

**DBA/DBRA COMPLIANCE PREVAILING WAGE
RESOURCE BOOK 2010
PRINCIPLES**

TRUCK DRIVERS

Definition 29 C.F.R. § 5.2(j).

◇ The terms “**construction, prosecution, completion, or repair**” mean all types of work done on a particular building or work at the site (including work at a facility deemed part of the “site of the work”) by laborers and mechanics of a construction contractor or construction subcontractor including without limitation:

◇◇ Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site.

◇◇ Painting and decorating.

◇◇ The manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work.

◇◇ Transportation between the “site of the work” (within the meaning of 29 C.F.R. § 5.2(l)) and a facility which is dedicated to the construction of the building or work and deemed a part of the “site of the work” (within the meaning of 29 C.F.R. § 5.2(l)).

Coverage of Truck Drivers

◇ Truck drivers **are covered** by Davis-Bacon in the following circumstances:

◇◇ Drivers of a contractor or subcontractor for time spent working on the site of the work.

◇◇ Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not de minimis.

◇◇ Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.

◇◇ Truck drivers transporting portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

◇ Truck drivers **are not covered** in the following instances:

◇◇ Material delivery truck drivers while off “the site of the work”.

◇◇ Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of the work.”

◇◇ Truck drivers whose time spent on the site of the work is de minimis, such as only a few minutes at a time merely to pick up or drop off materials or supplies.

◇ DOL has an **enforcement position** with respect to bona fide owner-operators of trucks who own and drive their own trucks. Certified payrolls including the names of such owner-operators do not need to show the hours worked or rates paid, only the notation “owner-operator”. This position does not apply to owner-operators of other equipment such as bulldozers, backhoes, cranes, welding machines, etc.

◇ Overtime pay requirements under CWHSSA apply to truck drivers regardless of whether the hours worked on the contract are on or off the site of the work.

Rulemaking background regarding material delivery truck drivers

◇ Three U.S. appellate court decisions in the 1990's led DOL to reexamine and revise the regulatory definition of "construction, prosecution, completion, or repair" as it applies to transportation. In view of three appellate court decisions that had concluded that DOL's application of the related regulatory definitions was at odds with the language of the Davis-Bacon Act that limits coverage to workers employed "directly upon the site of the work," revisions to the regulatory definitions were issued in 2000 to clarify the regulatory requirements.

◇ The rulemaking in 2000 addressed the application of Davis-Bacon prevailing wage requirements to material delivery truck drivers.

◇◇ The regulatory definition of "construction, ..." has been changed to provide that the off-site transportation of materials supplies, tools, etc., is not covered unless such transportation occurs between the construction work site and a dedicated facility located "adjacent or virtually adjacent" to the work site.

◇◇ Also, as indicated in the rulemaking, as a practical matter, since generally the great bulk of the time spent by material delivery truck drivers is off-site beyond the scope of Davis-Bacon coverage, while the time spent on-site is relatively brief, DOL chooses to use a rule of reason and will not apply the Act's prevailing wage requirements with respect to the amount of time spent on-site, unless it is more than "de minimis." Under this policy, the Department does not assert coverage for material delivery truck drivers who come onto the site of the work for only a few minutes at a time merely to drop off construction materials.

◇◇ For a full discussion of the regulatory changes, see the final rule published in the Federal Register on December 20, 2000, 65 Fed. Reg. 80,268-80,278. A section focused on "Coverage of Transportation – § 5.2(j)" appears on pages 80,275-6.)

The December 20, 2000, final rule is available at:
www.dol.gov/sec/reg/fedreg/final/2000032436.pdf.