

CHAPTER 6

WAGES AND PAYROLLS

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Section 6.1

GENERAL INFORMATION

6.1.1 Purpose

Contractors that perform work on Davis-Bacon Act (DBA) covered projects must pay wages in accordance with those predetermined by the Secretary of the United States Department of Labor (USDOL). This chapter of the workbook offers guidance and information surrounding the requirements of payment of predetermined wages, record keeping and overtime requirements. Contracting agencies must monitor and keep records of payments to employees as required by law.

Additionally, this chapter provides a uniform process for reviewing and processing contractor payroll submittals, conducting labor interviews, issuing violations and adding wage classifications to the contract. As applicable, information concerning other labor laws and regulations is also provided.

6.1.2 Scope

Contract wage requirements are included in every federally funded FDOT construction contract award of \$2,000 or more. These requirements apply to the prime and every level (tier) of subcontract, regardless of the amount of the subcontract.

The “government contract acts” (Davis-Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act) regulate: payment of wages, record keeping and reporting, and overtime pay respectively on these contracts. Compliance with these “government contract acts” is enforced on a day-to-day basis by the FDOT, as the contracting agency.

FDOT contracts which require compliance with the “government contract acts” include Special Provision Sub-article 7-1.1 which invokes the FHWA 1273, “Required Contract Provisions- Federal Aid Construction Contracts.” Also included in the Special Provisions of these Federal Aid contracts is Sub-article 7-16, “Wage Rate for Federal Aid Projects” which specifies the wage table(s) applicable to the specific contract. All FDOT contracts include Standard Specification 7-1, which requires adherence to all applicable laws; (federal, state and local).

Guidance for FDOT’s in-house procedures for monitoring this area of compliance is contained in the latest version of the Construction Project Administration Manual (CPAM).

6.1.3 State and Federal Minimum Wage

All FDOT projects are governed by the Fair Labor Standards Act (FLSA) which requires a minimum wage, overtime pay, and child labor standards be met. FLSA is enforced directly by the USDOL.

The State of Florida has a minimum wage law for hours worked in Florida. This rate is reviewed annually for adjustment with a new rate typically in effect January 1 of each year.

State and Federal minimum Wages are summarized in Table 6.1.3.1

Table 6.1.3.1			
State of Florida and Federal Minimum Wages			
Florida Minimum Wage		Federal Minimum Wage	
Effective Beginning:	Hourly Minimum	Effective Beginning	Hourly Minimum
January 1, 2013	\$7.79		
January 1, 2012	\$7.67		
June 1, 2011	\$7.31		
January 1, 2010	\$7.25		
		July 24, 2009	\$7.25
January 1, 2009	\$7.21		
		July 24, 2008	\$6.55
January 1, 2008	\$ 6.79		
		July 24, 2007	\$5.85
January 1, 2007	\$ 6.67		

Florida’s minimum wage law applies to workers on all FDOT construction projects; federal-funded and state (Non-FAP) 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 must be paid.

Compliance personnel on FDOT federally funded construction projects will issue a Notification of Payroll Violation (Form 700-010-59) for a code 4 violation (hourly rate paid is less than minimum authorized) in the event workers are paid less than Florida’s minimum. If that violation is not resolved within 20 days of the Notification a Performance Deficiency letter will be issued and the monthly estimate will be held. The State Attorney General’s office will be informed of the contractor’s failure to correct the underpayment of Florida’s minimum wage.

6.1.4 Requirements

The following elements comprise the contractor's responsibility involving wage compliance for Federal Aid contracts:

In addition to the following, the prime contractor, as outlined in 6.3 Requesting Additional Wage Classifications, must request approval of classifications and wage rates for classifications of work not covered by the applicable wage determination(s).

Reporting and Recordkeeping – Contractors must submit weekly-certified payrolls and statements of compliance as required. Payrolls and basic records relating thereto shall be maintained by the contractor/subcontractor during the course of the work and preserved for three years following the project's completion date.

Overtime Payments – All overtime hours (all those over 40 in a workweek) shall be paid at rates no less than 1.5 times the employee's basic rate of pay. Contractors are required to pay "laborers or mechanics" overtime for any hours over 40 in a workweek.

Deductions – Pursuant to the Copeland Act, any deduction from employee's pay must meet specified requirements and the contractor/subcontractor must request and receive USDOL approval for payroll deductions unless such deductions are specifically listed as not needing such approval (see Table 6.5.3.1 for listing). Deductions from employee pay must conform to the requirements of the Copeland Act, including documented approval where required.

Section 6.2

Wage Determinations

6.2.1 Purpose

General Wage Determinations (also known as wage tables, wage decisions, or WDs) are the document(s), which contain predetermined wages set by USDOL. They may or may not contain fringe benefits in addition to the basic rates of pay for individual classifications. Once assigned to a contract, this WD(s) will not change for the life of the contract, unless major changes happen to the scope of the contract work.

One contract may include multiple Wage Decisions based on the type of work, the location/county of the work, and certain critical contract dates.

If a contract is not awarded within 90 days after the bid letting (i.e., bid opening) then the most current modification of the Wage Determination will be applied to that contract, unless USDOL has granted the specific contract an extension to this 90 day rule.

If an incorrect wage determination has been incorporated in a contract, the valid wage determination will be incorporated retroactive to the beginning of construction through supplemental agreement or other method as specified by FDOT or Local Agency.

6.2.2 Types of Wage Determinations

Wage Determinations will carry a title, which identifies the state, year and number of the WD.

For example:

“General Wage Decision Number FL020001”, FL – state, 02 – year and 0001 is the number signifying the area the table is effective and the type of construction that it covers. In this case 0001 is Building Construction for Dade County.

There are four (4) major types of construction addressed on these WDs. They are:

Highway – this is used for most of FDOT’s projects. It includes the construction of roads, small bridges, bridges not over commercially navigable waterways, taxiways in airports, parking lots which are not incidental to building construction, and storm sewers/drainage work which are incidental to road construction.

Heavy – this category is one of a “catch all” nature. It includes those types, which are not covered by the other three categories. FDOT projects, which contain these, are mostly large marine bridges over commercially navigable waterways and sewage treatment plants for rest areas. Other examples of this type of construction are dams, powerhouses, railroad construction, and tunnels.

Building – covers most any building structure except those that are residential in nature that are 4 stories or less.

Residential – includes construction of all single family or apartment buildings designed which are not over 4 stories high.

Note that in the above definitions, the examples given for the types of construction are only some of the examples given by United States Department of Labor ('USDOL'). Sometimes when other types of construction are encountered, a decision is required by USDOL to determine the proper wage table(s) for the project.

Questions pertaining to the applicability of any wage determination should be directed to the District Contract Compliance Manager and the Prevailing Wage Rate Coordinator (PWRC). If necessary the PWRC will contact USDOL for guidance.

6.2.3 US Dept of Labor Wage Determination

Three of the most common rules experienced in determining which Wage Determinations and modifications apply to a specific contract are summarized in Table 6.2.3.1.

Table 6.2.3.1 Common US DOL Rules Guiding Wage Determinations

Referred To As:	Description
Ten (10) Day Rule	Guides the specific Publication Date & Modification Number for a contract's Wage Determination. The most current version (modification) of the wage table(s) (specified in the contract special provisions) is "locked in" at a date 10 days before the letting date. For example, if a wage table is modified by USDOL with a publication date that is 10 calendar days before the letting date for the project, then that is the correct version to use. If it is modified with a publication date 9 calendar days or less, before the letting, then the previous version would be used.
Ninety (90) Day Rule	Guides the specific Publication Date & Modification Number for a contract's Wage Determination. If a contract is not awarded within 90 days after the bid letting (i.e., bid opening) then the most current modification of the Wage Determination will be applied to that contract, unless the USDOL has granted the specific contract an extension to this 90 day rule.
20% and /or \$1Million	Guides the incorporation of which Wage Determinations apply to a contract. Additional Wage Determinations delineating rates and fringes for specific types of construction (e.g. heavy, building, dredging, etc.) are required if the specialized costs comprise at least 20% of the total construction cost OR totals at least one million dollars. If such work is less than 20% of the total construction cost <u>and</u> will cost less than \$1 million dollars, they are considered incidental to the primary type of construction and a separate wage determination is not applicable. Examples: \$6 million roadway construction project includes the construction of a building at the side of the roadway "A" building construction is \$1 million. A Building wage determination is required because although building construction is 16.7% of the total, the cost is \$1 million. "B" building construction is \$750,000. A building wage determination is not required because the building construction is 12.5% and under \$1 million.

6.2.4 Fringe Benefits Required in Wage Determination

A Wage Determination ('WD') may contain two separate requirements for any individual classification: 'Rates' and 'Fringes'.

'Rates' refers to the minimum monetary wage and 'Fringes' refers to minimum payments for a bona fide fringe benefit.

Contractors may fulfill the total wage requirement for a classification by paying cash and bona fide fringe benefits in a variety of combinations. Refer to Workbook Section 6.8 for information on Fringe Benefits.

6.2.5 Posting Requirements

The prime contractor is required to ensure the project's Job Site Bulletin Board(s) display the following items:

- (a) The correct Wage Determination(s) (WD). The WD posted on the bulletin board must be the same WD cited in the contract. WDs are obtained from the FDOT Construction Office website.
- (b) Classifications added by the request procedure. When additional classifications are approved by USDOL for the WD utilized on a project, those classifications are to be listed on FDOT form 700-010-67 "Additional Federal Wage Rate Decision Poster". This form is to be posted on the project bulletin board
- (c) The 'Important Wage Rate Information' poster. This poster is obtained from the FDOT Equal Opportunity Office website (see Section 1.4)

Section 6.3

Requesting Additional Wage Classifications

6.3.1 Purpose

Requesting an additional wage classification is the process which allows a classification to be added to a Wage Determination (wage table) on a project-by-project basis. USDOL refers to this request as a 'conformance'.

When a classification is approved it is only valid for the particular project on which it was requested. Blanket coverage to other projects is not allowed by current regulations.

Requesting additional wage classifications is a process which is required when the wage table(s) assigned to a project does not include classifications needed to perform the project's work.

USDOL provides guidance on conformances in their U.S. Department of Labor Prevailing Wage Resource Book, section on DB Conformances.

6.3.2 Requirements and Process

It is the prime contractor's responsibility to submit additional classification requests for their firm and all subcontractors on the project. Form No. 700-010-07 (Additional Classification-Request Form) is provided for this purpose and it is available on the FDOT Forms and Procedures website (see Section 1.4). Contractors may recreate this form to expedite filling out required information and making it compatible to email. The file may be MS Excel, MS Word, or an Adobe PDF. However, all information and general appearance of the form must be similar.

To submit an additional classification request the prime contractor should scan and email (or fax or send by US Mail) the form to the FDOT Prevailing Wage Rate Coordinator (PWRC), with a copy to the project Resident Compliance Specialist. The PWRC evaluates the request and issues a letter to the contractor with a copy to the DCCM (District Contract Compliance Manager) advising whether or not the State Construction Office agrees with the submitted request. If appropriate, the request, the PWRC's letter, and the WD(s) for the project are submitted to USDOL for a decision. It is important that all information on the form be clear and legible and that the contact name, e-mail address and phone number are correct in the event that questions arise. E-mail submission is preferred as that method creates a documented record and allows rapid response for questions and clarifications.

Upon receiving a response from the USDOL, the PWRC sends a letter noting the USDOL action to the contractor and the DCCM.

The DCCM is responsible for forwarding a copy of this transmittal to the project's Resident Compliance Specialist.

It is the contractor's responsibility to post any added wage classifications and rates on the project. The Additional Federal Wage Rate Decisions (Form No. 700-010-67) is provided to make posting this information on the project bulletin board easier. The final approval letter issued by the PWRC (and the copy of the USDOL response letter) for each classification is sent to the contractor and must be kept by the contractor in the project files for verification of those posted rates.

Additional classifications are not needed for apprentice's enrolled in bona fide apprentices programs. An additional classification request is not needed for enrollees in the FDOT OJT program unless the training classification is not specified on the WD. In such cases, the journeyman's rate is to be requested for the classification where OJT will occur. Apprentices or trainees rates will be specified in the apprentice or training program document approved by the Florida Department of Education.

6.3.3 Wage Payment while Awaiting Additional Classification Decision

Contractors are to make every good faith effort to submit and obtain Additional Classification decisions prior to the time when such workers will appear on the project.

If an "Additional Wage Classification" has been requested, but a response has not been received, the contractor may include the additional classification on the certified payroll and pay at least the minimum amount indicated in their request documentation.

Once the wage decision of the US Department of Labor has been received, the contractor must retroactively make any pay adjustments if the rates approved are greater than the rates paid to employees in that classification. In the event the response indicates that the work is included in that of an existing classification, the contractor is to begin immediately using the indicated classification and must retroactively pay any difference in rate resulting from this decision.

The contractor will be given 20 days of the notification from FDOT of the USDOL approved wage rate of a classification to make retroactive pay adjustments if needed, as well as submit corrected payrolls and documents evidencing payment to employees. If these adjustments are not made within this timeframe, payroll violations will be issued.

6.3.4 Directions for Completing the Additional Classification Request Form (Form No. 700-010-07)

General: This form is completed by the prime contractor to request a wage rate for classifications of work not listed on the Wage Table(s) assigned to a project. The classifications requested include those of the prime and all subcontractors. Up to three

(3) classifications can be requested on one form if they relate to the same contract/project and the same General Decision.

Prime Contractor Information: The name and address of the prime contractor is to be shown along with a phone number and e-mail address. This will be the address to which all correspondence relating to the request will be mailed.

Date: This should be the date on which the request is submitted. The address shown below the date is the mailing address if the US Mail must be used for submission.

Project Information: The financial project number, federal aid project number, and contract number are important to properly correlate the request with FDOT's internal tracking systems. The letting date and award date are used to assure the proper assignment of the appropriate wage table or general decision. The county is also used in the assignment of the wage table. The general decision number and publication date are the specific identifiers of the wage table to be used (the general decision number is shown in Special Provision 7-16 of the contract). All of the project information is shown in the contract document. Failure to show correct information may result in the form being returned for correction.

Classification Details: The form allows for the submission of up to three classifications, as long as they fall under the same contract and general decision number (some contracts include more than one General Decision Number – requests under more than one general decision number must be submitted on separate forms). The classification title and classification description should be shown in the terminology generally used within the industry. If the classification is similar to an existing classification, the description should include information that distinguishes the requested classification from the existing one. The suggested hourly rate of pay is the rate the contractor proposes to establish as the minimum for the requested classification. This rate must be consistent with the wage rates shown in the assigned general decision number; otherwise the FDOT will recommend a higher rate when the request is forwarded to USDOL.

Signature Block: The prime contractor's representative should sign here and include the printed name. The signature need not be the original signature (as this form is normally submitted electronically). If questions arise, this will be the person to whom the questions will be directed. This will also be the name that appears on correspondence addressed to the prime contractor listed at the top of the form.

Section 6.4

Employee Labor/EEO Interviews

6.4.1 Purpose

To fulfill the contracting agency's (FDOT) requirement to monitor payments made on federal aid construction projects, the following procedures have been developed for interviewing employees for proper classification, wage payment, and equal employment opportunity purposes.

6.4.2 Overview

The Employee Interview Report - Labor/EEO Compliance (Form No. 700-010-63), is provided to document interview results of a cross section of employees based on the dollar amount of the contract. Interviews are conducted monthly on a random basis and interviews are sought on a wide range of laborers and mechanics for labor and EEO compliance criteria. "Laborers and mechanics" is a general term used to mean all construction employees on the project performing labor or craft work as opposed to managerial or technical work. Note: For EEO purposes, other personnel such as foremen working on the project should be interviewed.

6.4.3 Monthly Interview Requirements

Representatives of FDOT and other agencies may interview employees to affirm compliance with requirements. Contractors and subcontractors are required to ensure that employees are available for interviews on the project during work hours.

The Resident Compliance Specialist ensures that the required minimum numbers of Labor/EEO interviews, based on the contract's dollar amount, are completed each month on a cross-section of active contractors and a diversity of workers. Table 6.4.3 summarizes the minimum number of monthly interviews. Additional interviews above the minimum may be conducted.

Data collected in interviews is compared to certified payroll records, EEO data and other compliance-related information to evaluate compliance. The Resident Compliance Specialist takes action to resolve discrepancies identified during interviews. Actions which may be taken include, but are not limited to: issuance of payroll violations, notices of noncompliance, obtaining copies of payroll checks, copies of EEO-related records, etc.

Table 6.4.3
Minimum Number of Monthly Employee Labor/EEO Interviews

Original Contract Amount	Required Minimum Number of Interviews per Month
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

Section 6.5

Payrolls

6.5.1 Purpose

On federal aid construction projects, certified payrolls are necessary to meet the requirements of the Copeland Act. The certified payrolls serve as a means of ensuring and documenting that workers are paid according to the Wage Decisions (WD) assigned to the contract and that deductions from earnings are in accordance with the Copeland Act.

6.5.2 Payroll Reporting Requirements

Each contractor and subcontractor shall furnish to the project's Resident Compliance Specialist a certified payroll for wages paid each of its employees assigned to the project during the preceding weekly payroll period. The prime Contractor is responsible for the submission of certified payrolls by all subcontractors. The certified payroll includes the Statement of Compliance and the payroll records.

The payroll includes wages paid to "Laborers and Mechanics" (i.e., workers whose duties are manual or physical in nature including those who use tools or perform the work of a trade), apprentices, trainees, watchmen and guards. Wages paid to workers who perform no manual or physical work on the construction project and whose primary duties are administrative, executive or clerical, are not included on certified payroll records. Architects, engineers, timekeepers, administrative staff, surveyors, quality assurance staff, and inspectors are excluded on project certified payroll records.

Payrolls are due for every week in which any contract work is performed. The Resident Compliance Specialist is to receive each certified payroll within (7) seven calendar days of the regular payment date of the payroll. Upon request, contractors will provide the day of the week their employees are paid.

The payroll record of employees is to include: full name, work classification(s), hourly rate(s) of wages paid, daily and weekly number of hours worked on the project, gross wages on the project (and those of all projects), fringes paid/received, the amount and purpose of each deduction(s) made, and actual net wages paid. FDOT additionally requires the race and sex on payroll records. See Table 6.5.2 for race and sex abbreviations.

On contracts let on or after January 19, 2009, the employee's address should not be reported and a 4 digit employee identifier will be recorded instead of the nine digit social security number.

Contractors may make corrections to their payroll records by striking-through and initialing each correction; white-out is not acceptable.

Table 6.5.2 Race and Sex Abbreviations	
Sex & Race Categories	Accepted Abbreviations for FDOT Reporting Purposes
Male	Male M
Female	Female F Fem
White (Not of Hispanic Origin)	White W Wh C Ca
Black (Not of Hispanic Origin)	Black B Bl
Hispanic	Hispanic H Hisp
American Indian or Alaskan Native	American Indian or Alaskan Native, AI-AN Amer Ind -Ala Nat
Asian	Asian As
Native Hawaiian or Other Pacific Islander	Native Hawaiian or Other Pacific Islander Nat Hi/PI HI/PI HI-PI
Two or More Races(not of Hispanic origin)	Two or More Races Two/More 2+

6.5.3 Deductions

The primary purpose of FDOT’s review of payroll deductions made for employees on federal construction projects is to ensure that there is no violation of the Copeland “Anti-Kickback” Act. The Copeland “Anti-Kickback” Act prohibits federal contractors or subcontractors engaged in construction from inducing an employee to give up any part of the compensation to which he or she is entitled to due to their employment and requires such contractors and subcontractors to submit weekly statements of compliance. Contractors are to maintain records documenting deductions and the employee’s consent or acknowledgment of deductions. Payrolls are required to show deductions in sufficient detail that allows compliance personnel to evaluate whether the deduction is subject to USDOL approval.

Table 6.5.3.1 summarizes, from the Copeland Act, deductions which are generally allowed without application to, or permission from, the U.S Department of Labor. Contractors are required to request U.S. Department of Labor permission before taking any deduction which does not fall within these parameters or which may questionably fall within these parameters.

Table 6.5.3.2 summarizes, from the Copeland Act, the four criteria which the US Dept. of Labor considers in granting contractor permission for other deductions. All four criteria must be satisfied for the granting of permission.

Generally administration fees, interest, or any profit taken on deductions is not allowed by the employer. Employee loans through a bona fide third party (such as a credit union, profit sharing trust fund, etc) may include interest and fees charged by that third party. In short, the employer may not benefit financially from the loan of money to an employee nor may they impose an administrative fee. Court ordered garnishments including a minimal processing fee payable by the employee and/or employer are allowed.

Deductions for personal use of cell phones and use of company vehicles require the permission of USDOL and must meet the criteria stated in Table 6-5-3-2. Contractors requesting USDOL permission for such deductions should provide additional information to address their compliance with the requirements.

Collective bargaining agreements which include deductions for dues or an identified fringe benefit do not require USDOL approval unless the purpose of a deduction is not identified or the deduction is for a 'union working assessment'.

Child support or other court mandated deductions may allow the contractor to deduct an administrative fee, but only if specified in the order. The following is general guidance on some common deductions:

Uniform Rental Deductions: These deductions must be approved by the Department of Labor. A copy of the deduction approval letter shall be sent to the Prevailing Wage Rate Coordinator for input into the BIZTRAK system.

Garnishment: A court ordered garnishment order shall be in the contractor's payroll files and be made available to the FDOT upon request.

Loans/Pay Advances: Any loan or pay advance to employees by the contractor/subcontractor requires a signed authorization by the employee for the deductions. A new deduction requires a separate authorization. USDOL approval is not required.

Table 6.5.3.1	
Deductions Generally Allowed without Contractor Application to or Permission from the US Department of Labor	
A	Federal, State income withholding tax; social security taxes
B	Amounts required by court order, such as child support payments
C	Repayment, without discount or interest, of employee advances or loans
D	Contributions to funds for medical or life insurance, retirement funds or pensions
E	Purchase of US savings bonds
F	Deductions for charitable organizations such as Red Cross, United Way
G	Automatic payroll deposits to a Credit Union
H	Union initiation fees and membership dues
I	Purchase of safety equipment of nominal value when such equipment is not required by law to be furnished by the employer
J	Reasonable cost of board, lodging or other facilities, when such meets the specific requirements of the Fair Labor Standards Act, Part 531 and special records are kept;
K	Transportation to and from the place of employment

Table 6.5.3.2	
Four Criteria Required by US Dept. of Labor in Granting Permission for Other Deductions (Satisfaction of all 4 Criteria is Required)	
1	The contractor, subcontractor or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend or otherwise, and;
2	The deduction is not otherwise prohibited by law, and;
3	The deduction is either:
A	Voluntarily consented to by the employee and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining employment or its continuance –or-
B	Provided for in a bona fide collective bargaining agreement between the contractor and the representatives of its employees, and;
4	The deduction serves the convenience and interest of the employee

6.5.4 Requesting US Dept of Labor Permission for Deductions

Contractors are responsible for requesting U.S. Department of Labor permission for deductions which do not fall within the parameters of those deductions generally allowed without USDOL permission (see Table 6.5.3.1.) This permission is to be obtained before taking the deduction.

Permission is generally granted for a period of one (1) year. Retroactive permission is occasionally granted and it is documented accordingly in the USDOL approval.

Submit signed deduction permission requests on company letterhead and include a copy of any previous approval granted for this deduction. Address the request to:

U.S. Dept. of Labor, Wage & Hour Division
Division of Enforcement Policies & Procedures - Rm. # S3006
200 Constitution Avenue, N.W.,
Washington, D.C. 20210,
Attn: Mr. Timothy J. Helm, Government Contracts Team

The contractor's proposed deductions should comply with all of the criteria stated in Table 6.5.3.2 and the letter should specifically state that their request:

“Complies with the provisions as set forth in Department of Labor Regulations, 29 CFR Part 3.6. These requirements are: (1) the contractor or any affiliated person does not make a profit or benefit directly or indirectly from the deduction, (2) the deduction is not otherwise prohibited by law, (3) the deduction is voluntarily consented to by the employee in writing and such consent is not a condition of employment or the deduction is provided for in a bona fide collective bargaining agreement, and (4) the deduction serves the convenience and interest of the employee.”

USDOL tries to respond to these requests within 30 days.

6.5.5 Overtime

Overtime is the payment of 1.5 times the basic rate of pay for any hours worked in a workweek over 40. In addition to OT requirements for DBA covered employees, there is also a requirement for OT pay for night watchmen and guards.

Payment of overtime is required for covered employees on federally funded projects over \$100,000.00 by the Contract Work Hours and Safety Standards Act. Those federally funded projects under \$100,000.00, as well as state funded projects, have overtime requirements for covered employees under the Fair Labor Standards Act.

Overtime payments are based on time actually worked (including break periods but not lunch) and cannot include holiday, vacation or other time paid but not worked.

6.5.6 Classifications

The payroll record is to reflect the employee's classification of work as listed on the Wage Determination (WD) or on the additional wage determination.

The payroll record should state the employee's classification title as listed on the wage decision. If classifications are abbreviated on the payroll, and the relationship to the titles on the wage decision is ambiguous, the contractor may be required to submit a letter stating to which classification on the wage decision the abbreviation is referring.

Semi-skilled is an EEO Category which includes several individual classifications; it is not a job classification. Refer to Table 3.4.5 for specific semi-skilled job classifications which must be shown on the payroll, if applicable.

A person working as a welder should be classified in the classification to which welding is incidental (example: Welder-Reinforcing Iron Worker) on the payroll record.

Enrollees in the FDOT On-the-Job Training program (See Chapter 5: On-the-Job Training) may be paid at the common or general laborer rate stated in the wage determination for training hours. If the trainee is not paid at least the minimum of the classification, "Trainee" must be added to classification title on the payroll (note that this may only be done when the individual is properly enrolled in the OJT program).

6.5.7 Work in More than One Classification

When an employee's work on a project includes more than one classification during a payroll period, the contractor has two alternatives for wage and payroll compliance:

Note: In the following examples, only applicable portions of the payroll record are shown; the examples are not complete payroll records.

A. Hourly rate varies and classification of work varies.

Pay the employee varying amounts based on work performed, provided that the hours worked in each classification are documented and the hourly rate paid is at least the minimum rate for each classification.

The Certified payroll reflects each work classification, hours worked in each, and rate paid for each.

Example:

General Decision Number FL 2003xxxxx											
		CLASSIFICATION		RATE		FRINGE					
		Truck Driver Mullti Rear Axle		\$8.88		-					
		Unskilled Laborer		\$7.77		-					
NAME	WORK CLASSIFICATION	HOURS WORED EACH DAY ON THIS PROJECT							TOTAL HOURS	RATE OF PAY	GROSS
		S	M	T	W	Th	F	Sa			
		4/4	4/5	4/6	4/7	4/8	4/9	4/10			
DLEX, JOE	Unskilled Laborer		8	8		2	8		26	\$ 7.77	\$202.02
	Truck Driver Multi rear axle				8	6			14	\$ 8.88	\$124.32

If an employee's work during one pay period is covered by more than one Wage Decision (e.g. Highway- county X and Highway- County Y OR, Highway and Heavy) and the contactor wishes to vary the rate of pay, then the payroll record must additionally include a notation as to which WD applies to which classification, days and hours of work.

B. Hourly rate and reported classification is unchanged although work varies.

All hours worked by the employee are paid at one rate which is equal to or greater than the minimum rate of the 'highest classification of work'. The 'highest classification of work' is the classification which the employee worked in which has the highest minimum wage on the Wage Decision.

The actual rate paid is equal to or higher than the minimum for each classification worked in.

The Certified payroll reflects the highest classification of work, hours worked each day, and the one rate applied to all work.

General Decision Number FL 2003xxxxx		
CLASSIFICATION	RATE	FRINGE
Truck Driver Mullti Rear Axle	\$8.88	-
Laborer	\$7.77	-

NAME	WORK CLASSIFICATION	HOURS WORED EACH DAY ON THIS PROJECT							TOTAL HOURS	RATE OF PAY	GROSS
		S 4/4	M 4/5	T 4/6	W 4/7	Th 4/8	F 4/9	Sa 4/10			
DLEX, JOE	Truck Driver Multi rear axle		8	8	8	8	8		40	\$ 8.88	\$355.20

6.5.8 Working Foremen/Women

Working Foremen/women are those employees who, while having some supervisory duties, also engage in "hands-on" construction craft and laborer work. The time that a working foreman expends in the construction craft or laborer work is subject to the Davis-Bacon Act provisions provided:

- (1) The employee does not qualify as an exempt executive (as defined in Part 541 of 29 CFR);
- And (2) Twenty percent or more of the pay period involves construction craft or laborer work.

The payroll record of a working foreman includes the designation of Foreman plus the craft or laborer classification worked in (i.e. "Foreman-Carpenter"). The Working Foreman/Woman is to be paid at least the minimum rate listed in the Wage Determination for the hours spent working in the specific classification.

If a working foreman works overtime hours in a craft or laborer classification, the wage paid for those overtime hours must be at least equal to time and a half (1.5) of the 'Rate' specified for that classification on the project's Wage Determination. If it is less, additional pay is due for each of the overtime hours.

A working foreman's hourly rate for a craft or laborer classification is calculated as follows:

Weekly Pay rate divided by 40 hours=equivalent hourly rate EXAMPLE:

A Working Foreman/Carpenter's weekly pay is \$600.00 per week; the hourly rate is \$15.00 (\$600.00/40 hours). The wage decision for Carpenter is:

General Decision Number FL xxxxx		
CLASSIFICATION	RATE	FRINGE
Carpenter	\$10.00	-

If overtime hours are incurred while working as a carpenter, this Working Foreman must earn at least \$15.00 per hour (1.5 times the carpenter's 'rate' of \$10.00). This employee's hourly rate equals the time and a half rate, so no additional pay is required. If the employee's hourly rate was less than \$15.00 then additional pay would be required for each overtime hour to equal the time and a half rate of the carpenter.

6.5.9 Independent Contractors

Occasionally, a contractor will have a person perform work on a project and that contractor will report that the person is an independent contractor and not an employee. Generally, a person cannot become an independent contractor just because he or she wants to be or because an employer prefers them to be. It is not enough that the employee and the employer agree.

Independent contractors are a legitimate resource in highway and bridge construction projects. The Department's concern is to ensure that such is not being falsely claimed in order to circumvent taxation, workers compensation and or prevailing wage requirements.

The U.S. Dept. of Labor and the U.S. Supreme Court have indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee.

FDOT may advise the contractor of apparent violations and will rely on the determination of investigators from Internal Revenue Service, the U.S. Dept. of Labor, etc., for a determination as to the validity of the reported status.

The U.S. Dept. of Labor Fact Sheet #13, (Employment Relations under the Fair Labor Standards Act) offers additional insight as well as various Internal Revenue Service documents. The fact sheet is available at the U.S. Dept. of Labor website (Section 1.4).

The work of independent contractors is to be authorized for the project through a Sublet or Rental Agreement. All subcontractor compliance reporting requirements apply to

independent contractors (see Section 1.7 Compliance Requirement Summary) including submission of certified payrolls reflecting hours worked on the project and classification of work.

Owners of independent contracting businesses who themselves perform the work of a laborer or mechanic on DB-covered jobs may be exempt from the prevailing wage requirements. To qualify as an exempt owner, a 20% bona fide equity interest must be held and the individual must participate in management of the business. To establish eligibility for this treatment, the owner must file a statement with the FDOT attesting to their ownership interest and management activities within their organization. This must be filed with a signature on each job where the business owner performs manual or physical work at the job site. Additional documentation may be requested for verification and verification may be done by the U.S. Dept. of Labor. After this statement is filed, for each week where the business owner works at the job site, the certified payroll should show their name and four (4) digit identifier, but the remaining information need not be shown, just a notation, "Owner – 541 Excluded". This treatment will be accorded only to bona fide business owners.

6.5.10 Truck Owner-Operators

An owner-operator of a truck is one who owns and drives their own truck. The operation of trucks by owner operators may be authorized for the project through a Sublet Agreement, Rental Agreement, or Purchase Order. Truck owner-operators are not routinely subject to EEO Reporting however they are subject to complying with FDOT's non-discrimination requirements and an 'abbreviated certified payroll' is required.

The abbreviated certified payroll of a truck owner operator includes their full name and the notation 'owner-operator'. None of the other data items (hours, rate, deductions, etc) required on a certified payroll is shown.

Contractors are responsible for insuring accurate reporting of all such operators on federal aid or federally assisted projects. It is acceptable for the prime or subcontractor who engages the owner operator to list the truck owner operator on their certified payroll provided they have (1) acquired and retained documentation attesting to the operator's ownership of the truck and (2) have a valid basis for assuring that only the owner is operating the truck on the specific project.

This basis may be established contractually (subcontract specifies that only the owner may drive the truck on the specific project), or with an affirmation statement signed by the owner of the truck, or through process controls where the operator of the truck is verified and documented for each load. Documentation of this valid basis is subject to verification. It is to be retained by the contractor for a minimum of three years following FDOT final payment on the project.

Periodically, truck drivers who perform on-site hauling (refer to Table 1.7.4.1) are subject to job-site observations and verifications by representatives of FDOT or other agencies. The primary purpose of the Trucker's Observation and Verification (FDOT form 700-010-61 is to confirm job site authorization and eligibility for claiming owner-operator status (if applicable). The verification includes a review of Motor Vehicle Registration and the driver's license. A Trucker Observation and Verification may be conducted on any truck associated with the project in order to affirm that unauthorized firms are not operating on the project. Additionally, the data may be used to confirm DBE status of the truck.

A payroll violation is issued when it is determined that a driver does not actually own the truck they are operating on-site and they have previously been reported as a truck owner-operator. Correction requires submission of a certified payroll reflecting all required data elements and an hourly rate at least equal to that specified on the project wage table for the class of truck operated.

The work of truck owner operators may be authorized for a project through a Sublet Agreement or Rental Agreement. Truck owner-operators are subject to contract compliance reporting (refer to Workbook Section 1.7, Compliance Requirement Summary for details).

A specialized Trucker Observation and Verification is periodically conducted on owner operator truck drivers who perform on-site hauling to confirm job site authorization and eligibility for claiming owner-operator status.

The primary purpose of the Trucker Observation and Verification (Form 700-010-61) is to confirm that the driver qualifies as an "owner-operator" under the reporting requirements of the Copeland Act. Refer to Table 1.7.4.1, Subcontract and Rental Agreement Summary to determine which truckers may have a Trucker's Interview.

However, if as a result of the Trucker Observation and Verification, an improperly licensed driver is identified at the job site, the driver, prime contractor, Project Administrator and District Contract Compliance Manager will be notified. The prime contractor will be responsible for insuring improperly licensed drivers do not return to the job site until the proper operator's license is obtained as specified in state law.

6.5.11 Certified Payroll for Warranty Work

Some construction contracts include provisions for warranty work following the final pay-off of a project. A certified payroll is required for construction craft and laborer workers performing warranty work on FDOT federally funded contracts if the employee(s) spend more than twenty percent (20%) of their work week on the site of the original work. All certified payroll requirements associated with work during construction apply to the warranty work. The notification to the contractor regarding the necessary warranty work

will include reference to the requirement and instructions on where to submit the certified payrolls.

6.5.12 Time Frame for Submittal of Payrolls

Each week in which any contract work is performed; the prime contractor will submit to the FDOT Compliance staff the payrolls and signed Statements of Compliance within seven (7) calendar days after the regular payment day of the payroll period. The prime contractor is responsible to assure that all required payrolls are submitted for all subcontractors, rental companies (for agreements with operators), and temporary employment agencies performing work during the subject week.

6.5.13 Contractor's Retention of Payroll Records

Both FDOT and contractor have retention responsibilities for payroll records.

Payrolls and basic records relating to those 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.

6.5.14 Department's Storage and Retention of Payroll Records

Payrolls submitted by the contractor to the Department and associated payroll records shall be maintained by the Departments representative during the duration of the contract. After final pay to the contractor on the contract is made, the payroll records will be boxed and submitted to DOT Central Office Records Center. These provisions are governed under FDOT Procedure, Topic No.: 050-020-024.

Records in electronic format will be transferred to disk or USB drive for submittal to DOT Central Office Records Center.

6.5.15 Statements of Compliance

The Wage and Hour Record (form No. 700-010-69) has two required parts:

- 1 A Statement of Compliance which includes signature of the contractor or their agent who pays or supervises the payment of the persons employed under the contract,
- 2 The Wage and Hour Record or payroll record.

Optional additional pages are provided for more space in detailing employee deductions ('Deduction Report') and employee fringe benefits ('Fringe Report').

The Statement of Compliance may be retyped for the convenience of the contractor, but it must contain the exact words and sections of the original form. The Statement certifies:

1. That the payroll for the pay period contains the information required and that such information is correct and complete.
2. That laborer(s) or mechanic(s) (including apprentice and trainee) 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.
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage rate determination incorporated into the contract.
4. That the Contractor or subcontractor shall make the required records available for inspection, copying or transcription by authorized representatives of FDOT, the FHWA, and the US Department of Labor.

Notifications of noncompliance (Payroll Violations) are issued for payrolls which have errors, are not consistent with interview reports, or show inadequate payment of employees.

6.5.16 Directions for Completing Wage and Hour Form (700-010-69)

This form includes four pages: Statement of Compliance, Wage and Hour Record, Deduction Record, and Fringe Benefit Record. Computer generated payrolls should follow these same guidelines.

Directions for completing The Statement of Compliance

Date	Record the date this record is being submitted
Name:	Name and title of person signing the Certification
Contractor;	Name of the company for which the employees works
Building or Work	Identification of the project (the FDOT contract #)
Payroll Period	Day and month /year pay period begins Day and month/year pay period ends
Contractor	Name of the company for which the employees works

Description of Deductions:

Each deduction listed on the payroll should be listed in this area (the four blank lines after “and described below”), however, attaching a additional page listing the deductions and placing a phrase such as “see attached payroll for deductions” in this area is recommended in lieu of listing each one separately.

Box 4a, b, c

Complete these boxes if the Wage Determination (WD) for this project indicates a Fringe payment amount for classifications or if fringe benefits are being used to meet wage rate requirements even if the WD does not include fringes. Box 4(a) or 4(b) or both may be checked.

Box 4(a) is checked when a contractor pays fringe benefits to an approved plan, fund or program in amounts not less than were determined in the applicable wage decision. Any exception shall be noted in section 4(c).

Box 4(b) is checked to indicate a contractor is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in section 4(c).

Detailed fringe benefit information is required for those employees; this can be satisfied by completing the Fringe Benefit Record page of form 700-010-69.

Remarks
Name & Title
Signature

Include any data deemed appropriate
Name and title of person signing the Certification
The persons signature

Directions for completing Wage and Hour Record

- Column 1. All payroll records submitted shall contain the employee’s first and last names. On contracts let on or after Jan. 19, 2009, the employee’s address is not reported and a 4 digit employee identifier should be recorded instead of the nine digit social security number.
- Column 2. This column is for withholding exemptions, race, and gender.
- Column 3. Classification: Record the classification as it appears on the wage determination (WD) or on the additional wage rate request for the specific project. Semi-skilled laborer, helper, or operator (without designation of which type) cannot be used. If the classification listed on the payroll is not exactly as it appears on the WD, the contractor may submit a signed letter to clarify and to correlate the payroll classification to the WD.
- Column 4. Hours worked by day of week. Overtime hours are to be listed on the upper row, straight-time hours are to be listed on the lower row.

Column 5. Total hours worked on FDOT project (shown separately for overtime and straight –time).

Column 6. Rate Paid – Indicate the hourly pay rate for overtime on upper row and straight-time on lower row. Check the rate paid for the work classification against the wage determinations for the specific contract. The hourly rate for Fringes paid in cash may be shown in the straight time space as follows:



Column 7. Gross Amount Earned. On the top section, record the employee’s gross earnings on this project. On the bottom section, record the employee’s total gross earnings this pay period (includes this project, other FDOT projects and any other)



Column 8. Deductions: All deductions *must be* identified. The amount of each and every deduction shall be listed along with its description, including those not requiring USDOL authorization. (See Deductions Section 6.5.4).

Column 9 Net wages paid for week.

Directions for completing the Deductions Record

Record the contractor’s name, address, payroll number, pay period ending date, contract number, financial project number and project description/county.

Employee Name (last, first): Record the employee’s name as it appears on the ‘Wage and Hour Record

Type a ‘deduction description’ in each box and then record the amount of that deduction for each employee or leave blank. Do not mix deductions and benefits on the same form. Example

Employee’s Name	Loan	Uniforms	Medical-individual		Total Deductions Amount
Adams, Juan		\$8.00			\$8.00
Beser, Louis	\$25.00	\$8.00	\$34.00		\$67.00

Directions for completing the Fringe Benefits Record

Record the contractor’s name, address, payroll number, pay period ending date, contract number, financial project number, and project description/county.

Employee Name (last, first): Record the employee’ name as it appears on the ‘Wage and Hour Record.

Type a ‘fringe benefit description’ in each box and then record the amount of that Fringe Benefit for each employee or leave blank. Do not mix deductions and benefits on the same form.

Section 6.6

Notification of Payroll Violation

6.6.1 Purpose

Payrolls are to be promptly reviewed by the Resident Compliance Specialist and the contractor is to be advised of all instances of omissions, tardiness and violations.

6.6.2 Violation Types

The Resident Compliance Specialist issues a “Notice of Noncompliance” letter (see Workbook section 1.6) in the event:

- A. The contractor or subcontractor was active on a project and failed to submit a certified payroll for that week. A copy of the Daily Work Report may be attached as reference
- B. The certified payroll record is not received within seven (7) days of that company’s regular payment day of the payroll period.
- C. The Statement of Compliance is incorrect or incomplete.

A Payroll Violation (Form 700-010-59) is issued by the Resident Compliance Specialist when it is determined the certified payroll does not comply with the minimum wage requirements, that the submitted wage/payroll information is incomplete or erroneous, or unauthorized deductions were made. Phone calls shall not be placed in lieu of issuance of this form; however, phone calls may be used to determine the nature or character of an apparent violation to better assure that a correct action or response is taken.

Payroll Violations are identified by a code number. The payroll record of any one employee may reflect more than one violation. Table 6.6.2 summarizes the Violation Codes.

**Table 6.6.2
 Payroll Violation Codes**

Code	Description
1	Time and one-half rates were not paid for work performed in excess of 40 hours per week
3	Improper Classification: Employees observed assigned to work involving "higher" classifications than those shown on payroll listing.
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(s) violated federal aid labor provisions or the contract
6	Unauthorized payroll deductions
7	Other violation not listed above

6.6.3 Correction Requirements

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

FDOT staff may refer to the Construction Project Administration Manual (CPAM) (Topic No. 700-000-000) chapter 5.4.7 for the Notification of Noncompliance process.

Code 1 payroll violations require that an assessed violation penalty of \$10.00 per day plus additional gross wages due be withheld and formal notification to be sent to Federal Highway Administration. Monies withheld for wage differences shall be released to the contractor upon receipt of supplemental certified payroll and copies of contractor's canceled payroll check for the amount owed, with the affected employee's signature. The Division Administrator of the FHWA or his designee will make the decision regarding the release of penalty monies withheld.

Code 3, 4, 5 or 6 payroll violations require contractors to furnish to the Resident Compliance Specialist, within 20 calendar days, a certified supplemental payroll showing the payment restitution along with proof of payment made and received by the employee. The date upon which the Payroll Violation is received by the prime contractor is counted as day one (1) of the twenty (20) calendar day resolution period.

The payroll record reflecting correction of a violation, and its accompanying Statement of Compliance is referred to as a ‘Supplemental Payroll’. The Supplemental Payroll is to be reviewed by the Resident Compliance Specialist. If it substantiates correction of the cited violation, the Contractor will be considered to be in compliance and no further non compliance action is taken.

If the corrective action does not satisfy the violation cited or if a certified supplemental payroll is required and is not received within the (20) twenty days allotted, and/or is received and does not satisfy the infraction, then the Resident Compliance Specialist coordinates the Performance Deficiency Letter which withholds the Monthly Progress Estimate in its entirety and affects the final grade of the prime Contractor’s Past Performance Rating.

6.6.4 Processing Supplemental Payments when the Employee cannot be located

In the event the contractor cannot contact the affected employee, (e.g. moved and no forwarding address) the contractor is not relieved of the responsibility for payment. In these cases, payment in the amount owed the employee must be sent to the US General Accountability Office (‘U.S.G.A.O.’). The District Contract Compliance Manager (DCCM) coordinates collection of the payment and the required supporting documentation and makes the submission to USDOL, who in turn forwards it to USGAO.

The contractor will provide a payment document that has a minimum expiration period of 180 days,

Make check or money order payable to:

“First and Last name of Employee OR U.S.G.A.O”
(Example: ‘John Doe OR U.S.G.A.O’)

So that the USDOL can readily identify and make appropriate disbursements to the affected employees, the check should note the name of the contractor and the contract number for which the work was performed.

The contractor will also provide the employee’s social security number and last known address to the DCCM.

Documentation to accompany the check or money order is to include a cover letter from the DCCM on FDOT letterhead that will include contract information, contractor information, subcontractor information if applicable, and name, amount owed, social security number and last known address of the employee(s) to which payment is owed. A completed Standard Form 1093, a copy of the Contractor Noncompliance Notification and a copy of the Certified Payroll record(s) is to also accompany the check or money order.

Mail the check to:

Ms. Beverly Kitchen
U.S. Department of Labor
Wage and Hour Division
61 Forsyth Street, S.W., Room 7M40
Atlanta, GA 30303

Attachment 6.6.4.1
Standard Form 1093

**SCHEDULE OF WITHHOLDINGS UNDER THE DAVIS-BACON ACT (40 U.S.C. 276a)
AND/OR
THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C.327-333)**

TO THE CLAIMS DIVISION
U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Contractor or subcontractor charged
with violations

Prime contractor

Contract No., (Date)

Report concerning irregularities transmitted to--
....., (Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are withholdings pursuant to the following laws:

Davis-Bacon Act \$

Contract Work Hours and Safety Standards Act \$

Total \$

Forwarded herewith is check No., dated

for \$

.....
(Disbursing officer or other administrative official)

Standard Form 1093
October 1971
4 GAO 46

Section 6.7

Wage Surveys

6.7.1 Purpose

Wage surveys are the means with which the USDOL gathers information to update the WD's prevailing wage rates.

6.7.2 Requirements

Wage surveys will be conducted when the U.S. 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 Contract 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.

6.7.3 Data Collection

USDOL will provide the forms and assemble the data when collected. Instruction will be given by USDOL and/or FDOT to help guide contractors through the survey process.

Section 6.8

Fringe Benefits

6.8.1 General Information

A Wage Determination ('WD') may contain two separate requirements for any individual classification: 'Hourly Rate' and 'Fringe Rate', the sum of which is the 'prevailing wage' for the classification. 'Rate' refers to a monetary wage and 'Fringe' refers to payments for a bona fide fringe benefit.

Contractors may meet the prevailing wage requirement for a classification by paying combinations of cash and bona fide fringe benefits:

- Paying the sum in cash
- Paying cash and making or incurring cost for 'bona fide' fringe benefits
- Any combination of the above

Under the Davis-Bacon Act, monetary wages paid in excess of the specified 'Rate' may be used as an offset or credit to satisfy fringe benefit obligations. Likewise, excess Fringe benefits may be used to satisfy the specified Rate provided the governmental minimum wage is honored in cash.

Where excess fringe benefits are used to offset the Rate, an employee's overtime pay of time-and-a half must be based on at least the 'Rate' specified.

6.8.2 Fringe Statements on Wage Determinations

The WD may state the Fringe for a specific classification in a variety of ways:

General Decision Number FL xxx xxx			
Fringe stated as:	CLASSIFICATION	HOURLY RATE	FRINGE RATE
Dollar amount per hour	Loader	\$12.00	\$2.00
Percent	Driver	\$12.00	3%
Specific benefit described in a footnote of the WD	Painter	\$12.00	(a)
Percent plus Dollar amount per hour plus	Carpenter	\$12.00	3%+ \$2.00
Percent, Dollar amount per hour plus footnote	Loader	\$12.00	3% , \$2.00, (a)
Sample WD Footnote:			
(a) Four (4) Paid Holidays per year			

The value of fringe stated as a percent is calculated by multiplying the percent times the WD Rate. The value of a fringe described in a footnote is calculated using the WD rate unless otherwise specified.

Attachment 6.8.2.1 Fringe Calculation Examples

Example 1

CLASSIFICATION	WD RATE	WD FRINGE	
Loader	\$12.00	\$2.00	
<p>The employee must be paid a minimum of the combined 'WD Rate' plus 'WD Fringe' for the first 40 hours each week. Many combinations are allowable:</p>			
Alternative	Cash Paid	WD Fringe Value	Total Paid per Hour
A	\$12.00	\$2.00	\$14.00
B	\$14.00	0	\$14.00
C	\$10.00	\$4.00	\$14.00
D	\$12.26	\$1.74	\$14.00
<p>Hours over 40 per week must be paid a minimum of the 'WD Rate' times the one-and-a-half (1.5) 'overtime premium'. Fringe for overtime is paid at the straight time rate.</p>			
\$12.00	X 1.5=	\$18.00 +\$2.00 = \$20.00/hr Overtime rate	

Example 2

CLASSIFICATION	WD RATE	WD FRINGE	
Loader	\$12.00	\$2.00	
<p>If the employee receives bona fide fringe benefits or the employer contributes to funded benefit plans, those benefits may be used to satisfy the combined 'WD Rate' and 'WD Fringe' amount. Pay for the first 40 hours each week may be:</p>			
Example	Cash Paid	WD Fringe Value	Total Paid per Hour
E	\$11.50	\$2.50	\$14.00
<p>If the employee works more than 40 hours per week and the amount for the bona fide fringe benefit or the funded benefit plan is fulfilled by the 40 hours of straight time, then the "WD Fringe" for overtime hours is paid in cash.</p>			
<p>Hours over 40 per week must be paid a minimum of the 'WD Rate' times the one-and-a-half (1.5) 'overtime premium' and the fringe for overtime is paid in cash since the benefits were fully funded from the first 40 hours.</p>			
\$12.00	X 1.5=	\$18.00 +\$2.00 = \$20.00/hr Overtime Rate	

Example 3

CLASSIFICATION	WD RATE	WD FRINGE	
Carpenter	\$12.00	3% + \$2.00	
<p>Fringe stated as a percent is calculated by multiplying the percent times the 'WD Rate'.</p>			
<p>Calculating the Value of for Fringe for Example 3:</p>			
\$12.00x .03=		\$0.75	
Plus WD Fringe \$		\$2.00	
WD Fringe Value		\$2.75	
<p>The employee must be paid a minimum of the combined 'WD Rate' plus 'WD Fringe' for the first 40 hours each week</p>			
Example	WD Rate	WD Fringe Value	Total Paid per Hour
F	\$12.00	\$2.75	\$14.75

Example 4

CLASSIFICATION	WD RATE	WD FRINGE	
Carpenter	\$12.00	3%+\$2.00+(a)	
<p>(a) Four (4) Paid Holidays per year</p>			
<p>Fringe described in a footnote is calculated using the 'WD Rate' unless otherwise specified</p>			
<p>Calculating the Value of Fringe for Example 3:</p>			
\$12.00x .03=		\$0.75	
Plus WD Fringe \$2.00		\$2.00	
Plus (a) 4 HolidaysX8 Hr per day X \$12=\$384.00 Hourly value of (a): \$384.00/ (53 wks x 40hrs=		\$0.18	
WD Fringe Value		\$2.93	
<p>The employee must be paid a minimum of the combined 'WD Rate' plus 'WD Fringe' for the first 40 hours each week</p>			
Example	WD Rate	WD Fringe Value	Total Paid per Hour
G	\$12.00	\$2.93	\$14.93

6.8.3 Fringe Benefits: Work Hour and Overtime Requirements

Where a wage determination specifies 'Rate' and 'Fringe', fringe benefits must be paid for all hours worked, including overtime. Overtime wages, including overtime fringe benefit payments are governed by Contract Work Hours and Safety Standards Act (CWHSSA).

The fringe amount may be excluded from the time and a half premium for overtime; fringe may be paid at the straight rate (versus the time-and-a-half rate) for overtime hours. Cash payments made to meet a required wage determination fringe benefit amount are excluded from the time and a half (1.5) premium for overtime; cash payment of fringe benefit requirements are paid at the rate of 1.0 for each overtime hour.

Following are three alternatives for the proper payment of fringe for overtime hours. Example: Cement Mason on a contract that utilizes the below general decision

General Decision Number FL xxx xxxxx		
CLASSIFICATION	RATE	FRINGE
Cement Mason/Concrete finisher	\$12.00	\$2.50

The Cement Mason works 44 hours during one pay period. The employee's total compensation will be \$662.00. However, gross wages on the paycheck may be less due to satisfying all, some or more of the fringe requirements in benefits.

ALTERNATIVE 1: Contractor pays rate and fringe in cash only; no bona fide fringe benefits are involved. Overtime must be paid at 1 ½ times the sum of the cash paid rate and 1 times the fringe for every hour of work over 40 hours:

Cash Wage	\$14.50	(=\$12+2.50; no bona fide fringes)
<hr/>		
Straight time	\$580.00	(=40 hrs x \$14.50)
overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5) (1.5 premium on wages only)
	\$10.00	(=4 hrs x (\$2.50x 1.0) (no 1.5 premium on fringe benefits)
Gross Wages	\$662.00	

ALTERNATIVE 2: Contractor pays rate in cash and fringe in bona fide benefits. Only the rate is subject to 1 ½ premium and the fringe is paid at straight rate for overtime:

Cash Wage	\$12.00	(and bona fide fringes equivalent to \$2.50)
<hr/>		
Straight time	\$480.00	(=40 hrs x \$12.00)
Overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5) (1.5 premium on wages only)
Gross Wages	\$552.00	

For fringe benefits, a total of \$2.50 must be paid into a plan, fund or program on every hour worked, including overtime.*

ALTERNATIVE 3: Contractor pays cash at lower than the specified rate and pays fringes greater than specified. The 1½ overtime premium is paid 1½ the specified rate.

Cash Wage \$10.00 (and bona fide fringes equivalent to \$4.50)

Straight time	\$400.00	(=40 hrs x \$10.00)
overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5))
Gross Wages	\$472.00	Plus bona fide fringe benefits

For fringe benefits, any hours over 40, \$2.50 must be paid into a plan, fund or program to meet requirements.*

*If a contractor is unable to pay fringe benefits into a plan, fund or program for overtime hours he will pay the overtime fringe benefit requirement to the employee in cash.

6.8.4 Bona Fide Fringe Benefits

Bona fide fringe benefits allowed by law include;

- Funded benefit plans:
 - Insurance: Life, health, dental,
 - Pension and 401K
- Unfunded benefit plans:
 - Vacation, holidays and sick leave

Deductions required by law such as taxes, social security, worker's compensation or unemployment compensation cannot be counted as a fringe benefit. Examples of items not considered bona fide fringe benefits include, but are not limited to the following:

- Personal use of a company vehicle
- Holiday cash bonus or food item
- Suggestion awards
- Recruitment bonuses
- Tools and other materials or services incidental to the employee's performance of the contract
- Cost of furnishing, laundering and maintaining uniforms or equipment where the contractor requires the employee to wear those items
- Cost of social functions, association dues, paid coffee breaks

6.8.4.1 Funded Benefit plans

Funded Benefit Plans involve contractor payments to a fund, plan or program where such payments are made irrevocably to a trustee or a third party. Insurance premiums paid irrevocably to a third party (e.g. insurance carrier) and employer 401K contributions and pension fund payments to a third party are examples of funded benefit plans. These may be credited toward the prevailing wage requirements if all requirements are met including the following;

- Such payments must be made regularly and at least quarterly. Profit sharing plans are bona fide fringe benefits provided the contractor escrows money at least quarterly on the basis of what the profit is expected to be.
- Fringe benefit contributions may not be claimed for employees who are not eligible for the benefit. (e.g. excluded because of part time status)
- Contributions to pension plans which meet ERISA (Employment Retirement Income Security Act) requirements are considered bona fide
- Contributions to pension plans which contain 'vesting requirements' (i.e, the employee is required to complete a certain length of employment) are bona fide provided the contractor's contributions for the employees who do not meet the requirement are not reverted, credited and/or returned to the employer but instead are distributed to the remaining pension participants.

Contributions made to funded fringe benefit plans are allowed based on the effective annual rate of contributions for all hours worked during the year by an employee, regardless of whether or not the hours were worked on a Davis-Bacon project. This is referred to as 'annualization'. Example

General Decision Number FL xxx xxxxx		
CLASSIFICATION	RATE	FRINGE
Cement Mason/Concrete finisher	\$12.00	\$2.50

The contractor provides the Mason a medical insurance premium contribution of \$200 per month, which is \$2400 per year (\$200x 12 months). The employee's annual hours are 2080 (52 weeks x 40 hours per week) so the hourly insurance premium contribution is \$1.15 (\$2400 annual premium divided by 2080 hours worked per year).

If the employee receives only medical insurance as a fringe benefit then for each hour worked on projects covered by the wage determination, the employee's pay is:

$$\begin{array}{r}
 \$12.00 \text{ hourly rate} \\
 1.15 \text{ hourly fringe benefit for insurance premium} \\
 1.35 \text{ additional cash due for fringe} \\
 \quad \quad \quad (= \$2.50 \text{ total fringe} - \$1.15 \text{ Insurance premium}) \\
 \hline
 \$14.50 \quad (\$12.00 \text{ Rate} + \$2.50 \text{ fringe})
 \end{array}$$

The certified payroll would report an hourly pay rate of \$13.35 (\$12.00+\$1.35) and the medical insurance would be identified as a fringe benefit.

6.8.4 2 Unfunded Benefit Plans

In unfunded benefits, monies are not paid by the contractor to a third party for future payments; rather the benefit is paid by the contractor as the benefit is earned. Common unfunded benefits include paid holidays, vacation or sick time. The USDOL requires

contractors to set aside, in an account, sufficient assets to meet the future obligation of unfunded plans in order to insure that such plans are not used to avoid compliance.

Unfunded benefits must also meet the following Davis Bacon requirements in order to qualify as bona fide benefits:

- It is reasonably anticipated that the benefit will be provided to the employee
- The benefit is a commitment that can be legally enforced
- The benefit has a financially responsible plan or program
- The benefit has been communicated in writing to the employees

The fringe contribution of most unfunded benefit plans varies based on the employee's actual hourly rate of pay. The following is an example of how 40 hours paid vacation would be calculated as a fringe benefit for two different employees who work 2080 hours per year i.e. 2080 (52 weeks x 40 hours per week):

Note: The total hours worked in the year on projects covered and not covered by a Davis-Bacon wage determination are included for calculating the hourly contribution rate.

	Actual Rate of pay(excluding fringe)	40 hours vacation pay	Per hour fringe contribution for 40 hours paid vacation	rate.
Employee A	\$10.00	\$400.00	\$0.19 (\$400 divided by 2080 hrs)	If unused paid time off
Employee B	\$15.00	\$600.00	\$0.29 (\$600 divided by 2080 hrs)	

is forfeited upon termination, then the per hour cost must be computed on the basis of the time off paid to the employee unless the employee is paid in full for time off upon termination.

Paid holiday hours may be counted as a bona fide benefit provided the employee who works any part of the week in which the holiday occurs will be paid the entire holiday pay. Contractors who require employees to work the day before and/or the day after the holiday in order to earn holiday pay, may be subject to verifications to prove the absence of arbitrary layoffs, and/ or other impermissible acts taken to avoid payment of holiday pay

6.8.5 Administrative Expenses

The administrative expenses incurred by a contractor in connection with the administration of a bona fide fringe benefit plan are not creditable towards satisfying the prevailing wage requirement.

6.8.6. Reporting Payment of Fringe Benefits on the Statement of

Compliance

Contractors who satisfy the Fringe benefit requirements of a wage determination by making payments to an approved plan or program, report that by checking the box for Section (4)(a) on the Statement of Compliance (Form 700-010-69). This signifies that the contractor is making payments for fringe benefits to appropriate programs for the benefit of the employees. Box 4A reads “where fringe benefits are paid to approved plans, funds or programs’.

If the contractor is satisfying fringe benefit requirements by paying employees in cash, then the box for Section (4)(b) on the Statement of Compliance is checked. Box 4B reads ‘Where Fringe benefits are paid in cash’.

If the contractor is satisfying fringe benefit requirements by paying a portion to an approved plan and a portion to the employee both Box 4A and 4B would be checked

6.8.7 Fringe Benefit Record Keeping Requirement

Fringe benefit contributions may not be averaged; credit may only be taken based on individual employee calculations. If fringe benefits are claimed toward the wage requirement, employer records must demonstrate that for each reported employee, payments were made or costs incurred for eligible fringe benefits. This includes a detailed accounting of all deductions made and the identification of funds. The contractor may be required to submit such calculations in support of their compliance with payroll requirements. An example of calculation records for two employees is shown below:

EMPLOYEE RATE & FRINGE CALCULATIONS					EMPLOYEE FRINGE BENEFIT CALCULATIONS						ADDITIONAL CASH PAYMENT FOR FRINGE
CLASSIF.	EMPL.	EMP'S HOURLY PAY RATE	WAGE TABLE		MEDICAL See #1	LIFE INSUR See #2	DENTAL INSUR See #3	PAID VAC-ATION See #4	PAID HOL-IDAYS See #5	TOTAL PAID FRINGE	
			RATE	FRINGE							
CARP-ENTER	SMIT,J	\$8.00	\$8.00	\$0.76	\$1.73	\$0.46	\$0.26	\$0.15	\$0.18	\$2.78	\$0.00
CARP-ENTER	FUE,H	\$8.00	\$8.00	\$0.76	DECLINED	\$0.06	DECLINED	\$0.15	\$0.18	\$0.39	\$0.37
LOADER OPER-ATOR	GIR, M	\$11.00	\$9.50	\$1.50	NOT ELIGIBLE UNTIL 6 MOS SENIORITY					\$0.00	The \$1.50 paid excess of base Rate is considered as Fringe (\$11-9.50=\$1.50)

FUNDED FRINGE BENEFIT CALCULATIONS	(A) Total Monthly Premium	(B) Monthly portion of premium paid by company	(C) Annual Standard Hours (40 hrs per week X52 wks)	(D) Monthly Standard Hours (Annual Standard Hrs divided by 12 mo) (= C / 12)	(E) Hourly Fringe Benefit Amount
					(Monthly Portion of premium paid by company divided by Monthly Standard Hours) (= B / D)

MEDICAL- EMPLOYEE ONLY COVERAGE	\$600.00	\$300.00	2,080	173.33	\$1.73 (#1)
LIFE INSURANCE (\$10,000 DEATH BENEFIT)	\$80.00	\$80.00	2,080	173.33	\$0.46 (#2)
DENTAL INSUR-EMPLOYEE ONLY COVERAGE	\$45.00	\$45.00	2,080	173.33	\$0.26 (#3)

UNFUNDED FRINGE BENEFIT CALCULATIONS FOR \$8.00 HOURLY PAY RATE	(W) Paid Hours	(X) Employee Hourly Rate	(Y) Paid Hours. times Hourly Rate (= W x X)	(Z) Annual Value (Annual Value / Annual Standard Hours) (= Y / (40 Hr. per week x 52 Weeks))
PAID VACATION	5 days/yr @ 8hrs= 40 hrs	\$8.00	\$320.00	\$0.15 (#4)
PAID HOLIDAYS	6 days/yr @ 8hrs= 48 hrs	\$8.00	\$384.00	\$0.18 (#5)

6.8.8 Additional information on Davis Bacon Fringe Benefits

Contractors are encouraged to research the details of Davis-Bacon Fringe benefit requirements and consult with District Contract Compliance Managers and the Prevailing Wage Rate Coordinator for additional information and assistance.