

LABOR NOTES

A Newsletter for Air Force Contracting Personnel on
Contract Labor Standards and Contractor Labor Relations

Please share with any and all interested parties. Knowledge is power!

1. DoL Prevailing Wage Seminars: DoL is putting on several Prevailing Wage Seminars at various locations this summer.

<u>Location</u>	<u>Date</u>
Charlotte, NC	July 14-16
Wichita, KS	July 28-30
Colorado Springs, CO	August 11-13
Baltimore, MD	August 25-27
Sacramento, CA	September 15-17

Material to be covered includes the Davis-Bacon Act and McNamara O'Hara Service Contract Acts, Executive Order 13658 "Establishing a Minimum Wage for Contractors", how to obtaining wage determinations and add classifications, compliance assistance and enforcement processes, how to appeal wage rates, coverage and compliance determinations, the Davis-Bacon prevailing wage survey process, and Executive Order 13495 "Nondisplacement of Qualified Workers." There will likely be some site-specific and unique breakout sessions as well.

It's all free, and it is knowledge-packed. If you attend, you ***will*** learn something. Sign up by emailing your name, title, organization, email address, telephone number and seminar desired to whdpws@dol.gov.

2. SCA Maintenance vs. DBA Repair:

The Service Contract Act (SCA) applies to routine, regularly recurring maintenance of public works, public buildings and building systems (electrical, plumbing, HVAC fire suppression, etc.). Construction, alteration, repair, or painting of these works, buildings, or systems are normally subject to Davis-Bacon Act (DBA) standards. For example, replacing lighting fixtures as they wear out is a maintenance task subject to SCA, but replacement of all fixtures at one time is considered repair/renovation subject

to DBA. Replacement of one fixture that becomes/evolves into replacement of the fixture, the wiring, the breaker, and panel would also be covered by DBA.

DBA will apply if the contract contains specific requirements for a substantial amount of construction and the work is physically or functionally separate from and capable of being performed separately. FAR 22.402(b)(ii) states in part that the word 'substantial' as used in that section relates to "... the type and quantity of construction work to be performed and not merely to the total value of construction as compared to the total value of the contract."

3. Demolition, dismantling, and removal of Government property:

To determine if DBA applies to your demolition contract, one must look at the entire scope of the contract as well as other contracts that might be part of the overall project (for instance, construction of a new office plaza may involve one or more contracts). Demolition, standing alone, is not necessarily considered to be "construction, alteration, and/or repair of a public building or a public work" subject to the prevailing wage requirements of DBA. For example, the demolition of a building because such structure is no longer needed would not in itself be a covered construction activity. However, where an existing building is being demolished and further construction activity at the site is contemplated that would be subject to DBA, DBA would apply to the demolition effort, such as demolition performed to permit construction of a new building or highway. The criteria to consider are found at FAR [22.402](#).

In some cases, the nature of the demolition or removal work alone might be considered construction activity covered by DBA. Removal of asbestos or paint from a facility that will not be demolished would be considered to be an alteration or repair ([AAM # 153](#)) and certain hazardous waste removal contracts that involve substantial earth moving to remove contaminated soil and re-contour the surface may be considered construction ([AAM # 187](#)).

DBA applicability on nonconstruction contracts can be difficult to analyze and decide, therefore contact your Air Force Labor Advisors with the specific facts and circumstances if you need help.

4. Base Access by DoL:

On February 12, 2014, President Obama signed Executive Order 13658, "Establishing a Minimum Wage for Contractors," to raise the minimum wage to \$10.10 for all workers on Federal construction and service contracts. The Executive Order directed the Department of Labor (DoL) to issue regulations

to implement the new Federal contractor minimum wage. As such, we expect a DoL nationwide initiative ramping up the number of investigations with an emphasis on SCA and DBA government contracts, potentially targeting some of our bases.

Due to incidents in the past with DoL, it's important that we remain vigilant in our efforts by adhering to and enforcing base access procedures as part of any DoL investigation. DoL has sole enforcement authority with respect to SCA and the authority to conduct independent investigations under DBA. However, contrary to belief, this enforcement authority doesn't automatically come with or extend to base and site access- that authority and subsequent privileges rests solely at the discretion of the USAF.

In coordination with several Security Forces offices, the following base access protocol was developed to eliminate any confusion or misunderstanding with the Department of Labor as it pertains to proper base/site access protocol on Air Force installations.

There are two types of access that apply to DoL. The first is "Base Access," which only requires official, Gov't issued credentials and allows basic access to the installation. The second type is "Site Access," which requires formal written notification requesting access to a particular site (ie, base hospital or clinic) and approval from the CO or leadership within the contracting squadron and other cognizant activities. Prior to gaining site access, an in-house briefing will be conducted to go over all established parameters for DoL to adhere to as well as any logistical accommodations made. Site access is only limited to the site of work associated with said SCA or DBA contract. Site access will not be granted to controlled/restricted area unless first authorized by the Air Force. If approved, site access requires an AF escort to and from the site of work and is required at all times for controlled/restricted areas. Authorization must be granted for any/all photography, video, etc. Appropriate security instructions and directives apply, of course.

As with any SCA and or DBA issues, please contact your Regional Labor Advisor for further guidance with DoL's refusal to adhere to or circumventing protocol via the contractor.

5. Enforcement of \$10.10 minimum wage:

As outlined above, one of DoL's top enforcement priorities remains the new "\$10.10 minimum wage rule" aka EO 13658 aka FAR 52.222-55. Complaints or noncompliance on this matter get national-level attention from DoL- so be advised, and advise your contractors accordingly. Remember that your regional labor advisors are available to help you and your contractors understand the ins and outs of this regulation- it can be tricky.

For instance, in the Davis-Bacon world, it is acceptable for employers to “mix and match” wages and benefits as long as the employer’s total obligation is met. The \$10.10 rule, however, throws a wrench in that scheme by requiring at least \$10.10/hr to be paid in the form of wages to the employee. The ability to “mix and match” remains, but the \$10.10/hr becomes an effective wage floor for employer’s to be cognizant of.

DoL has published some materials to their site to aid employers and employees, with more promised. The link below is a good starting point:

<http://www.dol.gov/whd/flsa/eo13658/index.htm>

6. Proposed changes to 29 CFR 541 pending:

29 CFR 541 defines employees that are exempt from the overtime provisions of the Fair Labor Standards Act, and, by extension, exempt from coverage under either the Service Contract Act or Davis-Bacon Act. Recall that in March 2014, the President called for revisions to this regulation to ensure that employees were fairly compensated. DoL has completed draft revisions to this regulation, so now the fun begins....we speculate that the most likely, and least onerous, change would be to manipulate the salary requirement contained in 29 CFR 541. As things stand at time of writing, employees meeting the other standards as well as being paid a salary of at least \$455 on a weekly basis are exempt; we suspect that the \$455 number will be revised upwards, perhaps sharply. Depending on how high the new figure is, we may see a whole slew of folks that were formerly exempt become covered personnel, subject to SCA and DBA.



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