

MONTANA DEPARTMENT OF TRANSPORTATION (MDT) Civil Rights Bureau

Revised 4-30-13



GUIDE TO DAVIS BACON CERTIFIED PAYROLLS ON FEDERAL AID CONSTRUCTION PROJECTS

The Davis Bacon and Related Acts (DBRA) and the Copeland Anti-Kickback Act apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

COMPANIES EXEMPT FROM PAYROLLS*

- Surveying/Engineering (unless they perform physical labor such as removing brush or installing erosion control devices.)
- Consultants (such as Explosive companies)
- Scientific Testing (such as Geotechnical testing)
- Call Civil Rights at 406-444-9270 when in doubt.

***If an employee works more than 20% of their work week, laboring on the project, their pay is subject to Davis Bacon.**

CERTIFIED PAYROLL: A weekly certified payroll record and completed Statement of Compliance (SOC).

All Federal - Aid construction project payrolls, both Prime and Subcontractor**, are submitted to the MDT Engineering Project Manager (EPM).

Note: For CTEP projects to the CTEP Administrator for Maintenance projects to the Civil Rights Bureau.

All are due within seven days of the payroll period end date. **The Prime contractor reviews all Subcontractor payrolls prior to submittal.

More information may be found in the MDT Civil Rights Manual at: http://www.mdt.mt.gov/publications/docs/manuals/crb_manual.pdf

AS REQUIRED BY the U.S. Department of Labor (USDOL), CERTIFIED PAYROLL RECORDS SUBMITTALS MUST CONTAIN THE FOLLOWING INFORMATION:

- The employee's full name and unique identifying number (i.e. employee identification number or last 4-digits of the employee's social security number only).
- Do not include employee addresses.
- The contractor's employee classification code and the corresponding classification from the wage decision.

STATEMENT OF COMPLIANCE (SOC): Each payroll is to be accompanied by a statement of compliance signed by an authorized agent of the contractor who has knowledge of the facts represented to be true. The Statement of Compliance verifies the payrolls are correct and complete, that the wage rates are not less than those required by the contract wage decision and that the classifications for each employee conforms with the work performed.

| SUBJECT | DESCRIPTION | EXAMPLE CALCULATIONS | |
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| | | TYPE | AMOUNT |
| <p>BASE WAGE RATE Refer to the specific contract for the wage rates that apply. This may include Building wage rates.</p> | <p>Reflects the wage rate for the specific classification of the work the employee performs.</p> <p>The following Special Classifications are NOT listed in the Davis Bacon Wage Decision and are addressed individually:</p> <ul style="list-style-type: none"> • Apprentice: Call Civil Rights Bureau for clarification • OJT Trainee: Call Civil Rights Bureau for clarification • Owner (owner of company): supply name, classification (owner) only. • Owner-Operator (ONLY) used for truck operators of heavy hauling equipment): supply name, classification, days & hours worked. • Foreman/Superintendent/Supervisor: Supply name, classification days and hours only. | <p>Classification base wage rate of a Power Equipment Operator, Group 1.</p> | <p>\$21.52</p> |
| <p>ZONE PAY (If applicable)</p> | <p>The Bid package will identify the designated Zone pay for the specific project. (found under ZONE PAY)</p> <p>The following classifications DO NOT RECEIVE zone pay:</p> <ul style="list-style-type: none"> • Painters/stripping • Electricians • Line construction • Welders, call Civil Rights Bureau for clarification | <p>Zone 3 pay</p> | <p>+4.00</p> |

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| Higher rate calculation | Add the totals together for the straight time wages. | (Lab Grp 4) | <u>\$379.26</u> | |
| | | | \$978.36 | |
| | Divide the total straight time wages by the total number of hours (48) worked on all jobs in the workweek. This results in the average hourly rate (\$20.38). | \$978.36/48 | | \$20.38 |
| | Multiply the average hourly rate by .5 = hourly overtime premium. | \$20.38 x .5 | | \$10.19 hourly overtime premium |
| | Hourly overtime premium rate x hrs. (8) worked in excess of 40 = Overtime wages due. | \$10.19 x 8 hrs. | | <u>\$81.52</u> |
| | Straight time wages + overtime wages = Total wages due. | Total wages due | | \$1059.88 |
| | OR | ----- | | ----- |
| | An employer <i>may</i> choose to pay the higher overtime wage of the classifications for all hours worked. | | | |
| | Employee works 30 hrs. in one classification and 18 hours in the other. | | | |
| | Multiply 30 hours times the classification wage rate. | 30 hrs. x \$19.97 (Lab Grp 2) | | \$599.10 |
| | Multiply 10 hours times the classification wage rate | 10 hrs. x \$21.07 (Lab Grp 4) | | \$210.70 |
| | Add the totals together for the straight time wages. | | | <u>\$809.80</u> |
| | The hours worked in excess of 40 (8) will be overtime hours and calculated at the higher rate (\$21.07). | | | |
| | Multiply the higher rate times 1.5 = hourly overtime wage rate. | \$21.07 x 1.5 | | \$31.61 hourly overtime wage rate |
| Multiply the hourly overtime rate times hours in excess of 40 | \$31.61 x 8 | | <u>\$252.88</u> | |

| | Add straight time wages and overtime wages = total wages due. | Total wages due | \$1062.68 |
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| <p>SHIFTING: Is when an employer subtracts from the classification base wage rate and adds it to the fringe amount to pay for fringe benefits. This process can also work in reverse.</p> <p>Under the provisions of § 5.31, 29 CFR when shifting, the wage/fringe package can be no less than the total which is stated in the contract. The base hourly rate of pay may not drop below the Federal minimum wage.</p> <p>Refer to the Deductions section below or call the Civil Rights Bureau for clarification.</p> | | See SUBJECT section: Fringe Benefits Portion shifted to bona fide plan | |
| SUBJECT | DESCRIPTION | EXAMPLE CALCULATIONS | |
| | | TYPE | AMOUNT |
| Fringes/fringe benefits <i>(When paid as cash)</i> | <p>When an employee's fringes are paid in cash (as part of their hourly wage).</p> <p>Mark the check box on the Statement of Compliance (WH347 page 2) that looks like the example below:</p> <p>(4) THAT:</p> <p><input checked="" type="checkbox"/> (b) WHERE FRINGE BENEFITS ARE PAID IN CASH</p> | Total wage package as described above. | \$33.52 |
| FRINGE BENEFITS Portion shifted to bona fide plan | <p>When a portion of the fringe benefits is paid to the bona fide plan, the remainder is shifted back in to the base wage rate.</p> <p>Mark BOTH check boxes on the Statement of Compliance (WH347 page 2) that looks like the example below:</p> | <p>Base wage rate</p> <p>Fringe</p> <p>Fringe benefit amount applied to a bona fide</p> | <p>\$25.52</p> <p>\$8.00</p> |

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| | <p>(4) THAT:</p> <p><input checked="" type="checkbox"/> (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS</p> <p style="text-align: center;">AND;</p> <p><input checked="" type="checkbox"/> (b) WHERE FRINGE BENEFITS ARE PAID IN CASH</p> | <p>plan</p> <p>Remainder shifted back to base wage rate</p> <p>Total hourly wage rate</p> | <p>- \$4.00</p> <p>\$25.52</p> <p><u>+ 4.00</u></p> <p>\$29.52</p> |
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| TYPE | DEFINITION OR ACTION NEEDED |
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| <p>DEDUCTIONS - INVOLUNTARY DEDUCTIONS Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes. AND/OR</p> | <p>ACTION NEEDED – DOCUMENTED ON ALL PAYROLLS THAT IT IS WITHHELD.</p> <p>NOTE: If Additional space is required for documentation or explanation on the Statement of Compliance, then provide on a separate sheet of company</p> |

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| Amounts required by court process to be paid to another, such as child support or court ordered garnishments. | letterhead. |
| SOCIAL SECURITY & MEDICARE (FICA) STATE (SIT),FEDERAL TAXES (FIT) | These are legal deductions |
| <p>CHILD SUPPORT GARNISHMENT If child support is required to be withheld by court order, it must be explained by the employer in writing on the certified payroll SOC</p> | <p>NEVER SEND COPY OF THE LEGAL CHILD SUPPORT DECREE TO MDT (contractor maintains records)</p> <ul style="list-style-type: none"> • Identify the withholding as Child Support in the “REMARKS” block of the Statement of Compliance. Include employee name, dollar amount and duration or you may submit a brief statement on your letterhead describing the garnishment. • No signed authorization required from employee. |
| <p>OTHER LEGAL GARNISHMENT If a deduction is required to be withheld by court order, it must be explained by the employer in writing on the certified payroll SOC.</p> | <p>NEVER SEND COPY OF THE LEGAL GARNISHMENT DECREE TO MDT (contractor maintains records)</p> <ul style="list-style-type: none"> • Identify the withholding as Garnishment in the “REMARKS” block of the Statement of Compliance. Include employee name, dollar amount and duration or you may submit a brief statement on your letterhead describing the garnishment. |
| <p>DEDUCTIONS - VOLUNTARY DEDUCTIONS Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.</p> | <p>ACTION NEEDED – Document the deduction on the Statement of Compliance as follows:</p> <p>For Equipment Operators - \$9.30 fringe rate.</p> <p>\$5.70 Per hour to: ABC Healthcare 1234 Anywhere Street Helena Mt 59601</p> |

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| | <p>\$3.60 Per hour to: 401K Plan 9876 This street Helena Mt 59601</p> <p>The contractor will need to maintain and make deduction records available should there be a concern or wage complaint.</p> |
| <p>UNION (COLLECTIVE BARGAINING AGREEMENT) Examples:</p> <p>Labor AGC Trust Operators OE&CI Montana Contractor’s Association (MCA) \</p> <p>These are only some of the Unions contractors are signatory with, there will be others.</p> | <p>When an employee’s fringe benefits are paid as part of a union agreement.</p> <p>Mark the check box on the Statement of Compliance (WH347 page 2):</p> <p>(4) THAT: (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS</p> <ul style="list-style-type: none"> • Identify the name & address of the union. |
| <p>NON-UNION EMPLOYER “BONA FIDE” FUND/PLAN: Pension Plan (401K), medical/health care, hospital care, retirement annuity, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay etc.</p> | <p>When an employee’s fringe benefits are paid as part of a “bona fide” plan.</p> <p>Mark the check box on the Statement of Compliance (WH347 page 2):</p> <p>(4) THAT: (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS</p> <ul style="list-style-type: none"> • Document the deduction on the Statement of Compliance as in the “Deductions” section above. |
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| <p>EMPLOYEE REQUESTS WITHHOLDING:</p> <p>Examples: Paycheck advances, company loan repayment, safety equipment, uniform cost, pension plan/fund, 401K March 23, 2012 March 23, 2012, life insurance, charity contribution, etc.</p> | <p>On the Statement of Compliance, in section: “(4) That: (c) Exceptions”</p> <ul style="list-style-type: none"> • Document the deduction on the Statement of Compliance as in the “Deductions” section above. |
| <p>PAYROLL SEQUENCE</p> | <p>For the life of a project, all contractors’ payrolls (Prime, Subcontractor and Sub-subcontractors) must be numbered in consecutive order for each week worked on the project.</p> <p>Many accounting programs only number payrolls for each week of the year (1-52) and do not have an override feature. In this case, the contractor will then put a line through the number assigned by the program and handwrite in the correct sequence number for the project.</p> <p>EXAMPLE: You work 3 separate weeks on an MDT project and your system assigns the week numbers as:</p> <p>Week 1 Worked, submit to MDT as payroll #1 Week 2 Did not work, do not submit to MDT Week 3, Worked, cross out 3, submit to MDT as payroll #2 Week 4 Did not work, do not submit to MDT Week 5 Did not work, do not submit to MDT Week 6 Worked, cross out 6, submit to MDT as payroll #3</p> <p>A project may continue for several calendar years. The payroll sequence will follow the life of the project and will not change from year to year.</p> |
| <p>SUPPLEMENTAL PAYROLL</p> | <p>Supplemental payrolls are required when there is an underpayment of wages (i.e. incorrect wage rate or a late timecard is received, etc.). Using the same work week as the original payroll:</p> <ul style="list-style-type: none"> • A Supplemental to Payroll #1 would be numbered 1A, with notation as why a supplemental was needed such as incorrect wage rate; |

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| <p>*When the correction is non-monetary, an email from the contractor correcting the mistake can be attached to the original payroll. A supplemental payroll is not required.</p> | <ul style="list-style-type: none"> •if an additional supplemental is needed to payroll number 1, continue to 1B, 1C etc. •Send in the original payroll. <p>The Supplemental should indicate ONLY the amount paid to the individual employee as restitution of wages. You do not have to recreate the entire original payroll where the under payment occurred.</p> |
| <p>FREQUENTLY ASKED QUESTIONS</p> | <p>ANSWERS</p> |
| <p>Mobilization</p> | <p>Does not receive Davis Bacon wages, no payroll required.</p> |
| <p>Supplier</p> | <p>An individual or company that delivers materials/supplies from a commercial source. No payroll needed.</p> <p>A payroll is needed in the case of an individual/company which delivers AND also applies the material. EX. An individual/company that supplies Magnesium Chloride to the project and also applies it to the road surface.</p> |
| <p>20% Rule</p> | <p>An employee who devotes more than 20 percent of their time during a workweek to a work classification is to be paid at that work classification for the time so spent. This includes salaried supervisors, superintendents and foreman.</p> |
| <p>Subcontractor</p> | <p>A subcontractor is any person or entity, to which a Contractor subcontracts, assigns or otherwise disposes of any part of the work. “Work” is the furnishing of all resources necessary to complete the project, and includes labor, equipment and materials. A subcontract is required for any person or entity on the project site, or for any work dedicated to the project. If the person or entity is included on the prime contractor’s payroll, a subcontract for the work is not required.</p> |

RESOURCES

MDT Civil Rights Bureau - 406-444-9270

MDT Civil Rights Manual located at: http://www.mdt.mt.gov/publications/docs/manuals/crb_manual.pdf

USDOL WH347 located at: <http://www.mdt.mt.gov/publications/docs/forms/contracting/wh347.pdf>

USDOL Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA) <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf>

TITLE 29--Labor, PART 5--LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

