



Prevailing Wage Policy For MHDC Multifamily Programs

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Prevailing Wage

The Davis-Bacon Act of 1931 and additional laws known as the Related Acts are a collection of United States federal laws which established the requirement for paying prevailing wage on certain public works or publicly funded projects. These laws require all contractors and subcontractors pay some of their employees particular wage rates depending on the type of work each employee performs.

Davis-Bacon laws do not apply to all developments. Only certain circumstances will trigger the applicability of Davis-Bacon such as developments with twelve (12) or more HOME assisted units, CHOICE Neighborhood funds, Housing Choice Vouchers, Rental Assistance Demonstration (RAD) or CDBG/CDBG-DR (used for construction). Developers should check with all funding sources to verify that Davis-Bacon is not required.

Workers

Prevailing wage will apply to any person performing construction labor on the construction site. Persons performing construction labor are listed as laborers and mechanics and contractors are required to pay those laborers and mechanics a minimum of the local prevailing wage rate and fringe benefits paid on projects of a similar character.

Working Foremen

Foremen or supervisors that regularly spend more than 20% of their time performing construction work must be paid prevailing wage under the corresponding worker classification.

Wage Rates and Payroll Processing

Wage rates are set by following the wage determinations published by the DOL for Davis-Bacon. Under Davis-Bacon laws, all contractors and subcontractors must pay their laborers and mechanics not less than the prevailing wage rate and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects within the area.

Wage Determinations

The Wage and Hour Division of DOL ("Division") issues communications known as Wage Determinations (sometimes referred to as Wage Decisions). A Wage Determination is a listing of wage rates and fringe benefit rates for different classifications of laborers and mechanics in a given area for a particular type of construction.

The Division issues its Wage Determinations by publication of a notice in the Federal Register. Wage Determinations are effective from the date of notice and have no expiration date. Wage Determinations are continually updated and change frequently. However, only one Wage Determination will be applicable to a development. The Wage Determination that will apply to a development will be the Wage Determination in effect on the date the construction loan documents are signed. The Wage Determination of that date is "locked in" and subsequent updates or modifications to Wage Determinations will not affect the wage rates on the development.

In the event a development uses construction financing through a source other than MHDC, the developer

is required to notify MHDC staff within ten (10) days of the construction loan closing date and provide a copy of the executed construction contract to MHDC.

Within the body of each Wage Determination a listing of classifications (laborers and mechanics) will be found. Accompanying those classifications will be basic hourly wage rates and fringe benefit rates that have been determined to prevail for the same type of construction within the geographic area covered by the Wage Determination.

Classifications

Some classifications may include a subclass or group number. Common examples include Operator, Truck Driver, and Painter. Subclasses or groups may have different pay rate requirements so detailing the subclass on the certified payrolls is important.

Wage Amounts

All developments with buildings that are four or fewer stories will be required to comply with the "Residential" Wage Determinations. All developments that have buildings with five or more stories must comply with the "Building" Wage Determinations.

Wage rates are based on classification of the worker. The classification is determined based on the type of work actually being performed by the worker during the pay period. It is important to note, the prevailing wage for each classification must be paid to a worker in the classification regardless of the worker's skill level. For example, if a worker is performing duties normally performed by a carpenter, that worker must be paid prevailing wage for the classification of carpenter, even if the contractor does not consider the worker to be fully trained.

In the event a worker performs duties in more than one classification, the employer may pay wage rates separately provided the employer maintains accurate time records showing the amount of time spent in each classification of work. If time records are not available, the employer must pay the worker the higher of the wage rate of the classifications for the duties performed.

Wages can be calculated by various methods such as piecework. Regardless of the method used to calculate wages, the total wages must be converted to an hourly rate for submission on the certified payroll reports and such hourly rate must meet the minimum prevailing wage rates.

Apprentice Rates

Apprentices may be paid less than the Wage Determination rate, provided the person employed is individually registered in a bona fide apprenticeship program registered with DOL.

Usually, the apprentice wage rate is expressed as a series of percentages tied to the amount of time spent in the program. Documentation detailing the wages rates should be submitted to MHDC staff. For example, an apprentice of less than six months would receive 65% of the journeyman's wage rate, while an apprentice who has been in the program between six months and one year would receive 70%, etc.

An apprenticeship certification from DOL's Office of Apprenticeship must be provided to MHDC staff. If no apprenticeship certification is provided, the worker must be paid the prevailing wage for his or her classification. An approved apprenticeship program will regulate the ratio of apprentices to journeymen. The maximum number of apprentices on the development cannot exceed the ratio allowed in the

approved program. MHDC requires submission of a copy of the apprenticeship ratios schedule for each class of apprentice performing labor on the site. If no ratio information is available, MHDC staff will default to a 1:1 ratio.

Payroll

All workers must be paid weekly.

Overtime must be paid to all covered workers who work in excess of forty (40) hours during a work week. The overtime rate must be at least 150% of the Wage Determination basic rate plus 100% of any applicable fringe benefit rate.

Fringe benefits are included in some Wage Determinations and usually are listed as an hourly fringe rate. If the Wage Determination includes a fringe benefit rate for a classification, the fringe benefit rate must be added to the basic hourly rate unless the employer provides bona fide fringe benefits for employees. Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave, as well as contributions to training funds. Fringe benefits do not include employer payments for contributions required by federal, state, or local laws such as the employer's contribution to FICA.

The total hourly wage rates may be no less than the total of the basic wage plus the fringe benefit wage. If the value of provided fringe benefits is less than the fringe benefit rate stated in the Wage Determination, the difference must be added to the basic wage rate. Likewise, if an employer provides fringe benefits with a higher value than required, the employer may offset the excess amount against the basic rate. Employers should submit additional documentation in this case.

When a lower basic rate is paid due to an offset of fringe benefits, the overtime rate must be calculated based on the basic rate as stated on the Wage Determination and not on the basic rate actually paid. Based upon the previous example, when the Wage Determination requires a basic wage of \$15/hour and a fringe rate of \$5/hour, the total wage rate including overtime would be \$27.50/hour ($\$15 \times 150\%$) + ($\$5 \times 100\%$). In the event the employer provides fringe benefits valued at \$7/hour and, therefore, pays a basic rate of \$13/hour, the employer must nevertheless calculate overtime based on the Wage Determination rate of \$15/hour rather than the \$13/hour that is actually paid.

Reporting

MHDC requires the submission of certified payroll on a weekly basis. All certified payrolls must be electronically sent via email to MHDC's Davis Bacon Administrator before the physical reports are mailed to MHDC. Each certified payroll report submitted must be the original report with an original signature. Photocopies will not be accepted.

Forms

Use of Form WH-347 (published by the Division) is recommended. Form WH-347 and accompanying instructions may be obtained at <https://www.dol.gov/agencies/whd/forms/wh347>. It is also available on MHDC's website. Use of the most recent revision of the form is important.

Reports are not required to be submitted on Form WH-347 and many software packages produce certified payroll reports. Substitute forms are acceptable, provided the substitute form includes all of the

information required by Form WH-347, including the certification language and signatures. In the event a substitute form is used, the proper certification language must be attached. The certification language is available for download on MHDC's website.

Contents

Regardless of which form is used, certified payrolls must be complete, legible, properly executed, and dated. The certified payroll reports should contain the name of the development and the name of the contractor or subcontractor for identification purposes. The name of the employee, employee's current address, and the employee's last four (4) numbers of their social security number must be included on all certified payrolls.

If fringe benefits are included in the Wage Determination, paragraph (4) of the certification must be completed by checking box (a) to indicate fringe benefits are paid into an approved plan or by checking box (b) to indicate fringe benefits are paid in cash. If the employer offsets part of the basic wage due to the value of fringe benefits, MHDC requires a letter from the employer itemizing the benefit plans with the respective amounts paid to each plan and certifying fringe benefits were paid on behalf of the employees.

All deductions not required by law or are part of a collective bargaining agreement must be authorized in writing by the employee. The written authorization for the deductions should be included with the first payroll. For court-ordered deductions, MHDC will accept the court ordered letter.

Numbering

Certified payroll reports should be numbered sequentially. The sequential numbering of reports helps MHDC staff identify whether any reports are missing and relieves the contractor from having to submit reports when no work was performed on the site. The last report to be filed should be labeled "Final Payroll."

A separate certified payroll report with the accompanying payroll certification must be submitted for each payroll for each weekly pay period. Providing one certification for multiple pay periods is prohibited.

Classifications

A job classification must be listed for each worker on each payroll submitted. The job classification listed must show the current classification for the type of work the person is actually performing during the pay period. Only classifications listed on the applicable Wage Determination can be used. If an additional classification is required, contact MHDC staff for assistance in determining which classification to request.

If a job classification has an associated subclass or group number, such subclass and group number should be included on the report.

Owner Operated Subcontractors

When a company is operated only by its owner(s), the workers must be listed on the certified payroll of the "upper-tier" contractor.

When an owner of a company works with his or her employees, the owner is only required to list his or

her name and work classification, along with a notation of “Owner” and the total hours worked. Owners are not required to report the amount of pay.

Inspections

MHDC will conduct periodic on-site inspections which will include interviews with persons performing labor on the construction site. Interviews with workers are confidential and MHDC will attempt to conduct the interviews in a manner causing as little disruption as possible.

Postings

A copy of the Wage Determination must be displayed at the site of the work in a prominent and accessible place where it can be easily seen by employees.

Records

Employers are required to maintain payroll records, including back up documentation such as timecards, for a minimum period of three years after the construction development is completed. General contractors must maintain a copy of the records of all subcontractors for the same period of time.

Underpayments and Corrections

In the event MHDC staff discovers any prevailing wage compliance deficiencies, the contractor will be notified immediately. The general contractor is responsible for ensuring all underpayments are corrected within thirty (30) days. The general contractor must provide MHDC staff with:

1. An amended certified payroll report showing the corrections and labeled as “Restitution Payroll,” and
2. A copy of the bank cleared check(s) making the restitution, and
3. A signed statement from each of the underpaid worker(s) stating they have received the required restitution without threat of repercussions.

Additional Information and Guidance

Additional information about Davis-Bacon and the Related Acts may be obtained at the DOL website.

The following documents are used or provide additional information:

- Davis-Bacon Labor Standards – This HUD publication provides guidance that specifically relates to Davis-Bacon.
- Form WH-347 – The certified payroll form provided by DOL. This form is available in a fillable pdf format and can be downloaded from the DOL website.
- Form WH-347 Instructions – Guidance provided by DOL with specific instructions for completing Form WH-347.

- HUD-4010 – Information provided by HUD regarding Labor Standards (the terms and conditions of this form must be incorporated into the construction contract).
- LR-96-01 – This letter ruling issued by HUD provides clarification regarding how prevailing wage applies to owners.
- Form WH-1321 – The employee rights poster provided by the DOL.
- Form WH-1321-SP – The Spanish version of the employee rights poster provided by the DOL.
- Payroll Deduction Authorization – This form should be completed by the employee to verify that deductions are authorized.
- Form HUD-2554 – This document must be used when the development includes Risk Share financing.

MHDC Contact Information

Additional guidance on Davis-Bacon and Prevailing Wage can be found on the MHDC website:
<https://mhdc.com/programs/hud-programs/davis-bacon/>

For assistance or additional information, please contact MHDC staff:

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