

# Montana Department of Transportation Prevailing Wage/Labor and On-the-Job Training Compliance Program Manual

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Construction Administration Section
Construction Engineering Services Bureau

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## A. DESCRIPTION

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

The minimum contract size/threshold of $2,000 applies to the prime contractor. All related subcontractors on the project are then covered under the DBRA regardless of the size of the subcontract.

The Act requires all contractors and subcontractors to pay no less than the prevailing wages and fringe benefits determined and published by the United States Department of Labor (USDOL) and included in the applicable contract.

## B. PURPOSE

The purpose of the DBRA is to preserve local wage standards and promote local employment. The Copeland Anti-Kickback Act ensures that the employees are not being forced to relinquish wages or fringe benefits they are entitled.

## C. PREVAILING WAGE/LABOR COMPLIANCE PROGRAM

All contracts financed in whole or in part by Federal funds have the *Required Contract Provisions for Federal-aid Construction Contracts (FHWA-1273)* document included in the contract documents. These provisions require that all laborers and mechanics employed at the *site of work* and that perform part of the contract work be paid the prevailing wage rates and fringe benefit rates as established by the U.S. Department of Labor (USDOL). Laborers and mechanics are defined as those whose duties are manual or physical in nature (e.g., workers who use tools or who are performing the work of a trade) as distinguished from mental or managerial.

The contract provisions are based on:

- Davis-Bacon Act - payment of prevailing wage rates as determined by the USDOL to all laborers and mechanics on Federal government contracts. 29 CFR 1,3,5 & 7
- Copeland Anti-Kickback Act – makes it a federal offense for anyone to require a laborer or mechanic to kickback their wages. The Act also requires submittal of weekly certified payroll reports.
- Contract Work Hours and Safety Standards Act - time and one-half pay for overtime hours, i.e., over 40 hours in any workweek.
- Federal-Aid Construction Contracts - 23 CFR 633 Subpart A
- Fair Labor Standards Act (FLSA) - 29 CFR 778

## D. CERTIFIED PAYROLLREQUIREMENTS

Laborers and mechanics must be paid unconditionally and without subsequent deduction or rebate on any account. Contractors or subcontractors are to use the AASHTOWare electronic payroll reporting system.

As required by USDOL, certified payroll records submittals must contain the following information:

- The employee's full name and unique identifying number (i.e., last 4-digits of the employee's social security number).
- The employee's classification code (if any) and the corresponding classification from the wage decision.
- The employee's hourly wage rate, and fringe benefit rate and where applicable, the overtime hourly rate. Fringe benefits may be paid in cash; into bona fide plans; or a combination of funds and programs and must be paid on an hourly basis. Bona fide fringe benefit plans must:
  - Reasonably be anticipated to provide benefits
  - Represent a commitment that can be legally enforced
  - Be carried out under a financially responsible plan or program
  - Be communicated in writing to the affected employees.
- The contractor's fringe benefit program must be outlined with amounts. *Additional information may be requested by the Prevailing Wage/Labor Compliance Program to verify the deductions are bona fide.
- The daily and weekly hours worked in each classification, including actual overtime hours worked.
- Gross wages earned for the week, on project and off site. This is the amount recorded on the employee's pay stub for the full week.
- Itemized deductions include taxes, any benefits paid for through payroll deductions, garnishments (if applicable) and any other deductions made. There must be enough detail included on the payroll to verify each deduction is allowable.
- Net wages include all wages paid to the worker for the week, whether project related or for private or other government work. This amount must match the check issued to the employee for the week. Cancelled checks may be requested.
- All records, no matter the Contractor or subcontractor, shall be made available upon the request of USDOL and/or MDT.

Definition of "working" on a Davis Bacon covered project site:

Performing Davis Bacon covered work within the project limits, or a secondary site determined to be a part of the project.

* To meet MDT Force Account and Davis Bacon requirements use the following guidance:

- When salaried supervisors are working within the projects "site of work" they must be shown on the certified payroll

Specific Exemption Examples:

- Individuals performing testing such as compaction testing do not need to be listed as they are exempt.
- Surveyors unless performing labor such as brush clearing for 20% or more of a 40-hour work week. If only performing survey work, they do not need to be listed as they are exempt.
- Owners are exempt.
- Engineers are exempt.
- Consultants are exempt.

Each contractor payroll must be numbered. Consecutive numbering should be maintained for the prime contractor and for each subcontractor (or sub-subcontractor) that is working on the project and stay consecutive for the life of the project. If a prime or subcontractor does not work on a project during any given week, a payroll is not required. The next payroll submitted should remain in sequence.

## E. FRINGE BENEFITPAYMENTS

The minimum rates for fringe benefits are shown in the Wage Decision (WD) or as established through the additional classification (conformance) process. Employers may make payment of the required benefits in the following manner:

- To an established program approved by the USDOL. Generally, an employee accepts this method of payment of fringe benefits as a condition of employment.
- Programs such as health insurance, life insurance, retirement accounts, savings accounts, etc., where the employee is enrolled in the program and designates beneficiaries. Acceptance of this method of payment of fringe benefits is based upon the employee authorizing his/her employer to enter the employee in these programs.
- A direct payment of cash to the employee.
- Any combination of the above.

The contractor must check the appropriate box in AASHTOWare. If fringe benefits are paid to approved plans, funds, or programs, in cash, or both.

The Prevailing Wage/Labor Compliance Program will require contractors; both prime and subcontractors, to provide evidence that the fringe benefits have been paid. Evidence shall consist of copies of canceled checks and/or trust fund reports. If fringe benefits are paid to a bona fide fund, the employee must be able to have access to that fund. It is the contractor's responsibility to provide information to the employee on how to access the fund. It is also the contractors' responsibility to provide Prevailing Wage/Labor Compliance Program with proof the fund is bona fide.

If fringe benefits are paid directly to the employee, the payment should be easy to distinguish on the certified payroll.

## F. DAVIS-BACON WAGE RATE

Wages on federal-aid projects are determined by federal Wage Decisions (WD) for Montana. The wage rates shown in the contract are the rates to be paid for the duration of the project. The term "Davis- Bacon wage rate" means the straight time hourly rate and zone pay if applicable. (See zone pay section below.)

## G. OVERTIME

All hours worked more than 40 hours a week on federal-aid project(s) must be paid to the worker at one and a half times the Davis-Bacon base wage rate. Fringe benefit amounts are never calculated at one a one-half time when overtime is calculated. Zone Pay must be included when calculating overtime.

## H. SHIFTING

When a portion of wages are deducted from an employee's Davis-Bacon wage rate and added to the fringe benefit rate, this process is known as "shifting." Under the provisions of § 5.31, 29 CFR any amount of money may be shifted from wages to fringes. Regardless of the amount of money shifted from wages to fringes or vice versa, the wage/fringe package can be no less than the total which is published in the contract. Overtime **must** be paid on the wage outlined in the wage decision, which includes the appropriate zone pay, as listed in the contract, not on the wage after shifting. When shifting, the base hourly rate of pay may not drop below the Federal minimum wage.

## I. ZONE PAY

The WD may indicate different rates depending on established zones and work classifications (see contract specific wage decision). Zone determination is based on the physical location of the site of work. If the physical location of the project is in two zones, the higher zone rate applies unless each zone can be verified by MDT.

## K. STATEMENT OF COMPLIANCE

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 laborer or mechanic conforms with the work performed. This is incorporated into the AASHTOWare system.

## L. MODIFICATION PAYROLLS

If there is an error in the payment of wages and/or fringe benefits, a modification certified payroll must be furnished as proof that restitution has been made.

## M. RECORDS AVAILABILITY

The contractor shall make their payroll records available for inspection by authorized representatives of MDT, Federal Highway Administration (FHWA) and/or the USDOL when requested to do so.

## N. NEW CLASSIFICATIONS

When a contractor believes a new classification is necessary, the contractor must complete a General Services Administration (GSA) Standard Form SF1444 and submit it to the MDT Prevailing Wage/Labor Compliance Program. The if approved the Prevailing Wage/Labor Compliance Program will forward the request to the USDOL for approval. The following criteria should be used to determine if a new classification is warranted.

- The work to be performed by the classification is not performed within an existing classification.
- The classification is utilized in the area by the construction industry.
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the determination in other categories.

## O. LABOR COMPLAINTS

Complaints may be filed with the MDT Prevailing Wage/Labor Compliance Program whenever a contractor's employee believes the proper wages or fringe benefits have not been paid. Complaint inquiries arise whenever there is reason to believe that violations exist. Sources of complaint inquiries include Prevailing Wage/Labor Compliance Program review of the certified payrolls, employees, their representatives, competing employers or other interested parties. Complaints are treated with confidentiality. Complaints must be submitted in writing by use of MDT Labor/Prevailing Wage Complaint Form.

The Prevailing Wage/Labor Compliance Program investigates to determine if there is evidence to substantiate or refute the complaint. At the end of the investigation, if the allegations have been substantiated, a demand is made for resolution and compensation. If the complaint is disproved, it is dismissed.

The Prevailing Wage/Labor Compliance Program investigative procedures will include, but are not limited to, the following:

- Review data submitted by or requested from the contractor.
- Personal interviews with all parties to the complaint.
- Personal interviews with knowledgeable parties, i.e., MDT Engineering Project Managers contractor payroll personnel.
- Analyze and evaluate information, make determinations and recommendations to resolve the issue; and
- Provide a report of investigation to Federal Highway Administration (FHWA).

## P. PREVAILING WAGE/LABOR COMPLIANCE SPOT CHECK INTERVIEWS

Mandatory spot check interviews are conducted by the Engineering Project Manager (EPM) or appropriate designee once during each month the prime contractor or subcontractor is on the project site.

Use the *Prevailing Wage/Labor Compliance Spot Check Form* when completing the interviews. It is recommended to save a copy of the initial form for known contractors or subcontractors at the setup of the contract, filling in fields that will remain static through the life of the contract.

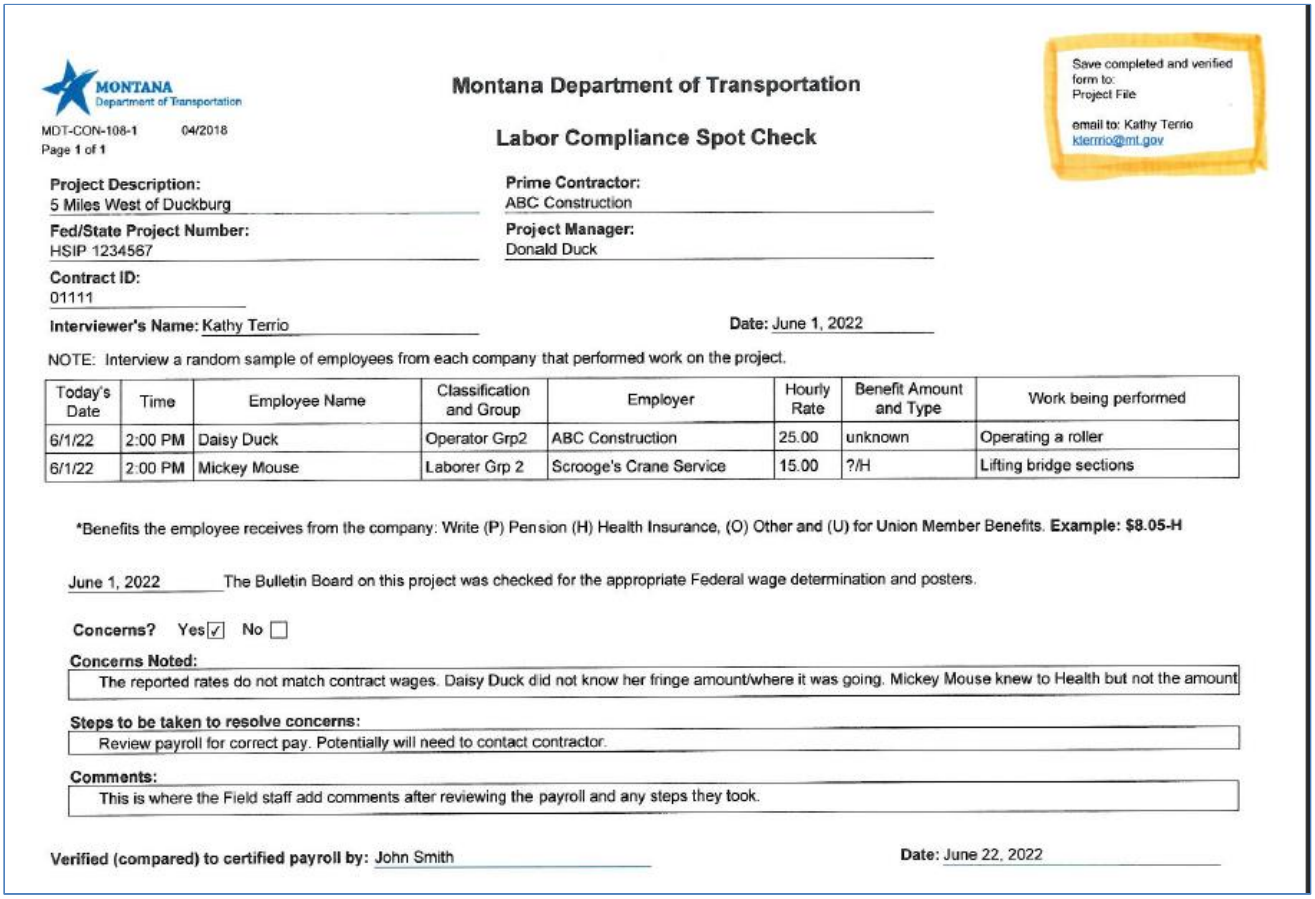
The EPM or Inspector must select a random number of contractor employees who are representative of each craft on the project site to interview. Interview at least a third of the contractor's personnel during each spot check interview.

When each spot check interview has been accomplished, the form must be compared to the payroll with the same week ending date. All persons interviewed should be on that

payroll and should have been paid for the work they were performing while being interviewed. If the employees on the form are not on the payroll for the corresponding week, the contractor must be notified, and a supplemental payroll requested.

When the form is completed for a contractor or subcontractor, enter the remaining data, and save it with Contract and Contractor name and date in the filename (e.g., "01919_Poteet_062522" to indicate June 25, 2022.

An example of a completed form is below. Remember to send all forms to Kathy Terrio for review and to determine if Federal requirements are met.



MONTANA Department of Transportation

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**Montana Department of Transportation**

**Labor Compliance Spot Check**

Save completed and verified form to:
Project File

email to: Kathy Terrio
kterrio@mt.gov

**Project Description:** 5 Miles West of Duckburg
**Fed/State Project Number:** HSIP 1234567
**Contract ID:** 01111
**Prime Contractor:** ABC Construction
**Project Manager:** Donald Duck
**Interviewer's Name:** Kathy Terrio
**Date:** June 1, 2022

NOTE: Interview a random sample of employees from each company that performed work on the project.

| Today's Date | Time | Employee Name | Classification and Group | Employer | Hourly Rate | Benefit Amount and Type | Work being performed |
|---|---|---|---|---|---|---|---|
| 6/1/22 | 2:00 PM | Daisy Duck | Operator Grp2 | ABC Construction | 25.00 | unknown | Operating a roller |
| 6/1/22 | 2:00 PM | Mickey Mouse | Laborer Grp 2 | Scrooge's Crane Service | 15.00 | ?/H | Lifting bridge sections |

*Benefits the employee receives from the company: Write (P) Pension (H) Health Insurance, (O) Other and (U) for Union Member Benefits. **Example: $8.05-H**

June 1, 2022 The Bulletin Board on this project was checked for the appropriate Federal wage determination and posters.

**Concerns?** Yes ☑ No ☐

**Concerns Noted:**
The reported rates do not match contract wages. Daisy Duck did not know her fringe amount/where it was going. Mickey Mouse knew to Health but not the amount

**Steps to be taken to resolve concerns:**
Review payroll for correct pay. Potentially will need to contact contractor.

**Comments:**
This is where the Field staff add comments after reviewing the payroll and any steps they took.

**Verified (compared) to certified payroll by:** John Smith **Date:** June 22, 2022

The uncovering of violations in the early stages of project construction will save time on the part of MDT personnel and avoid large backpay obligations on the part of the contractor, potentially creating a situation where the agency is in non-compliance with state statute and Federal Guidance.

In order to increase awareness of and compliance with the requirement. It has been determined that 90% compliance with this requirement is reasonable and will be expected on all contracts.

Using the example below, the project should have a total of 20 Prevailing Wage/Labor Compliance checks. 90% would be 18 Prevailing Wage/Labor Compliance checks on file.

*Prime Contractor, worked April – August*

*Prime Contract will have a spot check for April, May, June, July, and August (5)*

*Subcontractor 1, worked May – August*

*Subcontractor 1 will have a spot check for May, June, July, and August (4)*

*Sub-Subcontractor 1a, worked June & July (2)*

*Sub-Subcontractor 1a will have a spot check for June and July (2)*

*Subcontractor 2, worked September*

*Subcontractor 2 will have a spot check for September (1)*

*Subcontractor 3, worked April – September*

*Subcontractor 3 will have a spot check for April, May, June, July, August, and September (6)*

When a project is determined to not be in compliance with the requirement, a memo to the district project file will be requested of the EPM/FOP as to the reasoning for non-compliance. The completed Memo will be sent to the District Construction Engineer.

For additional Guidance see Construction Memo:
http://mdtinfo.mdt.mt.gov/other/webdata/internal/const/memos/Labor-Compliance-Memo-070120.pdf

## Q. MONITORING

Prevailing Wage/Labor Compliance Program is responsible for assuring all certified payrolls are checked and to ensure that the number of workers shown, correct wages, the classifications, and the hours worked appear reasonable. Prevailing Wage/Labor Compliance Program will perform a detailed review of the first full payroll of every construction project, ensuring compliance with Davis-Bacon and related acts. Prevailing Wage/Labor Compliance Program may also conduct a detailed review at least once on every project for each contractor and subcontractor. This review shall include requesting copies of check stubs or cancelled checks from contractors to ensure the certified payroll submitted is accurate. If full compliance is shown, payrolls may then be checked through the weekly overview. Further detailed checks are at the Prevailing Wage/Labor Compliance Program's discretion.

## R. REPORTING

On Federal-aid projects, the prime contractor is responsible for submittal of all weekly payrolls for both themselves and their subcontractors within 7 days after the regular payment date. Subcontractor payrolls are to be submitted to the prime contractor for review prior to submittal to MDT.

Certified payrolls shall be delivered to the MDT EPM weekly. Contractors are responsible for ensuring subcontractor compliance. If a subcontractor fails to pay the required wages, the Contractor will be held responsible for the payment of those wages.

Payrolls and basic records shall be maintained by the contractor and each subcontractor during the work and preserved for a period of three years from the date of completion of the contract.

## S. COMPLIANCE

Contractors' who fail to comply with DBRA may be subject to remedial action by MDT. The Prevailing Wage/Labor Compliance Program may at any time, visit the worksite, interview employees, and conduct investigations when necessary to determine if the program has been followed properly.

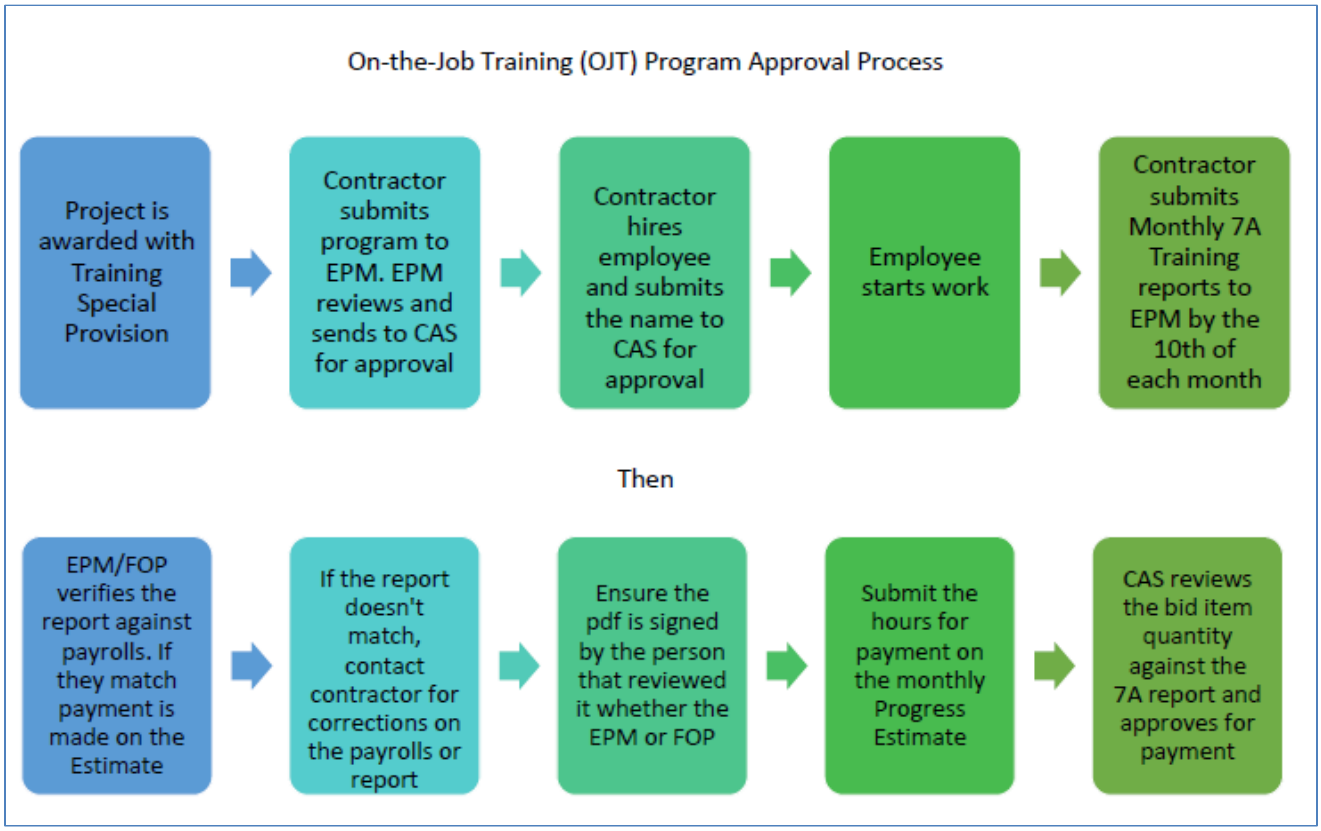
A contractor may be subject to further review if a contractor is selected for a full compliance review in any given year.

## T. ON-THE-JOB TRAINING

Background:
The Federal Highway Administration's (FHWA) On-the Job (OJT) Program was created to accelerate expansion of the pool of qualified women, minorities, and disadvantaged persons in the highway construction industry.

The FHWA's OJT program requires MDT to establish apprenticeship and training programs that target under-represented segments of the U.S. work force, including minorities, women, and disadvantaged individuals. These programs are developed to enhance both training and retention of well-qualified employees and meet the needs of trainees, employers, and the industry at-large.

MDT's OJT Program complies with federal requirements and targets the recruitment, education, and training of underrepresented individuals to fill positions in the highway construction industry.




Save the signed Monthly 7A Report to the applicable Estimate Training item for review by CAS.

## U. DEFINITIONS

**Subcontractor**

The prime contractor is responsible for any subcontractor's adherence to Prevailing Wage/Labor Compliance Program regulations. *MDT has no contract with the subcontractors and will resolve all Prevailing Wage/Labor Compliance Program matters with the prime contractor.* This can result in the prime contractor being responsible for restitution of wages due for the violation of one of its subcontractors.

Required labor provisions (Form FHWA 1273) as well as wage rates must be physically attached to each subcontract.

**Employees Working in More Than One Classification**

When an employee works more than 20% of the time in more than one work classification, they must be paid the appropriate wage rates for the time worked. However, the contractor may pay the higher of the two rates on all hours if desired.

**Site of Work (CFR 29 Pt. 5 Subpt. A 5.2L(1))**
Site of work means:

- *The primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
- *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is; (a) Located in the United States; and (b) Established specifically for the performance of the contract or project.

In addition, site of work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided:

- They are dedicated exclusively, or nearly so, to performance of the contract or project; and
- They are adjacent or virtually adjacent to the "primary site of the work" or the "Secondary site of the work" as defined above.

Site of work does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period may be dedicated exclusively or nearly so, to the performance of a contract.

**Owner/Operators**
<u>This exemption only applies to heavy hauling trucks (includes water trucks and distributor trucks).</u> It does not apply to other equipment such as dozers, backhoes, motor graders, etc. If the truck operator is the registered owner, the payroll entry will only show the individual's name and the designation "owner-operator." If anyone other than the registered owner is operating the truck, that person would be considered an employee and must be paid the appropriate wage rate designated in the contract. Sponsors, relatives, and children of registered owners must be paid at the proper Davis-Bacon wage rate. See "de minimis" or 20% rule for additional assistance.

**Truck Drivers**
Truck Drivers are covered by Davis-Bacon in the following circumstances:

- Drivers of a contractor or subcontractor for time spent working on the site of the work. See "site of work" definition.
- Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work if such time is not de minimis. See "de minimis or 20% rule" definition.
- Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
- Truck drivers transporting portions(s) of the building or work between a site established

specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain. See “Site of work” for additional information.

Truck drivers are not covered in the following instances:

- Material delivery truck drivers while off “the site of the work.”
- Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of the work.”
- Truck drivers whose time spent on the site of the work is “de minimis”, such as only a few minutes at a time merely to pick up or drop off materials or supplies.

**“De minimis” or 20% rule**

- If an employee works 20% or more of a 40-hour work week on a Davis Bacon covered jobsite and in a Davis Bacon classification, those hours shall be paid at that classification’s wage rate.

- An example would be John Smith worked a 40-hour week. 9 of those hours were as a Laborer Group 2 and 31 hours driving his own heavy hauling truck delivering materials. His 9 hours or 22.5% of his work week would be paid at the Davis Bacon wage of Laborer Group 2.

**Fringe Benefits**

In addition to the Davis-Bacon wage rate, fringe benefits must be paid:

- to a "bona fide" trust fund, or,
- to the employee, or,
- to a combination of 1 & 2 above.

**Guards and Watchmen**

Guards and watchmen who serve in no other capacity are not covered under the Davis-Bacon Act; however, they are covered by the Contract Work Hours Standards Act. Therefore, they must receive time and a half for work over 40 hours a week. The straight-time hourly rate must be at least the current minimum wage rate under the Fair Labor Standards Act.

**On-site Equipment Repair**

The USDOL has ruled that employees of outside firms who repair tires or equipment at the site of the project are covered by the contract labor provisions if they perform a substantial amount of work at the contract site. Generally, work which exceeds 20 percent of the employee's time is considered substantial.

**Working Foreman**

If a supervisor performs laborer or mechanic work on a regular or for a substantial portion of the time, the supervisor is subject to Davis-Bacon wages. Generally, work which exceeds 20 percent of the employee's time is considered substantial.

**Apprentices**

- Apprentices can be employed only under a registered program.
- Contractors or subcontractors must submit written evidence of registration tothe Engineering Project Manager (EPM) (apprenticeship agreement or statement of registration). Apprentices will be paid the rate established by the apprenticeship program.
- Employees classified as apprentices who are not registered must be paid the prevailing wage rates published based on the classification of work they performed.
- A copy of the apprentice papers must be attached to the first payroll on which the name of the apprentice appears.

**Gravel Testers**

Gravel testers performing work on or adjacent to the project site are exempt from Davis-Bacon wages. Submission of payrolls for gravel testers is not required.

**Surveyors**

Surveyors are exempt from Davis-Bacon wage rates. Submission of payrolls for surveyors is not required.

**Warranty Work**

The original contract prevailing wage determination applies regardless of when the warranty work is done. This is true regardless of whether there is a pay item for the warranty work.

**Montana Labor Management Association**

Montana Labor Management Association (MLMA) is a joint labor-management group that audits projects for compliance with collective bargaining agreements. MLMA may not view payrolls on the project site. To review payrolls MLMA must make a Public Information Request.