WAGE AND HOUR DIVISION

Davis-Bacon Act
Training Program
Internet Sites


Wage and Hour Division - http://www.dol.gov/esa/whd


Code of Federal Regulations
29 CFR Part

1 - Procedures for Predetermination of Wage Rates under the Davis-Bacon Act
3 - Payment & Reporting of Wages on Federal Construction Contracts
4 - Federal Service Contracts
5 - Labor Standards Provisions Applicable to Federal Construction Contracts
6 - Rules of Practice for Administrative Proceedings
7 - Practice Before the Administrative Review Board
778 - Overtime provisions under the Fair Labor Standards Act
Labor Standards Statutes

- The Davis-Bacon Act (DBA)
- Davis-Bacon and Related Acts (DBRA)
- Contract Work Hours and Safety Standards Act (CWHSSA)
- Copeland “Anti-Kickback” Act (CA)
- Walsh-Healey Public Contracts Act (PCA)
- McNamara-O’Hara Service Contract Act (SCA)
The Davis-Bacon Act

(DBA)
DBA

- Enacted in 1931
- Amended in 1935 and 1964
- Protects communities and workers from non-local contractors underbidding local wage levels
Davis-Bacon Act (DBA) Requirements

- Payment of locally “prevailing wages” and “fringe benefits” (FB’s) to laborers and mechanics, as determined by the U.S. Department of Labor (DOL)

- Applies to direct Federal and District of Columbia contracts
Davis-Bacon Act Requirements

- Applies to laborers and mechanics of contractors and subcontractors
- Performing work on the “site of the work”
- Must be paid not less often than weekly
- Wage scale must be posted at the job site
Coverage of the DBA

- Applies to contracts in excess of $2,000 to which the U.S. or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.
Criteria For Considering DBA Coverage:

1. Is the agreement a contract to which the U.S. or District of Columbia is a party?

2. Is the agreement a “contract for construction”?

3. Is the “contract for construction” a contract for construction of a public building or public work of the U.S. or the District of Columbia?
The Davis-Bacon and Related Acts

(DBRA)
Davis-Bacon Related Acts (DBRA)

- Davis-Bacon (DB) requirements are extended to over 60 “related acts” that provide Federal assistance for construction through:
  - Grants
  - Loans
  - Loan Guarantees
  - Insurance
DBRA Examples

- HUD financed construction of low-income housing projects

- Federal Highway Administration provides grants to states for reconstruction of roads and bridges on the interstate highway system
Distinguishing DBA and DBRA

- **Examples of Direct DBA Projects**
  - VA hospital
  - Federal office building (GSA)
  - Military base housing (DOD)
  - National Park road (Dept. of Interior)

- **Examples of DBRA Projects**
  - HUD - assisted housing construction project
  - EPA - assisted water treatment plant construction project
Contract Work Hours and Safety Standards Act

(CWHSSA)
Purpose of CWHSSA
(40 U.S.C. 327, et seq.)

- Enacted in 1962 - consolidated a number of “eight hour” laws, which provided for overtime pay after 8 hours a day and 40 hours a week on Federally financed contracts which require the employment of laborers and mechanics.

- In 1986, the daily overtime requirement was repealed to require overtime pay only after 40 hours a week.

- The overtime pay requirements of CWHSSA and the Fair Labor Standards Act (FLSA) are the same.
Requirements of CWHSSA

- Requires overtime pay for laborers and mechanics at a rate of one and a half times the basic rate of pay for hours worked on covered contracts in excess of 40 in a workweek.

- Liquidated damages can be assessed at a rate of $10 per day for each laborer or mechanic not paid proper overtime.
Coverage of CWHSSA

- Covers Federal contracts over $100,000 that require or involve the employment of laborers and mechanics on:
  - DBA covered construction contracts
  - DBRA covered construction contracts
  - SCA covered service contracts
- CWHSSA is self-executing (need not be in the contract)
- CWHSSA has no “site of work” limitation
Copeland
“Anti-Kickback” Act
(CA)
Purpose and Requirements

- Prohibits “kickback” of wages and back wages

- Requires contractors on DBA/DBRA covered projects to submit weekly a “statement of compliance”

- Regulates payroll deductions
Permissible Deductions Without DOL’s Approval (29 CFR 3.5)

Deductions for:

- Social security or Federal or state income tax withholding
- *Bona fide* prepayment of wages
- Court ordered payments
- Fringe benefits plans with certain provisions
- Purchase of U.S. savings bonds
- Repayment of loans or purchase shares in a credit union
Permissible Deductions
(29 CFR 3.5)

- Authorized contributions to organizations such as Red Cross, United Way, or similar charitable organizations
- Deductions for the “reasonable cost” of board, lodging or other facilities meeting the requirements of section 3(m) of FLSA
- Deduction for safety equipment - if not prohibited by FLSA or required by law for employer to furnish; cost to the employee cannot exceed the cost incurred by the employer
The DOL approves payroll deductions when the following criteria are met:

- The contractor makes no direct or indirect profit
- The deduction is not prohibited by law
- The deduction is voluntarily consented to in writing before work begins, or the deduction is provided for under the terms of a CBA
- The deduction serves the convenience and interest of the employee
Walsh-Healey Public Contracts Act (PCA)
Purpose of PCA

Provides labor standards for employees working on Federal contracts over $10,000 for the manufacturing or furnishing of goods, supplies, articles, or equipment.
PCA Requirements

- Establishes minimum wage, overtime, and safety and health standards, and posting requirements

- Prohibits employment of children under 16, and convict labor
Contracts Requirements
Both PCA and DBA

- The DBA also applies to PCA contracts that require more than an incidental amount of construction work

- Example - a contract for the supply and installation of a security system
  - Replacement of existing conduit
  - Laying cable
  - Tearing out and replacing walls
McNamara-O’Hara Service Contract Act

(SCA)
Service Contract Act

- SCA became effective in January 1966
- The law was amended in 1972 and 1976
- It is the most recent of government contract labor standards laws administered by the Wage and Hour Division (WHD)
Legislative History and Purpose of SCA

- To “close the gap” in labor standards protection for service contracts subject to SCA and contracts subject to PCA and DBA

- To remove wages as a bidding factor in the competition for Federal service contracts
Requirements of SCA

- Payment of prevailing wages and fringe benefits for service employees working on contracts over $2,500
- Payment of FLSA minimum wage ($5.15 per hour) for contracts of $2,500 or less
- Posting and recordkeeping requirements
- Safety and health protection
Coverage Under SCA

- Most contracts entered into by the U.S. or the District of Columbia in excess of $2,500 for the furnishing of services through the use of service employees

- Contract must contain the SCA labor provisions (29 CFR 4.6)

- Unlike DBA, DOL has sole enforcement authority for SCA
Federal Contracting Agencies
(29 CFR 4.107 & 4.108)

- Contracts entered into by an agency or instrumentality of the Federal government
  - Examples: Departments of Defense and Labor
- Contracts issued by wholly owned corporations of the government
  - Examples: Tennessee Valley Authority, United States Postal Service
- Contracts with non-appropriated fund activities
  - Examples: Military post exchanges (PX’s), cafeteria boards in Federal buildings
- Contracts entered into by the District of Columbia
Elements of Coverage
(29 CFR 4.110)

- Contract is principally for services
- Contract work is performed in the U.S.
- Contract is to furnish services “through the use of service employees”
Types of Service Contracts
(29 CFR 4.111 & 4.130)

Examples of service contracts:

- Security and guard services
- Janitorial services
- Cafeteria and food services
- Support services at Government installations
Contracts “in the United States” (29 CFR 4.112)

- 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf, American Samoa, Guam, Wake Island, Johnston Island, and the Northern Marianas (Canton Island, Eniwetok Atoll, and Kwajalein Atoll are no longer a part of the United States)

- Any portion of a contract principally for services performed in the US is covered.
Contracts “through the use of service employees” (29 CFR 4.113)

- SCA defines “service employee” as any person engaged in the performance of a covered contract except those that qualify for exemption as *bona fide* executive, administrative or professional employees under the FLSA (29 CFR Part 54 1)

- Employee coverage does not depend upon contractual relationship (See 29 CFR 4.155)
Contracts Not SCA Covered

- Contracts whose principal purposes are something other than services, *e.g.*, construction and manufacturing
- Contracts for leasing of space
- Contracts for professional and medical services (29 CFR 541 exemption)
- Contracts for services entered into by State or local public bodies that have received grants or funds from the Federal government, *e.g.* Medicaid and Medicare programs
SCA Statutory Exemptions
(29 CFR 4.115 - 4.118)

SCA does **not** apply to the following:

- Contracts for construction, alteration and/or repair of public buildings or public works
- Work subject to the Walsh-Healey Public Contracts Act
- Contracts for the carriage of freight by vessel, airplane, bus, etc., where published tariff rates are in effect. (Mail-haulers are not exempt)

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SCA Statutory Exemptions
(29 CFR 4.119 - 4.122)

- Any contract for the furnishing of services by radio, telephone, telegraph or cable companies, subject to the Communications Act of 1934

- Contracts for public utility services, including electric and power, water, steam, and gas

- Employment contracts providing for direct services to a Federal agency by an individual or individuals

- Contracts with the U.S. Postal Service for the operation of postal contract stations
SCA vs. DBA

Coverage Issues
Contracts Covered by SCA and DBA

- SCA contracts that also require **substantial** and **segregable** amounts of construction activity must also include the DBA (29 CFR 4.116(c)(2))
  - **Substantial**: the type and quantity of the construction work, not merely the dollar value
  - **Segregable**: the construction work being physically and functionally separate

- **Examples**:
  - DOD base maintenance contracts that require construction work, i.e., painting or repainting, refinishing floors, or reroofing facilities
  - Hazardous waste cleanup contracts that require landscaping activities that constitute construction work such as elaborate earthmoving or soil removal
SCA Maintenance vs. DBA Repair

- **SCA Maintenance**
  - Scheduled, regular and recurring
  - Routine to keep something in state of continuous utilization

- **DBA Repair**
  - Restoration, replacement, overhaul
  - One time fix to something not functioning
Common Problems

- Carpet and drapery installation
  - Scheduled carpet replacement as routine maintenance (SCA)
  - Carpet laying & drapery hanging as part of a new construction (DBA)
- Clean-up work
  - Routine clean-up (SCA)
  - Clean-up as part of construction (DBA)
- Demolition
  - Standing alone (SCA)
  - With subsequent construction (DBA)
- Drilling
  - Exploratory drilling (SCA)
  - Drilling of wells, e.g. water or oil (DBA)

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Common Problems

- Landscaping
  - With construction: elaborate landscaping; substantial earth moving & reclamation at hazardous waste sites (DBA)
  - Other landscaping, i.e., planting trees, mowing, seeding, unrelated to a construction project (SCA)
Lease Construction Contracts

- Factors to be considered in determining whether a lease contract is subject to DBA include:
  - length of the lease
  - extent of government involvement in the construction project
  - extent to which the construction will be used for private rather than public purposes
  - extent to which the costs of the construction will be paid for by the lease payments, and
  - whether the contract is written to avoid application of DBA
Coverage Determination

- Contracting agencies have initial responsibility for determining which labor statute applies

- DOL has authority for final determination on coverage

- Final rulings may be appealed to the Administrative Review Board (ARB)
DBA/DBRA Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices and Trainees
- Helpers
- Prevailing Wages
Laborers and Mechanics

- Includes workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards
Laborers and Mechanics

- Does Not Include:
  - Timekeepers, inspectors, architects, and engineers
  - *Bona fide* executive, administrative, or professional employees as defined by the FLSA

- Working foremen are generally non-exempt and must be paid the Davis Bacon (DB) rate for the classification of work performed
Site of the Work

- The definition for “site of the work” is set forth in regulations, Title 29 of the Code of Federal Regulations, at 29 CFR 5.2(l)

- These regulations were revised in January 2001
Site of the Work - Part I
(29 CFR 5.2(l)(1))

- DBA applies only to workers on the “site of the work”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and,
  - Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the contract
Site of the Work - Part II
(29 CFR 5.2(l)(2))

- Site of work also includes job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:
  - located adjacent or virtually adjacent to the "site of the work" described in Part I, and
  - dedicated exclusively or nearly so to the performance of the contract or project.
Site of the Work Part III
(29 CFR 5.2(l)(3))

- Site of the work” does not include a contractor’s or subcontractor’s
  - Permanent home office, branch locations, fabrication plants, tool yards, etc.,
  - whose location and continuance in operation are determined without regard to a particular covered project.

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Site of Work - Part III (cont’d.)

- Also not included in site of the work are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc. of a commercial supplier which are established by a supplier of materials
    - before the opening of bids for a project, and
    - are not located on the actual site of the work
  - Permanent, previously established facilities, even where such operations may be dedicated exclusively, or nearly so, to the performance of a contract.
Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - spent driving on the “site of the work”
  - spent loading or unloading materials and supplies on the “site of the work” if such time is more than *de minimis*
Covered Truck Drivers

- Truck drivers are covered when:
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain
Truck Drivers Not Covered

- Truck drivers are not covered when:
  - Driving off the “site of the work”
  - Traveling between a commercial facility and the “site of the work”
  - Time spent on the “site of the work” is *de minimis*
Truck Drivers
Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors [an owner-operator is a person who *owns* and *drives* a truck].

- Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator”.

- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.
Definition of Apprentices

- A person individually registered in a *bona fide* apprenticeship program registered with DOL

- An individual in his or her first 90 days of probationary employment as an apprentice

- DOL Regulations, 29 CFR Part 5.2(n)(1) and 5.5(a)(4)(i)
Definition of Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by DOL’s Employment Training Administration (ETA)

- DOL Regulations, 29 CFR Part 5.2(n)(2) and 5.5(a)(4)(ii)
Apprentices and trainees are two categories of laborers and mechanics not listed on a Wage Determination (WD). They are permitted to be used on covered projects and paid less than the journeyman rate when:

- registered in an approved apprenticeship or trainee plan
- paid the percentage of basic hourly rate required by WD
Apprentices and Trainees Coverage

- paid fringe benefits (FB’s) specified in the approved plan, or the full amount of FB’s listed on the WD if plan is silent

- the number of apprentices/trainees to journeyman meets the allowable ratio specified in the approved plan

- Apprenticeship plans are portable, training plans are not
Helpers

- Helpers may be employed if:
  - duties are clearly defined and distinct from other classifications on WD,
  - an established prevailing in the area,
  - not in an informal training program,
  - not permitted to use the “tools of the trade” in assisting a journey classification

- Helper classifications may be conformed to the applicable WD
Area Practice Surveys

- Used to determine proper classification for work performed on DB projects
- Limited Area Practice survey is acceptable when all parties agree on accuracy of preliminary data
- Full Area Practice Survey is necessary when preliminary data are disputed
Conducting a Limited Area Practice Survey Involving Union Rates

- Contact unions that may have jurisdiction over the work in question to determine if union workers did that work on similar projects in same county during prior year.

- Survey each union about how workers were classified.

- Information obtained from the unions should be confirmed by collective bargaining representatives of contractors.
Conducting a Limited Area Practice Survey Involving Open Shop Rates

- Contact open shop contractors to determine if they worked on similar projects in the same county during the prior year.
  - If so, ask how workers were classified.
  - If all or a majority of contractors agree, the area practice is established.
Conducting a Limited Area Practice Survey Involving Mixed Rates

- Determine which non-union and union rates in the applicable WD are involved in the area practice question.
- For the classification that has a union rate, contact the appropriate union and union contractors’ association to determine if union workers performed the work in question on similar projects in the same county during the prior year.
- For the classification that has a non-union rate, contact non-union contractors/association(s) to determine if non-union employees performed the work in question on similar projects in the same county during the prior year.
- If all parties, or a clear majority agree, the area practice is established.
Conducting a Full Area Practice Survey

- Identify similar projects in the same geographical area as the project at question which were in progress during the period one year prior to award of construction project at question.

- Determine what firms performed the work in question and contact those that are either open shop or union depending on the basis for the wage rates issued in the applicable WD.

- From each firm contacted, determine the week in which the greatest number of employees performed the work in question and determine how such employees were classified.
Conducting a Full Area Practice Survey

- Compile the information received and total the number of employees in each classification which performed the work in question.

- The classification which has the clear majority (60%) of employees is the proper classification.
“Prevailing Wage”

- “Prevailing wage” is made up of two interchangeable components:
  - basic hourly rates
  - fringe benefits (FB’s)
Meeting
WD Obligations

The WD obligations may be satisfied by:

- Paying both basic hourly rate and FB’s in cash
- Contributing payments to a *bona fide* plan
- Any combination of the two
Payment Obligations

- Must be paid weekly for all hours worked
- Cash wages paid in excess of the basic hourly rate may offset or satisfy the FB’s obligation
- Basic hourly rate is used to determine overtime payment
## Payment of Wages and Benefits

- **Basic Hourly Rate:** $12.00
- **Fringe Benefits:** $2.00
- **Total Prevailing Wage is:** $14.00

The contractor may comply by paying:

- $14.00 in cash wages
- $12.00 in cash wages plus $2.00 in FB’s
- $11.00 in cash wages plus $3.00 in FB’s
Payment for Overtime Hours

An employee works 44 hours as an electrician at a WD rate equals $12.00 (BHR) plus $2.00 in fringe benefits:

\[
\begin{align*}
44 \text{ hours} \times \$12.00 & = \$528.00 \\
4 \text{ hours} \times 12.00 \times \frac{1}{2} & = 24.00 \\
44 \text{ hours} \times 2.00 & = 88.00 \\
\text{Total} & = \$640.00
\end{align*}
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Examples of Fringe Benefits

Funded Plans:
- Life Insurance
- Health Insurance
- Pension

Unfunded Plans:
- Vacation
- Holiday
- Sick Leave
Funded Fringe Benefit Plans

- Contractors may take credit for fringe benefits contributions to third-party trusts, programs, or plans
  - without prior approval from DOL
  - that are *irrevocably* paid
  - that are made regularly, not less often than quarterly
- Credit cannot be taken for those employees not eligible to participate in the plan
Unfunded Fringe Benefit Plans

- Are provided from the general assets of the contractor
- Are not normally considered to be *bona fide* benefits
- Require advance approval of the Administrator
Unfunded Fringe Benefit Plans

- May be allowed if they meet the following criteria:
  - can be reasonably anticipated to provide benefits described in the Act
  - represent an enforceable commitment
  - can be carried out under a financially responsible plan
  - have been communicated in writing to affected workers
“Prevailing Wage” Credit for Fringe Benefits Contributions

- Credit for fringe benefit payments are generally based on the
  - period of time covered by the contribution, e.g., weekly, and
  - contribution amount divided by total hours worked (both covered and non-covered work)
Annualization of Rate of Contribution/Cost

- Applicable to annual type benefits
  - health insurance
  - Pension plans
  - Paid leave benefits (vacation, sick)
  - *bona fide* apprenticeship training funds
- Lump sum payment for annual cost of benefits
- Offset based on total annual hours worked (covered and non-covered work)
Investigative Procedures
Under
DBA/DBRA/CWHSSA
Investigation Procedures

- Reorganization Plan No. 14 of 1950
- Davis-Bacon (DB) Labor Standards Contract Stipulations
- Specific Steps in Conducting DBA/DBRA/CWHSSA Investigations
- Conclusion of Investigation
- Report Writing
- The Hearing Process
Reorganization Plan No. 14 of 1950

- DOL Functions/Responsibilities
  - Determining “prevailing wages”
  - Issuing regulations and standards to be observed by contracting agencies
  - Perform oversight function and has independent authority to conduct investigations

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Reorganization Plan No. 14 of 1950

- Contracting Agencies have day to day enforcement responsibility:
  - Ensures DB contract stipulations and appropriate wage determinations are in covered contracts;
  - Ensures that Davis-Bacon poster (WH-1321) and WDs are posted at the site of the work
  - Review certified payrolls in timely manner
  - Conduct employee interviews and investigations
  - Forward refusal-to-pay and or debarment consideration cases to WHD for appropriate action
  - Submit enforcement reports to DOL
The Term “labor standards” means the requirements of:

- The Davis-Bacon Act
- The Contract Work Hours and Safety Standards Act
- The Copeland Act
- The prevailing wage provision of the Davis-Bacon and “related Acts”
- The Regulations, 29 CFR 1, 3, and 5
Davis-Bacon Labor Standards
(29 CFR 5.5)

- Minimum wages (MW’s)
- Withholding
- Maintaining basic payroll records

- Submission of certified payroll records
- Apprentices
- Trainees

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Davis-Bacon Labor Standards

- Copeland requirements
- Subcontracts
- Contract termination and debarment
- Rulings and interpretations
- Disputes
- Certification of eligibility
Preliminary Steps in Conducting Investigations

- Obtain the following information:
  - Copy of labor standards clauses in contract
  - Copy of DB WD in contract, including any instructions for multiple schedules
  - Copies of certified payrolls
  - Employer identification number
Start of the Investigation

- Initiate contact with employer
- Examine certified payrolls
- Examine basic payroll records
Start of the Investigation (Cont’d.)

- Check for compliance with apprenticeship or trainee requirements
- Determine if a conformance is necessary

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Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview Statement should contain:
  - Place and date of interview
  - Name and address of employer/employee
  - Employment status and classification
  - Alleged violations
Conducting Investigations

- Determine compliance with “prevailing wages”
- Determine compliance with CWHSSA
- Compute back wages and liquidated damages
Computing Back Wages (40-Hour Workweek)

Contractor employs 5 Electricians on the site of the work, 40 hours a week. WD calls for a prevailing wage of $14.00 ($12/BHR + $2/FB’s). Contractor paid $10.00 per hour per employee.

Prevailing Wage: $14 X 40 Hours = $560

Wages per Employee: 10 X 40 = 400

Back wages per employee: $160

Total back wages owed = $800 ($160 X 5) p/w
Computing Back Wages
Overtime Hours

Same example except 50-hour workweek, 5 weeks, 5 days per week, and employer paid prevailing wage:

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<tr>
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<td>$12.00</td>
<td>X 50 Hours=</td>
<td>$600</td>
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<tr>
<td>OT</td>
<td>$12.00/2</td>
<td>X 10 Hours=</td>
<td>60</td>
</tr>
<tr>
<td>FB’s</td>
<td>$ 2.00</td>
<td>X 50 Hours=</td>
<td>100</td>
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<tr>
<td>Total</td>
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<td>$760</td>
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Back Wages(P/E) = $60

$60X5Weeks = $300 X 5Ees = $1,500
Computing Liquidated Damages under CWHSSA

Using the previous example, following weekly scheduled in effect for 5 weeks:

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Liquidated damages computed for Friday,
$10 \times 5 \text{ weeks} = 50 \times 5 \text{ Ees} = 250$
Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 40 hours as an Electrician at $15.00 BHR and also as an Unskilled Laborer for 10 hours at $10.00 BHR. The regular rate for determining the overtime rate is

\[
\begin{align*}
40 \times 15.00 &= 600.00 \\
10 \times 10.00 &= 100.00
\end{align*}
\]

\[
\frac{700.00}{50} = 14.00
\]

Overtime due: \(14.00 \times \frac{1}{2} \times 10 = 70\)
Conclusion of Investigation

- **Final Conference Procedure**
  - Inform contractor of investigation findings
  - Detail steps to eliminate violations
  - Consider additional evidence that may impact on findings (e.g., conformance)
  - Request payment of back wages
  - Notify liquidated damages under CWHSSA
- Contact WHD if no agreement
Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages

- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding)

- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy
Debarment

- Occurs when a prime or sub contractor is declared *ineligible* for:
  - violations of the DBA in disregard of its obligations to employees or subcontractors
  - aggravated or willful violations under the labor standards provisions of related Acts
- Period of ineligibility is 3 years for DBA covered contracts and up to 3 years for DBRA covered contracts
Debarment Criteria

- Debarment is considered when contractor has:
  - recurring violations of same nature
  - submitted falsified certified payrolls
  - required “kickbacks” of wages or back wages
  - refused to pay back wages
Hearing Process

- Refusal-to-pay cases:
  - If factual issues in dispute, WHD notifies contractor of findings and offers opportunity to request a hearing before the Administrative Law Judge (ALJ).
  - If questions of law in dispute, WHD issues ruling letter that may be appealed to DOL’s Administrative Review Board (ARB).
  - If debarment action initiated, contractor is offered opportunity to request an ALJ hearing.
Administrative Review Board

- Consists of 3 members appointed by Secretary of Labor
- Hears appeals of ALJ decisions
- Acts on petitions to review rulings of WHD Administrator on coverage interpretations, and WD matters
- Appeals may be in the form of oral hearing in Washington, D.C., but typically are by review of record in closed session