



Compliance Issues

Chapter 6 Wages and Payrolls

Questions asked during the Presentation have been addressed on the following slides: 8, 12, 17, 29, 37, & 42

Race and Gender???

► Clarification

- Chapter 6 (6.5.2 & 6.5.15) indicates 'FDOT additionally would like to have the race and gender annotated on the payroll records. If FDOT would like to have it, what is the Department's expectation of its use? Is there a process some Districts are performing that (obviously) some are not?

► ANSWER

- DOL is over the submittal of payroll and they do not require race and gender. Actually they feel less is more when it comes to personal information on payroll. But FHWA Regulations in 23 CFR 230 set contractual requirements for EEO and Affirmative Action Special Provisions that must be adhered to on Federal Aid Highway Construction Projects. Though they do not mandate that race and gender be tracked on payroll they feel that this is an easy way for the contractor to keep track of their own work force and if it is included makes the July report easy to be completed from the payroll for the yearly snapshot of workers employed. If the contractor chooses not to annotate payroll then an additional requirement for this information is required.

► RESOLUTION

- Because we are to follow the regulations laid out by USDOL for payroll-we make no requirement for Race and Gender. Contractors are allowed to track anything that they want, on their payroll, as long as it does not interfere with the accuracy or checking requirements. If annotated payrolls are not provided, then the contractor has to keep separate records with this information, and the records must be provided upon request. No changes are needed.

Written Notice when Break in Work???

➤ Clarification

- Sending a written notice when there is a break in work is something that I remember, we know when reading the daily work reports who worked/when, so therefore no written notice is needed. Should we initiate this process?

➤ ANSWER

- Yes, DOL does not require no-work payrolls and no written notice is required. This change was actually made last year-but somehow when the new manual went out the change did not make it in. Sometimes when there are so many changes, it is easy to lose track of what changes got in and which ones didn't

➤ RESOLUTION

- Chapter 6.5.2, third paragraph Strike: **“No Work” payrolls may be submitted whenever there is a temporary break in a contractor’s work on the project. However, if it is known that a firm will not be working on the project for an extended period of time, they may submit a written notice to the contracting officer alerting them of a break in the work. This notice should also give an approximate date when the firm will return to the project. If the company provides written notice, they do not need to submit “No Work” payrolls.**
- Chapter 6.5.2, third paragraph will read: Payrolls are due every week in which any contract work is performed. Upon request, contractors will provide the day of the week their employees are paid. The Resident Compliance Specialist is to receive each certified payroll within (7) seven calendar days of the regular payment date of the payroll. The certified payroll may be submitted on the form prescribed, or on the company’s regular payroll form if all required information is included.

Day of Week Employees are Paid???

► Clarification

- The Manual indicates 'upon request, the contractor will provide the day of the week their employees are paid...' – this was an issue prior to the Manual's publication as the information was a requirement to be submitted. Some Districts still permit RCS's to require the information in order to establish when a payroll is delinquent. Possibly as more Districts transition to operating on the 'supportive services' and RCS's have increased workloads, their desire to have the information will be less. We have found that even if the payrolls are religiously submitted as required, the RCS does not always have sufficient time to review the information upon receipt. Why 'ding' a contractor for late submittals if the RCS is not going to validate the document immediately upon arrival?

► ANSWER

► See 29 CFR § 778.105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him.

► See 29 CFR § 3.4 (a) Submission of Weekly Statements and the Preservation and Inspection of Weekly Payroll Records

Each weekly statement required under [§ 3.3](#) shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge

Day of Week Employees are Paid???

► RESOLUTION

- So-The workweek is easy to establish because of the dates on the certified payroll-however, that does not mean that you know when that pay roll actually was paid out to the employees. If the regular pay date is thought to be something other than what is normal – then there is no reason why you can not request that date from the contractor, because as you can see it is Federal Regulation that the statement be received no later than 7 days after the regular payment date.
- Chapter 6.5.2, States: Upon request, contractors will provide the day of the week their employees are paid. The Resident Compliance Specialist is to receive each certified payroll within seven (7) calendar days of the regular payment date of the payroll. .
- No change is required!

QUESTIONS



TRUCKING QUESTION???

▶ TRUCKING OBSERVATION AND VERIFICATION FORM

- ▶ Are we continuing to use the Trucker Observation form for Owner Operator verification? The Manual version is different from the previous work book and is now only addressing the Trucking Verification and Observation form for DBE purposes. It appears that the “Trucking Affirmation Statements” is obtained for owner operator verification listed on certified payrolls.

▶ ANSWER

- ▶ In Chapter 2.7: Project staff shall utilize the [Trucker's Observation & Verification \(Form 700-010-610\)](#) to verify both the owner-operator and the DBE status of individual trucks.

▶ RESOLUTION MINOR CHANGE TO CHAPTER 6

- ▶ 6.5.10 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. [This determination could have derived from the Trucker Observation and Validation form, or some other type of routine inspection \(See Chapter 2.7.7.1\)](#) Correction requires submission of a certified payroll for the driver, reflecting all required data elements, and an hourly rate at least equal to that specified on the project wage table, for the type of truck operated.

Question on Previous Slide????

- ▶ **Should standard language be adapted for Trucking Affirmation Statement? Difficulties arise when the truck is registered in another name than the name on the affirmation statement.**
- ▶ **NO – THIS STATEMENT IS A CONTRACTUAL RELATIONSHIP, BETWEEN THE TRUCKER AND THE CONTRACTOR. WE STATE IN THE WORK BOOK WHAT WE REQUIRE TO BE INCLUDED ON THE AFFIRMATION STATEMENT. THERE IS NO REASON WHY WE COULD NOT AMEND WHAT WE NEED TO SEE ON THE STATEMENT, BUT WE SHOULD NOT STANDARDIZE THE LANGUAGE.**
- ▶ **Suggestion:**
 - ▶ Require that the affirmation statement include the name on the registration of the vehicle being driven by the owner as well as the owner operators name and registration. Continue with the statement that only the owner will drive the truck and if the owner/operator changes vehicles during the course of this contract that this affirmation must be updated with the current vehicle registration information.

Trucking

▶ **Truck Drivers Covered by DBA**

- ▶ Drivers that are working for a contractor or subcontractor are covered for the time spent working on the site of work.
- ▶ For the time spent loading and/or unloading if time is not considered de minimis.

▶ **Truck Drivers Are Not Covered by DBA**

- ▶ Drivers traveling between a DBA covered site and a commercial supply facility while they are off the site of work.
- ▶ Drivers whose time on the site of work is de minimis, such as only a few minutes at a time merely to pick up or drop off materials or supplies.

Trucking

- ▶ **Truck Drivers Operating Rented Trucks**
 - ▶ Drivers that are working for a contractor or subcontractor and driving trucks that are rented or leased by the contractor are covered for the time spent working on the site of work, and will be carried on the contractors payroll.
- ▶ **Truck Drivers Rented with The Trucks**
 - ▶ Drivers that are rented with the truck are carried on the payroll of the leasing company but are subject to all of the wage rate requirements and the lessor shall furnish payroll for these employees.
- ▶ **Trucking Companies Should Be Operating as a Subcontractor**
 - ▶ Drivers are subject to all of the wage rate requirements.

Trucking Scenarios not Requiring DB

▶ Material Delivery Truck Drivers

- ▶ Material delivery truck drivers while off the site of work, this includes drivers of a contractor or subcontractor between a Davis Bacon job and a commercial supply facility while off the site of work. And drivers whose time spent on the site is de minimis ((just a few minutes to pick up materials or drop materials off).

▶ Asphalt Delivery Truck Drivers

- ▶ The Department has termed the time spent on the project of all truckers of Asphalt as de minimis and has exempted them from the Davis Bacon requirements. The reason for this is Asphalt trucks are hauling material that “time is of the essence to get the product delivered and placed”. Since truckers know that the time on the job is going to be as minimal as the contractor can make it-the hot material must keep flowing for the paving machines to operate properly, and therefore they may queue up, when the trucker is doing de minimis time on the project.

▶ Commercial Supplier:

- ▶ If the material is hauled to the project from a commercial supplier no prevailing wages are required as long as employees of the contractor or subcontractor do not perform the hauling. A commercial supplier will meet all of the following criteria:
 - ▶ The supplier is in the business of selling supplies to the general public.
 - ▶ The plant from which the material is obtained was not established specifically for the contract.
 - ▶ The plant is not on the site of work

Question on Previous Slide????

- ▶ **Could Earth Haulers be de minimis like Asphalt Haulers?**
- ▶ **YES – EARTH, SAND GRAVEL, FIELD DIRT ETC. IS A MATERIAL BEING HAULED TO THE PROJECT, SO YES EARTH HAULERS CAN BE DE MINIMIS, AS THE PREVIOUS SLIDE STATES:**
- ▶ **Material Delivery Truck Drivers not Requiring DB**
 - ▶ Material delivery truck drivers while off the site of work, this includes drivers of a contractor or subcontractor between a Davis Bacon job and a commercial supply facility while off the site of work. **And drivers whose time spent on the site is de minimis ((just a few minutes to pick up materials or drop materials off).**
- ▶ **Also Regulations state in 29 CFR 5.2:**
 - ▶ The transportation of materials or supplies to or from the site of work by employees of the construction contractor or a construction subcontractor is not “construction, prosecution, completion or repair”
 - ▶ This is saying that if they are just on the job for a de minimis time to pick up or drop off material then they are not considered having added anything to the actual construction of the project.

Trucking Scenarios not Requiring DB

- ▶ **Contractor Property Off Haul:**

- ▶ If the material being removed from the project becomes the property of the contractor when removed and the contractor's employees are hauling the material to a location off the State Right of Way that either belongs to the contractor or is specified by the contractor, no prevailing wages are required if the time spent on the project is de minimis.

Trucking Scenarios Requiring DB

➤ **Within Site or Project Haul:**

- If the material being hauled comes from a site/plant set up specifically for the project, then prevailing wages are required, regardless of who performs the hauling.
- Drivers of a contractor or subcontractor for time spent working on the site of work, or time spent loading or unloading materials and supplies if the time is not de minimis. Also drivers that transport materials or supplies between a facility that is deemed part of the site of work and the actual construction site, this includes a site established specifically for the performance of the contract and where the contract will remain.

➤ **Material Supplier Performing Work:**

- Laborers and mechanics employed by a material supplier who are required to perform more than an incidental amount of construction work in any workweek at the site of the work would be covered by the Davis-Bacon labor standards and due the applicable wage rate for the classification of work performed. For enforcement purposes, if such an employee spends more than 20% of his/her time in a workweek engaged in such activities on the site, he/she is Davis-Bacon covered for all time spent on the site during that workweek

Independent Contractor/Trucking

- ▶ **Truck Drivers Operating Their Own Trucks**
 - ▶ Drivers that own and drive their own trucks are termed *owner-operators/independent contractors*, they will be carried on the contractor's payroll, but only need to have their full name and the notation *owner/operator* on the wage statement.
- ▶ **Document Owner**
 - ▶ The prime or subcontractor who engages the owner-operator should list the truck owner-operator on their certified payroll.
 - ▶ And be able to provide (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 valid 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. Documentation of this valid basis is subject to verification and should be retained by the contractor for a minimum of three years following FDOT final payment on the project

Independent Contractor/1099

► Self-employed

- Self-employed independent contractors (often referred to as “1099 workers”) who perform as laborers or mechanics on a covered project are subject to DBA.
- The prime contractor must ensure that the independent contractor receives no less than the applicable DBA wage rate for the hours worked on the site of the work.
- And must ensure that such worker is reported on a certified payroll each week.
- The statutory language of DBA requires that all laborers and mechanics employed directly on the site of the work be paid no less than the predetermined wages “regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics.”
- Taxes must be paid in accordance with applicable federal State and local tax laws. IRS rules apply. However, failure to pay taxes appropriately is not a DBA issue. Questions regarding proper payment of taxes should be addressed to the Internal Revenue Service.
- 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. **To do business with the State of Florida, a contractor must be registered with the Department of State (DOS), and should supply the prime with an FEID number.**

Question on Previous Slide????

- ▶ What is the Process for notifying IRS when taxes are not paid on employees?
- ▶ After checking Certified payroll and determining that the employee was paid the prevailing wage but no taxes were withheld on the employee, contact the local IRS and give them the information on the employees and contractor:
- ▶ On the previous slide
 - ▶ Taxes must be paid in accordance with applicable federal State and local tax laws. IRS rules apply. However, failure to pay taxes appropriately is not a DBA issue. Questions regarding proper payment of taxes should be addressed to the Internal Revenue Service.
 - ▶ 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. **To do business with the State of Florida, a contractor must be registered with the Department of State (DOS), and should supply the prime with an FEID number.**
- ▶ See the IRS warning below:
 - ▶ <https://www.irs.gov/uac/irs-warns-businesses-individuals-to-watch-for-questionable-employment-tax-practices>
 - ▶ If Employment taxes of any kind are not paid on an employee, then contact the IRS office in your district.

QUESTIONS



Child Support

► WHICH LAWS TO FOLLOW

- Non-custodial parent lives in Florida and the Child Support Order is from another state. Which state's laws are followed in determining with holding from income and fees for processing?

► ANSWER

- When an employer or payor of income receives an income deduction order/notice for child support from another state on a child support obligor living and working in Florida, the payor of income should follow the law of the employee's principal place of employment in determining the employee's processing fee to be deducted along with the child support obligation. Therefore, Florida statutory fee should be deducted for those employees.
- The income-withholding order issued should be treated as if issued by a tribunal of this state.

Child Support

DOCUMENTATION

- Should a copy of the Child support documents, received by the Contractor in order to abide by a court order to deduct for Child Support, be provided to us?

ANSWER

- In the past we requested copies of the Documents because we needed to see if they included authorization for an Administrative fee to be charged by the contractor. We no longer need to do that. The Florida Statutes (FS) list the amounts that can be charged for administrative fees.
 - Per the FL statute you are allowed to deduct for administrative cost \$5.00 for the first deduction for Child Support and \$2.00 for each deduction after that. This deduction is to help with the cost that the employer has to pay for setting up the deduction in their system and to aid in expenses for mailing etc.
 - Court ordered deductions such as child support is a deduction that is listed in 29 CFR 3.5 and does not require volunteer consent by the employee. It is by court order and the Certification will take care of this type of deduction. If there is any question about whether the amount is legitimate, then the employee once again can be interviewed and if it does not mesh then once again we can turn this over to USDOL. The actual court order can have confidential information on it that we do not need to have, nor know. So please do not request these documents. That is investigative work that USDOL is responsible for.
- §3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**
- Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:
 - (c) Any deduction of amounts required by court process to be paid to another.

Child Support

▶ CCCR

- ▶ We can do on site reviews to review contractor files during this review, so if you wish to look at the court order during this period you can

▶ Employee Interview or Employee Complaint

- ▶ When an employee is interviewed and payroll is checked against his/her interview, a difference in the deduction could result in a request for the court documents to confirm the amount to be deducted from the employees weekly pay.
- ▶ If the employee were to complain about the amount the contractor is withholding for child support then this would definitely be a situation where we would ask for a copy of the court documents. Remember this is not something that we should ask for randomly and if in our possession extra care should be taken to protect the privacy of these documents.

QUESTIONS



Uniform Deduction Letters

➤ In the past

Payroll Requirements on Federal-Aid Projects What Contractors Need to Know

The Copeland Act is also called the Copeland “Anti-Kickback “ Act. It was created to:

- Prohibit “kickbacks” of wages and back wages
- Require contractors on covered projects to submit weekly a “Statement of Compliance” (i.e., certifying that the contractor has paid the required wages)
- Regulate payroll deductions from wages
- Specify methods of payment of wages

The most commonly encountered aspects of this regulation for our contractors are the requirements that certified payrolls be submitted and that DOL approval be obtained for the contractor to make payroll deductions for uniforms, cell phones, and certain other items opted for by the employee.

Uniform Deduction Letters

► In the past

Payroll Requirements on Federal-Aid Projects What Contractors Need to Know (Payroll Deductions)

Deductions for purposes other than previously listed require the approval of the Secretary of Labor. Such deductions typically include: personal use of vehicles; personal use of cell phones and/or pagers; uniform rentals ; purchase of tools; transportation costs; and personal use of credit cards. Permission to make such deductions must be obtained through USDOL and such authorizations must be renewed annually.

Uniform Deduction Letters

- **Present**
- If the uniform deduction does not take an employee below the required prevailing wage due for their work classification, no permission to make the deduction is required.
- If the deductions does take the employee below the prevailing wage, then the contractor may request approval of the deduction, provided it meets the factors set forth in 29 CFR 3.6.
 - Which includes the requirement that the deduction be for the convenience and benefit of the employee and voluntary.

Uniform Deduction Letters

- **Present**
- Required uniforms are considered to be for the benefit of the employer, and a business expense.
- Based on information previously provided, stating that uniforms are required, that employees must sign a waiver agreeing to follow the uniform policy upon employment, that they are not permitted to wear their personal clothes, and are verbally reprimanded for not following the uniform policy, it appears that the uniforms are required and therefore a deduction from the employee's pay would not be allowed.

Uniform Deduction Letters

- **Present**
- However, if the employee is not required to wear the uniform and that is stated in the uniform policy, the contractor can send a copy of the uniform policy, handbook, etc., and the USDOL will be happy to take that information into further consideration.

Uniform Deduction Letters

- **Present and Official Interpretation**
- If a uniform deduction does not take an employee below the required prevailing rate of pay, either on the General Wage Determination assigned to the project or either the prevailing rate conformed to the project by the WHD, and does not cut into the OT compensation required by the FLSA then the deduction can be made without permission from the USDOL.

Question on Previous Slide????

- ▶ **Uniform deductions only or are other deductions affected also?**
- ▶ **WE ARE STILL WAITING AN OFFICIAL ANSWER ON THIS:**
- ▶ **On A previous slide**
 - ▶ If the uniform deduction does not take an employee below the required prevailing wage due for their work classification, no permission to make the deduction is required.
 - ▶ If the deductions does take the employee below the prevailing wage, then the contractor may request approval of the deduction, provided it meets the factors set forth in 29 CFR 3.6.
 - ▶ Which includes the requirement that the deduction be for the convenience and benefit of the employee and voluntary.
- ▶ **Remember the deduction can not take the employee below the required prevailing wage and must be voluntary:**
 - ▶ So most other deductions are deductions that could fluctuate with use, example (credit card, gas card, or cell phone) so I would assume that we should still get these approved through USDOL, because of the possibility that the deduction could take the employee below the required prevailing wage.
 - ▶ If it was for a one time occurrence and you saw that it did not take the employee below the required prevailing wage and you saw where the deduction was voluntary by the employee – I would accept the deduction without USDOL notification.

QUESTIONS



Payrolls Checked for Completeness and Accuracy

- ▶ **CPAM 5.3:**
- ▶ *Though it is not possible to check every entry on every payroll, the following minimums shall be adhered to for guidelines and additional checks may be required if deemed necessary.*
- ▶ *The first payroll each Contractor/subcontractor submits on the project shall be checked completely for, but not limited to, errors, omissions, misclassifications, unauthorized deductions, or inadequate pay.*
- ▶ *Thereafter, spot checks shall be made at no less than 1 in every 10 entries on payrolls. The entries checked will be initialed by the Resident Compliance Specialist (RCS) to signify and acknowledge the entry verification. Upon satisfaction by the RCS of the accuracy of payrolls submitted by an individual Contractor and upon approval of the District Contract Compliance Manager (DCCM) or their designated representative, the minimum checking requirements may be lessened"*

Payrolls Checked for Completeness and Accuracy

- ▶ **Perfect Case:**
- ▶ It appears the prime contractor's payroll contains a large, excessive number of employees who are interviewed during a single pay period and the RCS has to compare a single payroll to a large number of interviews.
 - ▶ There are no or only minimal infractions.

Payrolls Checked for Completeness and Accuracy

- ▶ **DCCM Makes a Risk Based Reduction of Spot Checks on Payrolls:**
- ▶ When a large number of labor interviews are validated against the Prime Contractor's certified payroll and no situations requiring the issuance of payroll violations are found, the 'spot checking' (1 in 10 entries) can be amended as follows:
 - ▶ For the next two (2) pay periods, no payrolls for this contractor will be monitored.
- ▶ If payroll violations are issued on any of the employees interviewed, but it seems that this was not a calculated misrepresentation on the behalf of the contractor.
 - ▶ The Prime Contractor's payrolls for the next two (2) pay periods will only be monitored for the affected employees.

QUESTIONS



Table 6.2.1 Common USDOL Rules Guiding Wage Determinations

► 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.

Table 6.2.1 Common USDOL Rules Guiding Wage Determinations

► Ninety (90) Day Rule

<p>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.</p>
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Question on Previous Slide????

- ▶ How does a project that gets protested impact the wage determinations?
- ▶ IF THE PROTEST HOLDS THE PROJECT UP PAST THE 90 DAYS ALLOWED BY USDOL BETWEEN THE BID LETTING AND THE AWARD, THEN THE 90 DAY RULE WOULD APPLY AND THE MOST CURRENT WAGE DETERMINATION WOULD APPLY.
- ▶ On the previous slide

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.

- ▶ It is the responsibility of the District Compliance Manager to coordinate these activities:
 - ▶ If you are unsure of which WD is to be attached contact the CO.

Table 6.2.1 Common USDOL Rules Guiding Wage Determinations

► 20% and/or \$1 Million

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 and 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.

Table 6.2.1 Common USDOL Rules Guiding Wage Determinations

- ▶ **20% and/or \$1 Million**
 - ▶ But first the project must meet the test of two different types of Construction.
 - ▶ So if the building was not there in the previous situation then you would not need building construction.
 - ▶ If you had a bridge on the project that was not considered Heavy construction because of its location. Then the bridge is termed Highway construction and you would not need to determine if this section applies.

How to Determine if a Bridge is Heavy

- ▶ **See USDOL FIELD OPERATIONS GUIDE**

- ▶ General description of “heavy construction” characterizes as “bridges over navigable waters”
 - ▶ USDOL FIELD OPERATIONS GUIDE: **Heavy:** This is a catch-all category. It includes all other projects not classified as building, highway or residential (e.g. bridges over navigable waters, dams, dredging and irrigation projects, tunnels). Of the four categories of construction, this is the only type of construction that can be broken into subcategories such as water and sewer line projects and dredging projects.

How to Determine if a Bridge is Heavy

- ▶ **See AAM 130 & 131**

- ▶ Major bridges designed for commercial navigation.
- ▶ “Major bridges” have long been understood in WHD/BCWD to include “bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction, and other major bridges.”
- ▶ The last mention of “other major bridges” leaves open the possibility of specific situations where there is an unusual bridge other than the types specified that would be so unusual and large (such as structurally in a way that would distinguish it from normal highway bridges) that it should be examined more closely, and situations where evidence indicates that the local area practice is for certain other types of bridges to be treated as heavy construction rather than highway construction by the construction industry practice in the area

Question on Previous Slide????

- Is FDOT's definition of Major Bridge the same as USDOL? Is work in the water considered to be Heavy even if the Bridge is not Heavy?
- **NO – FOR THE DETERMINATION OF THE HEAVY TABLE YOU MUST USE THE USDOL'S DEFINITION. FOR DETERMINATION OF WHETHER OTHER WORK THAT IS IN THE WATER IS HEAVY OR NOT REFER TO AAM 131.**
- **Some work in the water that is listed as Heavy:**
 - Breakwaters, Caissons, Canals, Channels, Channel cut-offs, Cofferdams, Dams, Dikes, Docks, Drainage Projects, Dredging Projects, Flood Control Projects, Irrigation Projects, Jetties, Land Drainage and Leveling (that is not incidental to other construction), Land Reclamation, Levees, Locks Waterways, Ponds, Reservoirs, Revetments, Shoreline Maintenance, Unsheltered Piers and Wharves, Viaducts, Water-way Construction, Wells
 - Any other construction that may come up that you are not sure about, you could always forward up and request a decision.

How to Determine if a Bridge is Heavy

➤ See 33 CFR Section 329.4

- General **definition as determined by the United States Coast Guard. Navigable waters** of the United States are those **waters** that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- The U.S. Coast Guard (U.S.C.G.) makes navigability determinations regarding specific waterways or portions of waterways in order to determine its jurisdiction on those waterways. As stated in the U.S.C.G. link below:
- “NAVIGABLE WATERS OF THE UNITED STATES BY DEFINITION UNDER 33 CFR 2.36(A)(1) OR (2) ... include the territorial seas of the United States and all internal waters of the United States that are subject to tidal influence. ... too numerous to list by name ... [and] waterways for which the Coast Guard has made a navigability determination.”

How to Determine if a Bridge is Heavy

► What it all means

- AAM No. 130 recognizes: “Major bridges contain elements of both heavy and highway construction. On bridge projects involving what AAM No. 130 calls “major bridges designed for commercial navigation” it is common for the substructure and superstructure – i.e. the bridge itself – to be classified as “heavy construction” and for the highway approaches on either side and the paving and related road work (on the bridge once it is built) to be classified as highway construction (in such situations, these would easily comprise more 20% of the overall project cost and cost well over \$1 million; even the road work on the bridge could generally exceed \$1 million cost).

QUESTIONS



FALSIFICATION OF PAYROLLS

- ▶ **IT IS A CRIMINAL VIOLATION UNDER THE COPELAND ACT:**
 - ▶ It can result in a fine and up to 5 years in prison, or both.
 - ▶ 18 USC 874 & 1001.
 - ▶ Can be grounds for a private law suit under False Claims Act.
 - ▶ 31 USC 3730.

Most Payroll Violations are not Intentional

- ▶ **Once the Contractor is notified:**
 - ▶ The fix is made.
 - ▶ But for the rare instance that they do not.
 - ▶ Move quickly to gather all pertinent information on the situation.

Payroll Violations

➤ Contractor is refusing to comply:

- Create a file with information on the project and the prime contractor and/or the subcontractor if applicable.
 - To include non-compliance notifications.
- All affected employees should be contacted and do an interview and/or get any additional information that they are willing to offer. Example:
 - Get their contact information and any permanent address of parents or other family members. (this is in case the employee is no longer available when the investigation is completed)
 - Collect social security information (make sure to keep this in a secure location)
- If the problem is not resolved turn over to the Wage and Hour Division.
- Make a copy of all the information that you have including how much money is owed each employee and fill out and attach Form SF1446 (Labor Standards Investigation Summary Sheet) and send to US Department of Labor.

USDOL Investigation File

➤ Send to USDOL:

- The file with information on the project/include a copy of the contract, the wage decision(s) for the project, copies of the certified payroll records.
- Information on the prime contractor and/or the subcontractor if applicable.
 - Name and address of firm.
 - Name and address of all responsible officials.
 - Include non-compliance notifications.
- All employee interviews and any additional information that you collected.
 - Contact information and any permanent address of parents or other family members.
 - Social security numbers
- Completed computations of back wages, and confirmation of withholdings, include a list of affected employees and how much money is owed each employee.
- A detailed narrative of all investigation findings. Include Form SF1446 (Labor Standards Investigation Summary Sheet) .
- Make a copy for the Department and send the package to US Department of Labor.

QUESTIONS



CLASSIFICATION ISSUES

► **Classifications vs OJT classes:**

- Just because EOO has agreed to let you train someone in a technical or professional position does not mean that DOL will conform a classification for that position.
 - Remember If a position is Technical or Professional in nature then it may not be subject to Davis Bacon.
 - Example is a Survey Instrument man or survey chief. It is OK to be approved for OJT for these two classes but USDOL finds these professional or technical in nature and they are not subject to Davis Bacon requirements such as certified payroll.
 - Therefore, no classification will be conformed for these classes. The contractor would only have to make sure that a surveyor or a position equal to or higher than the class being trained in for the profession was present at the time the trainee is training.

CLASSIFICATION ISSUES

- ▶ **Specialized Labor Classifications vs Common/General Laborer:**
 - ▶ There are many specialized labor classification that we have created for our contractors that could use the classification of Common/General Laborer.
 - ▶ One of these is MSE wall laborer, Traffic Signal Laborer Etc.
 - ▶ I do not have a problem for you requesting any classification that is in our data base, however, many times according to who is reviewing the request in Washington, it could be rejected or conformed.
 - ▶ But we should not be writing payroll violations for these crossover classifications. And if the contractor tells you that he prefers to call them Common/General it is OK.

CLASSIFICATION ISSUES

➤ **Specialized Labor Classifications vs Tracking in Individual Classes:**

- There are many specialized labor classification that we have created for our contractors that could be broken down into individual classes.
 - One of these is MSE Wall Erector.
 - Once again you can suggest to the contractor that they request any classification that is in our data base, however, if the contractor disagrees with you and tells you, that they prefer to track the time the employees are doing a certain job or hold them in the highest classification they perform, then that is their perogative.
 - Example: The above classification may consist of a Common/General Laborer, a Power Tool Operator, a Roller Operator, a Concrete Finisher and a Bulldozer or Front End Operator. If the contractor chooses to track these classes that an MSE Erector performs instead of requesting the one class, then he can do that,
 - And we should not be writing payroll violations for these crossover classifications.

QUESTIONS



CUSTOMER SERVICE

- ▶ **WE ARE ALL CUSTOMER SERVICE REPRESENTATIVES:**
 - ▶ Customer service representatives answer questions and solve problems.
 - ▶ Always be respectful and know where to get answers if you don't know something.
 - ▶ Listen carefully so that you understand the need or concern in order to be able to resolve the problem efficiently and effectively.
 - ▶ Always respond in a friendly and professional manner. Be patient and polite.
 - ▶ We have access to responses for the most commonly asked questions and specific guidelines to follow.
 - ▶ Read the EOO Manual and CPAM and understand what you read. If you have questions call us and ask.

CUSTOMER SERVICE

- ▶ **AS CUSTOMER SERVICE REPRESENTATIVES WE SHOULD BE ABLE TO:**
 - ▶ Listen and respond to contractor needs and concerns.
 - ▶ Provide information about compliance, payroll and classifications.
 - ▶ Show how to calculate fringes and deductions.
 - ▶ Review payrolls.
 - ▶ Handle complaints from employees and contractors.
 - ▶ Research answers or solutions as needed.
 - ▶ Refer the contractors or employees to me or David-if you don't know how to respond. Or tell them you will get back with them and call us yourself.

QUESTIONS

