls are numbered from the first week that the Contractor or subcontractor appears on the project site. Each week has a payroll number. Different week numbers may exist for different Contractor/subcontractors for the same timeframe. For example, the Contractor will appear on the project site the first week of the project and a subcontractor may not appear on the project until week thirteen of the project time. The subcontractor would show their payroll as payroll week 1 since that is when they started work.

Page one of the CDOT Form 118 has a section for identifying any fringe benefits programs offered by the employer. These fringe benefits may be paid in cash or to approved plans, funds and programs. The contributions must be expressed as a dollar amount per hour and information regarding the name, address and phone number of the administrators must be listed. Any exceptions or remarks can also be included on the CDOT Form 118.

Page two of the CDOT Form 118 fulfills the certification as required by the USDOL. The payroll designee information at the top of the page must be the original on the first payroll. All subsequent payrolls can be copies of the designee. If the designee changes at any time then a new original payroll appointee must be submitted.

The Contractor/subcontractor certify under penalty of perjury on CDOT Form 118 that all employees have been paid their full contracted weekly wages. It also certifies the work performed was classified correctly, that only registered trainees, and apprentices were employed (if applicable), and that the payroll is correct and complete. The signatures at the bottom of both pages must be original signatures with original dates.

If submitted payroll weeks need to be revised, it will be submitted with a letter added to the week number (1A, 1B).

Periods of "no work" may be covered by the submission of the CDOT Form 118. One form submission may cover multiple consecutive weeks of "no work." The time must show a beginning and end date and all time must be documented.

A final CDOT Form 118 shall be submitted for the final week of work by the contractor/subcontractor. The CDOT Form 118 shall include the words "final". Should it be necessary for the Contractor/subcontractor to return to the project, a CDOT Form 118 for the no work period should be submitted with the payroll form for the workweek(s). The reason for the resumption of work should be noted in the remarks section of the CDOT Form 118.

# CDOT Form 118

Colorado Department of Transportation <b>CONTRACTOR WAGE COMPLIANCE STATEMENT</b>	Project Code: _____ Project Number: _____ Project Location: _____
--	---

**Contractors/subcontractors**

Completion of the payroll supervisor appointment and perjury statement is required by the U.S. Department of Labor and is included on the back of this form. Contractors/subcontractors are required to pay weekly; complete both sides of this form in full and attach to each payroll for the seven day payroll period. Prime contractors are required to submit the forms within seven days of the weekly payroll period to the project engineer; subcontractors submit forms for review to the prime contractor prior to submission to CDOT. The prime contractor is responsible for subcontractor payroll submittal and compliance; by submittal of subcontractor payrolls, the prime contractor certifies that they have reviewed the submittal for compliance.

Contractor/subcontractor name	Payroll number	Payroll period _____ to _____
-------------------------------	----------------	-------------------------------

**Fringe benefit information:**

Name(s)/addresses of fringe benefit administrator(s):  
 \_\_\_\_\_  
 \_\_\_\_\_

Contact person and phone number(s):  
 \_\_\_\_\_  
 \_\_\_\_\_

Contributions are made in cash or to the plans, funds or programs described below at least quarterly. There are no past due deposits. List the value of the fringe amount as the dollar amount per hour. Documentation of calculations used to determine hourly rates shall be available upon request. Please attach additional information as necessary if fringe contributions vary by employee.

<input type="checkbox"/> cash _____ <input type="checkbox"/> health insurance _____ <input type="checkbox"/> dental insurance _____ <input type="checkbox"/> life insurance _____	<input type="checkbox"/> pension _____ <input type="checkbox"/> vacation _____ <input type="checkbox"/> holiday _____ <input type="checkbox"/> other (describe) _____
--	--

All on-the-job trainees (OJTs) employed in the above period are registered in and paid according to a bona fide training program approved by the Colorado Department of Transportation and the Federal Highway Administration. Each trainee has also been approved for work on this contract.

I declare under penalty of perjury in the second degree, and any other State or Federal laws that the statements made in this document are true and complete to the best of my knowledge.

Contractor/subcontractor payroll supervisor or signatory party	Date
--	------

Date	(Name of signatory party)	(Title)	
	I, _____	_____	do hereby state:
(1) That I pay or supervise the payment of the persons employed by			
(Contractor or Subcontractor)		(Building or work)	
_____		_____ on the _____	
that during the payroll period commencing on the			
day of	Month	Year	and ending the
_____	_____	_____	_____ day of _____ Month _____ Year _____
all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said			
(Contractor or Subcontractor)		_____	
_____		from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:	
_____			
(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for therein for each laborer or mechanic conform with the work he performed.			
(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.			
(4) That:			
(a) WHERE FRINGES BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS			
<input type="checkbox"/> in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.			
(b) WHERE FRINGES BENEFITS ARE PAID IN CASH			
<input type="checkbox"/> Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.			
(c) EXCEPTIONS			
Exception (craft)		Explanation	
_____		_____	
_____		_____	
_____		_____	
Remarks			
_____			
Name and Title		Signature	
_____		_____	
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.			

## Wage Decisions

All wage decisions are determined by USDOL based on information gathered from a survey of the prevailing wage practices of the contracting community. In March 2009, Colorado was surveyed and was issued nine prevailing wages decisions. Some wages were determined to prevail as collectively bargained rates and other wages were found to be non-collectively bargained rates. The status (union versus non-union) of the Contractor is irrelevant. All laborers and mechanics shall be paid the minimum contract wage for the type of work they are performing on site per 29 CFR 5.5(a)(1) and FHWA 1273, IV, 1(a).

There are nine wage decisions for Colorado. The wage decision appropriate for the project will be included as part of the project standard special provisions based on the county the project lies in and therefore will be contractually binding. If the project spans two counties or more and each county is listed on separate wage decisions, both or all applicable wage decisions will be included in the project standard special provisions. To determine which wage decision is appropriate will be the higher wage for the work being performed on the contract.

The contract wage decision is composed of five columns:

1. The first column contains CDOT's four-digit code that must be included on the certified payroll
2. Column two is the classification description that corresponds to the first column
3. The third column is the basic hourly rate
4. The fringe benefit rate is in column four
  - a. If column four (fringe benefit rate) is expressed as a dollar value and a percentage, the percentage is a percentage of the basic hourly rate

Code	Classification	Basic Hourly Rate	Fringe Benefit	Last Mod
1000	Electrician (Clear Creek county)	\$26.42	\$8.68+4.75%	
To calculate the total fringe benefit: $\$26.42 \times 4.72\% (.0475) = \$1.26$ Total fringe benefit: $\$8.68 + \$1.26 = \$9.94$ Total wage: $\$26.42 + \$9.94 = \$36.36$				

5. Column five shows when the basic rate and the fringe benefit rate were last modified

Service subcontracts (cranes operators and/or concrete pump operators) are covered by DBRA. If working on site, these operators are covered by the wage decision and must

be compensated at the contract wage. Workers performing specialty work may also be covered by DBRA if the work performed is manual in nature.

## Executive Exemption under the Fair Labor Standard Act

A supervisor or working foreman may or may not be exempt for DBRA provisions. Working foreman must meet the minimum wage for the appropriate classification. For example, a working foreman is paid a salary of \$600/week for 40 hours of work. This would equate to \$15/hour. If the classification for the foremen requires a minimum rate of \$19/hour then the foreman would be entitled to an additional \$4/hour. For further information please see 29CFR 541 and/or the USDOL Field Operations Manual section 15(f)08.

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) exempts from the minimum wage and overtime requirements those employees that are performing as bona fide executives (managers) of the firm. This can include project superintendents and supervisors.

In order for an employee to be exempt as a bona fide executive, all of the following tests must be met:

1. The executive's primary duty must be management of the enterprise, or of a customarily recognized department or subdivision
2. The executive must customarily and regularly direct the work of at least two or more full time employees or their equivalent
3. The executive must have the authority to hire or fire other employees or the executive's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees is given particular weight
4. The executive must be paid on a salary basis of at least \$455 per week

The fact sheet defines primary duty as the principal, main, major, or most important duty that the employee performs. The evaluation of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

Management activities are defined as:

- Interviewing, selecting and training employees
- Setting and adjusting their rates of pay and hours of work
- Directing the work of employees
- Maintaining production or sales records for use in supervision or control
- Appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status
- Handling employee complaints and grievances
- Disciplining employees

- Planning the work
- Determining the techniques to be used
- Apportioning the work among the employees
- Determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold
- Controlling the flow and distribution of materials or merchandise to be bought, stocked and sold
- Controlling the flow and distribution of materials or merchandise and supplies
- Providing for the safety and security of the employees or the property
- Planning and controlling the budget
- Monitoring or implementing legal compliance measures

A customarily recognized department or subdivision is a unit with permanent status and function and is not to be a collection of employees assigned from time to time to a specific job or series of jobs. The phrase “customarily and regularly” means greater than occasional but less than constant. It includes work normally done every workweek, but does not include isolated or one-time tasks.

The phrase “two or more other employees” means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed between two, three, or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers.

Factors to be considered in determining whether an employee’s recommendations as to hiring, firing, advancement, promotion or any other change of status are given “particular weight” include, but are not limited to, whether it is part of the employee’s job duties to make such recommendations. It also includes the frequency with which such recommendations are made, requested, and relied upon. Generally, an executive’s recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee’s recommendations may still be deemed to have “particular weight” even if a higher level manager’s recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee’s change in status.

The USDOL’s fact sheet regarding the regulations for bona fide executive exemption, which is located on the Fairpay website, contains the definition of some of the above terms.

The link may be found at:

[http://www.dol.gov/whd/regs/compliance/fairpay/fs17a\\_overview.htm](http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm)

Under a special rule for business owners, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

Additional information is available at:

[http://www.dol.gov/whd/regs/compliance/fairpay/fs17b\\_executive.htm](http://www.dol.gov/whd/regs/compliance/fairpay/fs17b_executive.htm)



## Wage Conformance

Labor standards require that workers are appropriately classified and paid according to the type of work performed. The wage decisions contain the work classification of the typical work performed on highway construction projects. When a classification or work performed on the project is not listed in the wage decision, this work shall be conformed in accordance with USDOL procedures and FHWA contract provisions. It is the Contractor's responsibility to research classifications to assure that the worker is correctly classified and compensated. Questions regarding collectively bargained classifications should be referred to the unions for assistance in determining the correct classification. CDOT can be used as a source of information for classification issues. **However, on projects currently advertised, project specific information can only be given if all potential bidders are present.** Questions should be directed to the person listed in the project special provisions.

The wage rate to be conformed:

- Cannot be one that is already on the wage decision
- Must be a classification that is utilized in the area by the construction industry
- Must bear a reasonable relationship to the wage rates contained in the contract wage decision
- A helper rate must be a standard industry practice prevailing in the area - Colorado does not have a helper rate

The Contractor shall submit the USDOL's Standard Form 1444 for all conformance requests, even if a subcontractor is requesting the rate. Only one original form needs to be submitted. The USDOL Standard Form 1444 shall be agreed to by the Contractor/subcontractor and reviewed by the contracting officer in the CRBRC unit. If there is a disagreement between the parties, all information, including the view of all interested parties, will be sent to the USDOL for determination of the rate.

A conformance request is only applicable to the specific project that it is requested for. Each project shall be treated separately. A conformance request only modifies the wage decision for the project listed on the form. Even if the same contractor/subcontractor works on a neighboring project, each project shall have its own request.

The Standard Form 1444 can be found on the USDOL's website at:

<http://www.wdol.gov/docs/sf1444.pdf>

Only one page of the form is required. The employee signature is not required.

All conformance requests require final approval of the USDOL. CDOT will provide a preliminary approval. The Contractor shall be cautioned that the proposed basic rate and fringe benefit rate may be paid to all workers during the approval period. However, should USDOL not approve the proposed rate, an acceptable rate will be provided and back wage, and supplemental payrolls may be due.

# Request for Authorization of Additional Classification & Rate

## USDOL Form 1444

<b>REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE</b>		CHECK APPROPRIATE BOX <input type="checkbox"/> SERVICE CONTRACT <input type="checkbox"/> CONSTRUCTION CONTRACT		OMB No.: 9000-0089 Expires: 02/28/96
<small>Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.</small>				
<b>NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER</b>				
1. TO:		2. FROM: (REPORTING OFFICE)		
ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210				
3. CONTRACTOR			4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
10. SUBCONTRACTOR (IF ANY)				
11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)				
12. LOCATION (CITY, COUNTY AND STATE)				
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION				
NUMBER:		DATED:		
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)		b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS	
<small>(Use reverse or attach additional sheets, if necessary)</small>				
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)		15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE		
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE		TITLE	CHECK APPROPRIATE BOX: REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE	
<b>TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))</b>				
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.				
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.				
<small>(Send copies 1, 2, and 3 to Department of Labor)</small>				
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE		TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED	
NSN 7540-01-268-0631 Previous edition is usable		<b>DEPARTMENT OF LABOR</b>	<b>STANDARD FORM 1444</b> (REV. 12-90) <small>Prescribed by GSA-FAR (48 CFR) 53.222(f)</small>	



## Fringe Benefits

The Davis Bacon Related Acts was amended in 1964 to include fringe benefits. Payment of fringe benefits is required in the amounts listed in the wage decision for each classification. Fringe benefits may be paid in cash, bona fide plans, funds and programs or a combination. They must be paid regularly and not less often than quarterly. Fringe benefits must be paid for all hours worked at the rate as established in the wage decision. Fringe benefits paid at 1.5 times for overtime hours is not required.

Conventional plan, funds, and programs that are common to the construction industry do not need approval from the USDOL. Unfunded plans require permission by the USDOL for credit under DBRA. An example of an unfunded plan is a profit sharing plan. For the employer to take fringe benefit credit for a profit sharing plan approval from USDOL must be obtained and an escrow account where funds are deposited at least quarterly must be established. Depositing funds, at least quarterly, protects the employee from loss that could occur from a year that produced no profits. Documentation of the approved profit sharing plan by USDOL will be requested by CDOT and shall be presented for verification.

Bona fide fringe benefit plans must:

- Reasonably be anticipated to provide benefits as described in the 29CFR 5.5
- Represent a commitment that can be legally enforced
- Be carried out under a financially responsible plan or program
- Be communicated in writing to the affected employees

When determining the cash equivalent of fringe benefits, the period to be used is the period covered by the contribution. If the fringe benefit plan rate of contribution is different for employees (family vs. single coverage), credit must be determined separately for each employee or classification. An average for all employees is not allowed. An annual benefit (vacation pay) would be determined using the total actual number of hours (DBRA and non-government work) worked in the year divided by the cost of providing the benefit. Contribution for fringe benefits must be dispersed over all work not just DBRA work. If the amount per hour appears excessive, request the documentation for the computation.

Example:

Contractor C provides both single and family health insurance coverage. The monthly premium for single coverage totals \$173 and for family coverage totals \$346. All hours worked for the month total 173. Fringe

credit can be taken for \$1.00 per hour for those workers who elect single coverage and \$2.00 per hour for those workers who elect family coverage.

$$\$173 \text{ single coverage}/173 \text{ hours} = \$1.00$$

$$\$346 \text{ family coverage}/173 \text{ hours} = \$2.00$$

Total contributions or payments must be in the amount specified in the wage decisions. If the amounts for the coverage of the fringe benefits are not enough to cover the required amount, the remainder must be paid in cash.

Example:

Contractor A contributes \$2.00 per hour for each laborer for health insurance and \$1.78 per hour in life insurance coverage. The contract wage decision for common laborer requires \$6.78 per hour in fringe benefit. The contractor would owe an additional \$3.00 per hour in cash benefit.

$$\$2.00 + \$1.78 = \$3.78$$

$$\$6.78 - \$3.78 = \$3.00$$

If a contractor provides a fringe benefit plan that exceeds the amount required by the wage decision the contractor may reduce the amount of the basic rate as long as the total amount equals or exceeds the amounts required for the basic hourly rate and fringe benefit rate as listed on the wage decision. This reduction is allowed on straight time only. If the employee works over 40 hours during the workweek, computation of the overtime rate reverts to the contract wage decision amount. The fringe benefit amount would remain at the established rate.

Example:

Contractor B provides \$7.78 in fringe benefits. The contract wage decision rate for common laborer basic hourly wage is \$18.68 + fringe benefit rate of \$6.78 for a total of \$25.46. The contractor has elected to reduce the basic hourly rate to \$17.68 for a total of \$25.46. These rates may be paid for all hours up to 40 hours in the workweek. For hours over 40, the contractor must calculate the overtime rate on the contract basic hourly rate of \$18.68 and continue to pay the \$7.78 fringe benefit rate.

$$\$17.68 + \$7.78 = \$25.46 \text{ up to 40 hours}$$

Overtime calculation:

$$(\$18.68 \times 1.5) + \$7.78 = \$35.80$$

No credits can be taken for benefits required by law (social security, workers compensation, or Affordable Care Act fees).

Questions regarding pension plans and their applicability to DBRA must be addressed by USDOL.



## Deductions

All deductions from wages must be identified and allowable under DBRA. Although some deductions may be allowed under the FLSA, they may not be feasible under DBRA. Wages and deductions that decrease the hourly wage below the wage decision requirement is not allowed.

DBRA does not have a provision regarding Per Diem. If an employee is required to work at a location that is impractical to return home daily and incurs board and lodging expenses, those expenses may be reimbursed by the employer.

USDOL has advised “...tools of the trade and other materials and services incidental to carrying on the employer’s business are considered facilities primarily for the benefit or convenience of the employer, and are considered to be business expenses of the employer.” The costs and laundering of any uniform required by the employer has also been found to be a benefit to the employer and cannot be considered part of the employee’s wages. More information can be found in 29 CFR 531.3(d)(2).

As of May 2008, deductions that include deposits for personal protection equipment (PPE) are no longer allowed. OSHA issued a final rule that established a uniform requirement. Employers must pay for all types of PPE required under OSHA standards, except for certain safety-toe shoes and boots, prescription safety eyewear, and logging boots. The proposal cited two main justifications for requiring employers to pay for PPE. First, OSHA concluded that the OSHA Act requires employers to pay for PPE that is necessary for employees to perform their jobs safely. As part of this, the employer cannot require employees to provide their own PPE or to pay for their own PPE (no taking a deduction for a set time and then reimbursing the employee). Second, OSHA concluded that the proposed rule would enhance compliance with existing PPE requirements in several practical ways, thereby significantly reducing the risk of non-use or misuse of PPE (64 FR15406-07). Also included in this rule - the reimbursement of PPE for normal wear and tear and occasional loss will also be borne by the **employer**. Even though this ruling came from OSHA, USDOL is the regulatory agency for DBRA and as such, their position is that deposits for PPE may take the employee’s wage rate below the allowable minimum. Therefore, the deposit exception in the rule does not apply to DBRA covered contracts.

Deductions for garnishments or child support are allowable as long as the proper court documents have been submitted. Recognizing that this issue can be very sensitive providing copies of the court order for inclusion in CDOT’s files is not required. However, CDOT will review the documentation and make notes in the project files. No

further submittal or review will be required unless the amount of the deduction changes.

Pay advances are allowed under DBRA provided the employee has complete freedom to dispose of those funds (29 CFR 3.5(b)). No interest can be charged for the pay advance. The repayment of those wages is also allowed if the employee has signed a repayment schedule prior to the deduction. This documentation shall also be presented with the certified payroll.

Deductions not specifically mentioned here may be allowed if the deduction is for the benefit of the employee and that the employer does not make any profit from the deduction. Contractors may write to USDOL and request permission for deductions not automatically allowable under the law.

## Overtime

Overtime is payable after 40 hours in a work week. The 40 hours is not project specific but is based on the established seven-day work week. Employees must be paid 1.5 times their basic hourly rate of pay for all hours worked over 40 hours, both for public and private work. There is no requirement to pay fringe benefits at 1.5 times.

*Per 29CFR 5.32(a), The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes.... Contributions by employees are **not** excluded from the regular or basic rate upon which overtime is computed under these statutes*

For overtime that occurred on a DBRA covered project, the calculation is per the following:

During the course of the week, the worker may have spent the first 20 hours working in a classification off the project site where the hourly wage was \$10.00 per hour and the fringe benefit rate is \$3.00 per hour. The remaining 30 hours worked that week were spent on a DBRA covered project in a classification where the hourly wage was \$15.00 per hour and the fringe benefit rate is \$3.00 per hour. The contractor must pay the overtime rate of \$15.00 X 1.5 or \$22.50 per hour as the 10 overtime hours worked were all on the project site. Cash fringe would be added to the overtime rate at the regular amount.

The correct calculation would be:

20 hours X \$10

20 hours X \$15

10 hours X \$22.50 = \$725

50 hours X \$3.00 = \$150 for a total wage of \$875.

When overtime hours are on private work, the calculation is per the following:

During the course of the week, the worker may have spent the first 20 hours working in a classification on a DBRA covered project site where the hourly wage was \$15.00 per hour and the fringe benefit rate is \$3.00 per hour. The remaining 30 hours worked that week were spent on the project in a classification where the hourly wage was \$10.00 per hour and the fringe benefit rate is \$3.00 per hour. The contractor must pay the overtime rate of \$10.00 X 1.5 or \$15.00 per hour as the 10 overtime hours worked were all on the project site. Cash fringe would be added to the overtime rate at the regular amount.

The correct calculation would be:  
 20 hours X \$15  
 20 hours X \$10  
 10 hours X \$15.00 = \$650  
 50 hours X \$3.00 = \$150 for a total wage of \$800.

When the overtime hours are a mix of private and public, the calculation can be used as a weighted average per the following:

During the course of the week, the worker completed 50 hours working for the entire week. Of the total hours worked, 30 were in a classification on the project site where the hourly wage was \$15.00 per hour, the fringe benefit rate is \$3.00 per hour, and 20 were on a private project where the hourly rate was \$10.00 per hour and the fringe benefit rate is \$3.00 per hour. The 10 overtime hours were both DBRA and private job rates. The contractor must pay the overtime rate of \$13.00 X 1.5 or \$19.50\* per hour. Cash fringe would be added to the overtime rate at the regular amount.

\*The calculation for the weighted average for the off project work is as follows:

\$15.00 X 60% (percent of total hours for the week)	= \$ 9.00
\$10.00 X 40% (percent of total hours for the week)	= <u>\$ 4.00</u>
Weighted Average Wage Rate	= \$13.00 x 1.5 =
\$19.50	

The correct calculation would be:  
 20 hours X \$15.00 = \$300  
 20 hours X \$10.00 = \$200  
 10 hours X \$19.50 = \$195  
 Total Wages = \$695  
 50 hours X \$3.00 = \$150 for a total wage of \$845.

Additional information regarding the correct payment of overtime and fringe benefits included in the fringe benefit section.

Full text of overtime can be found in 29CFR 5 in the USDOL website:

<http://www.dol.gov/whd/index.htm>

## Truck Drivers

### General Information

Truck drivers who work on CDOT projects must have a contract with the Contractor that will include the FHWA 1273. A service contract is not acceptable. Truck drivers also need CDOT's Form 205 to be submitted.

DBRA does not cover a material supplier who manufactures materials to be used on a project site and/or delivers materials to the project site unless the supplier is hauling from a location that has been determined as site of work. Moving materials from one area of the project site to another area is covered as construction activity. Hauling material away from the project site to another site determined to be site of work is also covered as construction activity. A material supplier that only delivers construction materials to the project, if such time is *de minimis*, is not covered by DBRA.

*De minimis* will be determined on a case by case basis by CDOT as the USDOL did not wish to establish "an artificial benchmark" for determining the definition.

Truck drivers who spend more than an incidental amount of time on the site of work are covered for the time spent. If a driver drives on the project site, then must sit and waits in a queue to unload, the time spent driving on site and the time waiting to unload would potentially be compensable under the contract DBRA rate.

CDOT has received guidance from USDOL regarding the coverage of truck drivers for DBRA wages.

The guidance in part states that truck drivers are covered in the following instances:

- Drivers of a contractor or subcontractor for time spent working on the site of the work (drivers are considered working)
- Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis*
- Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site
- Truck drivers 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

Truck drivers are not covered by Davis-Bacon in the following circumstances:

- Material delivery truck drivers while off “the site of work”
- Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of work”
- Truck drivers whose time spent on the site of the work is *de minimus*, such as only a few minutes at a time merely to pick up or drop off materials or supplies

## Owner/Operators of Trucks

The USDOL takes a non-enforcement position regarding enforcement of Davis Bacon for truck drivers who own their own truck. **U.S. DOL's position applies only to trucks.** Owner/operators of other types of equipment must be paid the contract wages, regardless of any contractual arrangements that may be in effect.

Owner/operators of trucks will be required to show proof of registration and driver's license to verify that Davis Bacon wages are not applicable. Additionally, owner/operators of trucks must be independent and free to perform services for the public as a whole.

The factors that the Wage and Hour Division of the USDOL uses in making the determination of whether drivers are exempt are:

- The extent to which the services in question are an integral part of the employer's business
- The permanency of the relationship
- The amount of the alleged independent contractor's investment in the facilities or equipment
- The nature and degree of control the employer holds over the alleged independent contractor
- The alleged contractor's opportunities for profit and loss
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise

No single factor is controlling, the overall picture is the key.

**NOTE:** Owner/operators of trucks are required to submit certified payrolls. Certified payrolls will only need to show the names of the owner and the notation "owner/operator." Hours worked and rate of pay are not applicable.



## Site of Work

DBRA covers all laborers and mechanics that are employed on the site of work. The definition of site of work has undergone many changes due to challenges to the USDOL interpretation of coverage of DBRA.

Site of work as defined by 29CFR5.2(1) and (2) is as follows:

*The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.*

*...job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of work as defined in paragraph (1)(1) of this section.*

Further, the courts have narrowed the definition previously used. The USDOL released the following new definition in January 2001:

*The final rule revises the definition of the phrase "site of work" to extend federal prevailing wage law coverage to material and supply sources and tool yards that are dedicated to the covered federal project or are "adjacent or virtually adjacent" to the federal projects. Under the revised definition of construction, off-site transportation of materials, supplies, and tools is not covered by prevailing wage law unless that transportation occurs between the construction site and the dedicated facility located "adjacent or virtually adjacent" to the federal construction site.*

*Also covered under "site of work" are secondary sites, other than the project's final resting place, that are established specifically for the performance of the Davis-Bacon project and at which a significant portion of the public construction is performed.*

Pits, plants and staging area coverage (adjacency), will be determined on a case by case basis by CDOT as the USDOL did not wish to establish "an arbitrary, artificial benchmark" for determining Davis Bacon coverage.



## Other Classifications

Labor standards require that workers are appropriately classified and paid according to the type of work they actually perform. Colorado's prevailing wage decision has been split into nine wage decisions and all nine are contained in the specifications for all federally funded projects. The correct wage decision is based on what county the project is taking place. It is the Contractor's responsibility to check the appropriate county and wage decision for the project.

Laborers and mechanics that perform work in more than one classification may be paid at the rate specified in the wage decision for the time spent working in that classification. Wages may be paid for the appropriate classification and hours spent or the highest wage may be paid for all hours worked. Records must be kept that accurately record the time spent in each classification. DBRA does not make an allowance for lack of experience - a less experienced or competent employee must be paid at least the minimum amount. It is not relevant that the worker may have been hired to perform a specific craft, such as a general laborer. The rates contained in the wage decision are the minimum required.

CDOT receives frequent questions regarding the coverage of concrete pumper operators and crane operators under service contracts. Per DBRA, these operators are covered. Although CDOT realizes that, these operators' spend a limited amount of time on the project. CDOT Form 205 must be submitted (Standard Specification 108.01). Certified payrolls will also be required. In lieu of separate certified payrolls for these operators, contractors may show these. Operators of cranes and concrete pumps working on the site of work are covered by the contract wage determination and must be paid the appropriate wage. Workers who are performing specialty work are also covered by DBRA if the work performed is manual in nature. A CDOT Form 205 must be submitted (CDOT's Standard Specification 108.01). Certified payrolls will also be required.

Erosion control supervisors are not covered by DBRA for the inspection of the project site. This work is considered managerial and/or supervisory in nature and this work is not covered by DBRA wages. However, if the erosion control supervisor installs or replaces the erosion control measures, then the erosion control supervisor will be covered by DBRA for the time so spent.

CDOT has been advised by the USDOL that surveyors may now be covered by DBRA. Per USDOL's Memorandum 212 of March 2013, practices and procedures of surveyors were reviewed due to changes and new technology. Conformance requests with detailed descriptions of duties of the surveyors on the project may be submitted for an

appropriate wage. Note: USDOL may not consider the work covered by Davis Bacon because a conformance request is submitted.

Profiler Operators, Ticket Takers, and Testers classifications are also not covered by DBRA. Again, *DBRA does not cover the workers whose jobs are not manual in nature.*

There is no classification for Traffic Control Supervisor in the prevailing wages. CDOT, contractors and the USDOL have had many conversations regarding this issue. Attempts to add this classification in Colorado and other states have failed. The USDOL's position states that, with the exception of supervisor/administrator, which is not covered by the Davis-Bacon Act, rates for the functions of the TCS are contained in the wage decision. The functions of the TCS may include several classifications (traffic director/flagger, traffic/signal/sign laborer, and pickup/pilot truck driver). The employers are required to either separate the work hours for the different classifications performed and pay accordingly, or pay the highest rate for all hours worked [usually pickup truck driver]. Once a preference has been chosen, the employer must keep that compensation rate for the duration of the project.

CDOT has been advised by the USDOL that profiler operators, ticket takers, testers, and Erosion Control Supervisors be not considered laborers and mechanics under DBRA.

## CDOT Payroll Checking Procedures

The project engineer or public works administrator is responsible for assuring all certified payrolls are submitted.

The project engineer or delegate must review payrolls to assure that the number of workers are shown, and their classifications, and hours worked appear reasonable.

In May 2013, CDOT revised some rules for payroll checking procedures. Since the Contractor is responsible for wages on their projects, it is now their responsibility for reviewing and signing all subcontractors' payrolls saying they are reasonable per SS 107.01. CDOT personnel will randomly review a minimum of 10% of the projects payrolls. CDOT personnel will continue to sign all payrolls that were reviewed for verification.

Errors discovered during an in-depth check will require a detailed check of payrolls until accuracy by the contractor is achieved.

Items to check include:

- Review number of employees and classifications for reasonableness
- Check for reasonableness of hours worked by employees
- Initial and date CDOT Form 118 when reviewed
- CDOT Form 118, Contractor Wage Compliance Statement, must be attached to each payroll - the most recent version is March 2007, previous editions are obsolete
- CDOT Form 118 must be numbered consecutively beginning with number 1 with all weeks of time accounted - "No work" weeks or blocks of time may be documented with one CDOT Form 118 and numbered consecutively.
- CDOT Form 118 contains the required fringe benefit information (if applicable) and the appropriate check boxes are checked regarding cash fringe benefit and/or fringe benefits provided
- CDOT Form 118 page one is signed at the bottom
- CDOT Form 118 page two is completed and signed
  
- Payroll forms include the appropriate project information, including project number/subaccount number, location, week ending date and payroll number.
- Payrolls contain all required information (name, and unique employee identification number, number of project hours per day, total for week, etc.)
- Basic rate/fringe benefit hourly rate is correct per the wage decision for the classification listed for the employee

- Check overtime rate when hours exceed 40 in the 7-day pay period
- Deductions are allowable
- "Other" deductions are explained
- Fringe benefit types and requirements are allowable
- The reviewer will sign and date the CDOT Form 118 if payroll was checked

Items that could trigger additional checking and verification include:

- Odd number of hours (an hourly total of 14.58 hours) could indicate that the contractor is backing into the wage amount
- Lopsided classifications (one equipment operator and a large number of laborers)
- Avoidance of employee interviews

If a project engineer or public works administrator discovers errors in any certified payroll of a contractor or subcontractor, the Contractor will be notified in writing via the CDOT Form 105 - Speed Memo or other similar method, of the errors. The Engineer will detail the errors and provide a deadline for corrections. Original payrolls will not be returned to the Contractor. The Contractor shall provide supplemental certified payrolls showing the corrections. If back wages are owed to the employees, it is not unreasonable to require the contractor or subcontractor to provide copies of the cancelled checks (both sides).

It should be noted that the authority to withhold payments to the Contractor for non-compliance is included in the FHWA 1273 IV (2)(c).