Public Construction Frequently Asked Questions

1. What is the Little Davis-Bacon Act?

The Little Davis-Bacon Act (LDBA) is a set of state laws in Title 36 that establishes minimum wage and associated requirements for labor on public construction contracts awarded by the State of Alaska or a political subdivision of the state which exceed $25,000.00. The minimum wage (or the prevailing rate of pay) applies to construction-related workers. The Alaska Department of Labor and Workforce Development (DOLWD) publishes the prevailing minimum wages twice a year at: http://www.labor.state.ak.us/lss/pamp600.htm. The primary purpose of the LDBA is to establish a level playing field for labor costs associated with publicly funded construction projects.

2. What is the difference between Davis-Bacon and Little Davis-Bacon?

The Davis-Bacon Act (DBA) is a set of federal laws applicable to federal public construction projects. The Little Davis-Bacon Act (LDBA) is a set of state laws applicable to state projects. Some projects, such as certain highway projects, may be funded with both federal and state funds and may be covered by both federal and state laws. In these cases, construction contractors must comply with the most stringent provisions of both sets of laws.

3. Do the LDB laws require the same prevailing wages for the entire state?

No. There are two primary regions:
Northern Alaska - (the area that is north of N63 latitude and east of W138 longitude.), and
South Central/Southeast Alaska - (the area that is south of N63 latitude and west of W138 longitude.)

4. How do I calculate overtime on prevailing rates of pay?

Overtime compensation is 1½ times the employee’s basic hourly rate of pay. Fringe benefits must be paid for all hours worked, but not at time and a half if overtime is involved. Employees are entitled to overtime compensation for hours worked over eight hours in a single day. Employees are also entitled to overtime compensation for hours worked over 40 hours in a single week. To count the hours over 40 hours in a week, count only the daily hours the employee worked up to eight hours for each day he worked. If the employee worked over eight hours on any day that week, those hours have already been counted as overtime hours and need not be counted again.
5. **How do I calculate the overtime due by the weighted average?**

Because overtime is calculated by the week, you first count all the hours the employee worked at all classifications for the entire week. This includes all public construction and any private sector work. Now add up all the wages earned at all the different straight-time rates. Divide this total of the straight-time wages by the total of all hours worked for the week. This will give you the regular rate of pay, or straight-time average for the week. This average rate is divided by two to get the “half-rate.” This half-rate is multiplied by the total of all overtime hours worked for the week and added to the total of straight-time wages earned that week.

6. **How do I pay an employee who works more than one job classification with different rates of pay?**

The employee is due the minimum prevailing rate for each job classification for which he/she performs work. A contractor may break down the specific hours and rates for each classification, or they may choose to simplify and pay him/her for all hours at the highest rate. If the employee is paid at more than one rate and works overtime, the contractor will need to pay overtime at a weighted average of all the straight time rates of pay.

7. **What is a Certified Payroll?**

Certified payroll is a specially formatted payroll report that contains information about who worked on the public construction job, how many hours they worked and how much you paid them. It also contains a “Statement of Compliance” which contains certain legal language and requires the company official’s affirmation and original signature. By signing this Statement of Compliance, many things are being sworn to and confirmed by the owner(s) of the company and for which the company is liable. They are:

- All persons on the project(s) have been paid all of their wages earned, free and clear without rebates or kickbacks to the company;
- All employees listed on this payroll have been paid an amount not less than the applicable basic hourly rate for all hours worked (including overtime);
- All fringe benefits have either been paid in full directly to the employee, or that the fringes have been paid into approved plans, funds or programs;
- Only lawful deductions have been made;
- The company is in full compliance with the resident hire state laws as stated in AS 36.10;
- Any and all apprentices are properly registered with US Department of Labor, Employment and Training Administration Office of Apprenticeship;

8. **How Often Are Certified Payrolls Submitted?**

Certified payrolls must be submitted by the Friday of every second week. Certified payrolls can be filed electronically through the online system by logging into MyAlaska, at https://my.alaska.gov and clicking on LSS Filing Services.
9. How often do I have to pay my employees when they are working on a public construction project?

You must pay their wages weekly. There are no exceptions.

10. When, and to whom must Per Diem be paid?

Per diem must be paid at $75 per day to all “non-domiciled” workers in specific job classifications if room and board is not provided. If room is provided but no board, then $36 per day shall be paid. A non-domiciled resident means a person living more than 65 road miles from the midpoint of the project for at least 12 consecutive months prior to the award of the contract. If the distance from the midpoint of project to the main Post Office is 65 miles or greater, then the job qualifies for per diem.
   a.) Anchorage – International Airport Post Office
   b.) Fairbanks – Downtown Post Office
   c.) Juneau – Downtown Post Office

11. Where do I find the Alaska DOLWD project number?

Project numbers are emailed to contractors and agencies through LSS Online Services. Contracting agencies are required to submit Notifications of Award to Department of Labor and Workforce Development prior to a project number being assigned.

12. Do owner/operators have to be listed on certified payrolls?

Yes. An owner/operator is a sole proprietorship, partnership, or LLC that has elected to file their taxes as a sole proprietor or partnership, and who performs hands-on work on a public construction work-site.

13. Can I pay my employee a training wage while he is learning the job?

A contractor must pay the published prevailing wage, unless the employee is enrolled in an approved apprenticeship program registered with the U. S. Department of Labor, Office of Apprenticeship (telephone: (907) 271-5035, fax: (907) 271-5024). Note: the plan must be approved and the employee must be enrolled in the employer’s plan. There is one exception for a trainee properly registered under the Alaska Department of Transportation and Public Facilities Trainee Program.

14. How do I register my employee as an apprentice?

Contact the office of the U.S. Department of Labor, Office of Apprenticeship at (907) 271-5035.
15. **Does my foreman have to be paid the prevailing rates of pay?**

Yes. Foremen who perform hands-on work on a public construction site must be paid the prevailing rates of pay for the appropriate work classification(s).

16. **My foreman receives a salary of $1000 per week for 40 hours of work. Can I pay prevailing rates for the “hands-on” work out of the $1000 and just give the foreman whatever is left for the other work?**

No. The employee’s regular rate of pay in this example is $25.00 per hour ($1000 ÷ 40 = $25.00 per hour). The foreman must receive the proper prevailing rate, including fringe benefits, for the classification of work performed.

17. **Is my foreman/supervisor exempt from overtime?**

Possibly. Very specific criteria must be met in order to correctly classify an employee as being exempt from overtime. Contact the nearest Wage and Hour Regional Office for more specific information.

18. **What should I do if I don’t know whether a project is subject to the prevailing wage requirements?**

Contact the Wage and Hour Regional Office in the region where the project is located for a determination.

19. **What happens if a contractor/subcontractor fails to pay all of their employees properly?**

DOLWD will take appropriate enforcement action to collect the wages for employees. If the department cannot collect from a subcontractor, the prime contractor is responsible for any wages due.

20. **Is any further action taken against the violating contractor?**

Contractors who disregard their obligations to employees may be debarred from working on LDBA projects for a period of three years. It is possible for a prime contractor to be debarred because of their subcontractor’s violations.

21. **What do I do if I am unsure of the correct wage classification?**

Contact the nearest Wage and Hour Regional Office for assistance.

22. **What are some common violations the department finds?**

- Failure to pay proper prevailing rates for the classification worked;
- Failure to keep records of hours worked in each classification;
- Failure to pay the correct fringe benefit amount;
• Failure to pay prevailing rates on covered projects awarded by private, nonprofit corporations that are recipients of state grant money and use the funds for public projects;
• Failure to pay filing fees and to submit all required forms pursuant to AS 36.05.045, to the Department.

23. If the prime contractor requires the subcontractor to file certified payrolls with them, does this take care of the subcontractor’s filing requirements with the department?

No. The law requires that all subcontractors and contractors file payrolls with the Alaska DOLWD.

24. Is there a requirement to post the minimum wage rates for the various classifications of workers?

Yes. The scale of wages must be posted in a prominent and accessible place at every project work site.

25. As an officer or shareholder of a corporation, or a member of an LLC who files taxes as a corporation, should I be paid prevailing wage and be included in our certified payroll report if I perform hands-on work on a public construction project site?

Yes. As the corporation and LLC structure creates a separate legal entity for liabilities, the owners are considered employees of the business entity. Therefore, the business must report and pay owners the same as it would any other employee.

26. How long does an employer have to keep payroll records?

Payroll records must be kept for a period of three years.

27. Can the contractor put the worker’s fringe benefit contribution into a plan without the worker’s permission?

Yes. But only if the plan is acceptable to the IRS, and meets requirements under 29 U.S.C. 1001-1461 (Employee Retirement Income Security Act of 1974 – ERISA)

28. What should workers do if they have not been paid properly?

The workers should discuss the matter with their employer, and contact the Wage and Hour Administration immediately if the employer does not pay the wages due. Workers should always keep a personal record of their hours worked and save their pay stubs to verify the amount of wages received. If work is performed in more than one occupation/classification, the worker should identify the specific time of day he/she performed the various work, as well as the total hours worked in each classification.
29. Are there any fees that must be paid when working on public construction?

Yes. Before beginning work, the prime contractor (the person or entity that enters into the contract with the contracting agency) must file a “Notice of Work” (“NOW”) form with DOLWD, and pay all applicable filing fees through the online system by logging into MyAlaska, at https://my.alaska.gov and clicking on LSS Online Services.

30. How much are the filing fees and when do they apply?

The filing fee is one percent (1%) of the total contract amount, including all subcontract work, up to a maximum fee of $5,000.00, and only the prime contractor is required to pay the filing fee. The fee applies to public construction contracts exceeding $25,000.

31. Can we begin work on the contract right away and submit the NOW and pay the filing fee at a later date?

No, unless it is for work undertaken in immediate response to an emergency. If so, the notice and fee are to be filed no later than 14 days after the work has begun.

32. What if the prime contractor begins work on the contract and fails to pay the filing fee and submit the NOW?

The department may direct the contracting agency to withhold accrued project/contract funds until the filing fees are paid and the required NOW is filed.

33. Are there any forms that must be submitted upon completion of the contract?

Yes. Upon completion of all work on the public construction contract, the prime contractor must file a “Notice of Completion” (“NOC”) together with any additional filing fees owed as a result of increased contract amounts. This is to be done electronically through the online certified payroll program located by logging into MyAlaska, at https://my.alaska.gov and clicking on LSS Filing Services.

34. What if our original contract has changed and the value of the work is reduced, can we get a refund on the excess filing fees we paid at the start of the contract?

Yes. You will receive any applicable refund. A refund is usually reconciled at the conclusion of the contract and with the filing of the “Notice of Completion” (“NOC”) through LSS Online Services.