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Speaker 0 00:00:00 Welcome, and thank you for joining today's conference, Davis Bacon Compliance overview. Before we begin, please ensure you have opened the chat panel by using the associated icon located at the bottom of your screen. If you require technical assistance, please send a chat to the event producer. You can submit questions throughout the presentation to all panelists from the dropdown menu. In the chat panel, enter your question in the message box provided and send. If you'd like to ask a question verbally press the raised hand icon located to the top right above the chat panel. With that, I'll turn the call over to Brit Young Group leader in the office of state and grantee.

Speaker 2 00:00:54 Hi, good afternoon, everybody. Um, I'm Brit Young. I'm in the Office of State and Grantee Relations, and we're in office within the office of Elementary and Secondary Education. Um, we've heard from our grantees that they would like more, uh, more information about how to comply with the requirements under the Davis Bacon and Related Acts. And so I'm going to quickly turn over the microphone to our colleague Natalie. Natalie Collins. Um, she's from the Department of Labor, and specifically she's a senior advisor in the division of Government Contracts Enforcement. And so Natalie's going to walk through a presentation. Um, hopefully it will be helpful for you. We'll have time for questions at the end, and then also within the next, um, day or two, we'll be posting a one page brief on how you can comply with the Davis Bacon and Related Act requirements. Um, so I will say from the start again, we are recording this video, so you'll, and we will post it as soon as possible, probably next week.

Speaker 2 00:02:09 Um, we are not able to share this specific presentation with you, however, uh, we can share with you, um, public links to links that are available publicly from the departments of Labor websites that, um, provides, that includes the same information. But again, this presentation is being, uh, recorded and we will, um, post the recording, um, probably sometime next week. So, um, with that, I'm going to turn it over to Natalie and I just want to say ahead of time, um, a thank you, big thank you to Natalie for collaborating with us and, um, sharing her time today.

Speaker 3 00:02:53 No, thank you guys for having me. Um, we always really, really appreciate being able to come out and, um, talk a little bit about Davis Bacon. We realize, um, that there is a lot that goes into Davis Bacon compliance, especially from the point of view of, of funding recipients who are, um, sometimes making sub-grants to sub-recipients and also entering into contracts and having to oversee sometimes a variety of projects. Um, so, so thank you all for having me. Um, again, if there's any questions, feel free to type them into the chat and we'll, we'll try and get to all of them at as, or at least as many of them as we can at the end, or, or, uh, you know, raise your hand at the end. We'll try and get to questions. If there's any we don't get to, um, I'm sure we'll be happy.

Speaker 3 00:03:39 I'll be happy to, to try and get to them after the presentation. Um, Brit mentioned that there are, uh, links to PowerPoints available. I did drop in the chat, which I hope everyone can see a link. Uh, what the presentation today is kind of an overview on several topics, but we have, um, PowerPoints and, um, also recordings available on each of these topics in a little bit more detail. So those links are available there, um, which is where these slides come from, just a little bit trimmed down. So, um, and then if anyone has difficulty, um, accessing those, you can let, let Brit know and she will let me know, and I'll make sure that, that they are sent along.

Speaker 3 00:04:27 We're going to start off talking about coverage. I'm not going to go into super lot of detail as to, to how coverage ends up being applied, uh, to your projects, because you all know that

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the Davis Bacon coverage applies to your projects. So I'll touch on that briefly. Um, and then I'm going to go into what coverage means in terms of, uh, funding recipient and subrecipients obligations on a projects, I'm probably just going to say recipient, um, but when I do say funding recipient, and I'm talking about the recipients and the sub-recipients, uh, collectively, and I'm also going to talk about some of the sort of common questions and issues that sometimes give rise to problems and properly applying coverage. Uh, so we'll start off with that, and then we'll take a little bit deeper dive into wage determinations and compliance issues. All right, so the Davis Bacon Act itself, uh, was enacted in 1931, and it applied prevailing wage requirements and protections to federal construction contracts.

Speaker 3 00:05:27 Um, we're very proud of it. It was basically the first, uh, wage protection law, federal wage protection law that we had. And it's the source of all good things, Davis Bacon, but it's not the Davis Bacon Act itself. That applies coverage to y all's projects directly. Um, Congress for, for many statutes, uh, over 70, I think currently, when Congress provided federal funding for construction, uh, they made it a condition of that federal funding that any, any projects, any construction that receive those federal funds, basically played by the Davis Bacon Rules and paid those required Davis Bacon prevailing wages to the labors and mechanics performing onsite construction work for those projects. Uh, you'll frequently hear those statute statutes referred to as Davis Bacon related Acts or just related acts because Congress related the funding to those Davis Bacon requirements and basically tied them together. Um, that federal assistance can come in almost any form.

Speaker 3 00:06:30 It can be direct funding, um, it can be grants and loans, it can be a little bit more indirect. It can be loan guarantees insurance, um, sometimes exchange of property for nominal rent. Really anything that can provide valuable consideration can count as federal assistance. Um, so there are a lot of statutes that, that do provide, uh, do have those related ACT provisions. Um, for the most part, when you guys, uh, are receiving funding that triggers Davis Bacon coverage, uh, the related ACT provision that's usually going to be responsible for applying Davis Bacon requirements to your project is going to be 20 usc 1232 B, um, which is a fairly broad Davis Bacon Act provision that really applies those Davis Bacon Labor Standards requirements to all laborers and mechanics who are working on construction, uh, funded under programs administered by the Federal Department of Education. So even if the, the funding program is established by another law, um, as long as that funding program is administered by the Federal Department of Education, um, who, and, and they're providing that initial funding to the initial funding recipients, those Davis Bacon requirements do kick in.

Speaker 3 00:07:51 Uh, when we talk about the Davis Bacon requirements, I do just want to emphasize also that we are talking about all of the Davis Bacon Labor standards. We do get this question sometimes, particularly in situations where, um, you know, maybe it's a new funding program or recipient who hasn't received Davis Bacon funding before we get the question, Hey, okay, we have to, to pay these prevailing wages, but do the other Davis Bacon requirements still apply to this project? Or is it just the prevailing wages? Um, it is all the requirements. So when we talk about the Davis Bacon Labor Standards, um, that apply to your project, we're talking about the requirements in the Davis Bacon Act, uh, the Contract Work Hours Safety Standards Act, which I'm going to call qua, uh, if I mention again, but that is basically the act that applies overtime to federal contracts when it applies the Copeland Act, which is the act that you have to thank, uh, for certified payroll requirements.

Speaker 3 00:08:51 Um, it added those requirements to Davis Bacon, and also it makes it a federal felony for any prevailing wages to be kicked back. Uh, any wages due to workers should not come back to

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the contractor or the funding recipient or any party other than the workers. We're also talking about all the prevailing wage provisions of those related acts. Sometimes related acts will have specific, um, specific provisions that will either expand or limit coverage in certain ways. And we're also talking about everything in the, the regulations that implement the Davis Bacon Act and the Davis Bacon related Acts, which you can find at 29 C FFR parts one, three, and five. So when Davis Bacon applies to your, your, um, your funding and then to all the contracts entered into under that funding, it really does kick in all of those requirements that we're going to be talking about today.

Speaker 3 00:09:46 All right. Um, the first and most important thing from the perspective of funding recipient that you've really got to keep in mind is that once, once a project has received any federal funding that triggers those Davis Bacon requirements, and so from your guys' perspective, that's going to be, um, any federal funding that's administered by the Department of Education or, and, and there is some other funding that, that will trigger those requirements frequently funding from HUD does, for example. Um, the most important thing you've got to make sure is that the funding recipients, if they enter into contracts directly, uh, have to make sure that labor standards clauses are in, are included in all the contracts they entered into for any projects that are assisted in whole or in part by that federal funding. And that also all the applicable wage determinations are included. And we're going to talk about how you find those applicable wage determinations shortly.

Speaker 3 00:10:40 Um, if funding recipients, you know, have, uh, provide that funding further if they sub-grant or, or, or, uh, loan it to sub-recipients. Um, the sub-recipients need to make sure that those labor standards clauses are included in the contracts and, and funding recipients should provide necessary guidance and oversight to make sure that is being done. And we're going to go over those labor standards clauses here in a minute. But I also want to emphasize that in addition to making sure that those labor standards clauses and wage determinations go into that, that prime contract, that first contract or contracts that the funding recipient itself enters into with the contractor, the general contractor for that project, um, is also very important that the funding recipients, um, exercise oversight over those prime contractors to make sure that those labor standards clauses and wage determinations get flowed down into all of the subcontracts.

Speaker 3 00:11:38 Um, that is a clause, a contract clause that's going to be something that the prime contractor will have agreed to as part of their, their contract to do the construction. Um, and, and the regulations, um, at 0.5 and also 29 CFR 5.6 A are very specific that no further funding should flow unless, um, both the Federal Funding Agency and the federal funding recipients are sure that those clauses are in all of the contracts for that, that funded construction. So, as a funding recipient, um, there's more than one way that, that, that, that oversight and guidance can be exercised. Certainly making sure that, that the contractors are aware of that necessity through, um, you know, meetings, uh, negotiation or pre-bid meetings and so forth. But also it's completely allowable to require prime contractors to provide copies of subcontracts to ensure that's been done or to provide, um, require subcontractors to sign, acknowledging that they've received the Davis Bacon Clauses and ways determinations and provide that. Some agencies do that as well. Um, there's different methods that can be used, but did want to emphasize how important it is that that flow down happens, because if only that prime contractor find knows that the Davis Bacon applies and that never gets flowed down to the lower tier subcontractors, compliance is usually not going to happen.

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Speaker 3 00:13:06 So when I'm talking about, uh, these, these clauses very briefly just to go over what they are, uh, which is always helpful, uh, all the labor standards clauses that are required for related ACT contracts are in 29 CFR 5.5. All the Davis Bacon clauses are 5.5 A. All of those closet overtime clauses are in 5.5 b a one is the minimum wages clause. That is really the language that is the clause that says to contractors, you have agreed that you're going to pay these prevailing wages and French benefits, if any, that you're going to pay them to all the labors and mechanics on the side of work that you're going to have to pay them weekly. And yes, well as we'll talk about, they do have to be paid weekly. Um, and it talks about, you know, all the, the requirements related to that. Uh, 5.5 A one also discusses as we'll talk about briefly later, what a contractor should do if they need a wage rate for a classification of work that's not on their wage determination.

Speaker 3 00:14:11 In other words, a conformance you might have heard people use that term. We'll talk about conformance later, but just so you know, all of that is set forth for the contractor in that a one Labor clause 5.582 is an important one for funding recipients as well as the Federal Funding Agency. That is the contract clause, um, for withholding of funds. So whenever a contractor signs a Davis Bacon contract that has the properly incorporated clauses as it should, the contractor agrees that if at any point they have not paid workers in compliance with the Davis Bacon Labor Standards requirements, they're not submitting certified payrolls as they should be. They're not providing records as requested as they should be. They're not incorporating those labor standards for their subcontracts. They've agreed that any funds due to them can be withheld. Um, they can be withheld to meet those back wage requirements, or they can be withheld until violations have been corrected.

Speaker 3 00:15:15 Um, so they've agreed to it, and that sets forth, uh, those requirements in that process. 5.5 A three is the Labor standards clause that talks about records. It does talk about certified payrolls, um, at 5.5832. But also there are additional records that contractors are, are required to keep in support of those, uh, certified payrolls. Additional time records, additional payroll records, records of fringe benefit contributions, how they calculated their fringe benefit credit, um, records showing that their apprentices are properly registered, um, and properly paid as we'll discuss in 5.5 A four. And all of those records they're required to maintain and make available not only to us at the Department of Labor, but also to the, the funding recipients who enter into contracts with them.

Speaker 3 00:16:10 So 5.5 A four is the contract clause that does set forth the very limited circumstances in which, uh, apprentices and trainees may be paid lower than applicable prevailing wage rates. Um, 5.5 A five specifically brings in the Copeland Act requirements. As I mentioned earlier, that is not only certified payroll requirements, but it also makes it a federal felony, um, to require workers to give back of you their wages. It's a federal felony to falsify certified payroll requirements. Um, it also requires contractors to get approval for, for any deduction from wages. That's not specifically named in part three of the regulations. All that comes into play there.

Speaker 3 00:16:59 5.5 <unk> is that subcontracts clause that I mentioned earlier. Uh, when contractors sign a Davis Bacon contract, they are agreeing to flow down those labor standards clauses and wage determinations down to their lower tier contracts. I also like to highlight 5.5 a seven, which is contract termination in Debarment. Um, I think a lot of people who are familiar with Davis Bacon are at least somewhat aware that contractors who, um, have, you know, significant typically for, for related acts, it's going to be aggravated or willful violations can be debarred, uh, from bidding on future federal or federally assisted contracts for a period of three years. Um, that is future contracts. If you, you

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recommend a contractor for debarment, you do not, not need to be afraid that that means they will not be able to finish the contract that they're working on for you. They do get to finish out their currently awarded contracts, but I also want to flag that 5.5 a <unk> talks about contract termination.

Speaker 3 00:18:01 Um, failure to comply with any of the Davis Bacon Labor standards is grounds for defendant, the funding recipient or agency, whoever awarded that contract to the prime contractor to terminate the contract. Um, and you know, generally in that circumstance, the, the prime contractor is going to be responsible for, um, for any cost of, of having to result it and reword that contract. I like to mention that because I've had been into several situations in the past where we've, we've gone out and we've had contractors that, um, I guess you might call them persistent violators. Uh, you know, the agency or the funding recipient has worked with them and tried to get them into compliance and they've been not cooperative. Uh, and they generally, uh, in talking to, to the agencies or funding recipients who were, were sort of trying to bring those contractors into compliance with Davis Bacon, it frequently comes up that they've been having lots of other problems with these contractors too.

Speaker 3 00:19:06 And they were not always aware that, um, that Davis Bacon violations in and of themselves were grounds for contract termination. So I'm not saying you always have to terminate somebody just because they have Davis Bacon violations, but we do like to make sure that funding recipients know that that option is there. Uh, 5.588 and 5.589 are your very legal language <laugh> dealing with, um, how to resolve disputes, how to get rulings and interpretations. Um, if it's a Davis Bacon issue, it has to go through the, uh, Davis Bacon due process procedures and is not resolved in the way that other contract disputes are. Uh, 5.5 ak. Any contractor who signs a Davis Bacon contract and I say contract, I'm including subcontracts, has to certify. They're eligible to be awarded a contract. They cannot be debarred and sign this contract. If they do, they falsified and that is, is a problem.

Speaker 3 00:20:03 So those are the clauses very briefly. It's good to be, uh, familiar with them and where they are in case. So you know where to go if, if a contractor asks you, why do I have to do this? You can say, Hey, it's right in this contract clause that you signed. Um, and then, and it's very important that these clauses do make it into every contract now onto some common coverage, compliance issues. And I think, uh, we, I just saw a post that's related to this first one. One of the most common problems we run into for coverage, um, in a re in the related Act universe where projects receiving federal funding is this issue of projects funded in whole or in part. So unless the language of the related Act says otherwise, and yours doesn't, if, if the construction receives any federal funding, any related act, federal funding, those related ACT requirements apply to all of the construction for that project, no matter how that funding is allocated across the project or across the contracts for that project.

Speaker 3 00:21:15 So even if a project, the construction work for a project is divided across more than one contract, which could be for good and valid reasons, but even if it is, and even if a funding recipient, uh, decides that they're going to use the federal funding, maybe only for one or two of the contracts related to that project and use other funding, they're going to allocate other funding to other contracts that still does not limit Davis Bacon coverage only to the work on those contracts because the language of yours related Act says, um, all laborers and mechanics who, uh, who are employed by subcontractors or subcontractors on construction funded in whole or in part, not on a contract funded in whole or in part, um, so a construction project, it's going to be all of the contracts necessary to complete that project as long as they're closely related and purpose, time and place.

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Speaker 3 00:22:18 Okay. So for example, say that the project is, um, you know, happy day, maybe you're getting to build a new school or, or really, really substantially renovate a school, but you're having to knock down the existing building and you know, there's something there that has to be demolished. The site has to be leveled, it has to be cleared, and then there's the new construction that takes place and for whatever reason, uh, the, the contract for the demolition and clearing work is awarded separately from the follow on construction. Very common. Um, and the funding recipients like, well, we got this much federal funding, that'll, that, you know, that'll all go to the demolition and clearing, and then we're going to use this other funding to fund the contract for the new construction. Davis Beacon requirements are going to apply to all the work performed in that contract for the demolition and clearing. Yes, they're also still going to apply to all the construction work performed on the contract for the new construction. It's all one big bucket when a drop of related ACT funding goes into that bucket, boom, all the construction water in that bucket is Davis Bacon. And all of those laborers and mechanics do have to get, uh, those Davis Bacon prevailing wages.

Speaker 3 00:23:44 Another common question that we do have is state or local prevailing wages. Um, not every state or locality has prevailing wage rates, but some do. Um, and it is possible for a project to be subject to Davis Bacon prevailing wages and state or local prevailing wages. And that is sometimes confusing for sometimes funding recipients. Yes. But even more confusing for contractors who are like, which wage do we apply? Or we'll frequently get the question, what portion of the project do I apply the state prevailing wage to and the federal prevailing wage to, I've had people insist, Hey, 40% of this project is, is funded by the federal wages and 60% by by state wages. So which, what 40% of the project is the federal wages? No. Um, reasonable, but, but still, no. Uh, the contractor is going to have to apply whichever prevailing wage rate is higher state or federal for each classification.

Speaker 3 00:24:47 Um, so if you've got your state prevailing wage and you've got your federal prevailing wage, uh, for electricians, the state prevailing wage is higher. You pay the state prevailing wage for carpenters, the federal prevailing wage is higher. You pay the federal prevailing wage. The state doesn't require certified payrolls, but federal does, you turn in the certified payrolls. Um, so that is, is a common question that people have. I do see some questions. I know I said that I wait till the end, but the one just came up. That actually does come up a lot. Uh, two, a couple, a few <laugh>. Um, I see the question that's asked, if you only use the grant money on the purchase of equipment outside of the construction project, uh, yes, that can trigger coverage in a couple of ways. First, are you purchasing equipment that is being installed?

Speaker 3 00:25:41 Is that part of your project? Um, so you're purchasing a boiler, you're purchasing an elevator, you're purchasing, you know, we have all kinds of projects. You're purchasing an MRI machine that's probably not like the come up at a school, but that was an interesting one. And then it has to be installed, and then there's construction going on. Yes. Even if all the money goes to the purchase, the construction's still covered. Uh, also if you were purchasing equipment to do the construction with <laugh>, yes, that will typically still trigger coverage. Um, the only possible limitation that might occur on that. Um, and if you think the situation applies, feel free to, to reach out to, to Brett and she can reach out to me, is if the, the con the funding program itself does not allow the funding to be spent on construction, then we might have, uh, a different situation and we could talk.

Speaker 3 00:26:40 I also saw a question. What if the project begins before we get the Davis Bacon Related Act funding? How does Davis Bacon apply? Does it apply at all? Um, yes, yes, it does. <laugh> uh,

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typically speaking, if a project has started and then receives Davis Bacon Act funding, Davis Bacon Act applies right back to the beginning of construction. There is an exception, um, the exception being that if it can be shown that there was no intent to apply for the federal funding at the start of construction or the award of the contract as the case may be, and if it can be shown that, uh, requiring the retroactive application of Davis Bacon requirements back to the beginning of that project would cause injustice or undue hardship, um, then the, the, the agency can request from the Department of Labor a waiver of retroactive applicability. That process is set out in 29 C FFR 1.6 G.

Speaker 3 00:28:03 Um, it is a request that the agency has to make. So a funding recipient would have to ask, um, the Department of Education, um, to, to make that request to us frequently. What happens in that situation is that the, the funding recipient will make the request and the federal agency will basically attach a cover letter being like, we completely agree with this request, <laugh>, please fulfill it if you can, and send that along to the Department of Labor. Um, you can send that directly to me, um, and then we have to evaluate it to see whether it meets that, that undue hardship or injustice requirement, um, and make a recommendation to the administrator of wage hour who will grant it or she will not. Um, injustice or undue hardship, obviously that can vary somewhat depending on, on what kind of project we're talking about. Um, it does have to be something a little bit more than, Hey, paying Davis Bacon is going to cost us more money <laugh>, because obviously that that would always be the case.

Speaker 3 00:29:07 Well, not always, depending on what the, the prevailing wages, um, were at the time construction started, but, um, so I can't give like a hard and fast if, if you meet X amount of, of dollars or you have y conditions. Um, but I can give examples. Um, so this came up sometimes in the, the context of, of Covid especially where, um, for, for obvious reasons, you know, and these sometimes were schools, sometimes these were healthcare facilities, it varied. Um, did not want to wait to find out if they were going to get federal funding to start putting, um, safety features into their buildings to try and, and limit the spread of covid. So the construction started, um, and then, and then they got federal funding. Sometimes the federal funding didn't even exist when the <laugh> construction started. Um, and they were able to show that if they had to go back and, and apply Davis Bacon retroactively, um, they would, they would have to basically stop the construction on the safety measures for, for at least a significant portion of time, which has obviously going to cause harm to people.

Speaker 3 00:30:21 We're not, we're, we're not going to want to do that. So we granted, uh, tended to grant those waivers. Um, we grant them very frequently in the context of disaster recovery. Again, we don't, we don't want people to wait to find out that they're getting federal funding before they start, uh, repairing from disasters. Um, and we don't want to do anything that's going to slow that down because that will hurt people. Um, we've had situations where we had, one project I remember was, um, a water treatment plant that was not, um, adequately treating the water, we'll just say for the town it was actually discharging unsafe water. Um, and there was a, there were various reasons why if it went retroactive, it would really slow the project down and expand the period of time that the untreated water was being discharged. We're like, no, we're let us get rid of the, the, the polluting water as quickly as possible. So, so some kind of hardship or harm, um, is typically what we look for if we're, uh, doing that retroactive waiver.

Speaker 3 00:31:32 All right. Um, another common issue that we have with coverage is this issue of who counts as a laborer mechanic. So laborer mechanics are workers that, um, are out there working

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with the tools of the trade. They're doing manual labor, they're working with their hands when the site of work. Um, and 29 C ffr 5.5 a one is very specific that labors and mechanics have to get applicable for prevailing wages regardless of any contractual relationship, which may be alleged to exist between the contractor and such labors and mechanics, which is the regulatory way of saying we don't care whether they're employees or independent contractors, even if they are in business for themselves legitimately. Um, and our legitimate independent contractors, which is, um, misclassification of, of employees independent contractors is fairly common, but even legitimate independent contractors under Davis Bacon have to get those prevailing wage, require those prevailing wage requirements. Um, they have to get at least prevailing wages and fringe benefits owed to them for their classifications of work for all their hours worked. And the certified payrolls need to show that they're getting it.

Speaker 3 00:32:54 Uh, so the follow up question to that is frequently, but their business owners aren't, isn't there aren't business owners exempt sort of <laugh>. Um, the regulations do specifically say that laborers and mechanics do not include anyone who meets the executive administrative or professional exemptions under 29 C F R part 5 41, which most of the time those people aren't going to be out there performing a lot of fiscal labor anyway, but does specify. And there is a business owner exemption in 29 CFR part 5 41, 5 41, 1 0 1. But it's very, very limited, which people don't always realize. It's not just that the worker owns a portion of the business, they do have to own a portion of the business. They have to own at least 20% of the business, but they also have to be actively engaged in the management of an enterprise. And that actively engaged in the, in management is defined at 5 41 0.102. And it is activities such as hiring, supervising, um, disciplining, et cetera, employees, setting budgets, determining supply needs, uh, setting company-wide, like legal compliance policies, right?

Speaker 3 00:34:26 Things that you do when you're overseeing a whole enterprise. Those are the activities that to qualify for this exemption, these workers would need to be regularly actively engaged in. So most small independent contractors, even if they're legitimately in business for themselves, maybe even if they have one or two employees that they have work with them sometimes are not going to meet that duties test. They're not going to be regularly engaged in those kinds of activities to meet that exemption. So generally speaking, if you've got somebody who's out there spending most of their time on site working with their hands, they need to be getting prevailing wages. They need to show up on the certified payroll regardless if they're employees, independent contractors, sole proprietors of a really small business that don't meet that business owner exemption, which is, again, fairly hard to meet, you know, volunteers.

Speaker 3 00:35:34 Somebody who just walked on site and was like, I've always wanted to, to learn how to hang drywall. Today's my day and the site and the crew leads like, Hey, they're doing pretty good. I'm at, at, it doesn't matter why, if they're on site and they're doing that labor and mechanic work, almost always they're going to be getting those prevailing wages. The exceptions are very limited. One other thing that I did want to mention is something called force account work. Um, basically what that refers to is work that is actually done by employees of a government agency. Um, so for, for any funding recipients or subrecipients on the call who, who are not government agencies, I'm very sorry, but this does not apply to you. Um, but for those of you who are government agency, most related acts require prevailing wages to be paid to laborers or mechanics who work for a contractor or subcontractor.

Speaker 3 00:36:30 As it says here. That does include the prevailing wage provisions for programs administered by the Department of Education. It's labor as a mechanics, I'm employed by a contractor,



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slum contractor. Um, government agencies don't count as contractors. Uh, the Office of Management and Budget has, has spoken on this. This has come up before, uh, you guys just, just don't fall within that contractor framework. So if a government agency receives that related ACT funding and is like, great, we are construction experts, we do not need to contract this workout. We have a team of people that already work for this agency go, right? So maybe, which sounds kind of unrealistic, but it happens like maybe you get funding to put in a playground at a school and the local, the, the, the locality that gets that funding already has people on, on staff that do landscaping and repairs and upkeep at, at, you know, parks and et cetera in that county.

Speaker 3 00:37:32 And they can give that work to their own employees. That's good. That is absolutely fine. If it's the employees of the government agency, Davis Bacon does not apply, but as soon as the government agency gives that work to a contractor, even if it's a contractor that the agency has a regular contract with already, boom, railing raise requirements hit. So in that earlier scenario I mentioned, um, the agency getting funding for a playground and having employees on staff that frequently do landscaping and other similar work that they, they send out to do the work, it wouldn't apply. But if instead the agency's like, oh, we have a contract with landscaping company X, Y, Z who does all of our landscaping and park repair and restoration needs in this county, we'll just have them do it. We already have a contract with them to do all of our work. Might be a regular contract, but still a contractor for their work on putting that federally funded playground. And at that school, they're going to have to, those workers are going to have to get prevailing wages.

Speaker 3 00:38:48 All right, so that was the quick overview on coverage. I'm getting a lot of good questions. I am going to try and mostly wait till the end unless I see one that ties in with what I'm talking though, cause I want to make sure I get through all the topics. So let's move on to wage determinations. Wage determinations, um, are prob are the next area where problems can occur. Um, again, sort of like getting those, those clauses into the contract, if the correct wage determinations don't get into those contracts, um, even if everyone is trying their very hardest, the workers are not going to get paid correctly. So we're going to go over a little bit, um, about what, what a funding recipient obligations are in terms of wage determinations, um, how to know if you are putting in the right wage determinations. And then we're going to talk real briefly about conformance.

Speaker 3 00:39:41 All right, so starting off with what are your responsibilities in terms of wage determinations? So the first and most important one is making sure that you've got the correct wage determination. It's the most current applicable wage determination that applies for sure to this project. Um, and then it's incorporated in all the contracts like we discussed earlier, the prime contract and all the contracts that flow down from it. Um, also it's important that the funding recipient advise contractors about which schedule of rates applies to the different, um, construction on site. We're going to talk briefly here in a second. It is possible for more than one wage determination to apply to a project for a couple of reasons. If that's the case. Um, you know, as, as the person, the entity that has awarded the contract and incorporated the wage determinations, um, you need to, to help the contractors understand when they're supposed to apply, which wage determination.

Speaker 3 00:40:43 Um, and obviously wage hours are obviously happy to help with that. Also, some wage determinations. Um, this doesn't happen everywhere, but in some, some localities you'll have wage determinations that, um, maybe it will have heavy and highway rates or even building heavy and highway rates. Um, it'll be in the same document, but the rates will be separated out or you can have

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wage determinations that apply to multiple counties. But for some of the classifications, um, the rates are different for different counties. So again, uh, the funding recipient is responsible for providing guidance to the contractors as to how, how those different schedules apply, um, as we'll talk about in a little bit. But as I'll mention briefly here, um, while we always, always are happy to answer questions that we do and we encourage, uh, funding or symptoms to reach out with these questions. Um, under Davis Bacon, every, uh, the scope of the classifications, what wage rates have to be paid is very heavily based on local area practice.

Speaker 3 00:41:51 Um, so contractors, especially if they're not from the local area, may have questions as to whether certain work is within one classification or another. What is the local area practice with regards to that work? Um, it is the funding recipients responsibility and again, wage hours happy, happy to help, uh, to advise as to local area practice for the classifications. And finally, um, conformance requests. So if there is a wage rate that is, uh, for a classification that is needed but is not on the wage determination, we're going to talk about the process for getting that wage rate added just for your project. But although conformance requests, um, in a sense originate with a contractor, um, they come from the contractor to the funding recipient who, uh, should review them and as we'll talk about, indicate whether or not you agree with it, and then it's actually going to be the funding recipient who's going to submit those conformance requests to wage hour.

Speaker 3 00:42:52 Um, and we would submit our responses back to you. Uh, so we'll talk about that, but that is a very important, important role, making sure that contractors understand when conformance are needed and to help walk them through that process. All right, so Davis Baker wage determinations, those are the wonderful documents that have all the prevailing wages, the hourly wage rates, and the fringe benefits when there are e for all the different kinds of laborers and mechanics that are going to be employed on those construction projects. Um, the have been employed on construction projects of a similar character in the locality of that wage determination. Um, in this presentation I'm mostly going to be talking about general wage determinations. Those are the wage determinations that are available on sam.gov. Um, and a spending recipients, you can go on sam.gov whenever you have a contract, pull the wage, the general wage determination that applies to your, your project and incorporate it into your contract.

Speaker 3 00:43:54 You don't need wage hour, although again, we're happy to help, but you don't need us <laugh>. Um, there is another type of wage determination that I'm going to mention very briefly and then not refer to again for the rest of this presentation. In addition to general wage determinations that apply to, to all of the construction projects of a certain type within a certain county or other locality, but usually a county, there are project wage determinations, which are specific to, um, one specific project. Um, and in as funding recipients, you can request a project wage determination. There is a form for that, an SF 3 0 8 that is also available on sam.gov, but we're only going to do them in limited circumstances. First, there actually is no general wage determination for your type of project and your locality. That is rare. It happens though, but it, although it's rare.

Speaker 3 00:44:49 But if that is the case, feel free to request a project wage determination to, um, all of the work one year project or almost all of the work is in a classification that's missing from your general wage determination. So the project is to put a new roof on a school. The building wage determination for your, your county, and we'll talk about that in a minute, is missing a classification for roofers <laugh>. So even if you put that wage determination in, like none of the works that's going to be

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performed is actually on that wage determination and that circumstance, you can request a project wage determination. Also, this is not likely, I think, to come up for you guys, but if you have a situation where a project is in multiple counties, um, that tends to happen more often with highway projects and some heavy projects like canals and stuff.

Speaker 3 00:45:41 But if, um, in that circumstance you could also request a project wage determination, but most of the time, 98 or more percent of the time, you're going to be able to use those general wage determinations on sam.gov. So when you're picking the wage determinations from sam.gov first, please make sure you're looking at the right locality. Um, like I said, generally it's the county. Uh, if you go in sam.gov, you put in the state and then the county, and then it pulls them up. But please double check, especially if, and we greatly prefer that you actually incorporate the whole wage determination of the contract, but especially if you just give the wage determination identifying number, please, please make sure it's the one for the county that you met. I have seen contracts where they meant to put in like a wage determination for Kansas and they accidentally put in one for Kentucky, right? Or as the case may be, and nobody noticed until six months into the project, or at least if they noticed they didn't say anything. Um, so double check that first and then we're going to talk about how you know that you have got the wage determination for the type of project you're doing, and then you have to make sure it's the most current wage determination that applies. And we'll talk about all those things briefly.

Speaker 3 00:47:03 Um, so because prevailing wages under the Davis Bacon Act do have to be based on the wages paid to workers who work on similar kinds of projects in that locality, general wage determinations are separated out by the category of project four categories, and they're described in all agency Memorandum one 30. All the all agency memorandums that I memorandum I refer to are also available in sam.gov on the wage determinations page. If you scroll down, um, to the pass, the part where you're actually selecting the wage determinations, there is a link, uh, and there's forming categories. Building is going to be for any, uh, non residential sheltered enclosure for the purposes of, of housing people, equipment, machinery, et cetera. Um, so it has to be sheltered. It has to be, you know, have some basic amenities and so forth, not just a covering from the elements.

Speaker 3 00:47:56 It can't just be like a roof on a pole. Um, that's going to be schools, that's going to be office buildings, that's going to be banks, that's going to be basically any building that you can think of. It does include dormitories, as it includes barracks, it includes hospitals, nursing homes. The only thing it doesn't include is residences. Those are in your residential category. That's your single family homes, your row homes, your town homes and apartment buildings. If they're four stories or less, if they're above four stories they're building. Um, I'm not going to get into the, the details of how you figure out exactly how many stories a building has. It can be more complicated than you would think, uh, cause that's probably not likely to apply to you all that often. But that information is available on our website if anyone wants it skipping heavy for the minute.

Speaker 3 00:48:47 For the moment. Highway is all of your category, all of your types of projects that are paving. So it's your highways, it's your roads, it's also parking lots, although not parking garages. Those are considered building. Um, it's paved basketball courts and paved volleyball courts and so on. Anything where the project is basically to clear the space and then pave the heck out of it, that is your highway. Project heavy is everything else. If it's not a building or residence or a highway, it is heavy because heavy is such a catchall category. Sometimes if, if the data indicates sufficient differentiation in

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rates, you may have more than one heavy wage determination that applies to county. So you might have, for example, um, in a county that, that, uh, a coastal county, for example, might have a wage determination that applies to heavy work generally, but then a specialized heavy wage determination that applies to dredging and marine construction.

Speaker 3 00:49:49 So please, if your project is heavy, make sure that you have the correct heavy wage determination for your locality. Now, I mentioned earlier that it's possible that a, a contract a may need to include multiple wage determinations. One circumstances because the project has work in more than one county. Sometimes you can request a project wage determination. Um, but depending on the type of project, you may just put in two general, general wage determinations. If it's just that you're doing two buildings in two different places and they've been put into one contract for administrative convenience, for example, you just put in the two wage terminations. But also if you have substantial work in more than one category of construction. So what does that mean? Um, I saw, I did see a question, and we're going to come back to it about, um, whether playgrounds or constructions. And I had an example earlier with playgrounds, so we'll stick with that.

Speaker 3 00:50:45 Say that you have a project. Again, it's a, a whole new school. Um, we're building a new school in my, my county lately. So happy days <laugh>. We're kind of, kind of new school focused right now. My husband's a teacher. Um, and also it's going to have a playground and it's going to have a stadium with like a football field and a track, and it's going to be great and it's going to be awesome. Um, and it's going to be a lot of things <laugh>. And the school is obviously a building, but the stadium and the playground, well, they're not buildings and they're not highways or residences. They're heavy. Say you have two different categories of construction going on.

Speaker 3 00:51:27 If the all, if the total work in that second category of construction, the heavy category equals either 20% of the project costs or it exceeds 2.5 million, if it hits either one, then that is g generally going to be considered a substantial amount of construction in the other category. And you are going to have both wage determinations need to go in that contract, the building wage determination to apply to the construction of the actual building and the heavy wage determination to apply to that heavy work for that playground stadium and so on. Um, and then you'd have to let the contractors know, hey, you know, the building wage determination applies to the building. Heavy wage determination applies to these other things. You can't just pick whichever wage rate is lower and use that for the whole project they apply to the work they apply to. Um, if you have any questions about whether multiple wage determinations apply or any reason to believe that, hey, like this is only 2.6 million and I really don't think this is actually a substantial amount of construction for these reasons, please, please feel free to reach out to wage an hour. Um, you know, obviously our, our preference would be that you reach out to us as soon as possible <laugh>, um, if, if possible, even before a contract award. If you can, um, then, uh, then we're happy to assist you with that. But, but please do reach out to us if there's questions. No one, no one likes to find out that they should have included a second wage determination like nine months into construction.

Speaker 3 00:53:09 In addition to making sure that you have the wage determinations for the correct categories, please, please make sure that you have the most up-to-date wage determination. For most types of contracts, that wage determination will have to be updated right up to the time of award. Okay? Um, so that means that before you award the contract, you need to go back on sam.gov and see, hey, the wage determination for my county and for this category of construction that applies to my project,

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has it been updated since the last time I looked since I incorporated the wage determination to solicitation or, you know, request for proposal or whatever the document may be. If it has, then please update it in your awarded contract. The only exception is for those competitive sealed bid contracts. So if the, the, the method of awarding this contract is that all the potential contractors submit a sealed bid based on, you know, the information and the solicitation.

Speaker 3 00:54:10 And once, um, then the wage determination has to be updated up until at least 10 days before the opening of bids. If as a funding recipient, you think that, you know, you can let people all the, the potential bidding contractors know in a time period of less than 10 days so that they can change their bids if they need to. You can update it closer to the opening of bids, but you have to update it until at least up to 10 days before opening of bids. Um, if for those sealed bid contracts, the, the wage determination is updated up to that at least 10 days before the opening of bids, then it will not have to be updated again when the contract is awarded. As long as that contract is awarded within 90 days of bid opening. Once you hit date 91 and that contract has not been awarded, generally speaking, um, you then have, you then sort of lose that, that lock in and you will again have to update that wage determination to whatever the most recent version of that wage determination is as of the date of contract award.

Speaker 3 00:55:27 The only exception is if you can get an extension of the 90 day period from the Department of Labor, just like the, the waiver of retroactive application. Um, the extension of the 90 day period is going to be based on injustice or undue hardship. So the retroactivity waiver was, uh, 29 C FFR 1.6 G, this is, uh, 29 CFR 1.6 C. It's all, all 1.6 <laugh> for all the wage determination updating stuff. Um, and again, so that, that is a request that would specifically need to be made that we would have to, to approve. So I mentioned this just to, to emphasize, please, please keep track of how long it's been since bid opening date. Um, I have certainly run into to agencies and funding recipients who have sort of had the 91st day hit them by surprise. So we like to highlight that to make sure that everyone is aware.

Speaker 3 00:56:33 Um, I mentioned earlier advising contractors about worker classifications. So Davis Bacon. There, there is no national nationwide applicable definition of the different classifications and a wage determination for Davis Bacon purposes. There is no single nationwide definition of this is the work that counts as an electrician. Everything else doesn't. And that is because of the language of the Davis Beacon Act itself, um, which emphasizes that that prevailing wages must be based on local area practice, uh, wages and practices that prevail locally in local area. Practices to classifications really can vary, although classifications may have some core duties that tend to show up no matter where the work is performed. There really can be a lot of variation in whether certain work is claimed, you know, by carpenters or iron workers, or whether it's claimed by electricians or, you know, laborers. There is variation.

Speaker 3 00:57:44 Um, and so for Davis Bacon purposes work, the, the, the scope of a classification on a wage determination, the work that's included within that classification is based on the local area practice of the contractors whose rates prevailed on the wage determination. Uh, so when we, when the Department of Labor publishes these wage determinations that some of you may know, we do, we send out surveys and we get responses from contractors, hopefully, um, if, if we're able to publish a wage determination, we've gotten responses from contractors at least, and the wage rates that show up on, on that wage determination are going to be based on that data and the wage rates that prevailed based

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on that data. And you can tell that by looking at your wage determination. Your wage determination will tell you, Hey, for this classification, we'll stick with electrician just so that we have one.

Speaker 3 00:58:43 This electrician rate was based on, uh, this particular union locals rate prevailed. They had the most responses that showed the most frequent that they most frequently paid rates for this work. Or it will say, Hey, no, union local gave us a prevailing wa prevailing rate. We had DA data from different contractors, mostly probably non-union contractors. We did an average based on that survey. Non-union contractors rates typically prevailed for survey rates. Very occasionally you'll have something called a union weighted average where, um, all the rates were unions, but there were more, there was more than one local. And so we would average the rates between the two. Um, so sticking with the electrician, if you see on a wage determination, let us say E l e c dash 0 0 8 2, you know that the rate, the contractors whose rate prevailed for the electrician classification were the contractors who were signatory to the, uh, I B A W, the Electric Electrical Workers Union, local 82.

Speaker 3 00:59:52 If instead it says, and we'll say this, uh, I think I mentioned Kentucky earlier, we'll stick with Kentucky. Uh, if this project's taking place in Kentucky and it says S U K Y, and then a date 2012, let us say, well, probably wouldn't still be 2012, but you never know, then you know that that is a survey Kentucky rate non-union contractors, right, whose rates prevailed. And that matters because again, the contractors whose rates prevailed are the ones whose practice determine what's in that classification. So if it's an electric, if it's the electrician's union prevailed for electrician classification in that county, the work that has to be paid at the work is all the work that union co contractors typically pay at electricians rates. Generally, that's going to be set out in the cba. Um, if the survey rate prevail, right, if it's a survey rate and non-union contractors work generally prevail, uh, practice generally prevail. Then the scope of work included in that electrician's classification is going to be whatever work the non-union contractors in that area typically pay at electrician's rates. It makes a difference.

Speaker 3 01:01:08 Um, so if you are in any doubt as to whether certain work is included within a classification or not, and if a contractor comes to you with a question, um, your first task is always going to be to look and see what kind of rate that is, right? If it's a union rate, give the local call. If it's a non-union rate, you know, call up a couple of local contractors, call up your association general contractors, and of course any of them, you can always call up us. Um, although I can tell you that if you do call me, I'm going to go call the union local or the a g C chapter or so forth and so forth. I'm going to go through the same steps, but, um, but we are happy to help. Um, but it is important, I don't want to run, run out of time, so I won't give you any of war stories, but I did start out as an investigator and I did, um, investigations, you know, across a variety of areas and have, have had situations where hey, work in x, y, z county Kentucky, this would be carpenter's work, X, y, Z county and Tennessee area practices.

Speaker 3 01:02:08 This is paid as painters, right? You know, the, this is labor is work in some places, equipment operators and other, there's a lot of variation around these edges.

Speaker 3 01:02:22 All right, conformance request, I mentioned that prevailing wages on those wage determinations are based on surveys. To be able to publish a rate for classification, we have to get enough survey responses from enough contractors to say, Hey, you know, we've got a big enough sample size to be able to say what rate prevailed. If we don't get enough responses, we can't publish a rate for the classification for that locality. So sometimes rates are missing, um, if a rate is missing, right? You can a con a confirmation request, a conformance request can be submitted, um, to ask us to add that rate and that classification to the we determination for the term of that project only it is limited to that

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specific project. Please don't use a conformed rate from a previous project and try and use it for a project in, you know, six or seven months later, we cannot accept conformance requests and either approve them or deny them until the contract has been awarded for a couple reasons.

Speaker 3 01:03:35 One, because it is technically up to the contractor to decide, you know, what kinds of workers they need to perform the scope of work on the contract. Um, but two, keeping in mind what I said earlier about, uh, having to update wage determinations. The wage determination that applies to that contract may be updated and may change before contract award. And the conformed rate that we approve is based on the other rates and that wage determination. So we won't be able to conform until that contract is awarded. We know that wage determination has locked in, so we cannot, um, approve a conformance request. We won't even accept their performance request until the contract's been awarded. But man, the day it's been awarded, it can be sent off and we'll talk about how, um, you can work with contractors to get them ready to send those off promptly.

Speaker 3 01:04:30 Three things have to happen for us to approve a performance request. Um, the work for the proposed classification can't be performed by one or more classifications already on the wage determination. So we're not going to split a classification like if certain work is already performed by an electrician, we're not going to make like an electrician's helper category. Um, if they're doing the same work that's already in that classification, or if work is performed by two different classifications on a wage determination, we're not going to combine those duties to make a new classification has to be, Hey, this work just isn't on here. Um, we need roofers and we don't got them. The wage rate has to bear reasonable relationship to the other rates on the wage determination, and it has to be the other similar rates. So if the, the formed the classification that's being proposed for the conformance, if it's a skilled trade, like an electrician, a carpenter, iron worker, and so forth, we're going to be looking at the other skilled trade rates.

Speaker 3 01:05:32 If it's a laborer, we look at the other laborer rates. If it's, um, an equipment operator, we look at the equipment operator rates. If it's a truck driver, we look at the other truck driver rates. We're also going to look at within, within that source subgrouping, whether most of the rates were union or non-union. So I need, for whatever reason, I'm a contractor, my wage determination for my project doesn't have an electrician, and I need one. And I come to you as the funding recipient and say, Hey, I, we, we need a conformance for an electrician. How do I figure out what rate to pay? You're going to look at the wage determination. You're going to look at all the other skilled trades. Let's say you have seven skilled trades, you know, carpenter, iron worker, plumber, so forth. Of those seven skilled trades, if five of them are union and two of them are non-union, so the unions in the majority, we're going to compare the proposed rate to the union rates.

Speaker 3 01:06:29 On the flip side, if like four or five of the rates are non-union rates and only a couple are union rates, we're going to compare it to the non-union rates. If the proposed rate, you know, has a reasonable relationship to those rates, if it's within the range of those similar classifications, that is, that is what we need. We also need to make sure the proposed classification is actually utilized in the area by the construction industry, and it's not something that the contractor just sort of made up <laugh>. Um, so what can you do, um, before, even though a request can't be submitted before the contract is awarded, there is a lot that you can do to help the contractors who are, who are getting this work. Um, so you know, when the, as recipients or sub recipients when you're, you're either requesting

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proposals or putting out solicitations, um, and you're having meetings for the, with the potential contractors or you're taking questions from them or whatever your, your process may be, right?

Speaker 3 01:07:36 Make sure you talk about the wage determination with them, right? Compare it with the scope of work, try and encourage them to think about whether there are classifications that are needed on there that aren't there, and then they can go through that reasonable relationship process that I just described. It's listed in more detail on all agency memorandum two 13. Again, that's available in sam.gov. Um, and figure out what the proposed rate should be, right? And the, the potential contractors can talk about this. It doesn't need to be a secret. Um, so, you know, it can be at pre-bid meetings at these various things, talk about what classifications are missing, what's the potential range that would apply and have everything ready so that when the contract is awarded, the conformance request is ready to go. Okay? Uh, the contractor is going to fill out the conformance request.

Speaker 3 01:08:34 The form is an SF 1444, again available on sam.gov. Um, and then they're going to submit it to you. You're going to review it if you think that it's not right, right? Maybe you think, Hey, I don't actually think this conformance is needed. I think a classification on the wage termination, Ari performs us, or, yeah, I think classification is needed. This rate seems a little low or a little high, or whatever the case may be. There's a place on the 1444 where you're supposed to sign and indicate whether or not you agree. We really want you to indicate whether or not you agree. We take that really seriously because you guys are in the locality. We want your feedback, then you sign it, then you submit it to us. Um, that is the email.

Speaker 3 01:09:22 Um, and we will respond. The branch of construction wage determination reviews these, if the contractor did a really good job providing all the information needed in SF 1444, so they don't have to come back and request more information, um, which can be a longer process. They try to get them back in 30 days if they can. Um, and they will send them back to you. There should be no circumstance where a contractor is, is put in a rate on wage determination. You're a certified payroll rather. And you're saying, where'd you get that? It's like, oh, I submitted a conformance request. It was conformed. If they had a conform rate for your project, you would've gotten that conformant that approved conformance from the Department of Labor. It goes to you and then you give it to them. Okay? Um, if rates are missing, please, please make sure that your contractors know that this is the process to follow.

Speaker 3 01:10:20 They don't use the conformance from a prior project. They can't use a rate for that classification from a different category of wage determination, right? If you're doing a building project and you need an electrician, you can't use the electrician rate from the, the highway wage determination for that county. You also can't use the rate for an electrician for building projects two counties over. It has to be, um, if it's missing from the wage determination that applies to your project, it has to be a conformance because again, the conform rate is going to be based on the rates that do apply to your project. So if they use a rate from somewhere else, even if it's a rate for that classification, the rate probably will not have that reasonable relationship needed to the rates on, on your project wage determination.

Speaker 3 01:11:09 All right? Coverage and wage determinations are a lot, um, but once you've got them in place, then it's all monitoring. So I'm not going to say that that's easy, but, but you've got over the initial two hurdles. So we're going to talk a little bit about day-to-day oversight and what to look for. All right. What are the day-to-day oversight obligations? Um, one of the first ones, and one of the ones



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everyone thinks about are those certified payrolls and any related records. Um, certified payrolls, um, for the regulation, they go to the Federal Funding agency for, for review and maintenance. The federal funding agencies can and generally do delegate that responsibility along with the funding to the funding recipients. Um, we'll talk about certified payroll briefly. <laugh> well, we'll talk about quite a bit, but we'll ta talk about shortly, I guess. Um, also, contractors are required to post, there's a Davis Bacon, uh, employee rights poster, and they're also, they're required to post that and the applicable wage determinations that any conformance is on the site of work, and it has to be somewhere. Workers can see it easily prominent and easily accessible. Um, so you need to make sure that contractors are aware of that responsibility and that they're actually doing it on their site. It should be there.

Speaker 3 01:12:33 Uh, the regulations also, um, we have joint enforcement authority with the federal funding agencies who again, generally delegate that responsibility down to their funding recipients for these contracts. So in addition to, to site visits to make sure that wage determinations, posters, et cetera, are, are in place, um, interviewing workers to confirm compliance, right? You have that, that oversight. Certified payrolls, I mentioned earlier, workers must be paid weekly. That statutory, that is a statutory requirement and a regulatory requirement. I know sometimes contractors do not love it, but if they're taking a Davis Bacon job, they have signed a contract agreeing to it, and at least for the hours that their workers spend on that Davis Bacon job site, they do need to get paid those Davis Bacon wages weekly. When they sign the certified payroll, they're certifying that they have paid those workers their wages weekly, and again, federal felony to falsify certified payroll.

Speaker 3 01:13:36 We don't want people doing that. Um, so that weekly payroll, um, comes with weekly certified payroll requirements, uh, within seven days after the regular payment date of those weekly wages, that certified payroll should be submitted to you. Okay? Um, I, I should, I should mention as the slide says, cash wages have to be paid weekly. Um, if the contractor is meeting part of their uh, prevailing wage obligations through contributions to fringe benefit plan, um, those can must be made at least quarterly. They should indicate that, um, in, in, in section four of the certified payroll, which whether they're paying cert fringe benefits in cash or through contributions, um, if a contractor or, or subcontractors the case may be is not submitting certified payrolls to you timely, or is submitting them incorrectly or submitting them and they aren't signed. And a couple things we'll talk about, um, both the regulations and the contract clauses. <laugh> saying that as defending recipient, you are entitled to say, that's lovely. I'm not giving you any money until I see your certified payroll, or until I see your subcontractor certified payrolls. And as perfectly permissible, um, is entirely within your rights to withhold of certified payrolls are not being provided as they should be.

Speaker 3 01:15:12 Uh, I mentioned the certified payrolls have to be signed, um, again, signed by the contractor, subcontractor and authorized officer. The person signing these needs to be somebody in a position to know that the information in there is accurate, right? These should not be being signed by payroll clerk three <laugh>, right? Um, yeah, site superintendent, you know, project manager, somebody who not only knows, yes, this is the race that the people were paid, but can also say, yes, this is the work that they were performing and the hours that they were doing it, because again, they're, they're basically essentially swearing to the truth of what's in these documents to federal agency. So it needs to be, effectively, it needs to be somebody, the borrowable, right? It needs to be somebody responsible, certified payroll signatures. They can be a handwritten signature or they can be an electronic signature.

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Speaker 3 01:16:10 And by electronic signature, we mean any of those signatures where, you know, you have the certificates and you click on it and it does the verified signature with the date and the little stamp. Even Adobe PDF will do the, the electronic signatures nowadays. But what we cannot have is a copy of a signature, a photocopy, a fax copy, a scan copy. Because if we have to do criminal enforcement for falsification of a certified payroll, uh, the Department of Justice attorneys get very sad with us if we try and convince them to do criminal enforcement based on copy of a signature. We do need original or e-signature. Um, now if it's an e-signature, all right, that can be, that can be email, that's fine. It's fine if it's submitted by email, as long as it's an e-signature, it just can't be a scanned or copied signature.

Speaker 3 01:16:59 Um, actually before I, I get to that one other thing, um, we have an optional form that can be used for certified payrolls. The W h 3 47. You can get it from sam.gov, you can get it from our website. Either way, you don't have to use it, contractors don't have to use it. Um, use a different form, use a different format, use their regular payroll as long as it has all the information on there. Have an electronic payroll submission system. Obviously, we don't mandate them because we're not the ones that are having to receive all these certified payrolls, but we do love them. They're great. They make monitoring much easier. The only thing that's mandatory, the certified payrolls, if you look on our W H 3 47, what makes the payroll certified is the statement of compliance that the contractor signs. And this, the statement of compliance goes through, yes, all the workers have been paid the prevailing wages that they're due, yes, that these are the, the classifications they worked in. Yes, everything's accurate. That statement of compliance, whatever method is used, has to be their word for word. But other than that, use any format you want. Totally up to you.

Speaker 3 01:18:08 All right. When you're reviewing these certified payrolls, what are you looking for? I know sometimes people don't like certified payrolls, but from the perspective of trying to find out whether Davis Bacon is being complied with, certified payrolls are great. We love them. Um, because, you know, probably six times out of 10 you can identify violations straight out from the certified payrolls. And another four times out of 10, I mean 10 where there are violations, you can be like, Ooh, that's, hmm, looks a bit hinky. So reviewing certified, if you review your certified payrolls regularly, you're going to know if there's problems. So the first thing you're going to do is you're going to look and make sure that there's nothing just obviously wrong on the certified payroll. I already mentioned. They got to, they have to sign it and they have to indicate how they're paying, uh, the fringe benefits.

Speaker 3 01:18:59 But other things you'll see, usually you won't see just a flat out incorrect wage rate. But occasionally, um, what you will see, sometimes you'll see situations where, uh, fringe benefits, although you don't have to pay additional halftime on fringe benefits for overtime hours, you do still have to pay the fringe benefits for overtime hours. And you'll look at the rate that they have listed for overtime. You'll be like, Ooh, that doesn't include the fringe benefits. We're like right on the certified payroll. You can see the violation. Um, for apprentices, you can sometimes just look at the certified payroll and you'll be like, wow, they've got one journey worker and seven apprentices. That is not okay. There's no apprenticeship agreement out there that allows seven apprentices to work with just one journey worker for, for supervision. And you'll know that there's a problem. Um, you know, you'll look at the, the, um, certified payroll and you'll see that there's deductions on there, not just your normal tax deductions, but there'll be deductions for uniforms or deductions for breakages.

Speaker 3 01:20:03 And, um, if they have deductions for anything other than your normal taxes, child support, et cetera, under 29 c FFR 3.6, they have to have a letter from us and they have to get it renewed

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annually. Saying those deductions are okay, no letter, no deductions. So if you see those and you're like, where's your letter? And they don't have one, then you know that you got to send them to us and they've got a problem. Um, but even more than those face of the record violations, right? You're going to have your red flags. If you know that this subcontract is for electrical work in nine out of the 10 people on the certified payroll or laborers, chances are there's a problem there, right? Either they're just misclassifying people flat out, um, or they've, they're, they're saying, Hey, workers who have less experience, we're going to hire you as hire you.

Speaker 3 01:21:00 But for the first 90 days while you're learning, we're going to consider you laborers, right? That's not okay. There's no unofficial training program. If they want to pay a lower rate, they need to get the person into an apprentice program prop a properly approved one. Um, if you look at the certified payroll and you're like, wow, every day for the past week after week, all the everyone for the subcontractor, they've been working exactly four hours a day as plumber and exactly four hours a day as labor. It's been half and half every day. No, it hasn't been, construction sites aren't that organized, right? Instead of keeping track of how many hours that the workers are spending in each classification, they're just taking an average or using an estimate, or again, maybe they're just, they've decided to pay people less than prevailing wages and they're putting down their labors half the time to hide it.

Speaker 3 01:21:47 Red flags signs that you need to go out and do interviews. Um, if you're looking at these certified payrolls and you're like, huh, that's strange. These people are working like 37.36 hours and 39.47 hours and these weird decimal points, they're not, they're getting paid a day rate or a flat rate and then they're dividing the day rate or the flat rate by the applicable prevailing wage rate to come up with the hours needed to make it look like they're getting paid prevailing wage rate. Um, probably not definitely, but probably it's a sign. Again, the interviews are needed. Um, if you look at those certified payrolls and you're like, wow, these nice people pay double time for all overtime hours. Some contractors do pay double time for some forms of overtime, like overtime on weekends, you know, on holidays, et cetera. But if you see a contractor that all the overtime is paid at double time, again, red flag, that may be a sign that these workers are actually working at straight time.

Speaker 3 01:22:53 So if you see 10 hours at double time of overtime, they're probably working 20 hours of overtime and getting paid straight time and no, no overtime. Um, so there are a lot of things you can see just from, from looking at the records, you can either tell that, Hey, this is a violation, you didn't pay the right overtime rate, or, um, don't know this is a violation, but I think I need to go out there on site and interview these people because that's a whole freaking lot of laborers for the work that they're supposed to be doing. Um, so please, like, obviously no one, we, we don't expect that you necessarily have time to do detailed reviews of every certified payroll, but it is very helpful to have at least some criteria and guidance in place for how and when you're going to at least spot check these certified payrolls and, and do some degree of monitoring of them because they're helpful.

Speaker 3 01:23:46 Um, the, uh, in the chat earlier, I posted a link to, to a variety of, uh, presentations on Davis Bacon topics and they are recorded, uh, that there is one specifically that goes through example certified payroll and talks about how to review it, um, and has the particular red flags, if that is helpful. All right, investigations 29 CFR 5.6 a three has the language, uh, which does mention that investigations, um, agencies do them as well as we do. Um, and the agencies do delegate that to funding recipients. Typically, they include interviews and employees. Employee interviews are taken in confidence when just like, uh, both the Department of Labor and you as the funding recipient when you interview workers,

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those are confidential interviews. The contractor does not get those, not unless uh, it ends up going to litigation and they get and we get subpoenaed. Um, do they, do they leave our hands? And sometimes even then we try and redact them depending. So they are very confidential.

Speaker 3 01:24:55 All right, so when you're out there doing those investigations I already mentioned, uh, when you're out on site, look for those posters, look for the wage determinations, the conform rate being posted, and then also look at your site, like look at the number of workers there. If there are more workers, then you're typically saying when you're certified payroll, that might not be a good sign. Okay? Look at the equipment used. Does it match up, uh, with what you're seeing on certified payrolls? Does it seem like for, for the amount of equipment that's being operated on site, there should be more equipment operators. You know, look at the tools being used and the tasks being performed and get a sense of how it reflects what you've been seeing on certified payrolls.

Speaker 3 01:25:39 Um, and then you do interviews. Everyone always wants to know, they always want a bright line number. How many interviews do I do? Huh? There is no bright line number. I'm sorry guys, but Davis Beacon projects vary so widely, right? So some projects, it might be four or five workers like, you know, repainting a few rooms and patching some holes in the drywall. Some projects are huge multi-building projects that have like a couple dozen or more subcontractors and a few hundred workers. So it varies. But the important thing is what it says here, however many interviews that, that are enough to show, right, that the certified payrolls you're getting are accurate or not, and to establish the nature and extent of the violations and to show what's happening across all the different classifications of workers on the project. Okay? So you have to do enough so that you feel confident that you have an accurate picture of what's happening on that project for all the different types of workers.

Speaker 3 01:26:47 That should be your goal when you're interviewing workers. Um, we emphasize a lot something called cross interviewing because it's, it's especially for bigger projects, for smaller projects, you know, if you just have a few workers, you might be able to interview everybody, but for big projects, you're not going to ask them about each other, right? So if we're out there interviewing workers, we're saying we're asking them, okay, not only what time do they start work and when do they leave and when do they take lunch and what, what kinds of work are they doing? What tools are they using? What are their daily tasks? But we're asking, who are the other workers on your crew? Do they do the same work as you do? If not, how is it different? Who gets here before you? Who's still working here when you leave? Does everyone else take lunch when you do?

Speaker 3 01:27:32 Is there anybody who works through lunch? We cross interview. And that can be really, really helpful for getting that big picture of the project. Even if you can only do limited numbers of interviews, um, content and worker interviews, again, try and make sure you, you get that basic information about who and, and where and when. Um, get details about the work that they're performing, their, their tools and equipment used. Not just don't just have them say, oh, I do electrician work. Be like, you know, you know, what tools are you using? Are you pulling wire? Are you laying condo? What, what are you doing? Have them walk you through their typical day, um, and their typical hours worked. Ask about their pay rates, but also ask about their fringe benefits. Um, you know, hopefully if they're getting fringe benefits, like if they're getting retired, if supposed to be making, getting contributions to 401k, do they ever get statements, benefit statements? If they're supposed to be getting health insurance, what happens when they try to use it? All right? All of these sorts of things.

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Speaker 3 01:28:39 All right. In addition to certified payrolls, I mentioned earlier, 29 CFR 5.5 a three requires contractors to keep other records, time records, internal payroll records, records of the fringe benefit contributions that were made, or the costs that the fringe benefits provided, how they calculated that credit apprenticeship registration for each apprentice. The app apprenticeship program, terms that show how the apprentices are supposed to be paid and how many jerk journey workers should be supervising them. And those journey workers do need to be on site with those apprentices each day. Um, and they are required to make those records available not only to us, but also to you on request. They have to be able essentially to put their records money where their mouth is to support those certified payrolls. And just like the certified payrolls, if you make a request for records that they're required to keep and required to provide, they don't let you look at them. They won't produce them for inspection. Contract funds may be withheld until they do. Oh, I'm running, I'm running short on time and we had so many questions. Um,

Speaker 2 01:29:52 Natalie, I think we can do follow up. Um, we can follow up in writing.

Speaker 3 01:29:58 Sorry

Speaker 2 01:29:59 To any questions that you didn't have a chance to answer.

Speaker 3 01:30:03 Okay, yeah, no, I'm happy to. Um, I had a little bit do, do you guys have like five minutes to do the speed run on withholding and debarment?

Speaker 2 01:30:15 Let's do it.

Speaker 3 01:30:16 All right. Speed run remedies. All right. I've mentioned withholding a couple of times. Uh, basically either the Department of Education or the funding recipients, um, you guys on your own have the authority to withhold w back wages and to be withhold contract funds either for back wages due to workers, right? If you find out that people weren't paid correctly, if they weren't paid overtime under qa, there's liquidated damages that would be due to the Department of Education. Those can be withheld. And then as I've mentioned, if they're not incorporating those contract clauses into their subcontracts, they're not providing certified payrolls or providing records. You can hold on to their, their, the funds due to that prime contractor until they cough those up. Um, you do have to provide written notice there. Um, there, there are certain requirements, but, but basically as long as you provide the written notice, you can do it.

Speaker 3 01:31:10 That's up to you if you get a written request from the wage and hour division from the Department of Labor requesting withholding you messed withhold. All right? Um, and once, once wage hour has requested the withholding and the money has been withheld, you hold on to those funds like grim death until we tell you either A, give them to us so that we may send them to employees or b we tell you good news, the contractor has agreed to pay or good news we have assigned released from the contractor. Or occasionally, very rarely, but occasionally we were wrong. The LJ said to give the money back. Um, which I don't actually think I've been with wage hours since 2007. I haven't ever seen that happen completely. Um, more commonly what happens is the back wage amount gets adjusted. Um, it is not uncommon for contractors when they find out funds have been withheld to be like, we actually have these extra records, <laugh> of ours worked and so forth.

Speaker 3 01:32:12 Um, and adjustments are made. Uh, but until you have, and we'll do it in writing so you have it in writing from us, please hold onto that money because back wages withholding has

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priority over almost everything else. It has priority over contract rep procurement costs, it has priority over bankruptcy claims. We even have priority over IRS lie. Um, so please don't use it for something else because then we're going to come back more. We're going to be like, Hey, we've fulfilled all the due process requirements and now we can use this money to pay workers and we're going to be very sad if the money is gone. Um, you know, and different agencies have different methods of dealing with that if that, that has happened. But, um, but it is usually not good times.

Speaker 3 01:33:04 So, um, well now I'll go, I'll go on for that. Debarment I mentioned earlier, uh, contractors can be declared and eligible for future contracts. Um, for the Davis Bacon Act, it's disregard of their obligations to employees or subcontractors related acts. It's a little bit stricter. Uh, it's aggravated or willful violations. Again, that can be towards the workers or towards subcontractors. Prime contractors who have a pattern of not advising subcontractors of the Davis Bacon requirements who appear, who, who engage in conduct that shall we say encourages non-compliant practices on the part of their subcontractors can absolutely be debarred for that. Uh, typically debarment is for three years. Um, for related act, uh, contractor debarment, as the regulations stand right now, they can request early removal after six months. Um, it is a very high standard to get early removal from the DEBARMENT list once you're on it, but it can happen. So it is up to three years in that circumstance.

Speaker 3 01:34:17 Um, debarment, uh, is generally for as a aggravated and willful, these are examples. Um, obviously falsified certified payrolls or kickbacks, uh, debarment is going to be the least of their problems, uh, when, uh, the US attorney's office comes talking to them. But it debarment is obviously considered for that repeat violations. Um, there are only so many times that contractors get to be told that their con that their, their actions are violations and to keep doing it before debarment is a consideration. However, contractors can be debarred for the first vi a first violation if it's serious enough. Like if this is clearly intentional, right? Like as it mentions here, they clearly misclassified workers deliberately. They clearly were they just flatly didn't pay for some hours, they knew where hours worked, right? Um, these sorts of things hand be grounds for debarment on an initial investigation. Um, for prime contractors, again, if they're failing to ensure compliance by subcontractors, like if a prime contractor has one subcontractor that's not in compliance, this is not going to get a prime contractor to Bard.

Speaker 3 01:35:28 But if there's a real regular pattern and that contractor is traceable back to the prime contractor, we will consider, um, when you guys do your own investigations, okay? If you have to do withholding on your own because the contractor refuses to pay, or even if the contractor agrees to pay and come into compliance, but you think that debarment is warranted, um, you need to refer those cases over to us because we have to make sure that there, there's certain due process requirements that we have to make sure are met in those circumstances. Similarly, if funds have been withheld and then they have to be dispersed to workers, right? Um, wage hour, uh, has been per, uh, the reorganization plan in 1950 and then some, some stuff from OMB back in 2015. I think, uh, we're responsible for dispersing back wages owed to laborers and mechanics under Davis Beacon. So you would transfer those funds to us again on sam.gov. We have two all agency Memor Miranda, that set forth those processes, um, for referring those cases to the regional offices and dispersing those back wages. So, um, please take a look at those all agency memor Miranda on sam.gov when you have a chance. If you have any questions about transferring a case, you can reach out to me or you can reach out to the regional enforcement coordinator for your region.

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Speaker 3 01:36:57 Um, handy dandy internet sites. Um, we'll make sure that you guys have all of those. And then on the link that I dropped into the chat at the beginning, um, those, those PowerPoints have these links as well. Um, so I mentioned sam.gov several times. We have a website that has a lot of the stuff. Um, we have a prevailing major resource book that kind of goes through the different topics. Um, at the bottom is the link that I dropped into the site earlier, uh, about the different presentations. Oh, okay. Apologies for not getting to questions guys. I know I got to, to a couple of them, uh, as they were coming in earlier. But I will talk with Brett and we'll make sure that we get answers to all of your questions.

Speaker 2 01:37:39 Is there anything, thank you so much Natalie. I also put in the chat a link to where we post our webinar recordings. So, um, again, we will not be posting the PowerPoint slides, but we will be posting a recording hopefully as soon as next. Um, thank you so much Natalie for your time and, uh, energy you've put into this and helping us. We also will be posting, um, a one page brief that will hopefully be helpful, um, but the answers to your specific questions, we will, um, work to get, we will work to develop answers to those questions within the next week or two and um, post those to our website. And when I say our website, I mean the Department of Education, um, I put a link to where we keep our s r resources. There's also a page for, um, gear and es as well. Um, and um, with that, uh, again, thank you all for your attention and thank you very much Natalie. And we'll be in touch.

Speaker 3 01:38:47 All right, thank you. Trying to, Natalie type

Speaker 0 01:39:00 That concludes our conference. Thank you for using event services. You may now disconnect.