

The City of Austin: Wage Rates and Payroll Reporting

The Source of our Program

The ultimate source of all wage compliance efforts is the Davis-Bacon Act, enacted by the federal government. This act established the U.S. Department of Labor, and was intended to set a minimum prevailing wage for construction workers on federal construction projects. The prevailing wage is determined by the federal government, by county, for the entire country, and published as a “wage determination.”

In 1995, the State of Texas adopted Statute 2258 requiring prevailing wage rates to be paid on publicly-funded construction projects (public works), and authorizing the conduct of surveys to establish those rates. It also permits the adoption of prevailing wage rates as determined by the U.S. Department of Labor. The City of Austin, through ordinance, has adopted the use of these federal wage rate determinations.

Prevailing Wages

There are several determination schedules: Heavy and Highway, Building Construction, Residential, Heavy Tunneling, Offshore Pipeline, and Onshore Pipeline. Most frequently, the City uses Heavy and Highway, and Building Construction. The prevailing wage rates are included in the construction solicitations, as well as the requirement that all “mechanics and laborers” be paid no less than those rates.

For each classification of worker, a minimum hourly rate of pay is established. The nature of the work performed determines which classification is appropriate for that worker at that time, **regardless of skill level or experience**. If a worker performs work under more than one classification, that worker is to be paid no less than the highest applicable rate for the work performed, **unless the employer keeps a daily record of hours spent under each classification and identifies those split hours on the certified payroll**.

If more than one determination applies to the project, there are rules to determine which governs. If “Building Construction” and “Heavy and Highway” determinations are both used, anything within a 5 foot perimeter of the footprint of the building is governed by Building Construction rates. “Heavy and Highway” applies to the remainder of the site. As with multiple classifications, if the worker works under more than one determination, that worker must be paid the highest applicable rate, **unless the employer keeps a daily record of hours spent under each determination and identifies those split hours on the certified payroll**.

In order to pay an apprentice or trainee less than the full prevailing wage rate for a classification, the worker must be individually enrolled in a DOL-approved apprenticeship or training program prior to and while performing work on the project. The employer must be able to provide documentation that indicates enrollment in the program (including date of enrollment and current period), as well as the program-approved rates.

An employer is responsible for the payment of the total minimum wage required. The minimum wage obligation can be met by a combination of cash and fringe benefits or by cash payments.

Some examples of approved company-paid fringe benefits include: paid leave time, paid holidays, contributions to a qualified retirement plan, paid insurance premiums, paid uniforms. Some examples of non-allowable fringe benefits include use of a company vehicle, vehicle fuel, labor burden (the employer-paid portion of Social Security taxes).

Record Keeping

The City's contract establishes the City's right to audit without limitation to ensure contract compliance. The contract also requires that records be provided within 2 working days of request. Specific records required include: weekly certified payroll reports, employee-signed employee certifications, employee payroll deduction authorization forms, and evidence of individual enrollment in a DOL-approved apprenticeship or training program. Other records may be requested as needed. All these records are to be retained on file by the prime contractor for at least 3 years after substantial completion of the project.

For each construction contract, a pre-construction meeting will be held prior to the start of work. At that time, the contractor is provided copies of required wage postings, as well as general wage compliance requirements.

Enforcement: Site Visits and Wage Audits

In its efforts to enforce wage compliance, City staff will perform on-site observations. The first occurs within 25 working days of issuance of the project's Notice to Proceed. Others may occur as resources permit and as staff deem necessary. Staff may examine wage postings, observe the work being performed, and interview workers on-site. Staff will also note the subcontractors on-site, to compare with the project's approved Compliance Plan.

Wage audits can occur at any time, if suspected violations are observed or discovered, if a complaint is received, or if the project is selected based on a risk assessment by City staff. If a project is federally-funded, it will be audited continually throughout the contract duration.

On federally-funded projects, certified payroll, employee certifications, and payroll deduction authorization forms are to be furnished to City staff on a weekly basis. All "mechanics and laborers" on the project are to be paid not less than once per week.

The City's expectations are as follows:

- Workers are paid the proper prevailing wages.
- Workers are paid on time.
- Workers are paid time-and-a-half for all hours worked over 40 in a week.
- Workers are classified correctly.
- Required postings are displayed on-site, where they are visible to the workers.

- Required forms and records are collected by the Prime Contractor and available for at least 3 years after the project's substantial completion.

The most common issues related to wage compliance are as follows:

- Records weren't available in a timely manner.
- Postings weren't displayed properly on-site.
- Workers performed duties under more than one classification without proper back documentation to prove they were paid correctly.
- Workers' duties were misclassified.
- Workers weren't paid properly for overtime.

If a contractor violates the conditions of the contract:

- Funds can be withheld.
- Penalties may be assessed.
- Confirmed retaliation against employees may result in probation, suspension, or debarment.