



## **Public Construction Frequently Asked Questions**

### **1. What is the Little Davis-Bacon Act?**

The Little Davis-Bacon Act (LDBA) is a set of state laws in Alaska Statutes Title 36 which establishes minimum wage and associated requirements for labor on public construction contracts awarded by the State of Alaska or a political subdivision of the state that exceed \$25,000. The minimum wage (or the prevailing rate of pay) applies to construction-related workers, regardless of whether they are employees or not. The Alaska Department of Labor and Workforce Development, Wage and Hour Administration (DOLWD) publishes the prevailing minimum wages twice a year at: <http://www.labor.alaska.gov/lss/pamp600.htm>.

### **2. What is the difference between Davis-Bacon and Little Davis-Bacon?**

The Davis-Bacon Act (DBA) is a set of federal laws applicable to federal public construction projects. The Little Davis-Bacon Act (LDBA) is a set of state laws applicable to state projects. Some projects, such as certain highway projects, may be funded with both federal and state funds and may be covered by both federal and state laws. In these cases, construction contractors must comply with the most stringent provisions of both sets of laws.

### **3. What should a person do if they don't know whether a project is subject to the prevailing wage requirements?**

Contact the regional Wage and Hour Administration office where the project is located for a determination.

### **4. Are there any fees that must be paid when working on a public construction project?**

Yes. Before beginning work, the prime contractor (the person or entity that enters into the contract with the contracting agency) must file a "Notice of Work" (NOW) with DOLWD, and pay all applicable filing fees through the online system by logging into myAlaska, at <https://my.alaska.gov> and clicking on "LSS - Online Filing Services."

### **5. How much are the filing fees?**

The filing fee is one percent (1%) of the total contract amount, including all subcontract work, up to a maximum fee of \$5,000. Only the prime contractor is required to pay the filing fee. Filing fees are paid by clicking on "Pay Filing Fees Electronically" in the LSS - Online Filing Services system.

### **6. Can a contractor begin work on the contract right away and submit the NOW and pay the filing fee at a later date?**

Not unless it is for work undertaken in immediate response to an emergency. If so, the notice and fee are to be filed no later than 14 days after the work has begun.

**7. What happens if the prime contractor begins work and fails to pay the filing fee and fails to submit the NOW?**

DOLWD may issue a Cease and Desist order to the prime contractor, prohibiting the contractor and its subcontractors from working on the project until the filing fees are paid and the required NOW is filed. DOLWD may also direct the contracting agency to withhold accrued project/contract funds until the filing fees are paid and NOW is filed.

**8. Are there any forms that must be submitted upon completion of the contract?**

Yes. Upon completion of all work on the public construction contract, the prime contractor must file a "Notice of Completion" (NOC). This is done electronically through the LSS - Online Filing Services under myAlaska (<https://my.alaska.gov>) by clicking on "File Notice of Completion." Upon approval by DOLWD, the contractor then presents the NOC to the contracting agency in order to receive their final pay on the contract.

**9. What if the original contract amount changed and the value of the work increased or was reduced (change orders)?**

Additional filing fees to be paid or refunds owed the contractor because of changes made to the contract amount are reconciled at the conclusion of the contract with the filing of the NOC through LSS - Online Filing Services. Contractors must pay additional fees owed or request a refund for any excess fees paid at the time of filing the NOC.

**10. How is the DOLWD project number and name assigned and where can they be found?**

Contracting agencies are required to submit Notifications of Award (NOA) to DOLWD prior to project numbers being assigned. Once this NOA is approved, DOLWD emails project numbers and names to the contracting agencies and prime contractors through LSS - Online Filing Services. It is the prime contractor's responsibility to ensure all subcontractors receive the DOLWD project number and name.

**11. How often do employees have to be paid when they are working on a public construction project?**

They must be paid their wages weekly and unconditionally. There are no exceptions.

**12. Do the LDB laws require the same prevailing wages for the entire state?**

No. There are two primary regions:

- Northern Alaska/Southeast Alaska - (the area north of N63 latitude and east of W138 longitude.); and
- Southcentral Alaska - (the area south of N63 latitude and west of W138 longitude.)

**13. What should a person do if they are unsure of the correct wage classification?**

Contact the nearest regional Wage and Hour Administration office for assistance.

**14. Is there a requirement to post the minimum wage rates for the various classifications of workers?**

Yes. The scale of wages (Pamphlet 600) must be posted in a prominent and accessible place at every project work site.

**15. What is a certified payroll?**

Certified payroll is a specially formatted payroll report that contains information about who worked on a public construction contract, what their work classification was, how many hours they worked and how much the contractor paid them. Certified payroll also contains a “Statement of Compliance” which contains legal language and requires a company official’s affirmation and original signature. By signing this statement of compliance, the owner(s) of the company are swearing to and confirming many things for which the company is liable. They are:

- All persons performing work on the project(s) have been paid all of their wages earned, free and clear without rebates or kickbacks to the company;
- All employees listed on this payroll have been paid an amount not less than the applicable basic hourly rate of pay for all hours worked (including overtime);
- All fringe benefits have either been paid in full directly to the employee, or that the fringes have been paid into approved plans, funds or programs;
- Only lawful deductions have been made;
- The company is in full compliance with the Alaska Employment Preference Act as stated in AS 36.10; and
- Any and all apprentices have been properly registered with the US Department of Labor, Office of Apprenticeship.

**16. How often are certified payrolls submitted?**

Certified payrolls must be submitted by the Friday of every second week. Certified payrolls can be filed electronically by logging into myAlaska, at: <https://my.alaska.gov> and clicking on LSS - Online Filing Services.

**17. If the prime contractor requires the subcontractor to file certified payrolls with them, does this take care of the subcontractor’s filing requirements with the Department?**

No. The law requires that all subcontractors and contractors file payrolls with the DOLWD.

**18. Do owner/operators have to submit certified payrolls?**

Yes. An owner/operator is a sole proprietor, partnership, or an LLC that has elected to file their taxes as a sole proprietor or partnership, and who performs hands-on work on a public construction work-site. Owner/operators must list the actual hours worked on-site and the prevailing rate of pay they are receiving. They must also list the classification and class code that corresponds to the work they performed on-site.

**19. Can a truck broker submit certified payrolls on behalf of truck drivers?**

Generally, truck drivers who are owner/operators must submit their own certified payrolls. However, if a truck broker dispatches truck drivers and is working on the same project as those drivers, then in that circumstance the truck drivers are considered employees, and the broker may submit certified payrolls on their behalf.

**20. As an officer or shareholder of a corporation, or a member of an LLC who files taxes as a corporation, should I be paid the prevailing wage and be included on our certified payroll report if I performed hands-on work on a public construction project site?**

Yes. As the corporation and LLC structure creates a separate legal entity for liabilities, the owners are considered employees of the business entity. Therefore, the business must report and pay owners the same as it would any other employee – weekly and unconditionally.

**21. How is overtime calculated on prevailing rates of pay?**

Overtime compensation is 1½ times the employee's basic hourly rate of pay. Fringe benefits must be paid for all hours worked, but not at time and a half. Employees are entitled to overtime compensation for hours worked over eight hours in a single day. Employees are also entitled to overtime compensation for hours worked over 40 hours in a single week. To count the hours over 40 hours in a week, count only the daily hours the employee worked up to eight hours for each day he/she worked. If the employee worked over eight hours on any day that week, those hours have already been counted as overtime hours and need not be counted again.

**22. How is an employee to be paid who works at more than one job classification/class code with different rates of pay?**

The employee is due the minimum prevailing rate of pay for each job classification in which he/she performs work. A contractor may break down the specific hours and rates for each classification, or they may choose to simplify and pay him/her for all hours at the highest rate. If the employee is paid at more than one rate and works overtime, the contractor will need to pay overtime utilizing the weighted average method.

**23. How is overtime calculated using the weighted average?**

Because overtime is calculated by the week, all the hours that the employee worked under each classification for the entire week, including both public construction and any private sector work, must be taken into consideration. Overtime is calculated by using a blended and proportional weighted average of all rates. For further details and assistance about using the weighted average formula, please contact the nearest regional Wage and Hour Administration office.

**24. Does a foreman/superintendent have to be paid the prevailing rates of pay?**

Only if they perform hands-on work on-site, and then they must be paid the prevailing rates of pay for the appropriate work classification(s).

**25. My foreman receives a salary of \$1,000 per week for 40 hours of work. When performing "hands-on" work, can he/she be paid the prevailing wage rate out of the \$1000 and be paid the difference as a lump sum for other hours worked?**

No. The employee's rate of pay in this example is \$25 per hour ( $\$1000 \div 40 = \$25$  per hour). The foreman must be paid the proper prevailing rate, including fringe benefits, for the corresponding classification of work performed.

**26. Is my foreman/supervisor exempt from overtime?**

It depends. Very specific criteria must be met in order to correctly classify an employee as being exempt from overtime. Contact the nearest regional Wage and Hour Administration office for more specific information.

**27. Can a contractor put the worker's fringe benefit contribution into a plan without the worker's permission?**

Yes. But only if the plan conforms to regulation 8 AAC 30.025, is acceptable to the IRS, and meets requirements under 29 U.S.C. 1001-1461, the Employee Retirement Income Security Act of 1974 (ERISA).

**28. Can employees be paid a training wage while learning their job?**

A contractor must pay the published prevailing wage, unless the employee is enrolled/registered in an approved apprenticeship program registered with the U.S. Department of Labor, Office of Apprenticeship (telephone: (907) 271-5035, fax: (907) 271-5024).

Note: the plan must be approved and the employee must be enrolled/registered in the employer's plan. There is one exception for a trainee properly registered under the Alaska Department of Transportation and Public Facilities Trainee Program.

**29. How does an employee become registered as an apprentice?**

Contact the U.S. Department of Labor, Office of Apprenticeship at (907) 271-5035.

**30. When must board and lodging be provided? What about per diem?**

Board and lodging must be provided to workers employed on a remote public construction project. This applies to all workers who are entitled to prevailing wage. Board and lodging applies under the following conditions:

- The project is inaccessible by road in a two-wheel drive vehicle, or is located 65 or more road miles from the international airport in either Anchorage, Fairbanks, or Juneau. If it is a highway/road project, the distance is measured from the center of the project; and
- The worker's permanent, physical, domiciled residence must be more than 65 road miles from the project for the worker to be entitled to receive board and lodging.

Per diem is an allowable alternative to board and lodging under certain circumstances. Per diem must be paid at the minimum rate listed in Pamphlet 600. For more information about board and lodging/per diem, including alternative arrangements, see Alaska regulations 8 AAC 30.051 – 8 AAC 30.056.

**31. How long does an employer have to keep payroll records?**

An employer must retain payroll records for a period of three years.

**32. What should workers do if they have not been paid properly?**

The workers should discuss the matter with their employer, and contact the Wage and Hour Administration immediately if the employer does not pay the wages due. Workers should always keep a personal record of their hours worked and save their pay stubs to verify the amount of wages received. If work is performed in more than one classification/class code, the workers should identify the specific time of day they performed the various work, as well as the total hours worked in each classification.

**33. Does a contractor or sub-contractor have to hire 90% Alaskans on a public construction contract?**

It depends. The Employment Preference Act, otherwise known as Alaska's local hire law, requires 90% of the employed workers to be Alaskan residents. The hiring preference applies on a project-by-project, craft-by-craft or occupational basis and must be met each workweek by each contractor/subcontractor. The area(s) or zone(s) of the state where the 90% hiring preference applies may change periodically and is updated every two years. A current and updated determination is available at: <http://labor.alaska.gov/lss/forms/res-hire-notice1.pdf>.

**34. What if the needed workers are specially trained and the contractor cannot find enough workers to make up the 90% Alaskan resident workers quota?**

Contractors may apply for a waiver from the 90% Alaskan worker requirement by following an established procedure. Contact the regional Wage and Hour Administration office to learn more about this waiver process.

**35. What are some common violations found by DOLWD?**

- Failure to pay the proper prevailing rates of pay for the classification worked;
- Failure to keep an accurate record of the hours worked in each classification;
- Failure to pay the correct fringe benefit amount;
- Failure to pay the prevailing rates of pay on covered projects that have been awarded by private, nonprofit corporations that use state grant money for public projects;
- Failure to pay filing fees and to submit all required forms pursuant to AS 36.05.045, to the Department;
- Failure to pay per diem; and
- Failure to comply with the Alaska Employment Preference Act.

**36. What happens if a contractor/subcontractor fails to pay all of their employees properly?**

DOLWD will take appropriate enforcement action to collect the wages for employees. If the Department cannot collect from a subcontractor, the prime contractor is responsible for any wages due. DOLWD can also withhold accrued contract payments in an amount required to pay the workers.

**37. Is any further action taken against violating contractors who have disregarded their obligations to their employees?**

Contractors who disregard their obligations to employees may be debarred from working on LDBA projects for a period of three years. It is possible for a prime contractor to be debarred because of their subcontractor's violations.

**38. Does DOLWD offer contractors any training that covers Title 36 and LDBA requirements?**

Yes. DOLWD offers free monthly seminars in the regional Anchorage, Fairbanks, Juneau and Wage and Hour Administration offices. You can view the seminar flyers for each office at: <http://www.labor.alaska.gov/lss/whhome.htm>.