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RISE PA Small-Scale Award Track and Federal Prevailing Wage Compliance

Frequently Asked Questions

The information provided below is meant to assist RISE PA Small-Scale Award Track (SAT) applicants and awardees in understanding how federal prevailing wage requirements impact their projects. If a RISE PA SAT applicant or awardee has any questions about which specific prevailing wage rates apply to their project, they should contact the U.S. Department of Labor or their local U.S. Wage and Hour office for support.

Section 1: General Information and Applicability

1. What do Davis-Bacon and Related Acts require?

The Davis-Bacon Act and Related Acts (DBRA) require contractors and subcontractors to pay their laborers and mechanics no less than the locally prevailing wage and fringe benefits for their geographic location, as determined by the U.S. Department of Labor (US DOL) for projects costing over $25,000 in total costs. All RISE PA projects are required to follow DBRA as these are federal funds from the U.S. Environmental Protection Agency (EPA).

2. Who determines prevailing wage rates?

The US DOL is responsible for determining prevailing wages rates for different worker classifications, issuing DBRA regulations and standards, and overseeing consistent enforcement of these Davis-Bacon labor standards. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies like the EPA assist construction projects through grants, loans, loan guarantees, and insurance. The Clean Air Act (CAA), from which the authority for the Climate Pollution Reduction Grant (CRPG) is derived, codifies the Davis-Bacon prevailing wage standards in Section 314 and is one of the "Related Acts." The CPRG program funds the RISE PA program. This language requires all programs established or funded under the CAA to comply with the prevailing wage requirements of the Davis-Bacon Act.

3. When do federal prevailing wage rates apply to RISE PA?

Any project that is funded as a whole or in part by CPRG funds, such as the RISE PA program, is required to comply with DBRA. Therefore, all RISE PA-funded projects must pay workers involved in the construction of a RISE PA project prevailing wage.

RISE PA SAT awardees cannot receive reimbursement for their eligible expenses until they provide the required documentation showing that all federal prevailing wage requirements have been met by their contractors/subcontractors, or in the case of awardees performing their own project labor, proof that in-house staff have received the applicable prevailing wages for the hours worked on the project construction. It is critical that RISE PA SAT awardees carefully select and coordinate with all contractors and subcontractors involved with the project, as these parties will be responsible for supplying the certified payroll and other documentation essential for DBRA compliance and eventual reimbursement.

4. If the total cost of the RISE PA SAT project is $50,000, but different contractors will complete different parts of the project and each part costs less than $25,000, do the contractors need to meet federal prevailing wage requirements?

Yes, the total cost of the project is still over the prevailing wage threshold of $25,000, so all of the contractors and subcontractors must pay the applicable prevailing wage rates to their workers.

5. Where can I find more information about DBRA?
Here are several useful references:

- Davis-Bacon and Related Acts (DBRA) | US EPA
- DBRA Requirements for EPA Subrecipients
- Presentations: Prevailing Wage Seminars | U.S. Department of Labor
- Davis-Bacon and Related Acts | U.S. Department of Labor
- Federal Register: Updating the Davis-Bacon and Related Acts Regulations
- SAM.gov | Wage Determinations
- Davis-Bacon Learning Portal

For basic Davis-Bacon Act compliance questions, contact your local U.S. Wage and Hour office: 1-866-4-US-WAGE or 1-866-487-9243, https://www.dol.gov/agencies/whd/contact.

Section 2: Davis-Bacon and Related Acts Compliance and Reporting

1. What is a wage rate determination and how do I get one?

- A wage determination is an official listing of the hourly and fringe rates that laborers across different job classifications must be paid when working on a project that requires prevailing wage. These rates are different across different localities.
- Work with your DOL Wage and Hour Office and contractor to determine what roles will be required to complete the project.
- Your contractor will then select the applicable wage determinations for those roles for your locality: https://sam.gov/wage-determinations.
- You and your contractor should keep a copy of each of the wage determinations used for your records.
- Although rare, if no existing classifications on the wage determination fit the proposed role, you must submit a conformance request using form SF-1444 through the awarding agency. This is rare. Do not substitute a similar classification or use the general laborer rate.
- If you have questions or need support, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

Do I need a wage determination to submit a RISE PA SAT grant application?

Yes, the contractor or the applicant, if providing their own labor, must select the applicable wage determinations prior to submitting a RISE PA SAT application. The wage determination specifies the correct prevailing base and fringe wage rates for the workers performing DBRA-covered labor and these rates are essential to developing an accurate project quote that complies with RISE PA requirements. The wage determination used must be listed on any quotes involving construction or installation labor. It is important to note that the wage determinations used must be active during the time of project construction. If the wage determinations are updated prior to the project commencing, the updated wage determination should be used. If you have you have questions or

need support with wage deter, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

3. How much more does prevailing wage cost than other labor rates?

Prevailing wage rates vary by location, project, and type of work performed. To estimate how much prevailing wage may cost when planning your RISE PA SAT project, ask your contractor to use past prevailing wage rates from similar projects or search for the applicable wage determination(s) based on your locality and project type. Prevailing wage rates paid must be current to the intended construction start date of the project.

4. Who gets paid prevailing wage on a RISE PA funded project?

All workers actively involved in project construction must be paid the applicable prevailing wage rate for all hours worked. The following workers are covered by DBRA:

- Laborers and mechanics – Their duties are manual or physical in nature and are not primarily serving administrative or executive functions.
- Watchpersons and guards – Considered eligible workers under DBRA
- Forepersons – If the foreperson spends more than 20% of their time during the work week on laborer or mechanic duties, then they must be paid the applicable prevailing wages for those specific hours worked.
- Apprentices – Can work for less than the stated prevailing wage rates, but only if they are enrolled in an apprenticeship program registered with the US DOL or the PA Department of Labor and Industry (PA DLI). Otherwise, apprentices must be paid full prevailing wage rates for the hours worked.

5. Who does not get paid prevailing wage on a RISE PA funded project?

- Government employees – local and state employees are not considered contractors and do not need to be paid prevailing wage.
- Supervisory personnel – These roles inspect and provide guidance at the site and do not need to be paid prevailing wage. However, if they are physically participating in construction labor for more than 20% of their work week, they must be paid the applicable prevailing wage rate for those hours worked.
- Vendors – If their sole involvement in the project is delivering materials to the site, then they do not need to be paid prevailing wage. However, these parties do need to be paid prevailing wage if they remain on site to participate in construction activities.

6. Do apprentices need to be paid prevailing wage?

- Apprentices can work at less than the prevailing wage rate for the work they perform only when they are employed under and individually registered in a bona fide apprenticeship program registered with the US DOL Employment and Training Administration Office of Apprenticeship (OA), or the PA DLI.
- A person who is not individually registered in the program, but who has been certified by the OA or the PA DLI to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program.
- If the apprentice is not registered with a bona fide apprenticeship program, then they must be paid the applicable prevailing wage rates.

7. What if my project scope changes and different job classifications are required?
The RISE PA SAT application, including the project quotes and budget, should be as final and accurate as possible. It is important to submit a well-defined project to avoid major changes to the project; however, changes can occur. Any alterations to the project should be discussed with the PennTAP RISE PA SAT team so that these changes can be considered and captured in your paperwork. If a new or supplemental wage determination is needed, this should be provided to the PennTAP RISE PA team. The base grant award requested in your RISE PA SAT application cannot be adjusted after submission to reflect any increases in labor costs.

8. As a RISE PA grant recipient, what are my responsibilities regarding DBRA compliance?

- Any manufacturer that signs the RISE PA SAT subaward agreement is considered a grant recipient under DBRA. Grant recipients have specific duties regarding DBRA compliance. Some manufacturers may contract the construction of their project to other entities. In such cases, the manufacturer would then be considered the "contracting agency" under DBRA and is responsible for the oversight of DBRA compliance activities by these hired contractors.
- When manufacturers enter contracts for project work to be performed, they must ensure those parties (and any further subcontractors) are also aware of, and comply with, DBRA requirements. Manufacturers must confirm that the following statement is included in all contracts and subcontracts: "By accepting this contract, [the contractor] acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants."
- The failure of a contractor to pay the applicable prevailing wage rates to their workers will result in the manufacturer being unable to receive their full reimbursement for their RISE PA SAT project. Compliance with federal prevailing wage requirements (e.g., certified payroll records) will be confirmed prior to the release of any reimbursement funds to the grant recipient.
- The manufacturer should ensure that DBRA contract provisions and appropriate wage determinations are included in all contracts they enter with contractors performing the work. The final contract between the grant recipient and the contractor should include:
    - Copies or listings of all prevailing wage rate determinations to be used
    - Listing of requirements related to prevailing wage reporting and record keeping for DBRA compliance.
    - Confirmation that contractors are responsible for ensuring that any subcontractors that they hired to perform work on the project also meet federal prevailing wage requirements and include the DBRA Requirements for Contractors and Subcontractors statement in any further subcontracts.
- The manufacturer should ensure that all certified payroll reports and appropriate wage determinations are received from all contractors involved in the project for all weeks during which construction work was performed on site.
- The prevailing wage determination used in a quote submitted to RISE PA is valid for 120 days from the date of issue. If there is no signed contract between the grant recipient and the contractor within 120 days, wage determinations should be checked again to ensure that no updated wage determinations have been published. The RISE PA grant program will

reimburse at the rate included in the quote and budget materials, regardless of wage determinations current at the time of the actual construction start.
- The PennTAP RISE PA team will make every effort to meet with project contractors and subcontractors to explain DBRA compliance requirements and support their submission of certified payroll and other required records.
- If you have questions or need support, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

9. Is there suggested DBRA language that the manufacturer can use for contracts with the parties performing the construction on their project site?

The EPA provides Contract Provisions for Davis-Bacon and Related Acts. A link to these contract provisions must be included in all contracts to which Davis-Bacon and Related Acts apply, unless an attachment is included with identical information, or the language in these contract provisions is provided verbatim in the contracts, as required by 29 CFR 5.5.

The manufacturer must require the following statement to be included in any contracts and subcontracts entered into for the purpose of the RISE PA SAT project: "By accepting this contract, [the contractor] acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants."

10. As a contractor or subcontractor of a manufacturer who is a RISE PA grant recipient, what are my responsibilities in regard to DBRA compliance?

- Review the RISE PA Contractor Information Sheet on the RISE PA SAT website.
- Post a notice (including the Davis Bacon poster and applicable wage determinations) at the site of work during the period of construction.
- Correctly track employee hours worked and pay DBRA-covered employees the applicable base and fringe rates on a weekly basis for all hours worked during the period of construction.
- Submit weekly certified payrolls (accompanied by a signed "Statement of Compliance on page 2 of the WH-347) to the manufacturer and RISE PA SAT contact. This form lists specific job classification and wages paid for each employee who performed labor during the week. The completion of weekly certified payroll reports is mandatory for compliance.
- Maintain basic records and certified payrolls (for up to three years after the completion of the work).
- Provide certified payroll records, registered apprenticeship materials, wage determinations, etc. to PennTAP and the PA Department of Environmental Protection upon request.
- If you have questions or need support, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

11. What happens if the contractor(s)/subcontractor(s) hired by the RISE PA grant recipient does not pay prevailing wage when required or does not do so correctly?

- If a contractor(s) or their subcontractor(s) does not pay workers involved in project construction the correct prevailing wages legally required, this becomes a civil matter between the grant recipient and the contractor/subcontractor.
- The grant recipient cannot be reimbursed by the RISE PA program until compliance with federal prevailing wage requirements is confirmed. Therefore, it is strongly suggested that

the grant recipient includes contractual language requiring the payment of the legally required prevailing wage rates and compliance with reporting and recordkeeping by all contractors and subcontractors involved with their project. All contracts and subcontracts should include: "By accepting this contract, [the contractor] acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants."

- If the incorrect prevailing wage rate is paid by the contractor or their subcontractors (e.g., the wrong wage determination is used), the situation can be rectified by their paying the difference in wages due to the worker. The contractor will be required by PennTAP RISE PA to provide the specific wage determinations used on the project.
- If the contractor or their subcontractors do not pay prevailing wage when required by law, they can be debarred from working on publicly funded projects. Contractors are responsible for oversight of subcontractors in complying with DBRA. When a federal or contracting agency finds that a contractor has underpaid workers and has thereby violated the DBRA-related clauses in their contract, the DBRA restitution process gives contractors the chance to voluntarily come into compliance and pay back wages. If contractors refuse to do so, then generally withholding is the only way to obtain payment of back wages. Most contractors do prefer to make the voluntary payment rather than having their contract payments withheld, but withholding is still sometimes necessary.

12. Should workers be paid Pennsylvania or federal prevailing wage rates?

- Different types of public funding have different prevailing wage requirements. The RISE PA program uses federal funding and requires the Davis-Bacon Act to be followed.
- Where Federal prevailing wages *are required*, such as the RISE PA program, Pennsylvania prevailing wages do not apply (43 P.S. § 165-15). PA Department of Labor and Industry will accept the federal prevailing wage rates if the project is subject to DBRA.
- If the project is also receiving public funds from the Commonwealth of Pennsylvania, you should confirm whether those funds require you to follow the Pennsylvania Prevailing Wage Act. Questions relating to PA prevailing wage in conjunction with a project requiring federal prevailing wage should be directed to the PA Department of Labor and Industry.

13. I am a contractor hired to perform work on a RISE PA-funded project, how do I fill out the weekly certified payroll form?

- The contractor/subcontractor is responsible for filling out Form WH-347 for all workers involved in labor on the project site. The payroll clerk or person responsible for payroll is likely the best person to complete this form and must complete this form on a weekly basis. A packet with the form and instructions for completion can be found here.
- The contractor is responsible for ensuring that any subcontractors hired to complete work on the project also complete and submit the certified weekly payroll for their eligible workers.
- The certified weekly payroll forms from all contractors and subcontractors should be sent to the manufacturer and the PennTAP RISE PA team by the contractor(s) on a weekly basis during the construction period. Completed forms for all work undertaken during the construction of the project are required for reimbursement.
- If you have questions or need support, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

14. What records need to be kept and shared with the PennTAP RISE PA team?

The PennTAP RISE PA team and the PA DEP may collect the following documents from the grant recipient and/or contractors and subcontractors involved in providing labor for the project construction. All records should be kept for 3 years following the project.

Basic Records: Contractors must keep basic records that include worker information over the course of the grant. Contractors must provide these basic records to PennTAP and the PA DEP upon request. These records must contain the following for each worker covered under DBRA:

- Name
- Social security numbers
- Address
- Telephone number and email address
- Classification(s) of work performed
- Hourly rates paid, including rates of contributions or costs for bona fide fringe benefits or cash equivalents.
- Apprenticeship registration records, as applicable
- Daily and weekly number of hours worked
- Deductions made and actual wages paid

Certified Payrolls: Contractors and subcontractors must keep a record of all certified payroll applicable to work performed on the project. For every week that DBRA-covered work is performed, all contractors and subcontractors involved in project labor must submit certified payrolls (Form WH-347) by email to the PennTAP RISE PA SAT team and include the manufacturer in the communication. In the case of subcontractors, the prime contractors are responsible for submitting all subcontractors' certified payroll to PennTAP and the manufacturer. The certified payrolls must include the information listed above, except that full social security numbers and last known addresses, telephone numbers, and email addresses should not be included.

Each certified payroll submitted must be accompanied by a "Statement of Compliance" (see Page 2 of WH-347) signed by the contractor or subcontractor, or their agent who pays or supervises the payment of the contract's workers, and must certify the following:

- That the certified payroll for the payroll period contains the information listed above, the appropriate information and basic records are being maintained, and such information and records are correct and complete;
- That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned; and,
- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

A contracting agency or prime contractor may allow contractors to submit certified payrolls through an electronic system as long as this system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed;

and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

15. Do the DBRA records need to include benefits in addition to wages?

Whenever a contractor is claiming any fringe benefit credit towards their prevailing wage obligation, they must maintain a record of their rates of contributions or costs anticipated for the fringe benefits. Therefore, they will generally be required to keep a record of their contributions to fringe benefit plans/costs of providing fringe benefits directly, what those fringe benefit plans are, and how they computed the hourly credit for those contributions/costs as stated in 29 CFR 5.5(a)(3)(i)(B).

Instead of the traditional funded fringe benefit plan, it may be possible that the contractor is claiming a fringe benefit credit for an unfunded plan. An unfunded plan is the term used when the contractor claims a credit for the reasonably anticipated costs of benefits that they provide directly to workers, as opposed to the more traditional funded fringe benefit plan where a contractor makes irrevocable contributions to a third-party plan or trustee, who is then responsible for paying out all benefit claims.

If the contractor is claiming that fringe benefit credit for an unfunded plan, which requires specific approval from DOL under 29 CFR 5.5(a)(1)(v), the contractor must maintain records that show the following:

- The commitment to provide such benefits is enforceable,
- The plan or program is financially responsible,
- The plan or program has been communicated in writing to the laborers or mechanics affected, and records that show the anticipated costs or the actual cost incurred in providing such benefits.

Note that these fringe benefits records are part of the basic records that the contractor must maintain and provide to the contracting agency upon request; they are not part of the certified payrolls that are routinely submitted to contracting agencies. Also note that benefits covered under the Davis-Bacon Act may include payment or insurance for medical or hospital care, pensions on retirement or death, injuries or illness resulting from occupational activity, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits.

16. If the project has started prior to the RISE PA execution of the subaward agreement by the grant recipient, is the contract with the contractor considered retroactive and DBRA requirements apply? In this case, how might wage determinations be made for that construction?

Davis-Bacon prevailing wage requirements will apply retroactively to the start of construction. If you have questions or need support, please contact the PennTAP RISE PA team at PennTAP_RISEPA@psu.edu.

17. Is prevailing wage required for work done off-site, such as prefabricating a component in the contractor's shop?

In most cases, labor carried out off-site does not require the payment of prevailing wage. If the off-site location is dedicated *exclusively* to this project, it may qualify as "site of work" under DBRA

and, in this case, prevailing wage would apply. Please confirm with your local DOL Wage and Hour Office with any questions.

18. What is the Davis-Bacon poster and where should it be displayed on the project site?
The official DOL Davis-Bacon poster (WH-1321) is available at dol.gov/agencies/whd. This poster must be posted in an accessible location alongside the applicable wage determinations at the project site during the period of construction.