IBEW POLICY BRIEF

Chapter 6: Prevailing Wage Requirements

The IBEW supports prevailing federal, state, and local wage laws. Prevailing wage laws benefit workers, employers, communities, and taxpayers by fostering an environment where skilled craftsmen and women complete projects safely and efficiently.

The Davis-Bacon Act covers contracts with the federal government or the District of Columbia over $2,000 for construction, alteration, and repair, including painting or decorating, of public buildings or public works. Davis-Bacon requirements also extend to numerous “related Acts” that provide federal assistance through grants, loans, loan guarantees, or insurance.

The U.S. Department of Labor is responsible for determining local prevailing wage rates. The Wage and Hour Division issues two types of wage determinations: general determinations, also known as area determinations, and project determinations. A project wage determination is issued at the specific request of a contracting agency for a specific project. Usually, it expires in 180 days.

Although opponents of a prevailing wage claim that prevailing wage requirements increase project costs, harm the economy, and squeeze small businesses out of significant opportunities, the opposite is true. Davis-Bacon laws ensure that public construction jobs go to local residents, increasing state and local tax revenue. These laws also stabilize project costs and improve productivity and safety on the job site.

First, by establishing local wage rates as the prevailing wage rates on public works projects, Davis-Bacon laws encourage contractors to hire locally. Davis-Bacon also helps local contractors compete for local projects by protecting against under-bidding. Low-road contractors often underbid these projects by bringing in workers from other areas for less pay.

Research shows that prevailing wage laws do not increase the overall cost of public construction projects. Construction labor costs constitute a comparatively low share of total project costs. Contractors who pay the prevailing wage can offset these costs because prevailing wage laws promote better training, greater skill levels, and higher productivity.

Furthermore, research shows that prevailing wage laws increase tax revenue to states and localities by ensuring that contractors hire locally and workers pay local taxes.

With prevailing wage requirements, large and small contractors can attract highly-skilled and trained workers. Prevailing wage rates within a locality ensure the quality of the craftsmanship on a project and that the workers can do the job right the first time. In addition, having the proper workforce prevents costly and time-consuming delays further down the road. When a contractor procures a highly skilled, extensively trained, safety-conscious workforce, their projects are completed safely, on time, and within or under budget[9]. As a result, taxpayers get a fair return on investment for public projects funded by federal tax dollars.

Prevailing wage requirements bring stability to the inherently volatile construction labor market. These requirements benefit the industry in recruiting and training workers and maintaining the long-term supply of skilled labor.

Recent Developments

Davis-Bacon in the Bipartisan Infrastructure Law

Congress included Davis-Bacon protections in many programs under the Bipartisan Infrastructure Law (BIL).

The BIL applies Davis-Bacon labor standards to federally funded or assisted construction projects in three ways:

1. Adding funding to programs previously authorized by an existing Davis-Bacon Related Act
2. Adding new programs under the umbrella of an existing Davis-Bacon Related Act
3. Including provisions that expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through BIL

Proposed Updates to Davis-Bacon Regulations

On March 11, 2022, the DOL announced the publication of the proposed rule, "Updating the Davis-Bacon and Related Acts Regulations." The DOL proposed amending regulations that set forth rules for the pre-determination of Davis-Bacon wage rates. It also proposed amending the administration and enforcement of Davis-Bacon labor standards that apply to federal and federally-assisted construction projects.

[9] *See, e.g.,* Nooshin Mahalia, *Prevailing wages and government contracting costs* (2008), http://www.epi.org/publication/bp215/.

The Davis-Bacon Act was first signed into law by President Herbert Hoover in 1931. However, a Reagan-era overhaul substantially weakened the law. The Regan administration changed the calculation of local prevailing wage laws, which reduced the rate paid to workers on federally funded construction projects. The DOL's proposed regulations will restore the original formula and review it more frequently so that rates set for federal contractors continue to align with local construction wages. In addition, the update includes anti-retaliation language to protect workers who raise concerns about payment practices from being fired or discriminated against by their employer. There are also new strategies for recovering back pay.

The new regulations will deliver changes promised by President Biden to rebuild our nation's infrastructure and revitalize the economy through infrastructure investments that create good, union jobs.

The primary purpose of the proposed rule is to return to the 1935-1983 era three-step method of determining "prevailing wage" rates:

1. Any wage rate paid to a majority of workers
2. Suppose there is no wage rate paid to a majority of workers. In that case, the wage rate is paid to the greatest number of workers, provided it is paid to at least 30 percent of workers (i.e., the so-called "30-percent rule")
3. If the 30 percent rule is not met, DOL will use the weighted average rate

This reform will ensure that prevailing wages reflect the wages paid to local community workers. The proposed rule will also mean higher worker wages through faster prevailing wage updates. The updated regulation will provide internal safeguards to ensure that prevailing wages keep up with actual wages. The rule will also include more efficient enforcement of the act's standards. In addition, the proposed rule will enhance worker protection and enforcement, including debarment and anti-retaliation provisions.

The proposed rule is poised to have a substantial impact. Davis-Bacon laws cover roughly $217 billion in annual federal construction contracts. As a result, the administration and Congress expect the Bipartisan Infrastructure Law to lead to the most significant surge in federal construction spending in modern history.

Due to the partisan environment in which President Biden and Congressional leaders negotiated, efforts to secure prevailing wage policies on all BIL programs were complicated by opposition from Republican-supported industry and corporate interests. Senate Republicans refused to support the law's inclusion of Davis-Bacon prevailing wage protections for new programs within the BIL. As a result, Davis-Bacon protections will apply to some – but not all – BIL-funded projects.

The Government Affairs Department continues to work closely with the Biden Administration, federal agencies, and Congress to ensure that prevailing wage requirements and other meaningful labor standards are incorporated into federally funded and assisted projects to the greatest extent possible under the law.

Government Affairs Department Points of Contact

Danielle Eckert Danielle_Eckert@ibew.org	Director of Government Affairs
Taylor Waites Taylor_Waites@ibew.org	Construction, Labor Standards & Apprenticeships