

# Kansas Department of Commerce

## Labor Standards

### Frequently Asked Questions

1. What wage rate would contractors pay their employees while traveling to and from a job site?

In Anderson vs. Clemens Pottery Company, the Supreme Court ruled in part... “That travel to and from the work place was a normal incident of employment and shouldn’t be considered paid working time.” Generally, time spent commuting is not considered work time.

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2. Is a contractor obligated to pay an employee overtime for driving to and from work on top of their forty-hour work-week?

No, the employee clock starts at the job site, therefore, the hours traveled to and from work do not count against the forty-hour work-week, but the employee must be compensated according to the Fair Labor Standards Act.

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3. If a contractor pays an employee his/her hourly rate for their travel time to and from a job site, could this be considered a fringe benefit?

Yes, as long as it is a written company policy.

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4. If a contractor works on multiple projects, should they include all labor hours on the CDBG payroll?

If a contractor is working on a CDBG project and is also working on a project for someone else in another location that is **non-CDBG**, the contractor does not have to report any of the hours worked on the other project. He is only required to report the CDBG project hours. However, the contractor is required to report the gross wages earned on all projects followed by the gross wages earned on the CDBG project. The contractor can do this on the payroll itself. This is our way of finding out whether or not a contractor is paying overtime.

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5. Does an employee who worked 38 hours during a week and who took eight hours of vacation earn overtime pay for the week?

No, the employee must have worked over 40 hours during a week in order to earn overtime pay regardless of the vacation time taken during the week.

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6. Can a contractor pay an “Apprentice” Plumber, Brick Mason, Electrician, etc. less than the prevailing wage for that classification?

Yes, to pay an “Apprentice” less than the prevailing wage rate for the trade, the “Apprentice” must be enrolled in an Apprenticeship program with the State of Kansas or another bona fide Apprenticeship program.

When a person is being reported as an “Apprentice” one must secure a letter from the Department of Commerce Apprenticeship program certifying that the person in question is duly enrolled in an Apprenticeship program. If the contractor is unable or unwilling to provide the needed letter, then the contractor must pay the prevailing wage rate.

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7. If an apprentice electrician is in an approved program, does the electrical contractor have to pay fringe benefits?

Yes, if this is spelled out in the Apprenticeship Agreement that a contractor has signed with the Kansas Department of Labor. The agreement usually states the apprentice is entitled to a percent of both the full journeyman's wages and full fringe benefits. The CDBG grant administrator should secure a copy of the Apprenticeship Agreement to see what has been agreed upon.

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8. Should a Grant Administrator verify the eligibility of prime contractors and subcontractors?

Yes. The prime contractor and any subcontractors working on CDBG projects must be verified for eligibility purposes prior to contract award.

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9. Do we still need to fill out the Subcontractor Certification form whenever we hire a subcontractor?

The Subcontractor Certification form is obsolete and no longer to be used. Administrators must ensure that the Contractor Certification forms are filled out and on file for all prime contractors.

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10. Can a contractor require an employee to work during a week where there is a paid holiday? And would the holiday pay be considered in the regular forty-hour work-week or would the employee have to work the forty regular hours and get paid holiday hours as overtime?

Employees must work a forty-hour work-week before they are entitled to overtime. In the case above, the contractor can ask his employees to work up to a forty-hour work-week before paying them overtime. However, the contractor must compensate employees for the holiday pay.

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11. Does Davis-Bacon apply to Railroad Workers?

Railroad workers employed by railroad companies such as Burlington Northern Santa Fe, Kansas City Southern, Norfolk Southern are exempt from Davis-Bacon regulation, if the workers fall under the Railway Labor Act. However, if the railroad contracts out such construction work, laborers and mechanics employed by contractors or subcontractors are covered by the Davis-Bacon Act.

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12. If a well drilling company is either testing or drilling exploratory wells, do Davis-Bacon wage rates apply?

No, this is considered a service. However, when a company drills a well in order to put it into service or production, then Davis-Bacon wage rates come into play and apply to the drilling rig operators.

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13. Does the televising of lines fall under Davis-Bacon?

The internal inspection of sewer lines for leakage and damage through the use of closed circuit T.V. inspection and the simultaneous sealing of leaks or other damage in the lines as the machine inspects the sewer line is covered by DBRA. On the other hand, if the contract is only for inspection, DBRA would not apply.

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14. Is the use of a company truck for personal use considered a fringe benefit to an employee?

No, it is not considered a fringe benefit. The use of the truck is considered as payment for travel expenses and is incurred for the employer's benefit.

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15. If contractors are faced with two different carpenter wage rates plus fringe benefits in the same wage decision, what wage rate should they use?

Use the lower of the two wage rates plus fringe benefits. There may be more than this one instance where wage rates are listed differently. In the event you find a similar situation, please use the same ruling and make sure you **document your decision**.

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16. Does Davis-Bacon apply to grass seeding after a project has been completed?

Yes, Davis-Bacon applies to the initial seeding, but any subsequent treatments are not.

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17. How are fringe benefits calculated for an electrician if the hourly rate is \$25.35 and the fringe benefits are \$7.67 + 4 percent?

\$25.35 x 4% = \$ 1.01	OR	\$25.35 x 1.04 = \$26.36
Hourly Rate = \$25.35		
Fringe = \$ 7.67		Fringe = \$ 7.67
Total = \$34.03		Total = \$34.03

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18. What are fringe benefits under the Davis-Bacon Act?

The Act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar program, or other bona fide fringe benefits. (29 CFR 5.5.29)

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19. What are not considered to be fringe benefits under the Davis-Bacon Act?

The Act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workman's compensation insurance under either a compulsory or elective State statute is not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence (per diem) or to industry promotion funds are not normally payments for fringe benefits under the Act. (29 CFR 5.5.29)

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20. Are Per Diem and lodging expense payments to employees working out of town considered fringe benefits?

No, these expenses are part of doing business for the employer. If the employee was not working out of town, the payments would not be paid to the employee, therefore, they are not considered fringe benefits, but are a cost of doing business.

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21. Is a company's incentive bonus considered fringe benefit?

A bonus is not considered a fringe benefit as it has no bearing on an employee's hourly wage rate. The employee would be paid the same whether he or she received the bonus or not. Also, the company is not obligated to pay a bonus, but is obligated to pay a fringe benefit if the company has it as part of the benefits package.

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22. Payrolls seem to be required for demolition activities when a parking lot is built or another building is built on the cleared site. What if grass and shrubs are planted and a park/open space results?

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Davis-Bacon would not apply. If planting is on the scale of Central Park in New York then Davis-Bacon would apply.

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23. When are Davis-Bacon wage regulations triggered vis-à-vis housing rehabilitation projects?

Davis-Bacon wage regulations are triggered when eight or more contiguous housing units are being rehabilitated or when eight or more scattered site housing units are awarded to the same contractor under the same contract.

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25. Who is not covered under the Davis-Bacon Act?

Architects, engineers, **technicians** and draftspersons are not covered by DBRA, unless they perform duties as laborers and mechanics.

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26. There is restitution owed in the amount of .30 cents for Approved Paving on a project. Do I need them to pay restitution for such a small amount?

If the contractor does not have a pattern of shorting wages and the wage restitution is less than \$10.00 you can overlook the underpayment. However, if the underpayment occurs again, you must pursue the underpayments.

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27. How many laborers can a contractor have on a job?

It all depends on the nature of the work. Contractors must be careful not to have an excess number of laborers as it may be construed as a misclassification of the workers. Contractors who have what is deemed an excess number of laborers will be required to provide an explanation of the work being performed and the need for all the laborers on the job site.

Who should I contact for further information?

For more information please contact us at [kdc\\_cdbg\\_inbox@ks.gov](mailto:kdc_cdbg_inbox@ks.gov).

**See Helpful Notes on next page**

**Helpful Notes**  
**June 2004**  
**Davis-Bacon Workshop**

**Supervisors:** Contractors do not have to report hourly rates on supervisors as long as the supervisors work more than 80 percent of their time in a managerial capacity. However, supervisor hourly rates must be reported when he/she works more than 20 percent of their time with “tools of the trade”. For example, if a supervisor is also an electrician, and he works with his crew installing fixtures more than 20 percent of his time, he will be required to report his wage rate and hours on the job. However, if he is just supervising he will not have to report his hourly rate.

**80/20 Percent Rule:** At times projects have multiple components such as a sewer plant and sewer lines. Questions arise as to what wage rate to use, Heavy or Water/Sewer Lines. The rule is that if the smaller of the components is less than 20 percent of the cost of the project it is considered incidental to the main component and the wage rate of the larger part will apply. However, if the smaller component is more than 20 percent of the project, then it will have a separate wage rate. In that case the project will have two wage determinations.

**Miscellaneous Issues**

When contracting or subcontracting Tree Removal Services, the wage classification of Landscape Worker should be requested using the Additional Wage Classification request form.

Demolition only projects are exempt from Davis-Bacon requirements. However, grantees must ask for this determination from CDBG and not make the determination on their own.

Verification of contractor eligibility is performed on all prime and subcontractors.

**\*\*Employee interviews must be conducted on all federally funded projects.\*\***

Davis-Bacon regulations apply when CDBG funds are spent on construction related activities. In the event CDBG funds are used to acquire or design a project, and local funds are used to construct, then Davis-Bacon **does not** apply to that construction.

Wage rates are locked in as long as work begins 90 days after contract award. In the event a delay occurs in the beginning of construction, the fact that the contractor moved his/her work trailer to the job site, or some minor work is accomplished, then the Davis-Bacon rates remain locked in.

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