

Section 5.4

CONTRACT WAGE REQUIREMENTS

5.4.1 Purpose

To provide a uniform process for reviewing and processing Contractor payroll submittals, conducting labor interviews, issuing violations and adding wage classifications to the contract, that are requirements on all Federally-funded Construction Contracts over \$2,000.00.

5.4.2 Authority

Sections 20.23(4)(a) and 334.048 (3), Florida Statutes (F.S.)

Required Contract Provisions - Federal Aid Construction Contracts (Form FHWA-1273)
Note: FHWA -1273 was revised May 1, 2012 and this version applies to contracts let after August 10, 2012. Regulated under Title 23 CFR 633.102.

5.4.3 General

The Contractor is required to comply with the “government contract acts”, (***Davis Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act (CWHSSA)***), which are regulated by the ***U.S. Department of Labor***. The government contract acts regulate payment of wages, record keeping and reporting, and overtime pay respectively. Construction workers shall be paid at rates no less than those prescribed in the wage tables of the contract. Payrolls and basic records relating thereto shall be maintained by the Contractor/subcontractor during the course of the work and preserved as required. All overtime hours (all those over 40 in a work week) shall be paid at rates no less than 1.5 times the employee's basic rate of pay. Coverage by these acts will be indicated in the contract by inclusion of ***Special Provision Sub-article 7-1.1*** which invokes the ***Form FHWA-1273***. Florida has a minimum wage law that applies to workers on all Florida Department of Transportation (FDOT) construction projects including those federally funded. On federally-funded construction projects, where the Florida minimum wage is higher than a required minimum rate on a Wage Determination, the Florida minimum wage must be paid. Compliance is enforced on a day-to-day basis by the FDOT, as the contracting agency.

5.4.4 Federal Wage Rate Table(s) & Poster

(A) Resident Level Responsibilities

The wage determination (including any additional classification and conformed wage rate) and the ***Davis Bacon Poster (WH-1321)*** shall be posted at all times by the contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers. ***The Additional Federal Wage Rate Decision Form No. 700-010-67*** is provided to make posting of additional classifications and conformed wage rates on the project bulletin board easier. A copy of the appropriate table(s) is provided in the contract. The poster can be obtained from the Department's website. The poster is also available from the FDOT Equal Opportunity Office (EEO) website. And the wage determinations can be obtained from the USDOL "Wage Determinations OnLine.gov" site.

The prime Contractor is required to post the applicable wage table(s) on the job site bulletin board. This is the wage table(s) in the contract unless an amendment has been made to the contract. Amendments are sometimes made because the award date exceeds 90 days past the letting.

5.4.5 Payroll Requirements

(A) Resident Level Responsibilities

Each Contractor shall furnish an original certified payroll or a scanned copy of the original, to the Resident Engineer (or their designee) for wages paid each of its employees (including apprentices, trainees, watchmen and guards engaged in work during the preceding weekly payroll period), each week in which any contract work is performed. The Contractor is also responsible for submitting the payrolls for all of his subcontractors. The payrolls submitted shall state accurately and completely all of the information required. All payroll records submitted shall contain the employee's name, the employee's id number (applies to contracts let 2009 or later), correct work classification(s), and hourly rate(s) of wages paid including any fringe benefits (as set forth in ***Section 1(6)2(b)*** of the ***Davis-Bacon Act***), daily and weekly number of hours worked on the project, gross wages on the project and all projects, the amount and purpose of each deduction(s) made, and actual net wages paid. All employee deductions must be shown on each payroll, or submitted on supplemental data attached to the payroll, specifying the purpose and amount of each deduction. The prime Contractor is responsible for the submission of certified payrolls by all subcontractors. The payrolls are due within seven (7) days of the regular payment date of the payroll. On contracts let before January 19, 2009, the employee's address should be reported

and the employee's social security number would be used for the employee identification.

On all contracts the contractor and subcontractor shall maintain records that document the full social security number, race, gender and current address of each covered worker and shall provide these records upon request to the Department. It is not a contract violation for the prime contractor to require the subcontractor to provide employee information such as race, gender, addresses and social security numbers to the prime for their records. **(See FHWA 1273 Section IV 3(b)).**

Payrolls shall be checked for completeness and accuracy. Whiteouts are not acceptable. Corrections may be struck through and initialed by the person filling out the payroll. Though it is not possible to check every entry on every payroll, the following minimums shall be adhered to for guidelines and additional checks may be required if deemed necessary. The first payroll each Contractor/subcontractor submits on the project shall be checked completely for, but not limited to, errors, omissions, misclassifications, unauthorized deductions, or inadequate pay. Thereafter, spot checks shall be made at no less than 1 in every 10 entries on payrolls. The entries checked will be initialed by the Resident Compliance Specialist (RCS) to signify and acknowledge the entry verification. Upon satisfaction by the RCS of the accuracy of payrolls submitted by an individual Contractor and upon approval of the District Contract Compliance Manager (DCCM) or their designated representative, the minimum checking requirements may be lessened.

5.4.6 Statement of Compliance

(A) Resident Level Responsibilities

Each payroll submitted shall be accompanied by a **Payroll Form [WH-347](#) or Form No. [700-010-69](#)** (or an equivalent document containing all required information), signed by the Contractor or subcontractor, or his/her agent who pays or supervises the payment of the persons employed under the contract, and must certify the following:

- (1) That the payroll for the pay period contains the information required and that such information is correct and complete. That such laborer(s) or mechanic(s) (including apprentices and trainees) employed on the contract during the payroll period have been paid the full wages earned and that no deductions, directly or indirectly have been made other than those permissible.
- (2) That any payrolls under this contract required to be submitted for the payroll period are correct and complete and that each laborer or mechanic has been

paid no less than the applicable wage rates for the classification of work performed, as specified in the applicable wage rate determination incorporated into the contract.

- (3) That any apprentices employed in the pay period are registered in a bona fide apprenticeship program registered with the State That in addition to the basic hourly wage, fringe benefits are either paid into approved plans, funds or programs or are paid in cash to the employee.

Payroll Form WH-347 or [Form No. 700-010-69](#) (or an equivalent), shall be furnished by all Contractors/subcontractors working on Federal Aid Projects. This form must be furnished when the Contractor/subcontractor begins work and required to be submitted to the Resident Engineer (or their designee) each week thereafter with respect to the wages paid each employee.

5.4.7 Notification of Payroll Violation

(A) Resident Level Responsibilities

A **Notification of Payroll Violation, [Form No. 700-010-59](#)**, detailing the type of violation and requesting correction or clarification shall be issued by the Resident Engineer (or their designee) when it is determined that certified payrolls contain errors, or that required wage/payroll information is omitted or erroneous. Phone calls shall not be placed in lieu of issuance of this form; however, phone calls should be used to obtain clarification in making a determination on whether information is omitted or erroneous. The violation shall be recorded in the Construction Automated Reporting System (CARS). Instructions for the system can be found in the **Construction Systems User's Manual** found on the Construction web site.

The prime contractor is responsible for obtaining and forwarding to the RCS all documentation and records required to satisfactorily resolve all notices of noncompliance and payroll violations issued for their own workforce, their subcontractors, temporary employment agencies, and rental agreements with operators.

See **Guidance document 5.4.C** for examples of payroll violations which may help you discern which code violation to use.

Payroll violations are identified by a code number. The codes range from 1-7 and some are considered more severe than others.

**Table 5.4.1
PAYROLL VIOLATION CODES**

CODE	DESCRIPTION
1	Time and one-half rates were not paid for work performed in excess of 40 hours.
3	Improper classification of employees.
4	Hourly rate paid is less than minimum authorized wage rate for classification of work shown and included in the construction contract.
5	Certified payroll contains mathematical errors that indicate payment made to the employee violated federal labor or contract provisions.
6	Unauthorized payroll deductions.
7	Other violation not listed above.

If the violation indicated is a Code 1, a violation penalty of \$10.00 per day is assessed plus additional gross wages due. The RCS will generate three copies of the **Notification of Payroll Violation, [Form No. 700-010-59](#)** as well as three copies of the cited payroll. Once this information has been compiled, the RCS will take the following action for Code 1 violations:

- (1) Review the violation(s) and prepare a letter for the Resident Engineer's signature and send a letter by Certified Mail, Return Receipt Requested, (See **Guidance Document 5-4-A** for this **section**), to the prime Contractor. The letter shall identify the violation(s) and dollar amount of wages owed, and requesting that supplemental payrolls, canceled payroll checks or some other proof or evidence that restitution has been made to the employee, and an explanation regarding the cause for noncompliance be furnished to the RCS. The labor violation **Notification of Payroll Violation Form No 700-010-59** and the **Labor Overtime Violation Withholding/Release, [Form No. 700-010-54](#)** shall be attached thereto. Copies of these documents shall be distributed to District Final Estimates Office, District Compliance Office, and District Construction Engineer.
- (2) Upon receipt and subsequent review of the certified supplemental payroll, and an approved method of evidence of payment and an explanation provided by the Contractor, the RCS will prepare a

letter for the Resident Engineer's signature and send a letter (**See Guidance Document 5-4-B** for this section) to District Final Estimates Office recommending a course of action for the disposition of the monies withheld. Copies of this distribution shall be made to the District Compliance Office and District Construction Engineer.

- (3) Following the District's recommendation for the final disposition of the Contractor's monies withheld, the RCS shall prepare a letter for the Resident Engineer's signature and send another **Labor Overtime Violation Withholding/Release letter** indicating the required action to the District Compliance Office.
- (4) The Resident Engineer shall notify the prime Contractor in writing of the final disposition of the violation monies withheld and a copy of this notification shall be forwarded to the District Construction Engineer's Office that issued the violation.

The prime Contractor is responsible for obtaining and forwarding to the RCS, all documentation and records required to satisfactorily resolve Code 1 violations issued for contract work performed by their subcontractors or under rental agreements. In the event that resolution could not be met between the Department and the Contractor the Payroll Violation will be forwarded to FHWA for a decision from the Division Administrator of FHWA or his designee. This decision is final and binding on the Department and the Contractor, subject to the contractors appeal as set forth below. Therefore the total amount of additional wages due and penalties have been withheld from progress or final payment on this contract pending final determination by the FHWA and or appeal by the Contractor.

Any appeal from the finding of fact and determinations of the FHWA must be filed within 60 days from the date of the withholding of funds on this contract. The 60 days begins with the date on which this formal notice of the withholding of funds is received by the contractor by certified mail (return receipt requested). The aggrieved Contractor or Sub-contractor shall have the right of appeal to the Federal Highway Administrator, the Secretary of Labor, and/or the Court of Claims. Such appeals must be submitted through the Department who will make proper distribution.

If the violation indicated is a Code 3, 4, or 5, the Contractor must furnish to the Resident Engineer's Office, within 20 days, a Certified Supplemental Payroll showing the payments made as restitution along with a copy of canceled checks, an electronic statement of deposit to the employees account, pay stub or an affidavit stating payment

by the contractor with the affected employee's signature, as evidence that the restitution has been made. The date the Payroll Violation is received by the prime contractor is counted as day one (1) of the twenty (20) calendar day resolution period.

If the review of the certified supplemental payroll by the RCS substantiates that the cited violation has been corrected, the Contractor will be considered to be in compliance and no further action is required. Comments shall be entered into CARS reflecting that corrections have been satisfied.

If a certified supplemental payroll is required and is not received within the (20) twenty days allotted, or is received and does not satisfy the infraction, then a Performance Deficiency Letter is issued to the contractor and withholding of the progress pay as outlined in **Section 5.4.10(1)** shall be exercised.

If the violation identified is a Code 6, the Contractor must furnish a certified supplemental payroll to the RCS, within 20 days and the disposition of the violation will be the same as specified above for Code 3, 4, and 5.

If the violation identified is a Code 7, the corrective action, documentation and time restraints afforded for corrective action shall be specified in the comments section on the **Notification of Payroll Violation**.

If the corrective documentation received substantiates that the error cited has been corrected and this documentation was made available for review in the allotted time frame, CARS shall be updated to reflect this and no further action is required.

If the corrective action does not satisfy the violation cited, then withholding of the progress payment as outlined in **Section 5.4.10(1)** shall be exercised. The DCCM shall insure that all wage violations are entered into the **Contractor Noncompliance Program** of the **Construction Automated Reporting System (CARS)**.

All information entered into the **Contractor Noncompliance Program** shall be input by personnel selected and assigned by the Resident Engineer. A current listing of these people shall be maintained by the DCE's Office. Access to this program is granted by the State Construction Office Systems Support.

The DCCM shall provide instructions for entering data into the **Contractor Noncompliance Program** to all personnel assigned this task.

Violation Types are explained on the **Notification of Payroll Violation, [Form No. 700-](#)**

[010-59.](#)

5.4.8 Additional Notes on Violations

(A) Resident Level Responsibilities

- (1) Violations requesting certified supplemental payrolls under violation Codes 3 through 7 will be forwarded as indicated:
 - (A) Original - Sent to the prime Contractor
 - (B) Copy 1 - Retain in a project file with a copy of the cited payroll attached.
 - (C) Copy 2 - Forward this copy of the violation to the DCCM
 - (D) Copy 3 - Forward this copy of violation to the subcontractor if the violation is issued to subcontractor

- (2) When a violation is discovered in reviewing a payroll it is essential that a **Notification of Payroll Violation, [Form No. 700-010-59](#)**, be issued in each instance (Code 1 through 7) in order that frequency of violations can be monitored. Violations are monitored by the State Construction Office (SCO) as follows:
 - (A) Wage violations are monitored through the CARS System. Contractors with excessive violations are required to submit a written plan that demonstrates how they intend to eliminate their payroll violations and those of their subcontractors.

The Contractor's wage violations are then monitored by the SCO for one (1) year.

Labor regulation compliance should be outlined at the pre-construction conference. The requirements as related to submittal of payroll and weekly statements, as well as withholding of progress estimate until cited infractions have been satisfied, shall be emphasized.

5.4.9 Request for Additional Wage Classifications

(A) Resident Level Responsibilities

The ***Additional Classification – Request, [Form No. 700-010-07](#)***, shall be submitted by the prime Contractor when a work craft is required but not included in the ***Federal Wage Rate Table(s)*** that are prescribed in the contract. The request shall be submitted to wd.conformance.dot.state.fl.us (or fax or send by US Mail to the Prevailing Wage Rate Coordinator in the SCO) and a copy sent to the RCS for the project. E-mail submission is preferred as this method creates a documented record and allows for rapid response time. The Contractor may pay the employee at least the minimum amount requested on the request document until a response is received from the USDOL. The contractor will then be given 20 days from the date of notification from FDOT to make retroactive pay adjustments if needed for the conformed classification.

A wage determination may contain two separate requirements for any individual classification, an “hourly rate” and a “fringe benefit” the sum of which is the prevailing wage for the classification. A contractor is required to pay overtime (time and a half) on the hourly rate but is only required to pay straight time on fringes. This needs to be calculated when doing reimbursements for retroactive pay.

5.4.10 Failure to Submit Required Records

(A) Resident Level Responsibilities

If the Contractor or subcontractor fails to submit the required records or does not make the records available to the aforementioned agencies, these agencies may, after written notice to the Contractor, take such actions as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make the records available may be grounds for debarment action.

When a Contractor/subcontractor fails to comply with contract requirements for submittal of payrolls, EEO forms, corrected payrolls, etc., and continues to ignore requests for compliance, the District is authorized to take the following action:

- (1) With the authorization of the DCE, and consultation with the DCCM, the Resident Engineer may withhold payment of the monthly progress estimate. The Resident Engineer may withhold the sub-contractor’s pro-rate share of the monthly progress estimate in the event a subcontractor fails to comply with contract requirements. Subsequent non-compliance on the part of the subcontractor may result in withholding the entire payment to the Contractor of the monthly progress estimate.

- (2) The Resident Engineer shall notify the Contractor in writing of the intent to withhold payment in advance of this action. The notification shall include the following:
 - (a) Specific reasons for withholding payment.
 - (b) Specific actions required by the Contractor/subcontractor to gain release of payment.
- (3) The Resident Engineer shall provide copies of this notification to the Director, Office of Construction and the District Contract Compliance Office.
- (4) The Resident Engineer's Office shall prepare the work sheet for the progress estimate to be withheld along with other estimates, and forward it to the District Office for processing.
- (5) After processing, the DCE shall hold the progress estimate until notified by the Resident Engineer that the Contractor/subcontractor is back in compliance.

5.4.11 Employee Interview Report – Labor/EEO Compliance

(A) Resident Level Responsibilities

The Contractor shall allow authorized representatives of the Department, FHWA, and/or the Department of Labor access to their employees on the project, and shall permit such representatives to interview employees on the job during working hours. The Department has an ***Employee Interview Report – Labor/EEO Compliance, Form No. 700-010-63***, which is to be completed by the Resident Engineer's Office per the instructions on the form.

Note: This form shall be kept in a separate confidential file and not with the rest of the project files.

The number of required Labor/EEO interviews shall be based on the dollar amount of the contract. The RCS will ensure that the required minimum number of interviews, are completed each month as shown in the following **Table 5.4.2:**

**Table 5.4.2
Monthly Labor/EEO Interview Schedule**

Original Contract Amount	Minimum Number of Interviews
Under \$ 1,000,000	2
Over \$1,000,000 - \$3,000,000	3
Over \$3,000,000 - \$5,000,000	4
Over \$5,000,000 - \$10,000,000	5
Over \$10,000,000 - \$15,000,000	6
Over \$15,000,000 - \$20,000,000	7
Over \$20,000,000 - *	8 *

* For every additional \$5,000,000 dollars in the original contract amount the minimum number of interviews will increase by one (1).

- (1) When the interviewer has a reasonable basis to believe the Contractor and/or subcontractor may not be in compliance with the provisions of the ***Davis-Bacon Act***, a copy of the employee's paycheck shall be secured and the pay rate checked against certified payroll.
- (2) The date and action(s) taken to resolve any discrepancies or violations, determined as a result of the interview, shall be indicated in the space provided on the report. The employee being interviewed must sign the report.
- (3) A cross section of employees shall be interviewed if possible. Examples of this would be minorities, non-minorities, skilled, unskilled, trainees and foremen.

5.4.12 Retention of Payroll Records

(A) Resident Level Responsibilities

Both FDOT and the Contractor have retention responsibilities for payroll records. Payrolls and basic records, relating to payrolls shall be maintained by the prime contractor, during the course of the work, and preserved for a period of three (3) years from the date of completion of the project. These records are required to be available for inspection, copying, or transcription, by FDOT, FHWA, USDOL, or authorized representatives. These provisions are governed under ***29 CFR part 5.5*** and ***FHWA 1273, section IV***.

Payrolls submitted by the Contractor to the Department and associated payroll records

shall be maintained by the Department's representative during the duration of the contract. After final payment to the Contractor is made, the payroll records will be boxed and submitted to FDOT Central Office Records Center. These provisions are governed under FDOT procedure, ***Records Management Topic No. 050-020-025***.

5.4.13 Wage Surveys

(A) Resident Level Responsibilities

Wage surveys will be conducted when the US Department of Labor (USDOL) initiates them and commits to publishing new wage tables from the surveys. USDOL will outline the time period for which survey data will be collected, which is usually for a year's time period. The Prevailing Wage Rate Coordinator, along with the District Compliance personnel, will encourage Contractor participation by means of announcements and workshops in the districts and communication through the Contractor's associations. The points will be stressed that (1) the results of the survey's accuracy are determined by the amount of participation (poor participation creates erratic rates in the wage tables) (2) once the survey is done, rates will be in effect for at least the next three years and (3) if voluntary participation is not successful the Department will have no choice but to return to a contract requirement method of collecting data. USDOL will provide the forms and assemble the data when collected. An instruction booklet will be created and distributed to help guide Contractors and Department personnel through the survey process.

**GUIDANCE DOCUMENT 5-4-A
(SAMPLE LETTER)**

Date _____

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Financial Project ID: _____
FAP No.: _____
County: _____

Dear Mr./Ms. _____

Enclosed are copies of Form No. 700-010-59 listing _____ violations of Section IV of the "Required Contract Provisions - Federal Aid Construction Contracts" (FHWA-1273) which is included in the contract for the above referenced project. The _____ violations involved were disclosed by examination of the payroll listings for the payroll period ending _____.

A total of \$ _____ in additional wages is due, in accordance with Section IV of the aforementioned contract provisions, \$ _____ in liquidated damages have been assessed. Therefore, \$ _____ will be withheld by the Department of Transportation and deducted from the payment due on the next Progress Estimate.

Please forward directly to this office, three (3) copies of Certified Supplemental Payrolls and canceled payroll checks or some other proof or evidence that restitution has been made to the employee indicating that corrective action has been taken in regard to this citation.

In addition to the above, we ask that you furnish this office with an explanation of the facts surrounding this underpayment. This information will be utilized in preparing a recommendation as to whether the liquidated damages should be retained or remitted.

We urge you to re-examine your payroll procedures and take appropriate action to prevent recurrence of similar violations.

Sincerely,

Resident Engineer

cc: District Final Estimates Office
District Compliance Office
District Construction Engineer

GUIDANCE DOCUMENT 5-4-B

(SAMPLE LETTER)

Date

District Final Estimates Office

Attention: _____

RE: Financial Project ID: _____
FAP No.: _____
County: _____

Dear Mr./Ms. _____:

You received a copy of our letter, dated _____ to the Contractor for the above referenced project, whereby the Contractor was notified of a violation of Section IV of the "Required Contract Provisions - Federal Aid Construction Contracts" (FHWA -1273).

As a result of this violation, \$ _____ in additional wages due and \$ _____ in assessed liquidated damages were withheld from payment due on the progress estimate.

In response to our notification, the Contractor submitted certified supplemental payrolls indicating that corrective action has been taken in regard to the violations. The Contractor also explained the circumstances surrounding the violations.

The District Construction Office has reviewed the supplemental payrolls and is of the opinion that the affected employees have been properly compensated. Therefore, by copy of this letter, we are requesting that you release the \$ _____ being withheld as unpaid wages.

The District Construction Office is also of the opinion that the violations were caused inadvertently. We therefore recommend that the \$ _____ being withheld as liquidated damages be released.

Sincerely,

Resident Engineer

cc: District Compliance Office
District Construction Engineer

GUIDANCE DOCUMENT 5-4-C

(Examples of Code Violations)

Code 1

A code 1 violation is issued when the contractor paid the employee straight time for all time worked on the project. This would include all hours over 40 where the employee should have been paid time and one-half.

- For example: If an employee's base rate of pay is \$15/hour and he/she worked 50 hours, and the contractor paid them \$15/hour for the entire 50 hour, when payment should have been made at 40 hours @ \$15/hour and 10 hours @ \$22.50/hour for a total of \$825.

Code 3

A code 3 violation is issued when the contractor paid the employee under a classification which the employee did not work or paid him under a classification even when he worked under a different higher classification all or part of the time. If the contractor chooses to carry the employee in the highest classification that he/she works, for the entire pay period then that is OK, but if an employee works in a higher classification than what he is listed, then a payroll violation has occurred, regardless of whether the employee is paid enough to cover that classification or not.

Code 4

A code 4 violation is issued when the contractor is paying an employee less than the approved rate on the wage classification for the type of work the employee is doing. It could also result from using the wrong general wage decision. If the wrong numbers were inadvertently applied to the contract from a wrong general wage decision then wages would be off for certain classifications if not all.

Code 5

A code 5 violation is issued when mathematical errors on the certified payroll indicate that the payment made to an employee violated federal labor laws and/or contract provisions. This could be a simple mathematical error, applied by human input and resulted in the wage of an employee not being calculated properly. An example would be if the employee was inadvertently paid for 4 hours instead of 14 hours in a certain classification.

Code 6

A code 6 violation is issued when deductions made to an employee's paycheck were not previously approved, either by the USDOL if that applies or by the employee for deductions that are more personal in nature.

Code 7

An employee that was interviewed on the job does not show up on payroll for the date that he/she was interviewed. (A discrepancy has occurred with the Employee interview and the Payroll). Any violation that is not listed above.