



Chapter 7: Labor, Payroll, Posting and Equal Employment Opportunity Requirements

Seattle District, NWS

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Chapter 7

Labor, Payroll, Posting, and Equal Employment Opportunity Requirements

1. General. The various labor laws enacted by Congress and the implementing regulations are designed to protect the labor force employed on Government contracts. The labor requirements apply to all laborers and mechanics working on the site of work regardless of any other employment arrangement.

2. Labor Clauses. The following are the basic labor clauses (including clarification) included in construction contracts over \$2,000.00:

a. The “DAVIS-BACON ACT” requires all employees to be paid at least the minimum rate specified for the classification of work being performed. If the wage determination in the contract does not contain a classification for the work being performed, the contractor must submit a Request for Authorization of Additional Classification and Rate, SF 1444 (Figure 7-1). A properly completed sample SF 1444 is included as Figure 7-1A and instructions as Figure 7-1B.

b. The “CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION” requires all employees to be paid time and one-half for all hours worked in excess of 40 hours per week.

c. The “APPRENTICES AND TRAINEES” clause requires all apprentices and trainees to be individually registered and employed in accordance with a program recognized by the U.S. Department of Labor. Evidence of registration and the approved ratio of apprentices-to-journeymen must be submitted for each apprentice. Apprentices and trainees not employed in a bona fide program or over the allowed ratio rate are entitled to restitution at the wage rate in the contract. Apprentice ratios apply on a day by day basis, not weekly. (Please note: The allowable ratio of apprentices-to-journeymen on the Government job site cannot be greater than the ratio permitted the contractor for the entire workforce.)

d. All federal contractors must comply with the requirements of enrollment of the “E-VERIFY” program as applicable.

e. The “PAYROLLS AND BASIC RECORDS” clause requires the weekly submittal of certified contractor payrolls (Figure 7-2) accompanied by a signed Statement of Compliance (Figure 7-3) from the prime and all subcontractors (including all lower tier subcontractors) performing work on the site of work. It also requires that the prime contractor and all lower tiers keep accurate records pertaining but not limited to hours worked, wages, deductions, fringe benefits, employee certifications, apprentice registration, employee contact information, travel associated with out-of-state workers, etc.



Seattle District Practice is for the contractor to submit a list of the subcontractors working on the project. You can use this listing to detect any missing subcontractor payrolls before you make your weekly submission to the Contractor Industrial Relations Technician (CIRT). We can use the listing to verify no payrolls were inadvertently omitted. Please notify the CIRT with any subcontractor additions or changes.

Please submit payrolls with a front page Transmittal sheet that has the company name, certified payroll contact, and full USACE contract number. The transmittal sheet lists each subcontractor in alphabetical order and the payroll weeks being submitted. Payroll weeks should be consecutively numbered and be submitted with the Statement of Compliance (SOC) or DD Form 879 stapled to the back of each payroll, with the latest payroll on top.

When an owner is performing work of a “laborer or mechanic” on the work site in excess of 20%, he/she must be reported on a payroll showing hours, rate of pay, classification, etc. The only exceptions to this rule are owner/operators of their own trucks and those who qualify under the executive exemption in 29 CFR 341, B and H.

To eliminate confusion, it is requested that when a week or more passes in which no work is performed, a “no work” statement be submitted. Multiple weeks of “No Work Performed” may report consecutive weeks on one page listing the weeks covered with consecutive dates (for example, NWP #11-20 2/14/13-4/18/13).

f. The “COMPLIANCE WITH COPELAND ACT REQUIREMENTS” clause incorporates the requirements of 29 CFR Part 3 in the contract.

g. The “SUBCONTRACTS” clause requires the prime contractor to incorporate the labor clauses in its subcontracts. It also states the prime contractor is responsible for the compliance of its subcontracts, regardless of tier, with the labor requirements. In addition, it requires a completed Statement and Acknowledgement, SF 1413 (Figure 7-4), be submitted for each subcontract. All subcontractors shall receive a copy of all applicable wage determinations. For contracts with multiple wage determinations attached, the prime contractors must evaluate the work performed by the subcontractor and ensure each subcontractor follows the correct determination for the specific work that each subcontractor is performing. Failure to use the correct wage determination could result in restitution due to the employee(s).

h. The “CONTRACT TERMINATION--DEBARMENT” clause indicates that breach of the labor clauses may be grounds for contract termination or debarment.

i. The “COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS” clause incorporates all rulings and interpretations of 29 CFR 1, 3, and 5 into the contract.

j. The “DISPUTES CONCERNING LABOR STANDARDS” clause specifies that disputes concerning labor requirements are resolved in accordance with the procedures in 29 CFR 5, 6, and 7; and not the regular disputes clause in the contract.



k. The “CERTIFICATION OF ELIGIBILITY” clause indicates that the prime and subcontractors have not been debarred for labor violations.

3. FREQUENT AREAS OF PAYROLL DISCREPANCY. The following items are examples of labor violations that are often discovered during routine payroll examinations:

a. The most common violation is the improper classification of employees. All workers/employees must be classified in accordance with the work they perform on the job site. Laborers not performing the tasks listed in the wage determination under the laborer groups are allowed to perform the tasks such as clean up, digging ditches and materials transport from one location to another. Tools of their trade typically include brooms, shovels, wheel barrowers, etc. A general laborer is not allowed to do any work incidental to any other trade. For example, laborers are not allowed to place or lay material within the workspace of another trade (placing pipe within a wall to have the pipefitter/plumber seal and connect.) Measuring, cutting, and placing material is incidental to the skilled trades and not covered under the general or common laborer classification. Skilled trades (plumbers, carpenters, sheet metal workers, etc.) may also not be paid a split laborer wage to do work incidental to their trade. If a worker works in a skilled trade, they are paid the skilled trade wage rate unless they are working in another skilled trade such as an equipment operator.

b. Working foremen and supervisors are considered laborers and mechanics if they perform labor in excess of 20%; therefore, they must be classified and paid in accordance with the work they are performing.

c. An appropriate box must be checked in the fringe benefit section on the Statement of Compliance. If the contractor pays the employee fringe benefits then, a statement showing where each benefit is paid to, the amount is itemized and how often the benefit is paid into the plan. A common misconception is if an employer pays a monthly amount for a benefit, the employer must divide that benefit by all hours worked in the month on all projects. That will give an hourly amount. The total monthly amount cannot be imputed to the government but broke out between all projects evenly depending on the hours worked.

d. All payrolls should be numbered consecutively and the last payroll from each contractor should be marked “FINAL.”

e. Contractors that pay its employees on a piece-work basis must keep adequate records to demonstrate compliance with the hourly wage rate required by the contract.

f. An additional class and rate must be requested for each class performing work on the contract which is not in the wage determination. It is a good idea to look through your wage determination upon receipt of your contract and submit the additional classification and rate requests you know you will need prior to the start of work. Lack of these additional classifications will delay final payment and release of funds on the contract.

g. The specific work classifications must be included on all payrolls for each employee. Typically the laborer, power equipment operators, and truck driver classifications contain



various groups. The specific group or type of work performed, equipment or truck used, must also be included for these classifications.

h. All hours over 40 per week must be paid. The accurate calculation of overtime pay must be at least one and one-half times the hourly rate (either at the highest rate worked for that week or using the weighted average method) plus the basic hourly fringe benefit rate.

i. All contractors required to use QCS should have ALL lower tiered subcontractors listed in the system. This is necessary to properly document exposure hours and to accurately report contractor daily activities.

j. Prime contractors are ultimately responsible for ensuring that all applicable taxes, trade certifications and licensing, and employee wages are properly reported, paid and submitted as applicable by subcontractors (regardless of tier). Records must be produced as required or requested per 29 CFR 5.5.

4. EEO CLAUSES. The following Equal Employment Opportunity Clauses should be thoroughly reviewed.

a. “EQUAL OPPORTUNITY” (FAR 52.222-0026)

b. “AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION” (FAR 52.222-0027)

c. “AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS” (FAR 52.222-0035)

d. “EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA” (FAR 52.222-0037)

In addition, the following clause applies to all construction contracts exceeding \$2,500.00:

e. “AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS” (FAR 52.222-0036)

5. EEO SUBMITTALS. Information needed for submitting EEO documents can be found in the contract clauses. Sample documents are provided as indicated below:

a. Equal Employment opportunity: A copy of such a notice is included (Figure 7-9).

b. Affirmative Action. You must provide written notification as described in Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity to the Director of the office of Federal Contract Compliance Programs (OFCCP) at the appropriate address listed below for all subcontracts over \$10,000.00.



Address notification to:

Assistant Regional Administrator
U.S. Department of Labor ESA/OFCCP (For work in WA, OR & ID)
Room 3038, Federal Office Building
909 First Avenue
Seattle, Washington 98174

Assistant Regional Administrator
U.S. Department of Labor ESA/OFCCP (For work in MT)
Room 1442, Federal Office Building
1961 Stout Street
Denver, Colorado 80294

c. Subcontracting Reports: Samples of Standard Forms 294 and 295, and instructions for completion are included (Figures 7-5 and 7-6, respectively).

6. POSTINGS. The following postings will be displayed in a conspicuous place at your on-site job office, easily accessible to all employees and to persons seeking employment. Posters will be protected from the weather.

a. All wage determination and approved additional classification and rate requests will be posted.

b. “Notice to Employees” Poster: This is an 11” x 17” Solicitor of Labor Poster, WH-1321 (Figure 7-7) that calls attention to the wage determination and to certain rights of the workers. This poster will be displayed on all contracts over \$2,000.00.

c. “Equal Employment Opportunity is the Law” Poster: This will be displayed for all contracts over \$10,000.00 (Figure 7-8).

Enclosures

Figure 7-1 Sample SF1444
Figure 7-1A Sample SF1444 (Completed)
Figure 7-1B SF1444 Instructions
Figure 7-2 Sample WH-347 and Instructions
Figure 7-2A Sample WH-347 (Completed)
Figure 7-3 Sample DD 879
Figure 7-3A Sample DD 879 (Completed)
Figure 7-4 Sample SF 1413
Figure 7-4A Sample SF 1413 (Completed for subcontractor)



Figure 7-4B Sample SF 1413 (Completed for lower tier)

Figure 7-5 SF 294

Figure 7-6 SF 295

Figure 7-7 Notice to Employees Poster

Figure 7-8 Equal Employment Opportunity Poster

Figure 7-9 Employment Activity Guide SF100

