

How the Inflation Reduction Act May Affect Your Davis-Bacon Labor Compliance



The Inflation Reduction Act (IRA) was signed into law on August 16, 2022. Its objective is to provide tax benefits to contractors who comply with the prevailing wage and apprentice requirements set forth in the law.

Compliant “taxpayers” (this might be a confusing term for those used to construction language; it could mean an agency, a developer or a prime contractor, whomever would be the entity requesting the tax credit) are eligible for a tax credit called the Enhanced Energy Tax Benefit. Below is a summarized rundown of some of the most important aspects of the IRA as it pertains to how it will use prevailing wages and apprenticeships. For more information and an extensive FAQ page about the IRA, [click here](#).

Note: The Treasury Department and the IRS provided initial guidance (Federal Register 2022-061) on November 20, 2022. These prevailing wage and apprenticeship requirements follow the Davis-Bacon Act (for the most part).

Types of New Work:



There are new types of work that now qualify for prevailing wages under the IRA. They include facilities that produce electricity from renewable sources such as: wind, biomass, geothermal, solar, landfill gas, trash, qualified hydropower, and marine & hydrokinetic resources.

Other new types of work include: energy storage technologies, industrial carbon capture, direct air capture, energy efficient commercial buildings, dwellings that meet energy star efficiency standards, clean hydrogen facilities, and clean fuel production facilities.

Wage Determinations and Prevailing Wages:

In the absence of an actual Agency or Awarding Body, you as the “taxpayer” must confirm the correct wage determination was assigned, making sure the proper construction type is listed. If the contract is negotiated, then the wage determination that is applicable is the modification (i.e., Mod.0, Mod.1, etc.) on the date of contract award. If the contract is competitively bid on, the wage determination that is applicable is the modification on the date of the bid opening. However, when construction does not start within 90 days of the bid opening, the applicable modification would instead be the one in place the day construction starts.

There is no guidance yet providing direction on where to submit certified payroll reports (CPRs), but it is stressed that you must “prove” prevailing wages were paid.

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Conformances:



Typically, you would ask for written guidance on how wage determinations should be utilized if multiple wage determinations are assigned to the project; this is a topic that hasn't been addressed yet. Nonetheless, the expectation for you to review the wage determinations to ensure the inclusion of all necessary classifications (based on the project's scope of work) is clearly stated.

You must then submit conformances as necessary. However, this process **does not use the SF-1444 form**. Instead, you must email IRAprevailingwage@dol.gov for all classification issues. Keep in mind that in following requirements set out in DBA, it's still necessary to share all conformance approvals with your subcontractors.

Apprenticeships:

The IRA has stated that apprenticeship requirements have three parts that need to be met. First, the labor hours. Apprenticeship labor hours must total 12.5% for projects beginning during 2023 and will ultimately reach 15% for projects beginning in 2024.

Second, the ratios. Apprenticeship ratios must be followed, per their specific program.

Third, participation. Contractors who employ four or more workers must employ at least one qualified apprentice. If the apprentice program cannot respond to your request within five days, or if your request for apprentices is denied, then you must document all "good faith efforts" to meet these requirements in case the goals are not met.

Records to Prove IRA Compliance:



The guidance provided mentions "good faith efforts". This means it's important to document your intent to be compliant in all aspects. To help prove your eligibility for the tax benefits, it's important to have records available to prove you are maintaining all aspects of your labor compliance. These records could be certified payroll reports (CPRs), wage determinations, communications with the U.S. Department of Labor (USDOL), conformance requests, or apprenticeship reports.

Penalties:

Labor compliance penalties under the IRA appear to be fairly severe. Prevailing wage underpayments will be resolved by 1) paying workers their restitution; 2) paying 3% interest on that restitution; AND 3) paying a penalty equal to \$5k per occurrence – or \$10k if wages were intentionally disregarded – for EACH worker that was underpaid that year.

Failure to meet apprenticeship requirements will result in a penalty of \$50 per labor hour – or \$500 per labor hour if the requirements were intentionally disregarded – for the year in which this requirement was not satisfied.

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