



Illinois Department of Transportation

Division of Highways / Bureau of Construction
2300 South Dirksen Parkway, Springfield, Illinois 62764

Subject:
Labor Compliance
Federal-aid Highway Projects

CONSTRUCTION MEMORANDUM NO. 16-14
SMALL BUSINESS MEMORANDUM NO. 16-1

Effective: April 1, 2016

Expires: Indefinite

This joint Construction/Small Business Enterprises Memorandum supersedes Construction Memorandum No. 09-14, dated March 6, 2009.

1. **General:** This joint Construction/Small Business Enterprises Memorandum is written for compliance with the Required Contract Provisions, Form FHWA 1273, and the U. S. Department of Labor Field Operations Handbook. It is not intended that this memorandum be a complete guide for the administration of labor compliance. However, an attempt has been made to cover the most common situations that are likely to arise in general administration. For more comprehensive coverage, see the above-mentioned documents as well as the provisions of the appropriate construction contract.

All federal-aid contracts include Wage Decisions by the U. S. Department of Labor and appropriate labor compliance provisions. Construction contracts which do not contain federal wage rates contain wage rates determined by the Illinois Department of Labor. The Illinois Department of Labor is the labor compliance enforcement agency for contracts which contain rates determined by that Department. The remaining contents of this Memorandum pertain to those federal-aid contracts which contain Wage Decisions by the U. S. Department of Labor.

2. **Payment of Wages:** Pursuant to the contract requirements, all laborers and mechanics working upon the site of the work must be paid unconditionally and not less often than once each week, the full amounts which are due and payable for the period covered by the particular payday. Each laborer and mechanic must be paid weekly at hourly rates for every hour of work. His/her rate for hours worked must equal or exceed the wage rates specified in the contract, including fringe benefit payments for the class of work actually performed. His/her hourly rate for hours worked in excess of forty hours per week, must equal or exceed one and one-half times the basic hourly rate of pay, not including fringe benefits, received for the class of work in which he/she was actually engaged, and no deductions may be made from total wages earned unless the deduction is permitted by law.

The total hourly wage paid to, and on behalf of, an employee should never be less than the total of the basic hourly wage rate shown on the wage decision, plus the sum of the fringe benefit payments set forth in the wage decision. It is possible, however, to pay less than the basic hourly wage rate in cash to the employee in those cases where the employer provides fringe benefits in excess of those required by the wage decision. For example, if the employee is entitled to \$31.50 per hour as a basic hourly wage rate, plus \$23.00 per hour in fringe benefit contributions, but the employer actually pays \$23.50 per hour in fringe benefit contributions, (pursuant to a bargaining agreement or other contract of employment), the employer may satisfy his/her obligations under the minimum wage requirements if he/she pays \$31.00 per hour in cash to the employee, and, in addition, makes fringe benefit contributions in an amount not less than \$23.50 per hour.

3. Apprentices and Trainees: Apprentices under programs approved by the U. S. Department of Labor will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with the Bureau of Apprenticeship and Training, U S. Department of Labor. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he/she actually performed. The Contractor or subcontractor will be required to furnish to the State written evidence of the registration of his/her program and apprentices as well as the appropriate ratios and wage rates.

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity are not subject to the requirements above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. All apprentices and trainees are subject to the same overtime provisions as other laborers and mechanics.

4. Classification: The key to the just administration and enforcement of contract labor standards requirements is the proper classification of laborers and mechanics according to the work they actually perform and the nomenclature of the Secretary of Labor's wage decision applicable to the contract. Since construction work generally is performed by recognized craft classifications, practice in the construction industry and labor jurisdiction over the workers generally determines the proper classification. For example, carpenters have recognized duties and workers performing such duties should be classified as "carpenters." Likewise, duties of a lineman are well established and workers performing these duties should be designated as "lineman" on the payroll. However, there is no universal system for identifying all construction job classifications. Therefore, it is possible that a wage rate for workers performing certain duties will be included in the wage determination under nomenclature which differs from local terminology. For example, mason tenders, known as such in one area, are known as hod carriers in other areas.

In the event that any classes of laborers or mechanics are to be employed which are not listed in the wage determination decision contained in the contract, such rates should be determined by the Regional Engineer and the Contractor. Consideration should be given to union bargaining agreements, prevailing area practices, and field experience in arriving at an agreed classification and wage rate. A report on these additional classifications and wage rates should be forwarded to the Bureau of Small Business Enterprises by the Regional Engineer, along with any and all substantiating material, for transmittal to the U. S. Department of Labor for approval.

Form FHWA 1444 should be used for making such a report. Copies of this form are available from the Bureau of Small Business Enterprises and should also be stocked in the District offices.

5. Wage and Fringe Benefits: The terms "wages," "scale of wages," "wage rates," "minimum wages," and "prevailing wages" include: (1) the basic hourly rate of pay, and (2) the rate of contribution made by a Contractor or subcontractor to a trustee or a third person pursuant to a fund plan or program for such fringe benefits as health and welfare, insurance, vacation, pension, training programs, etc.
6. Preconstruction Conference: The labor compliance requirements of a contract must be discussed at the preconstruction conference. A suggested outline for such discussion is set forth in Chapter 402, Pages I5 and I6, of the Labor Compliance Manual for Direct Federal and Federal-aid Construction, Fourth Edition.
7. Labor Compliance Representative: Each highway district, as well as each political subdivision of the State that is authorized to administer federal-aid contracts, must have a designated Labor Compliance Representative. In addition, a Labor Compliance Representative should be designated for each federal-aid project on which wage rates have been determined by the U. S. Department of Labor. Generally, this will be the district's Contract Compliance Officer/Coordinator unless named otherwise by the district's Project Implementation Engineer.

The Bureau Chief (or designee) in the Bureau of Small Business Enterprises has been designated as Labor Compliance Officer for the Illinois Department of Transportation.

Each Labor Compliance Representative should become familiar with the applicable laws, regulations, and contract provisions pertaining to his/her respective area of jurisdiction and be prepared to implement, enforce, and generally administer an adequate Labor Compliance Program.

8. Payrolls and Payroll Records: Contractors and each subcontractor are required to file a copy of each weekly payroll with the Resident or EEO Office.

The payrolls shall be submitted on form SBE 48 or an approved facsimile. An approved facsimile would be forms produced by the contractor that shows all the required information captured on form SBE 48. All payrolls must contain the following information:

- (a) The employee's full name and individual identification number.
- (b) The employee's classification.
- (c) The employee's hourly wage rate and, where applicable, his/her overtime hourly wage rate.
- (d) The daily and weekly hours worked in each classification including actual overtime hours worked (not adjusted).
- (e) The itemized deductions made.
- (f) The net wages paid.

NOTE: The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individual identifying number for each employee (e.g., the last four digits of the employee's social security number).

When space on the payroll form is limited, supplemental data may be submitted as an attachment to the payroll form.

The prime contractor is responsible for the submission of copies of payrolls for all subcontractors or others from whom payrolls are required. The weekly payrolls submitted must be accompanied by a statement signed by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. Form [SBE 348](#) (formerly WH-348), or an equivalent of this form, must be used as the weekly Statement of Compliance.

The weekly Statements of Compliance and accompanying payrolls should be received within 4 weeks of the payment date of the payrolls. If the payrolls are not submitted in that time, the contractor shall be notified and required to submit the payrolls within the next 7 days. If the payrolls are not submitted by then, contract payments shall be withheld until the contractor comes into compliance.

The submitted payrolls shall be initialed and dated by the Resident or Labor Compliance Representative, whoever receives the payroll, as an acknowledgement of the date and submission of the payrolls. After review by the Resident, or the Labor Compliance Representative, the payrolls and statements should be retained in the project files. The payrolls may be retained in the district office but shall be clearly organized by contact, contractor, and date.

The original payroll should not be returned under any circumstances to the Contractor for correction of discrepancies or clerical errors. The corrections should be made by supplemental payrolls prepared and submitted in the same manner as the original payroll.

The contract specifications require the contractor to submit payrolls for every week that the contract is active, including weeks when no work is performed. The weekly payrolls shall be submitted and marked "No Work", "Suspended", or "Complete", as applicable when no work is performed or work is complete. This will in essence require the prime contractor to submit payrolls every week the project is active.

This is also required of subcontractors but they will only be required to submit payrolls for the times they are actively working on the project. For example, a subcontractor hired to install storm sewer shall submit payrolls for the duration of the storm sewer installation. If a week of work is lost because of weather, they are still required to submit a weekly payroll that states "No Work". However, when the subcontractor's work is complete, such as all storm sewer work is complete, their final payroll shall be marked "Complete". If a staging milestone has been reached and the subcontractor will leave the project for an extended duration, they will not be required to submit weekly payrolls but the payroll representing the last week of work that the milestone was reached shall be marked, "Suspended". Submission of payrolls shall resume when they return to the project to carry on with their subcontracted work.

9. Employee Interviews: Systematic spot interviews are to be made by the Resident, or the Labor Compliance Representative, with the employees of the Contractor and subcontractors on the job to establish that the minimum wage and other labor standards of the contract are being fully complied with and that there is no misclassification of labor or disproportional employment of apprentices.

Form [BC 163](#) has been developed to record such employee interviews. Reports of Employee Interviews should be retained by the district Contract Compliance Officer/Coordinator with copies in the project files.

Although there is no prescribed time or interval for making employee interviews, it is suggested that such interviews be made shortly after the Contractor begins work and thereafter at least once every six months on each federal-aid project on which wage rates have been determined by the U.S. Department of Labor.

10. Inspection by EEO/LC Field Personnel: Early and complete labor compliance inspections are essential to the development of a sound compliance pattern on all projects. Projects of short duration (six months or less) should be inspected at least once while the work is in progress. In the case of contracts which extend over a longer period of time, the inspections should be made with such frequency as may be necessary to assure compliance.

Such inspections shall include interviews with employees with reference to payroll data and classification information, as well as examinations of the payrolls themselves.

Documentation of such inspections should be retained in the EEO/LC file indicating actions taken and results obtained. Any discrepancies or suspected violations by the contractor or a subcontractor should be resolved immediately. Interviews made in connection with these inspections may be correlated with the requirements discussed in Section 9 of this Memorandum.

11. Truck Owner-Operators: All employees of truck owner-operators, regardless of the number of trucks owned by an owner-operator, must receive not less than the prevailing rate of wages applicable to the classification of work performed, provided their work is covered by the Davis-Bacon and related Acts. Such rates, hours, fringe benefits, etc., must be shown on the payrolls.

Only an individual who actually owns and operates his/her own truck is exempt from the payroll reporting requirements. The notation "owner-operator" must be shown on the payroll opposite the name of such owner-operator.

The foregoing exemption from enforcement requirements for owner-operators applies solely to situations involving trucks. It does not encompass other equipment commonly utilized by Contractors with owner-operators such as bulldozers, backhoes, and the like. In such situations, normal enforcement procedures should be followed.

Some trucking may be exempt from the contract labor standards provisions depending upon the type of hauling being done. Each case must be reviewed and a determination made based upon the specific circumstances.

12. Rental Equipment With Operators: All operators of rented equipment must receive not less than the prevailing rate of wages applicable to the classification of work performed, provided their work is covered by the Davis-Bacon and related acts. Such rates, hours, fringe benefits, etc., must be shown on the payrolls.
13. Posters and Notices: Items pertaining to labor compliance are to be posted at the site of all federal-aid projects on which wage rates have been determined by the U. S. Department of Labor.

It is the contractor's responsibility to procure and display the required notices and posters. Posters and notices must be legible and located for easy access and visibility.



Tim Kell, P.E.
Interim Engineer of Construction



Pam Simon, Acting Bureau Chief
Small Business Enterprises

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|--------------------------------|-----|-----|
| c. Approve/Deny | Yes | Yes |
| d. Maintain/File | Yes | Yes |
| e. Monitor Jobsite Performance | Yes | Yes |

E CONTRACTOR DIRECTORY

1. Prime/Subcontractor

- | | | |
|------------------|-----|-----|
| a. Receive | No | Yes |
| b. Review/Update | No | Yes |
| c. Input Data | No | Yes |
| d. Maintain/File | Yes | Yes |

2. DBE/WBE Firms

- | | | |
|------------------|-----|-----|
| a. Receive | No | Yes |
| b. Review/Update | No | Yes |
| c. Input Data | No | Yes |
| d. Maintain/File | Yes | Yes |