

**FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT THE DAVIS-BACON & RELATED ACTS (DBRA) AND
ABOUT COMPLETING SDDOT's STATEMENT OF COMPLIANCE AND CERTIFIED PAYROLL FORMS**

1. Question: Our payroll system is set up on a bi-weekly pay cycle, is that ok?

Answer: No. If you are performing work on a **covered project (Federal-aid contract in excess of \$2,000 OR a Non-Federal-funded SDDOT highway construction or repair contract in the amount of \$100,000 or more)**, the employees will be paid unconditionally and not less often than once a week. There are no exceptions to the requirement for the weekly payment of wages in the Davis-Bacon regulations, codified in 29 CFR Part 3 and Part 5.

[29 CFR Part 3](#)
[29 CFR Part 5](#)

2. Question: Are we required to submit a Payroll to the SDDOT every week, whether our company performed any SDDOT project work or not?

Answer: No. Payrolls are required to be submitted for the weeks that work is performed on the site of covered projects.

3. Question: Our company worked on three different SDDOT projects during one week, are separate Certified Payroll Reports required for each project?

Answer: In most cases, yes separate weekly Certified Payroll Reports must be submitted to SDDOT for each project work is performed. An exception is when multiple projects are within one SDDOT contract, then separate weekly payroll submissions would not be required for each project within one contract.

4. Question: Are subcontractors required to send their Payrolls to the prime contractors?

Answer: Payrolls are required to be sent directly to the SDDOT Labor Compliance Office in Pierre by the prime contractors and by the subcontractors. If a subcontractor is requested to submit copies of their payrolls to a prime contractor, in South Dakota it is optional not mandatory to provide copies of payrolls to prime contractors. Prime contractors will receive timely weekly delinquent notices if their subcontractors have failed to submit their payrolls to the SDDOT.

5. Question: If our company has employees that work in more than one classification and we list each classification on a separate line on the Certified Payroll, how do we enter the "All Projects" payroll information?

Answer: Only one line of "All Projects" payroll information is required for each employee. Please remember that the "All Projects" information MUST reconcile to each employee's WEEKLY paychecks.

6. Question: What qualifies as "bona fide" fringe benefits?

Answer: **To be considered "Bona Fide" Fringe benefits in accordance with 29 CFR 5.23, 5.26, and 5.27; contributions MUST be made to a trustee or third party administrator.**

"Bona Fide" Fringes reiterated at 29 CFR 5.29 of the Davis-Bacon Act include contractor or subcontractor making payments or incurring costs for 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 insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits.

"Bona Fide" Fringe benefits do not include benefits required by other Federal, State, or local law; such as Federal Withholding Tax and Social Security Tax. South Dakota State Law requires Workers Compensation Insurance and Unemployment Insurance.

"Bona Fide" Fringe benefits do not include payments made for travel, subsistence (per diem), or to industry promotion funds. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

"Unfunded" fringe benefits (such as vacation or holiday pay) MAY be considered, only if all of 4 conditions stipulated in 29 CFR 5.28 are met. However, the contractor must submit written request to the Secretary of Labor for approval, in accordance with 29 CFR 5.5(a)(1)(iv).

[29 CFR Part 5](#)

7. Question: How do we report the "Total Weekly Fringe" amount when our company pays three types of "bona fide" fringe benefits? (Ex: our company pays \$275 each month toward every employees' single- or family-coverage health insurance, company pays \$.030/hr. for dental/vision insurance, and our company matches 2% of gross pay for 401(k)).

Answer: Each week may have a different value for each employee, depending on the number of hours worked and/or the employees' gross pay. Example: One of your employees works 55 hours @ \$16.00/hour in a week during the month of June, for a total gross pay of \$1,000.00. The employee's number of the total hours (Davis-Bacon and non Davis-Bacon hours) worked during the month of June of the prior year was 230 hours. In this example, the "Total Weekly Fringe" amount paid by the employer is **\$102.50** [(\$275 insurance/230 June of prior year hours) x 55hrs this week=**66.00** weekly health insurance cash value + \$.030x55hrs=**16.50** dental/vision + \$1000x2%=**20.00** 401(k) employer match].

8. Question: Does the Davis-Bacon Act allow crediting employer-paid fringe benefits toward meeting the basic wage requirements?

Answer: Yes, see FOH Section 15f07, but caution the overtime must be paid at time and one-half of the basic hourly pay. The hourly fringe benefit credit value may be different for every employee each week, depending on the number of hours worked each week and/or if the premium paid by the employer is not the same for every employee. **In determining the hourly cash equivalent credit for fringe benefit payments for each individual employee, the period of time to be used is the period covered by the contribution [ex: for June monthly health insurance contributions, ALL hours worked during the June health coverage month must be used]. It is imperative that the total hours worked by each individual employee be used as a divisor to determine the rate of contribution per hour since employees may work various number of hours on both Davis-Bacon covered work and non-government work in the same period, in accordance with the U.S. DOL's Field Operations Handbook (FOH) Section 15f12.** Using the example above, assume \$16.00 is the basic hourly wage rate and 35 hours were worked on a covered project and 20 hours were off-site of the covered project, but health insurance is the only employer-paid fringe. The hourly cash equivalent credit for this week is \$1.20 (\$275 monthly insurance/230 prior year June monthly hours worked). In this case, \$14.80 could be paid as the hourly cash wage and \$1.20/hr. fringe credit applied toward the basic minimum rate. Overtime pay must be calculated on the full basic rate of \$16.00, which is \$24.00 minus \$1.20 fringe credit = \$22.80/hr. cash wage that must be paid for all overtime project hours worked for this EXAMPLE individual employee.

[DOL'S FOH-see Sections 15f07 and 15f12](#)

9. Question: Is my company required to pay working Foremen/Superintendents according to the contract wage rates?

Answer: A foreman or supervisor/superintendent who physically performs project work 20% or more during a work week on the project site is entitled to be paid at least the minimum hourly rate, plus overtime, for the type of project work he/she performed; as stipulated in **29 CFR 5.2(m) definition of "laborer or mechanic"** and by the Department of Labor's Wage and Hour Division.

[29 CFR 5.2\(m\)-Working Foremen included in definition of "Laborers and Mechanics"](#)

[DOL's FAQ on Working Foremen\Supervisors](#)

10. Question: If my company has workers that are 16 and 17 years old, are they allowed to work on the projects and are there any minimum age limits?

Answer: Yes, 16 and 17 year olds are allowed on construction projects; however, there is very limited types of work they are allowed to do. They cannot operate any power equipment or any power tools. They cannot perform any outside helper duties for any vehicles or power equipment. There is an exception for incidental and occasional driving by 17 year olds - see link below 29 CFR 570.52 criteria that must be met. In accordance with SDDOT Specification 634.3, the minimum age for flaggers is 18 years old. In accordance with 29 CFR 570.52 [DOL's Child Labor Order #2] Incidental and occasional driving by minors who are at least 17 years of age may drive automobiles and trucks on public roadways ONLY when all nine of the following criteria in 29 CFR 570.52 (see link below) are met:

Conclusion: The only type of work that 16 and 17 year olds are allowed to perform on construction sites is to operate a hand-shovel.

[29 CFR 570 Child Labor Laws](#)

11. Question: If I am a company owner and my family and relatives work on the project site, do they need to be paid the contract wage rates?

Answer: The Davis-Bacon Act does not have exemptions for relatives; therefore, relatives must be paid the appropriate Davis-Bacon wages for the classifications of project work actually performed and must be included on the payroll, in accordance with the U.S. Department of Labor's Field Operations Handbook (FOH), **Section 15e18**.

[DOL Field Operations Handbook, see Section 15e18](#)

12. Question: Do company owners that are working on the project site need be listed on the payrolls and be paid the contract wage rates?

Answer: Anyone performing project work on the site must be reported on the Certified Payroll, in accordance with 29 CFR 5.2(o). In some cases, the business owner may be exempt from the contract wage requirements when the required conditions are met under the Bona Fide Executive exemption in 29 CFR 541.100, then the salary information is not required to be reported on the payrolls. An individual with at least 20% ownership of business who is required to work long hours, makes no management decisions, does not supervise at least two employees, and has no authority over personnel **does not qualify for the executive exemption and must be paid the hourly contract wages**, as stipulated in DOL Field Operations Handbook (FOH), Section 15f06.

[29 CFR Part 5 - see 5.2\(o\)](#)

[DOL Field Operations Handbook, see Section 15f06](#)

13. Question: Are truck drivers covered by the Davis-Bacon and Related Acts contract wage requirements?

Answer: In several situations, truck drivers are not covered by the Davis-Bacon & Related Acts (DBRA) wage requirements. It depends if the truck driver is performing "construction work" on the project site, or if the truck driver is hauling within the "site-of-the-work" distance, or if the truck driver is the legitimate owner/operator of his/her own truck. Legitimate owner-operator truck drivers, who are the only driver of their own truck, are exempt from the Davis-Bacon wage requirements (this exemption does *not* apply to owner-operators of construction equipment). The U.S. Department of Labor's (USDOL's) Final Rule, dated December 20, 2000 and effective January 19, 2001, clarified the definitions of "construction" and "site-of-the-work." **Truck drivers transporting material, equipment or supplies are not performing construction; therefore, are not covered by the wage rates. Truck drivers hauling material from a plant or pit are not covered by the wage rates unless two conditions are met; 1) the plant/pit must be dedicated exclusively to the project AND, 2) the plant/pit must be located adjacent or virtually adjacent to the project site. It is the position of the USDOL that truck drivers are not covered by Davis Bacon wages if the time spent loading or unloading at the project site is not more than de minimis (more than 20% of the truck driver's work week hours). The SDDOT's definition for "adjacent or virtually adjacent" is within ½ mile radius of the project proper, as stipulated in SDDOT Specification 8.1. Both ends of a haul must be within a ½ mile radius of the project for the GT1 or GT2 wage rates to apply.** (For complete definitions on "site-of-the-work" and "construction" visit 29 CFR 5.2 (j) and 5.2(l). For more information on truck drivers in general visit the USDOL Prevailing Wage Resource Book, under Truck Driver section of the DBRA Compliance Principles.

[USDOL Prevailing Wage Resource Book](#)

[SDDOT Standard Specifications - Select "Section 8"](#)

14. Question: If we hire an equipment owner-operator, such as a crane owner-operator, is this situation treated the same as company owners?

Answer: In most cases, equipment owner-operators are treated as employees by the company that hires them in accordance with 29 CFR 5.2(o); therefore the employee must be reported on the payroll and must be paid at least the minimum wage for the classification of work performed on the project site. If the owner-operator of the construction equipment has a legitimate business in operation that has a valid South Dakota contractor's license, then the normal process to seek written approval to sublet a portion of the work with the submission of Form DOT-202 Request to Sublet Work must be processed *prior* to any project work being performed by this construction company as stipulated in SDDOT Specification 8.1.

[29 CFR Part 5](#)

[SDDOT Standard Specifications - Select "Section 8"](#)

15. Question: If my company has employees working at a concrete batch plant that is exclusively dedicated to the project/contract and this batch plant is located 0.25 miles from the project site, do the contract wage rates apply to these employees?

Answer: Yes, your concrete plant situation meets both of the two conditions of the DOL's Final Rule clarifying the definition of "site of the work" which determines if the wage rates apply to plant/pit employees: 1) the plant/pit must be dedicated exclusively to the project AND, 2) the plant/pit must be located adjacent or virtually adjacent to the project site. The SDDOT's definition for "adjacent or virtually adjacent" is within ½ mile radius of the project proper, as per SDDOT Specification 8.1. Both ends of a haul must be within a ½ mile radius of the project for the GT1 or GT2 wage rates to apply. (For complete definitions on "site-of-the-work" and "construction" visit 29 CFR 5.2 (j) and (l).

[29 CFR Part 5](#)

[SDDOT Standard Specifications - Select "Section 8"](#)

16. Question: If some of my company's truck drivers are delivering gravel to a project site, when the haul originated 7 miles away from the project site and the drivers are not performing any project work on the project site, do the contract wage rates apply to them?

Answer: The DBRA wage and payroll requirements do not apply to these truck drivers, as they do not meet the 2 conditions of DOL's Final Rule (see FAQ numbers 12-14, above); however, the company may elect to pay the truck drivers the contract wage rates.

17. Question: If I have a truck driver that delivers asphalt from a portable plant that is located 4 miles from the project and they place the asphalt on the road are they entitled to the wage rates?

Answer: The truck driver's time from the plant to the project is not subject to the wage rates, as the location of the plant is outside of the 1/2 mile site of work distance. The time the driver spent placing the material (from one point on the project to another point on the project) is entitled to the wage rates; provided it is for more than the de minimis amount of time spent for placing (more than a few minutes). It is the position of the USDOL that truck drivers are not covered by Davis Bacon wages of the time spent loading or unloading at the project site is not more than de minimis (more than 20% of the truck driver's work week). **For complete definitions on "site-of-the-work" and "construction" visit 29 CFR 5.2 (j) and 5.2(l).** For more information on truck drivers in general [visit the USDOL Prevailing Wage Resource Book, under Truck Driver section of the DBRA Compliance Principles.](#)

[29 CFR Part 5](#)

[USDOL Prevailing Wage Resource Book](#) SDDOTCertifiedPayrollReportwithInstructionsandFAQs.xlsm

18. Question: If my truck drivers are hauling base course from a stock pile, that has been established for this project and is located ¼ mile away from the project site, to another location on the project site - would they be subject to the Davis-Bacon contract wage rates?

Answer: Yes, they would be entitled to wage rates as both the **exclusive** and the **adjacent** conditions have been met. The plant/pit must meet two conditions before the wage rates apply to the employee. 1) the plant/pit must be dedicated exclusively to the project AND, 2) the plant/pit must be located adjacent or virtually adjacent to the project site. The SDDOT's definition for "adjacent or virtually adjacent" is within ½ mile radius of the project proper. Both ends of a haul must be within a ½ mile radius of the project for the GT1 or GT2 wage rates to apply. (For complete definitions on "site-of-the-work" and "construction" visit 29 CFR 5.2 (j) and (l)). For more information on truck drivers in general visit the USDOL Prevailing Wage Resource Book.

[29 CFR Part 5](#)

[USDOL Prevailing Wage Resource Book](#)