

Reporting Our Union Wage

A FIELD GUIDE TO DAVIS-BACON PREVAILING WAGE SURVEYS

Laborers'
International
Union of
North America

LIUNA!

Feel the Power

LIUNA CONSTRUCTION DEPARTMENT

Why Are Federal Wage Surveys Important to LIUNA Members?

THE DAVIS-BACON ACT, passed by Congress in 1931, requires all contractors on federal and federally-assisted construction projects to pay no less than the local prevailing wage rate for each class of construction worker. The law was meant to prevent out-of-state contractors from bringing workers into a high-wage market, underbidding local employers and eroding wages. That law also establishes a process to determine what the local prevailing wage is in each market. The process is known as a federal prevailing wage survey and is different from surveys that may be conducted by a state under its prevailing wage law.

The U.S. Department of Labor (DOL) is responsible for conducting wage surveys and determining the local prevailing wages. Under the current procedures, DOL:

1. Announces a wage survey for an entire state and sets a deadline for submitting data (the announcement of the survey is sent as a written notice to interested parties, such as building trades unions and others who request notification of surveys);
2. Collects project wage data, usually for the 12-month period prior to the survey cut-off date, from interested parties (unions, contractors, associations) that submit wage data on DOL Form WD-10s; and
3. After analysis, DOL determines the prevailing rates for each construction classification in each county and publishes the rates at www.wdol.gov.

Surveys are conducted independently for each of four sectors—Building, Heavy, Highway, or Residential.

LIUNA's goal is to secure an accurate prevailing wage rate for our jurisdiction that is not lower than our local collective bargaining agreement(s). Securing an accurate prevailing wage at the union rate allows our signatory contractors to bid federal jobs competitively without being at a disadvantage to companies that do not pay good wages. This creates work opportunities for Laborers and helps prevent the erosion of construction workers' income.

Participation in a wage survey is an essential part of securing a union prevailing wage rate. In many cases, submitted information from one or two construction projects makes all the difference in protecting the livelihood of our members.

Notice and Schedules of Federal Wage Surveys

When DOL announces a wage survey, it will provide four pieces of information in the written notice announcing the survey:

- The state,
- The construction sector (Building, Heavy, Highway, or Residential),
- The survey period, and
- The cut-off date

The written notice will generally come to the International and Local union offices. The LIUNA Construction Department also notifies the Regional Office.

Local union staff should be made aware of the importance of any correspondence from the U.S. Department of Labor, and be instructed to bring

it to the attention of union officers. Local unions with jurisdictions across state lines should ask the regional DOL office to notify the local union about upcoming surveys even if the local is headquartered in a state different from the survey.

Wage information from projects performed during the survey period must be collected and submitted by the cut-off date. *DOL treats its cutoff date as absolute so get your WD-10s in on time or preferably ahead of time.*

It is preferable to submit project data online. If you decide to submit through the U.S. mail, it is a good idea to have proof of mailing, or use certified mail, in case the information does not reach DOL in a timely fashion.

Davis-Bacon Prevailing Wage Survey Schedule

<https://www.dol.gov/whd/programs/dbra/Survey/status.htm>

How to Participate in a Davis-Bacon Wage Survey

- 1. Attend the DOL pre-survey briefing** and get to know the DOL Regional Wage Specialist in charge of the survey. The DOL Regional Wage Specialist should be a resource for you throughout the survey process so get his or her contact information.
- 2. Review the current general wage determination for your area on www.wdol.gov** and also review the section of your current CBA covering classifications, wages and fringe benefit rates.
- 3. Identify projects active during the survey period.** Projects can be identified through dispatch records, Dodge Reports, and contacts with signatory contractors.
- 4. Figure out the peak week for each Laborer classification on each project.** After finding projects, determine the week with the highest number of workers employed in each Laborer classification to determine the *peak week*. There may be different *peak weeks* for different Laborer classifications. (Note: Wage data is collected by *peak week*, not by hours worked.)
- 5. LIUNA Locals and signatory employers are a good source for peak week wage data.** You will need to identify the wages and dollar value of the fringe benefits received by workers in each Laborer classification during the *peak week* of the project, and the number of workers employed at this rate. In addition to the valuable information that Local dispatch records may contain, Business Managers are often in the best position to make initial contact with employers to request project wage information. Business Managers should be familiar with the survey process in order to make the request.
- 6. Organize your documents.** It is important to create a simple system to order your collected project wage information. This allows you to assess areas where more wage data may be needed to establish a prevailing union wage. Keep copies of all documents you submit in responding to a wage survey, whether they are sent by mail or electronically. If there is a mistake in the wage determinations, it is very difficult to correct if you have not kept a copy of your WD-10 forms. Sometimes you will need these records years after they are submitted.
- 7. Coordinate with other LIUNA locals in submitting your wage data to the Department of Labor.** It is essential that all LIUNA locals within a state submit data to DOL as consistently and accurately as possible. There should be statewide agreement on the Laborers' classifications that will be used for the survey as well as how the work performed by the classifications is described on the WD-10 Form. In general, it is helpful to minimize the number of classifications used to describe Laborers to prevent dilution of the rates and enhance the likelihood of winning a union rate for the key classifications.

Project Data Sources

The wage survey collects information on *peak week*—the week with the greatest number of Laborers (by classification) on a project—and the wage and fringe benefits for those workers. It is sometimes necessary to take several steps to identify the projects and then secure credible wage information. The following are common sources for such information.

- **Local Membership Tracking Program:** Member hours worked each month by contractor can sometimes help identify employers and projects with potential wage data.
- **Dispatch records:** These records may help you to identify employers, classifications and possible *peak weeks*.
- **Construction project databases (CTTS/Dodge/MEP/IIR):** These databases provide names and locations of projects and can help identify General Contractors/subs with payroll records for these projects.
- **Health and Welfare Fund Reports:** These reports can identify hours logged with employers by month, which helps identify projects, contractors and *peak week* as well as wages/fringe benefits.
- **Contractors:** Employers have payroll submittals listing workers by trade and wage/fringe benefits.
- **Written statements by workers:** These are best used with other evidence to corroborate work done and/or wages earned; pay stubs can be very helpful.
- **Project Owners:** Industrial facility owners may have project information about workers on the job.
- **Public Project Owners:** Government procurement offices (e.g. school districts) keep project information.
- **Prevailing Wage Coordinators on public projects (e.g. state or city jobs):** These individuals, sometimes called compliance officers, may have information about payroll and workers.
- **Certified Payrolls:** Contractors and subcontractors are required to keep accurate payroll records on public projects showing the work classification and wage/fringe of each employee performing work.
- **State Labor Departments:** Information gathered in response to state prevailing wage surveys may be useful in federal wage surveys.

NOTE: On Heavy and Highway projects, data from both public and private projects can be considered in determining the prevailing wage. For Building or Residential construction surveys, DOL will not use federal projects in the wage determination unless there is inadequate data from private and state/city projects. You must submit ALL federal project data so that it can be used if the other data is insufficient to issue a wage determination.

Working with Contractors

Project wage data can be submitted by the contractor directly to DOL, or employers may agree to give LIUNA staff the payroll data to organize and submit on behalf of the employer. If contractors say they will submit the wage data directly, it is best to request that they share with you the DOL confirmation number they receive. This lets you know they have submitted the forms and allows you to view them online.

It is common to experience delays in securing contractor assistance. Bookkeepers, secretaries, and administrative staff can usually be a great help if given the approval to assist in the process. Be persistent and patient.

Be clear about the information you need. Do as much of the up-front leg work as you can before asking for cooperation. Employers may be reluctant to share payroll information initially, but many will participate in the survey as long as YOU do most of the work.

It is useful to prepare talking points about the benefits of participating in a wage survey before talking with contractors:

- The Prevailing Wage law takes wage rates out of the competitive bidding process on public projects. With set labor rates, contractors compete for public projects on skill, productivity, and management abilities—not on who can scrape together the cheapest workforce.
- Submitting data keeps you competitive by making your collectively bargained wages standard for all federal and federally-assisted projects. This maximizes the number of jobs you can bid and minimizes price cheating by competitors.
- The union can submit data on your behalf. We do not want or need personal information such as worker names, addresses or Social Security numbers. What the Department of Labor needs is the number of men and women working on a project, the work they did, the week they worked, and the hourly wage/fringe paid. DOL will follow up directly with the employer with questions or clarification regardless of who submits the project data.
- Explain to contractors that DOL will make follow-up phone calls to “verify” the data, including the type of work done by laborers on the project. It is critical for contractors to return these phone calls because data will not be counted if DOL cannot reach the contractor to follow up on the submission.
- This is not an audit!

How Does a Rate Prevail?

The rules for wage surveys include four key concepts that affect the area wage determination.

1. Survey period: This is the defined time period for which wage data on projects will be accepted. Wage data can be submitted for work performed on any project that was active during the survey period, even if the *peak week* work occurred outside the survey period.

For example, the final phase of a building project that started in January 2016 ended in January 2017. The project can therefore be included in a wage survey covering January through December 2017. If the highest number of Laborers (see peak week below) on that project worked at some point in 2016 rather than 2017, LIUNA should report that wage data on a WD-10 because the project falls in the survey period.

2. Peak week is the one week during a project in the survey period during which the greatest **number** (not hours worked) of Laborers is at work

in a specific classification. Different classifications of work will usually have different *peak weeks*. For instance, “Mason Tenders” and “Concrete Laborers” might be on the same project but at different times. We report the *peak week* for each classification independently, particularly if they receive different wage rates.

3. Majority: To prevail at a given wage rate, the majority of workers in a classification must work at **exactly the same wage** rate during the survey period.

4. Minimum data for a wage determination: In order to make a wage determination for a class of workers, DOL currently requires wage data from at least three workers who worked for at least two employers (and in some cases six workers from three employers). If there are not enough workers reported in a key classification for a county, DOL will merge wage data from multiple counties in order to produce an acceptable sample size on which to base a determination for that classification.

Example #1 Peak Week Majority Union with Same Wage:

1. \$22.75 (union)
2. \$22.75 (union)
3. \$22.75 (union)
4. \$22.75 (union)
5. \$14.87 (non-union)
6. \$14.87 (non-union)
7. \$13.85 (non-union) **Prevailing wage: \$22.75 (majority)**

Example #2 Peak Week Majority Union with Different Wages:

1. \$22.75 (union)
 2. \$22.75 (union)
 3. \$22.75 (union)
 4. \$21.75 (union)
 5. \$14.87 (non-union)
 6. \$14.87 (non-union)
 7. \$13.85 (non-union)
- Prevailing wage: \$19.08 (averaged)**

Note: Even though union rates are the majority of the rates reported in Example #2, the wage rates are for different amounts. This has the effect of fragmenting the union rate and allowing the nonunion rates to be averaged to determine the prevailing rate.

Submitting LIUNA Project Data in Davis-Bacon Wage Surveys/WD-10

1. Wage data is submitted to DOL on a form known as Form WD-10. WD-10s can be submitted online at <http://www.dol.gov/whd/programs/dbra/wd10/index.htm> or in paper form. It is advisable to keep records on paper during the collection process, but submit the data online. The online WD-10 program allows you to print out a copy of your filled in forms.
2. Either unions or contractors can submit the data to DOL. LIUNA affiliates should work with their signatory contractors to either collect the data from the contractor for submission or encourage and assist contractors to provide data to DOL themselves.
3. Project data is not submitted by “man-hours.” Rather, submit the **number of workers** employed in the *peak week* for each laborer classification.
4. All entries for the WD-10 line called **CLASSIFICATION** should be “LABORER.” For **TYPE OF WORK**, specify the general classification that best describes the work performed. Consistency and accuracy in naming the “TYPE OF WORK” across the state is important, so coordinate with other LIUNA locals during this process.
5. Calculations of peak week are done separately for each Laborer classification.
6. If a Laborer performs work in more than one county during the *peak week* (for example, on a bridge or highway project), count him/her in *all* counties worked that week.
7. The *peak week* can occur outside of the survey timeframe announced in DOL’s transmittal letter as long as *any work* on the project has occurred within the survey period.
8. Report working foremen and designate them correctly as working foremen. *Do not report premiums*. Use the “notes” section of the WD-10 to clarify any discrepancy when you report a wage without the premium. A working foreman is a foreman who works with the tools of the trade at least 20% of the time, and spends some time directing the work of others.
9. Fringe Benefits are paid in addition to the hourly rate, including Health & Welfare, Pension, Apprentice & Training and Vacation & Holiday. If you are not sure of the category of the fringe benefit, enter the rate information and specify the fringe type in the “Description of Any Additional Fringe” field at the bottom of the WD-10.
10. In addition to submitting WD-10s, LIUNA affiliates should provide DOL with their Collective Bargaining Agreements (CBAs) and a map showing the geographical area covered by the CBAs.

Classification #1 LABORER	Paid under CBA? <input type="checkbox"/>	Number of Employees <input type="text"/>
Type of Work Performed Common or General	Peak Week Ending Date <input type="text"/>	Hourly Rate <input type="text"/>

**** NEVER use “UNSKILLED” or “SEMISKILLED” as a Laborer classification (i.e. “Type of Work Performed”). It would be more accurate to use the description “Common or General.”**

What to Expect After Submitting Wage Data

Ordinarily, the time between the closing date of a federal wage survey and the publication of prevailing wage determinations **averages two years**.

During the time that the Department of Labor's Wage and Hour Division analyzes all of the wage data it has received, you or your signatory contractors are likely to hear from DOL staff asking for additional information to support their work. This may simply be requests for copies of collective bargaining agreements, local jurisdiction boundaries, or wage and fringe breakdowns. In other cases, the staff may ask for more detail about specific work performed on construction projects being reviewed. It is always best to respond to any DOL inquiry in a timely manner with the most accurate information you have. *Also, encourage signatory contractors to respond to calls from DOL and to let you know about the calls. The failure of contractors to respond during the post-survey verification process can cause DOL to discard the data, and have a serious negative impact on the final prevailing wage rate.*

The International Union is also in regular contact with Department of Labor staff and can often assist in clarifying any requests that arise during a wage survey. The Construction Department staff is available to assist in these cases as appropriate.

What if union rates do not prevail?

Active participation in the survey is the best way to maximize the likelihood that DOL will issue a prevailing rate for Laborers' classifications in your area that are the same as our local union's collectively bargained rates. In some cases, however, the survey

may not provide enough supporting data for all laborer classifications and result in a survey rate

(average of all wages) for some or all of laborers' work. There are several reasons why that may occur.

1. Non-union project wage data may simply outweigh union data during the survey period. This happens when less than 50% of the workers received union rates during the *peak week* reported on the project.
2. Occasionally wage information may be grouped across multiple counties in order to get enough wage data for a classification (DOL calls these multiple county groupings "Supergroups"). In rare cases where counties that include two or more local union jurisdictions are involved, it is possible to have a majority of union workers, but at more than one rate. This results in a "blended" or average rate which matches neither CBA.
3. Finally, the DOL sometimes simply makes mistakes. With good documentation, we can challenge incorrect determinations. The union can request copies of DOL's compilation of original data submissions by all parties—documents known as WD-22s and WD-22As. LIUNA affiliates can request assistance from the International Construction Department to analyze the underlying data for possible errors.

The process for challenging wage determinations is established by federal regulations. The law allows for a process of reconsideration by the Wage and Hour Administrator, and beyond that a review by an Administrative Review Board.

Planning for Future Surveys

The Davis-Bacon wage survey process described here will become more familiar as states are repeatedly surveyed. It is best to plan ahead for future surveys by identifying a record keeping system to track and retain all construction activity of LIUNA members. This will allow for more efficient and accurate reporting of peak week activities in future surveys.

REFERENCE MATERIAL

- **Davis-Bacon Act** general information
<http://www.dol.gov/whd/programs/dbra/whatdbra.htm#.UNNKbK7hcWk>
- General Information on **Davis-Bacon Surveys**. This includes links to scheduled and ongoing survey dates, a list of DOL's five Davis-Bacon Regions, and the contact information for each Regional Wage Specialist. <http://www.dol.gov/whd/programs/dbra/surveys.htm>
- **Electronic WD-10** (Submission Form)
<http://www.dol.gov/whd/programs/dbra/wd10/index.htm#.UNNKKK7hcWk>
- Published **Davis-Bacon Wage Rates**
<http://www.wdol.gov/dba.aspx>
- **Public Works Compliance Network** web site: a valuable subscription service for all prevailing wage issues. www.publicworkscompliance.org
- **National Alliance for Fair Contracting** web site: valuable Davis-Bacon resources.
www.faircontracting.org

**For further questions or assistance, please contact the
LIUNA Construction Department at (202) 942-2335.**

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