

## Labor Compliance

### General

Each employee on each ODOT construction project must be paid no less than the “prevailing wage rates” (wages and benefits) specified in the contract for the project. The specified prevailing wage rates (PWR) will be:

- The Davis-Bacon & Related Acts (DBRA) wage rates on most Federal-aid projects.
- The BOLI (Bureau of Labor & Industries) wage rates, frequently called “Little Davis-Bacon,” on projects with only State or other local funding and on projects that have Federal-aid funding but are not located on the National Highway System.

Some employees may not be covered by the PWR. See discussion below.

The Project Manager must monitor labor compliance on all ODOT construction projects to assure that all employees affected by the project PWR receive proper payment for work performed.

Here are some facts about the DBRA and BOLI PWR:

#### 1. DBRA PWR

The U.S. Department of Labor periodically conducts wage surveys to determine prevailing wages.

ODOT is responsible for resolving allegations of wage violations on projects that specify the DBRA PWR. ODOT may involve other State or Federal agencies if fraud may be involved.

#### 2. BOLI PWR

BOLI conducts annual wage surveys to determine prevailing wages.

BOLI PWR are required on Off-System Federal-aid projects. These have a Federal-aid project number similar to “X-BRO...”

ODOT is responsible for resolving allegations of wage violations on projects that specify the BOLI PWR, but ODOT may request assistance from BOLI.

### Roles & Responsibilities

#### 1. All Employers (prime Contractor and Subcontractors)

Each employer on an ODOT project must inform its employees and the Project Manager in writing of its work schedule whenever it deviates from a five day, eight hours per day schedule. **If an employer does not notify its employees or the Project Manager of the work schedule, the employer must pay**

**overtime based on a work schedule of five days, eight hours per day.** Refer to further discussion below on work schedule.

The Contractor must post wage posters, listing the PWR wages, zone pay, and fringe benefits, at the work site where all employees may read them.

Each employer on the project must inform its employees of the PWR and disposition or payment of fringe benefits. **Each employee should know what hourly and fringe benefit rate they earn for the work they perform. Each employee should also know where their fringe benefit goes if not paid in cash to them and how to access the fringe benefits.**

Each employer must provide certified payrolls, through the prime Contractor, to the Project Manager at the frequency specified in the contract.

Who must be paid according to the specified PWR and reported on certified payrolls?

- All workers on the project, except as excluded below (approved apprentices and trainees may be paid at less than the PWR as allowed by their apprentice or trainee program)
- Supervisors who spend at least 20% of their time performing craft work
- On projects with BOLI PWR, all owners who perform craft work on the project more than 20% of the time
- On projects with DBRA PWR, all subcontractor owners who perform craft work more than 20% of the time
- For employees operating trucks involved in project-related work, refer to requirements in:
  - Exhibit A of this section of this Manual for projects with BOLI PWR
  - Exhibit B of this section of this Manual for projects with DBRA PWR
- For employees that are working at a material source or site of work other than the project site, refer to requirements in:
  - Exhibit C of this section of this Manual for projects with BOLI PWR
  - Exhibit D of this section of this Manual for projects with DBRA PWR

The following are not covered by the required PWR and do not need to be reported on certified payrolls:

- Employees involved in the production and stockpiling of material for use or future use on other than the project, whether the production and stockpiling is all of or only part of the project
- Operators of operated rented equipment who spend less than 20% of their workweek at the project site
- Owner-operator of an owner-operated truck
- Employees in crafts that are considered “professional,” such as surveyors and testing technicians, as well as the superintendent and other office workers
- Supervisors who spend less than 20% of their time performing craft work

- On projects with DBRA PWR, any subcontractor owner who performs craft work on the project less than 20% of the time and any prime Contractor owner
- On projects with BOLI PWR, any owner who performs craft work on the project less than 20% of the time
- Truck drivers who are excluded from PWR as discussed in Exhibits A and B of this section of this Manual
- Employees at sites of work or material sources who are excluded from PWR as discussed in Exhibits C and D of this section of this Manual.

Employees must be paid for all time that they are required to be at the work site, whether or not they are performing duties during that time. Employees will not receive pay, however, for the break taken to consume a meal. For instance, an employer must pay flaggers, or similar workers, for all time that they are required to be at the work site, other than meal break. This is true even though ODOT will not pay under the Flagging bid item for some of that time because no flagging work is being performed.

## 2. The prime Contractor

- Is responsible for the labor compliance of itself and all subcontractors on the project
- Must assure that each subcontractor complies with the PWR applicable on the project
- Must submit certified payrolls for its employees
- Must review each subcontractor's payroll for compliance and submit to the Project Manager
- Is responsible for unpaid wages and fringe benefits owed to all employees on the project. This means that the prime Contractor is also responsible to a subcontractor's employees, if a subcontractor fails and refuses to properly pay its employees.

## 3. The ODOT Project Manager

Among other duties, is responsible for administering labor compliance, conducting wage interviews with employees, and reviewing and comparing certified payrolls with other documentation.

- cursorily verifies wages, zone pay, and fringe benefits on certified payrolls. Refer to discussion below.
- Must take appropriate action to resolve known or alleged improper payments to employees.
- For any errors or deficiencies in wage and benefit payments, must require the prime Contractor to correct the error or deficiency and provide a supplemental certified payroll to document the correction. To verify that the payment deficiency has been properly resolved, the Project Manager may also require the prime Contractor to provide:
  - Copies of the canceled check to each affected employee for the supplemental payment and/or

- The signature of the employee on the supplemental payroll or a statement acknowledging receipt of wages due.
- Maintain this documentation within the certified payroll file to show that employees were properly paid.
- Must withhold money from the progress estimate payment for wages and benefits that have not been properly paid to an employee(s), if the prime Contractor or employer does not rectify the situation timely.

#### 4. ODOT Office of Civil Rights

Before the pre-construction conference, the Office of Civil Rights (OCR) will send the Project Manager and the prime Contractor a packet containing all forms and posters required by all programs administered by the OCR.

The OCR field coordinator will:

- When requested by the Project Manager, attend the pre-construction conference to address Labor Compliance and other Affirmative Action programs.
- Periodically monitor Labor Compliance by spot-checking payrolls or other actions.
- Provide assistance with Labor Compliance issues.
- Perform the final review and acceptance of Labor Compliance and will send the required Labor Compliance documentation to the Construction Section.

#### Release of Public Records

The Fair Contracting Foundation, unions, or other organizations/persons may request to look at or obtain copies of certified payrolls or other records. Most of the project records, including certified payrolls, are considered to be public records and the Project Manager should comply with the requests. Some information on the certified payrolls, however, should not be divulged such as Social Security Numbers. ODOT Procedure ADM 07-04, "Public Access to Department Records," provides the following guidance:

"...social security numbers should never be released to the general public and it is questionable whether or not personal addresses can be released."

Before providing access to or copies of the certified payroll information, first black out each Social Security Number and personal address.

Other documents, such as those of an advisory nature within ODOT, may not be public records and should not be furnished. Refer to guidance in the Project Records section (12) of this Manual.

## Work Schedule

Each employer's work schedule is important because it determines when an employee must be paid at the overtime for work performed. Each employer on the project can choose its work schedule as follows:

- Five days, eight hours a day, Monday through Friday
- Four days, ten hours a day, any four consecutive days between Monday and Friday (either Monday through Thursday or Tuesday through Friday)

Remember that the contract also requires overtime pay for all work performed on a Saturday, Sunday, or specified holiday, as discussed below.

If an employer has a four days, ten hour work schedule on the project and works employees on a fifth day, the work schedule for those employees for that week **reverts to a five day, eight hour schedule and overtime must be paid based on the reverted work schedule.** (Example: Employer has a work schedule of ten-hour days, Monday-Thursday. Employees worked 10 hours each day. Employees also work for 2 hours on Friday. The work schedule reverts to a five day, eight hour schedule that results in 2 hours of overtime each day Monday-Thursday and no overtime on Friday.) This guideline is contained in BOLI's Prevailing Wage Rate Laws Handbook. If an employer questions this regulation, refer them to BOLI's Wage and Hour Division.

If an employer notifies its employees and the Project Manager that the work schedule on the project is four days, ten hours, yet the certified payrolls show consistent work hours on the 5<sup>th</sup> day, the employer is not adhering to the four/ten work schedule. The Project Manager must notify that employer that is considered to be on a five/eight work schedule and must pay overtime based on the five/eight work schedule.

An employer may elect to employ crews or individuals working on different work schedules as long as it notifies the employees and the Project Manager in writing and does not change the work schedules except as in the following paragraph.

An employer may change its stated work schedule for the project only if the change in schedule is permanent for the remainder of the calendar year. An employer may not change its work schedule back and forth to avoid overtime. If an employer is party to a collective bargaining agreement, it may have work schedule flexibility that supersedes state law. When an employer claims its collective bargaining agreement supersedes the law, the Project Manager may request a copy of the agreement to verify that.

## Certified Payrolls

### 1. Contractor Reporting Requirements

Projects specifying DBRA PWR. On projects specifying Davis-Bacon PWR, each employer must submit weekly certified payrolls on a weekly basis. Each certified payroll must include the certification shown in Section V.2.d in form FHWA-1273 located in the contract.

Projects specifying BOLI PWR. On projects specifying BOLI PWR, each employer must submit weekly certified payrolls no less than monthly. The Project Manager must receive these certified payrolls no later than the 5<sup>th</sup> of each month. (This weekly/monthly payroll submittal is effective on projects awarded on or after January 1, 2002. Projects awarded prior to this date fall under the old requirement of first payroll, 90-day interval payrolls, and last payroll.)

The certified payroll, for a project including the BOLI PWR, may be submitted on the form included in the BOLI PWR document included in the contract or may be submitted in a similar format including similar information and the required certification.

The certified payroll must contain the following information on the first payroll on which each employee appears. Afterward, the address and Social Security Number only need to be shown if there is a change in this information, such as for a new employee.

✓ Name	Required on every payroll
✓ Address	Required once unless changed
✓ Social security number	Required once unless changed
✓ Work classification	Required on every payroll
✓ Hours worked	Required on every payroll
✓ Rate of pay	Required on every payroll
✓ Gross amount earned	Required on every payroll
✓ Deductions (including fringe benefits paid to bona fide programs)	Required on every payroll
✓ <b>Net amount paid</b>	<b>Required on every payroll</b>

**Note: A certified payroll must show regular and overtime hours only for one project . If an employee worked on more than one public works project, that employee and time worked must be shown on a certified payroll for each project.**

Each certified payroll must have an original signature of a company official or agent who pays or supervises payment of persons employed on the project.

Each certified payroll must state the disposition of the fringe benefits, whether they are paid to the employee or whether they have been placed in a specified fund.

**The prime Contractor must assure that it submits certified payrolls for itself and all of its subcontractors to the Project Manager in a prompt and timely fashion. If payrolls are not submitted promptly, the Project Manager may withhold payment or may suspend work until the situation is resolved.**

## 2. Review of Certified Payrolls by the Project Manager

The Project Manager must review the certified payrolls to assure that all contract labor requirements are fulfilled.

The Project Manager may use checklists or other methods to monitor and assure that the Contractor is submitting all certified payrolls on time for itself and all subcontractors. A sample checklist is included at the end of this section of this Manual.

Comprehensively review each certified payroll to assure that the employer has properly paid each employee the proper base wage, zone pay (if applicable), and fringe benefits specified in the contract for each classification of work performed. Generally, review the first payroll from each employer in its entirety. If the first payroll is correct, the Project Manager only needs to perform cursory review on subsequent payrolls.

Verify proper payment by comparing information on the certified payroll to the wages, zone pay, and benefits specified in the PWR included in the contract. If the Project Manager has performed an Employee Wage Interview, as discussed below, also compare the results of that interview with the certified payroll.

The person who reviews the payroll should mentally analyze the work of an employer to assure that the employer is paying the employees at the classifications needed to perform the involved work.

If an employer requires an employee(s) to perform work in more than one work classification, the Project Manager or Inspector should alert the person reviewing the certified payrolls about the need for pay under more than one classification.

To minimize flipping back and forth between the contract and the certified payrolls, develop a quick reference to the applicable wage rates such as a cut-and-paste sheet for each work classification on the project. Include overtime calculations as well in that reference.

If the employer pays the fringe benefits to the employee, the payroll must show payment of an amount no less than the sum of the base wage (including zone pay if applicable and at the appropriate straight time or overtime rates) and fringe benefits.

If a discrepancy in wages, zone pay, overtime, or fringe benefits is found, address it immediately especially to assure correct future payments. The Project Manager must work with the Contractor to resolve all deficiencies.

The person reviewing each payroll should indicate the payroll items checked and must sign each payroll after completing review of that payroll.

Refer to discussion below about the Project Manager's Labor Compliance Certification that the Project Manager must complete and submit at the end of the project.

### Base Wage and Zone Pay

#### 1. Base rate

The employer must pay each employee, for each classification of work performed, at the wage rate specified in the PWR included in the contract. See discussion below about reduced rates for apprentices and trainees.

As discussed above, the Project Manager and staff should cursorily verify that the employees are paid for the proper classification of work being performed, especially if the employee(s) is performing work in more than one classification.

#### 2. Zone pay

The employer must also pay zone pay as required by the PWR included in the contract. The Project Manager must determine the correct zone pay to be paid. Request assistance from the External Workforce Programs Compliance Officer as appropriate.

The method to determine zone class may differ between work classifications.

Zone is measured along existing roadways from the center of the project to the nearest base point referenced in the wage determination for the work classification, except:

- If the wage for a work classification is based on work locales that may involve several counties in each locale (such as for Electricians) and the project includes work in more than one work locale, determine the correct zone rate for each work locale. Determine the proper zone by measuring from the nearest base point to the center of the project located in that work locale. The employer must pay the proper wage and zone pay for the location that the work is done.
- If a project has a no work zone of a mile or more and the project may involve multiple zone areas, determine the proper zone for each work area based on the distance from the center of each portion of the project to the nearest base point. Each employer must pay the zone pay appropriate for each work area.

For these situations, an employer may elect to pay either:

- The highest of the two zone rates for all work on the project, or
- The appropriate zone rate for work performed in each zone

#### 3. Total base wage

For the purpose of calculating the wage rate for overtime, the “total base wage” is the Base Wage rate plus applicable Zone pay. Overtime must be paid at the rate of 1.5 times the “total base wage.” Also refer to discussion on Overtime below.

### Fringe Benefits

Each employer must pay fringe benefits to each employee, for all time the employee works, as specified in the PWR included in the contract.

For overtime, calculate the base wage at the time and a half rate before including the fringe benefit amounts, as discussed above.

The employer may pay fringe benefits as part of the paycheck or other pay for work performed or may put the fringe benefits into bona fide pension, health, insurance, vacation, or other appropriate programs.

Paying per diem for travel is **NOT** a fringe benefit.

The employer may not reduce the wage or fringe benefit for any payment that the employer is required by federal, state, or local law to make, such as workers compensation, unemployment compensation, or social security contributions.

Each certified payroll must indicate whether the fringe benefits are paid to the employee or are being placed in appropriate programs.

If fringe benefits are not paid to the employee, the fringe benefit amounts must be paid irrevocably to a trustee or third party under a bona fide program, and the employer must make those payments regularly and not less often than quarterly. The Project Manager may request the names and locations of the appropriate programs as necessary and each employee **MUST** be able to obtain that information.

### Apprentices, Trainees, and Reduced Wages/Fringe Benefits

#### 1. Apprentices

An employer may pay reduced wages to apprentices as allowed by the applicable apprentice program.

Apprentices are registered with the BOLI Apprenticeship and Training Division. The Joint Apprenticeship & Training Committee (JATC) monitors their wages and level of apprenticeship.

An apprentice is generally paid less than a journeyman, usually beginning at 40-60% of journeyman scale of the base wage, as specified in the apprentice program.

An apprentice only needs ODOT approval to work on a project or receive reduced wages if the apprentice is a trainee identified as part of the On-The-Job

(OJT) program when it is required by the contract. At all other times, the prime Contractor or subcontractor may employ apprentices and must pay at least the reduced wage specified by the apprentice program.

The Project Manager may request documentation from an employer to verify an individual's status as an apprentice (usually a dispatch slip).

## 2. Trainees

Trainees are not registered with BOLI. Each employer must pay each trainee the PWR for the project unless ODOT has consented to include a trainee in the OJT program if one is included on the project. An employer may only pay reduced wages, according to the trainee program, when the employee is participating in the OJT program on the project.

When apprentices or trainees participate in the OJT program on a project, the apprentice or trainee and the employer must submit to the Project Manager each month a record of the training received. Refer to discussion in the Affirmative Action section of this Manual.

## Overtime

Each employer must pay each employee at the proper overtime rate for all overtime worked.

ORS 279.334 specifies overtime requirements for all projects. There are only two exemptions from the overtime requirements specified in ORS 279.334:

- Employees covered under a Collective Bargaining Agreement
- Employees who work for Indian-owned businesses on Indian Reservations (for those, overtime is specified in the federal Contract Work Hour & Safety Standards Act and must be paid for all work performed over 40 hours in a work week)

An employer must pay overtime as specified in ORS 279.334 when:

- Work is performed in excess of 8 hours in a day or 40 hours in a week when the work schedule is five consecutive days, Monday through Friday, **OR**
- Work is performed in excess of 10 hours in a day or 40 hours in a week when the work is four consecutive days (either Monday-Thursday or Tuesday-Friday), **AND WHEN**
- Work is performed on Saturday, and the legal holidays listed in ORS 279.334 (Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day)

If an employee works on more than one project in a 24-hour period, the hours worked are accumulative and the employer must pay overtime for work beyond eight or ten hours per day, dependent upon their permanent work schedule, regardless of where the work was performed.

An employer may not use a work schedule of four nine-hour days and one four-hour day per week. This would be considered to be a 5 day/thus 8 hours per day work schedule and the employer must pay overtime for all work beyond eight hours a day or beyond the 5 days.

An employer may not “bank” overtime hours and then redeem them as straight time on other days. If an employer requires an employee to work beyond the established work schedule, it must pay the employee overtime for the additional time.

### Employee Wage Interviews

The Project Manager must periodically interview employees on projects that include DBRA PWR to help monitor labor compliance; however, they are useful and recommended as well on projects that include BOLI PWR.

At least once each six months, interview random employees of the prime Contractor and each subcontractor that worked on the project within that period. Record the information on form 734-3475, Employee Interview Report. See the example at the end of this section of this Manual.

During the interview, ask each interviewed employee what classification of work the employee is performing and what the employee is being paid for that work. Each employee must receive proper pay for each classification of work performed. If an employee performs work in more than one classification such as laborer, carpenter, cement mason, ironworker, etc., the employee must be paid at the appropriate rates specified in the projects PWR for the time worked in each classification. In addition, ask the employee if they have seen the wage determination that should be posted at an accessible site.

If an employee works in more than one classification, the Project Manager or staff reviewing the certified payrolls should verify that the employee is paid under the appropriate classifications for work performed. The Project Manager or Inspector should alert the person reviewing the certified payrolls about employees who work in more than one classification and may also note that on form 734-3475 when interviewing employees.

The Project Manager or staff should also compare the certified payroll with information included on form 734-3475 and the work being performed by the employer and mentally analyze whether the employer is paying the proper classification(s) for the work.

### Labor Complaints and Investigations

The Project Manager may become aware of a wage or labor problem from many sources including:

- The employee wage interview process may identify probable improper pay to an employee.

- The employee may complain about improper payment. The employee may provide needed information on the Labor Complaint. Refer to the example at the end of this section of this Manual.
- A representative of a union trade may complain about improper payment of employees. The representative may interview employees on the project and may request copies of certified payrolls for the project. Refer to discussion above on providing that information.
- The Fair Contracting Foundation, that also represents labor, may complain similar to the union trade representative.

If the Project Manager has reason to question whether an employee received adequate payment for work performed, the Project Manager must take the action needed to resolve the issue and have the proper payments made. Contact the External Workforce Programs Compliance Officer or the Office of Civil Rights field coordinator for assistance, if needed.

The Bureau of Labor and Industries (BOLI) has authority, under ORS 279.526, to file a claim against the Contractor's bond for unpaid wages. That claim, however, must be filed within 180 calendar days after the person claiming the unpaid wages last worked on the project. If the Project Manager is aware of a claim for unpaid wages, and it is approaching 180 days since that person last worked on the project, contact the External Workforce Programs Compliance Officer.

If the Contractor failed to properly pay its employees and ODOT had to have BOLI pay the employee directly, the Project Manager must address that in the required Prime Contractor Performance Evaluation. Refer to the Contractor Performance Evaluation section (34) of this Manual.

#### Project Manager's Labor Compliance Certification (form 734-1734)

When the Contractor has completed all work on the project site except for landscape establishment work and has submitted all associated payrolls, the Project Manager must compile the following and submit it to the Office of Civil Rights field coordinator:

- Original, signed Project Manager's Labor Compliance Certification (form 734-1734). See example at the end of this section of this Manual.
- All certified payrolls. Each certified payroll should indicate the items that the Project Manager or staff has checked.
- All employee interviews, form 734-3475

Also refer to discussion in the Final Documentation section (37) of this Manual.

If a subcontractor has completed all of its work on a project and requests to have its retainage returned, the Project Manager must comply with the procedure at the end of the Final Documentation section (37) of this Manual, including duties related to labor compliance documentation.