

## Five (or more) Types of Prevailing Wage

*By Philip Ely, Advantage Resource Inc.*

When most contractors think of prevailing wage, they think of high labor rates, required fringes, certified payrolls, and compliance issues. Some do not realize that “prevailing wage” is a generic term and everything is not simply “Davis-Bacon”. There are multiple federal prevailing wage laws, thirty two states with prevailing wage laws, and over one hundred localities with their own prevailing wage or living ordinance requirements. In fact, a contractor might have five projects, and all five may be subject to different prevailing wage laws, each with their own requirements, wage determinations, overtime definitions, and penalties for non-compliance.

A project’s funding authority will typically determine which set of rules a contractor must abide, along with determining the minimum specified hourly wage plus an additional hourly Bona Fide Fringe amount for particular worker classifications. It is important to note, however, that “Bona Fide Fringe” has a specific prevailing wage definition and is not necessarily as defined by the IRS. It is common knowledge that having a properly constructed and administered Employee Benefits Program can help the contractor save money and be in compliance, but the contractor must be able to count on their service providers to also be knowledgeable of prevailing wage regulations.

Prevailing Wage is a continuous issue for contractors, with often severe and even crippling penalties for noncompliance. Since knowledge of prevailing wage, in general, is a good place to start, this article summarizes some of the more common prevailing

wage laws which a contractor may come into contact, along with pointing out some key differences between them.

### The Laws

The Davis-Bacon Act (DBA) is a federal prevailing wage law that applies to contractors performing work on federal contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works. Passed into law in 1931, “Davis-Bacon” is what some contractors may think of when they hear “prevailing wage”, but the two terms are not synonymous. In addition to the DBA, approximately sixty federal laws authorize federal assistance on construction projects through grants, insurance, loans, or loans guarantees. These laws, collectively referred to as “Davis-Bacon Related Acts” (DBRA), include provisions that require Davis-Bacon labor standards. To the contractor, DBA and DBRA are one and the same, as the requirements for DBRA projects are generally the same as those for DBA projects.

The Walsh-Healey Public Contracts Act (PCA) applies to federal contracts in excess of \$10,000 for the furnishing or manufacture of supplies, materials, or equipment to the U.S. government. Passed in 1936, the PCA sets minimum wage, overtime, and recordkeeping standards for covered contracts, and covers employees who handle, assemble, produce, or ship goods under these contracts. Certain contracts are specifically exempted from PCA requirements. While some contractors may have PCA contracts or projects, they tend to be rare among construction contractors.

The McNamara-O’Hara Service Contract Act (SCA), passed in 1965, is a federal prevailing wage law that requires contractors who perform services on covered contracts in excess of \$2,500 to pay service employees a local prevailing wage and to furnish fringe benefits. The SCA was originally intended to “close the gap” between federal construction (DBA/DBRA) and procurement (PCA) projects. SCA projects typically have a defined Health & Welfare (H&W) hourly fringe rate and stipulate the payment of certain holidays and a vacation schedule based on years served. Construction contractors may find that some of their prevailing wage projects are actually subject to SCA requirements, in that the project may be funded under a maintenance or service contract.

In addition to federal prevailing wage laws, thirty two states have their own prevailing wage laws. Collectively referred to as “Little Davis-Bacon” laws, state laws are typically similar to the Davis-Bacon Act, with additional regulations and requirements to follow. The amount and specifics of these “additional requirements” vary state to state. Kentucky, Ohio, Indiana, Illinois, Missouri, Tennessee, and West Virginia are just a few of the states that have their own state prevailing wage laws.

Kentucky’s prevailing wage law, the first of which was passed in 1940, is administered by the Division of Employment Standards, Apprenticeship, and Mediation of the Kentucky Department of Labor. State contracts in excess of \$250,000 for the construction, reconstruction, improvement, enlargement, alteration,

or repair of any public works project are subject to state prevailing wage laws. Most work on state roads, local courthouses, and public schools are Kentucky state prevailing wage projects. One large difference between the Davis-Bacon Act and Kentucky's prevailing wage law is the presence of daily overtime laws on state projects. Most prevailing wage audits in the state are performed by investigators from the Kentucky DOL.

In Ohio, prevailing wage is regulated and administered by the Ohio Department of Commerce. Ohio uses different cost thresholds, depending on project type, before prevailing wage requirements come into effect. The state also has certain notification requirements of employers to their employees before

work on a prevailing wage project begins, along with stiffer penalties for non-compliance than some other states. There are also some Ohio state projects, like schools, that are specifically exempted from certain state prevailing wage requirements.

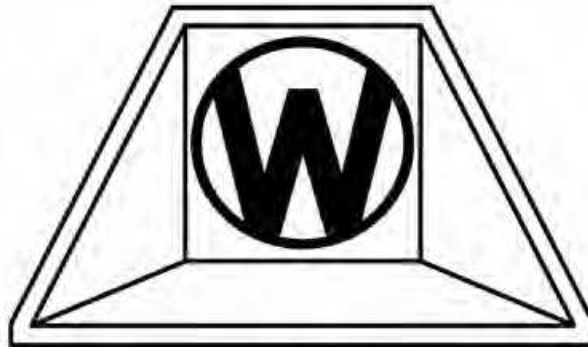
Indiana refers to prevailing wage as the Common Construction Wage (CCW), and wage scales are adopted on a project-by-project basis. Indiana also differs in its cost thresholds, wage determination means, and CCW project exemptions as from other states.

Illinois publishes revised wage determinations monthly, and rates paid to laborers and mechanics may change mid-project. Illinois also has specific daily, weekend, and holiday overtime requirements for its

prevailing wage projects.

In some respects, prevailing wage is like a sporting event. While the general layout of the game may remain the same, the rules, instructions, and penalties can differ depending on where the game is played. As with most things, it is the duty of the contractor to know which rules are in effect. For example, a contractor may be doing work on a Federal courthouse (Davis-Bacon), a state courthouse in Ohio (Ohio State PW), a school in Kentucky (Kentucky State PW), a water treatment plant in Indiana (Indiana State CCW) and service work at a military facility (McNamara-O'Hara SCA). Five projects, five sets of rules to follow, all prevailing wage.

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