

DAVIS-BACON

**WAGE AND
PAYROLL
REQUIREMENTS**

CRD/**January 2012**

DAVIS-BACON WAGE AND PAYROLL REQUIREMENTS

JANUARY 2012

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These guidelines are provided to assist contractors in complying with the federal wage and payroll requirements of the Davis-Bacon and Related Acts on North Dakota Department of Transportation federally funded highway construction projects **ONLY**. Although the information contained in the handbook has been obtained from reputable sources in accordance with currently available information, it may not be applicable to other contracting agencies or other State Departments of Transportation. **The Civil Rights Division provides technical assistance to ONLY those contractors working on federally funded highway construction projects in North Dakota.**

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DAVIS-BACON WAGE AND PAYROLL REQUIREMENTS

The following is a summary of the wage and payroll requirements under the Davis-Bacon and Related Acts (DBRA):

A. Special Provisions

1. Under DBRA, all persons employed on or working upon the **site of the work** of a federally funded highway construction contract **MUST** be paid the wage rates and fringe benefits determined by the Secretary, U.S. Department of Labor (USDOL), to be prevailing in the area of the project. In addition, DBRA requires that certain labor standards provisions be specified in the contract awarded to the successful bidder and that the applicable Davis-Bacon wage rate decision also be included in the contract documents. Consequently, all federally-aided highway construction contracts contain the following special provisions:

- a. *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-94)*.* This special provision outlines contractor requirements relating to wages, payrolls, and compliance statements and is available online at:

www.fhwa.dot.gov/programadmin/contracts/1273.cfm

*The USDOL regulations concerning employees' social security numbers and addresses on Davis-Bacon weekly certified payrolls were changed effective **January 18, 2009**. The U.S. Department of Transportation (USDOT) Form FHWA 1273 has **NOT**, as yet, been revised to reflect the changes. Consequently, the North Dakota Department of Transportation (NDDOT) has modified the FHWA 1273 to incorporate the changes. The NDDOT version (Rev. January 18, 2009) **MUST** be used until USDOT revises Form FHWA 1273. The NDDOT version is available online at:

www.dot.nd.gov/divisions/civilrights/docs/1273.pdf

- b. *Labor Rates from U.S. Department of Labor.* This special provision specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction and is available online at (select a published date from the drop-down box):

2. Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.
3. Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, the entire contract is considered federally funded and is subject to DBRA. Therefore, Davis-Bacon wages **MUST** be paid and weekly certified payrolls **MUST** be generated and submitted for all portions or segments of the contract.

B. Site of the Work Definition

1. The definition for the **site of the work** has undergone many changes due to challenges to USDOL's interpretation of DBRA. The courts have significantly narrowed the definition previously used. In January 2001, USDOL released the following new definition modifying 29 CFR 5.2(j)(l):

“The **site of the work** definition includes material or supply sources, tool yards, job headquarters, etc., in the **site of the work** only where they are **dedicated** to the covered construction project **and** are **adjacent or virtually adjacent** to the location where the building or work is being constructed.”

2. The new definition applies to all federal-aid projects **let to contract** (**NOT** awarded) after **January 19, 2001**.

NOTE: Let to contract means the bid opening date.

3. Also changed is:

“The regulatory definition of construction 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 construction site.”

4. The key is **dedicated** to the job site **AND adjacent or virtually adjacent** to the location where the work is being constructed. NDDOT has defined **adjacent or virtually adjacent** as **any tool yard, fabrication plant, job headquarters, material or supply source (i.e., borrow pit, stockpile site,**

concrete or asphalt batch plant site), **etc.**, whose boundary is located **within one-half mile** of the closest right of way boundary to the **federal-aid** project. The distance is measured as one-half mile from the boundary to the **tool yard, fabrication plant, job headquarters, material or supply source (i.e.,** borrow pit, stockpile site, concrete or asphalt batch plant site), **etc.**, to the closest project boundary, **as the crow flies**, NOT to the middle of the project.

5. The federal regulations further define the **site of the work** as:
 - a. “I(1) The **site of the work** is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established **specifically for the performance of the contract or project.**”
 - b. “I(2) Except as provided in paragraph I(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the **site of the work** provided they are **dedicated exclusively, or nearly so**, to performance of the contract or project, **and** provided they are **adjacent or virtually adjacent** to the **site of the work** as defined in paragraph I(1) of this section.”
 - c. “I(3) **Not included** in the **site of the work** are **permanent** home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are **established** by a supplier of materials for the project **before opening of bids and not on the site of work** as stated in paragraph I(1) of this section, are **not** included in the **site of the work**. Such permanent, previously established facilities are **not** part of the **site of the work**, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.”
6. Supplying and Hauling Material
 - a. If the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, is located **more than one-half mile** from the

closest right of way boundary to **a federal-aid project**, DBRA **generally* DOES NOT** apply. It **DOES NOT** matter when the project was **let to contract** (**NOT** awarded) because the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, is **more than one-half mile** away.

- b. If the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, is located **one-half mile or less** from the closest right of way boundary to **a federal-aid** project,
 - (1) DBRA **generally* DOES NOT** apply if the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, **HAS BEEN** open and making sales to the general public within the previous **twelve months** of the **day** the project was **let to contract** (**NOT** awarded).
 - (2) DBRA **DOES** apply if the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, **HAS NOT BEEN** open and making sales to the general public within the previous **twelve months** of the **day** the project was **let to contract** (**NOT** awarded).

***If the time spent on the site of the work loading and/or unloading materials, supplies, tools, etc., is NOT more than de minimis (only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc.). See Section C (page 9) for information concerning the application of DBRA to truck drivers.**

- c. **Except as noted in Section C (page 9)**, the manufacture and **delivery** to **a federal-aid project** of supply items such as sand, gravel, and ready-mix concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are activities **generally NOT** covered by DBRA. This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site. Such bona fide material suppliers are **NOT** considered contractors under DBRA. Thus, their employees are **generally NOT** due Davis-Bacon wages and weekly certified payrolls are **generally NOT** required **by NDDOT**. What constitutes a sufficient quantity of sales to the general public depends on the circumstances in each case, but **MUST** be **more than mere token sales**.

- d. The supplier **MUST** be able to demonstrate that he or she has ***routinely been selling to the general public*** from the **borrow pit, stockpile site, concrete or asphalt batch plant site, etc.**, and that the borrow pit, **stockpile site, concrete or asphalt batch plant site, etc.**, was opened for that use, **NOT** for the federal-aid project in question. In other words, if they are normally considered a supplier but they opened the borrow pit, **stockpile site, concrete or asphalt batch plant site, etc.**, just for the federal-aid project, **AND** the borrow pit, **stockpile site, concrete or asphalt batch plant site, etc.**, is located ***one-half mile or less*** from the closest right of way boundary to the project, they would be considered a subcontractor and **NOT** a supplier. Consequently, Davis-Bacon wages would be due and weekly certified payrolls would be required.
- e. If DBRA **DOES** apply to a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, the employees who perform tasks directly related to producing the product are covered, including the truck drivers who haul the materials from the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, to the **federal-aid** project, regardless of on whose weekly certified payroll they appear.
- f. It **DOES NOT** matter who owns the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**; who is crushing; or who is producing the product. What matters is whether the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, is **dedicated** to the **federal-aid** project **AND** is **adjacent or virtually adjacent** to the project.
- g. In addition, it **DOES NOT** matter if the borrow pit is a state-optioned pit. If the borrow pit is located ***more than one-half mile*** from the closest right of way boundary to the **federal-aid** project, DBRA **generally* DOES NOT** apply.
- h. If rubble or other material is hauled from a **federal-aid** project to a location designated in the plans and specifications for the project, DBRA **DOES** apply **and weekly certified payrolls are required**. If no location is designated in the plans and specifications and the truck drivers are hauling the rubble or material from the project to a location determined to **NOT** be a **site of the work**, DBRA

generally* **DOES NOT** apply and weekly certified payrolls are generally* **NOT** required by NDDOT.

***If the time spent on the *site of the work* loading and/or unloading materials, supplies, tools, etc., is **NOT more than de minimis** (only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc.). See Section C (page 9) for information concerning the application of DBRA to truck drivers.**

- i. However, if a material supplier, **manufacturer, or carrier** undertakes to perform a part of a **federal-aid** contract as a subcontractor, its laborers and mechanics (**those who perform manual labor**) employed at the ***site of the work*** would be subject to DBRA in the same manner as those employed by any other subcontractor **and weekly certified payrolls would be required. In addition**, employees of a material supplier who are required to perform ***more than an incidental amount*** of construction work in any given workweek at the ***site of the work of a federal-aid project*** would be covered by DBRA and due the **appropriate** wage, **including applicable fringe benefits**, for the classification of work performed. **This includes warranty and/or repair work.**

(1) For example:

- (a)** If an employee of a supplier of precast concrete items is required to go to the federal-aid project to repair and clean such items, and in so doing performs ***more than an incidental amount*** of construction activity on the project, the individual would be subject to DBRA.
- (b)** An employee of an equipment rental dealer or tire repair company who performs on-site repair work on leased equipment is subject to DBRA if the employee performs ***more than an incidental amount*** of work on the federal-aid project.

- (2)** For enforcement purposes, if **such** an employee spends ***more than 20 percent*** of his or her time in a workweek **engaged in such activities** on the ***site of the work*** of a federal-aid project, he or she is DBRA covered for all time

spent on the **site of the work** during that workweek. The employee **MUST** be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, for those hours and weekly certified payrolls **MUST** be generated and submitted.

(3) **However, this DOES NOT pertain to truck drivers who spend time on a federal-aid project or the *site of the work* of a federal-aid project merely to pick up or drop off materials, supplies, tools, etc. They would be subject to the *de minimis* ruling. [See Section C (page 9) for information concerning the application of DBRA to truck drivers.]**

j. Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, Davis-Bacon wage rates **MUST** be paid and weekly certified payrolls **MUST** be generated and submitted for all portions or segments of the contract. Consequently, the principles previously described apply to borrow pits, stockpile sites, concrete or asphalt batch plant sites, **etc.**, used for the contract or project. For example:

- (1) A contract has three portions or segments, of which two are federally funded and one is strictly state funded.
- (2) There is a two and one-half mile gap between the state funded portion or segment and the next closest federally funded portion or segment.
- (3) Material is being hauled from a borrow pit located ***less than one-half mile*** from the closest right of way boundary to the state funded portion or segment.
 - (a) Because two of the portions or segments are federally funded, the entire project is viewed as federally funded.
 - (b) Since the borrow pit is located ***less than one-half mile*** from the closest right of way boundary to the state funded portion or segment;
 - DBRA **generally*** DOES NOT apply if the borrow pit HAS BEEN open and making sales to the general

public within the previous **twelve months** of the **day** the project was **let to contract** (NOT awarded).

- DBRA DOES apply if the borrow pit HAS NOT BEEN open and making sales to the general public within the previous **twelve months** of the **day** the project was **let to contract** (NOT awarded).

***If the time spent on the site of the work loading and/or unloading materials, supplies, tools, etc., is NOT more than de minimis (only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc.). See Section C (page 9) for information concerning the application of DBRA to truck drivers.**

- (4) DBRA applies to anyone working **adjacent** (within one-half mile) to the boundaries of the project site, normally at a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**
 - (5) If material is hauled from that same borrow pit to any one of the other two portions or segments, which are NOT **adjacent** to the borrow pit, DBRA still applies because the portions or segments are looked at as a whole.
- k. There are times when, at the end of a **federal-aid** project, NDDOT adds another mile or two to the project through the issuance of a change order. If it was previously determined that the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, was located **more than one-half mile** from the closest right of way boundary to the project but the added segment brings the boundary to the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, **within one-half mile** of the project boundary:
- (1) Those employees working on the additional segment under the change order would be due Davis-Bacon wages, including applicable fringe benefits, and weekly certified payrolls would be required.
 - (2) Those employees hauling from and working at the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**,

under the change order would be due Davis-Bacon wages, including applicable fringe benefits, and weekly certified payrolls would be required **by NDDOT ONLY** if the borrow pit, stockpile site, concrete or asphalt batch plant site, **etc., WAS NOT** open and making sales to the general public within the previous **twelve months** of the **day** the project was **let to contract** (**NOT** awarded) **and ONLY if the truck drivers' time spent on the additional segment under the change order is more than de minimis.** [See Section C (page 9) for information concerning the application of DBRA to truck drivers.]

- I. If it is unclear whether a borrow pit, stockpile site, concrete or asphalt batch plant site, **etc.**, is considered a **site of the work of a federal-aid project**, contact the NDDOT Civil Rights Division for a ruling. [See Section R (page 67) for addresses and phone numbers.]

C. Application of DBRA to Truck Drivers

The application of DBRA to truck drivers is based on the definition of **construction, prosecution, completion, or repair** in 29 CFR 5.2(1). Three U.S. appellate court decisions in the 1990's helped to clarify these definitions and provide the guidelines below (65 FR 80268-80278, December 20, 2000):

1. Truck drivers **ARE COVERED** under DBRA in the following circumstances:
 - a. Truck drivers of a prime contractor or subcontractor for time spent working on the **site of the work**.
 - (1) In this instance, the **site of the work** means a federal-aid project and any tool yard, fabrication plant, job headquarters, material or supply source (i.e., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., that is:
 - (a) **Dedicated to the federal-aid project AND**
 - (b) **Adjacent or virtually adjacent to the federal-aid project.**

- (2) NDDOT has defined *adjacent or virtually adjacent* as any tool yard, fabrication plant, job headquarters, material or supply source (i.e., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., whose boundary is located *within one-half mile* of the closest right of way boundary to a federal-aid project. The distance is measured as one-half mile from the boundary to the tool yard, fabrication plant, job headquarters, material or supply source (i.e., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., to the closest project boundary, *as the crow flies*, NOT to the middle of the project.
- (3) *Dedicated* to the federal-aid project means the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was NOT open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (NOT awarded).

NOTE: *Let to contract* means the bid opening date.

- b. Truck drivers of a prime contractor or subcontractor for time spent loading and/or unloading materials, supplies, tools, etc., (including waiting time) on the *site of the work*, if such time is NOT *de minimis*.
- (1) In this instance, the materials, supplies, tools, etc., would be coming from a location NOT covered by DBRA to a federal-aid project or the *site of the work* of a federal-aid project or going from a federal-aid project or the *site of the work* of a federal-aid project to a location NOT covered by DBRA (based on paragraph 1,a of this section) and NOT designated in the plans and specifications for the project (i.e., off-site).
- (2) *De minimis*, as defined by USDOL, means only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc. According to USDOL:
- (a) The *de minimis* ruling is a result of the Midway court case. The Midway truck drivers came on-site for only ten minutes at a time to drop off their

deliveries and that the time spent *directly upon the site of the work* constituted only ten percent of their workday; but no one argued in the case that the truck drivers were covered only during that brief time. USDOL DOES NOT preclude coverage for time spent on the *site of the work* no matter how brief. However, as a practical matter, since generally the great bulk of the time spent by material truck drivers is off-site and beyond the scope of DBRA coverage while the time spent on-site is relatively brief, USDOL chooses to use a rule of reason and will NOT apply DBRA with respect to the amount of time spent on-site, unless it is *more than de minimis*.

- (b) In other instances, *more than a substantial amount of time* was previously defined as 20 percent or more in a given workweek for enforcement purposes. However, this DOES NOT apply to truck drivers who spend time on a federal-aid project or the *site of the work* of a federal-aid project merely to pick up or drop off materials, supplies, tools, etc. There is NO set percentage of time used to determine *de minimis*. USDOL will consider 5-10 percent to be *de minimis* but may NOT consider 18 percent or more to be *de minimis*. Decisions on anything close to 20 percent are made on a case-by-case basis.
- (c) Situations involving *de minimis* rulings normally arise when:
- A borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *beyond the half-mile limit* but still close enough to cause the truck drivers less time in travel and more time on the federal-aid project or the *site of the work* waiting to be loaded and/or unloaded.

- A borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *within the half-mile limit* and was open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (NOT awarded), thus making it a commercial borrow pit, stockpile site, concrete or asphalt batch plant site, etc., and thus causing the truck drivers less time in travel and more time on the federal-aid project or the *site of the work* waiting to be loaded and/or unloaded.

(d) The prime contractor is ultimately responsible for compliance by it and any of its subcontractors and material suppliers. The burden of proof lies with the prime contractor and its subcontractors and material suppliers. The prime contractor and its subcontractors and material suppliers can either:

- Pay the appropriate Davis-Bacon wage, including applicable fringe benefits, for all of the hours the truck drivers spend on the federal-aid project or the *site of the work*; or
- Keep accurate records of the time so spent on the federal-aid project or the *site of the work* and pay the appropriate Davis-Bacon wage, including applicable fringe benefits, for the time spent on-site that is *more than de minimis*.

NOTE: The prime contractor can either include the truck drivers on its weekly certified payrolls or require the subcontractor or material supplier to generate and submit weekly certified payrolls for the time spent on-site that is *more than de minimis*.

(e) In determining whether a truck driver's time spent on-site is *more than de minimis*, USDOL

recommends basing the percent of time spent on-site on all of the hours the truck driver works in any given workweek rather than the truck driver's daily hours. Thus, 8 hours out of a 40-hour workweek would be 20 percent.

- (f) A prime contractor's, subcontractor's, or material supplier's failure to keep accurate records may cause NDDOT to side with the complainant should a wage dispute ensue.
 - (g) If a wage dispute does ensue and it is determined that a subcontractor's or material supplier's truck drivers spent *more than a de minimis* amount of time on a federal-aid project or the *site of the work* of a federal-aid project, and it is found that the prime contractor did NOT incorporate the labor standards provisions and/or Davis-Bacon wage rate decision into the subcontract or purchase agreement, the prime contractor will be held liable for any back wages found due.
 - (h) The prime contractor can minimize the likelihood of situations occurring where *de minimis* rulings are required by having truck drivers wait at locations considered NOT to be a *site of the work* until radioed in.
- c. Truck drivers transporting materials or supplies between a facility that is deemed part of the *site of the work* and the actual construction.
- (1) In this instance, a material supplier would be delivering materials or supplies to a federal-aid project from a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., determined to be a *site of the work* of the federal-aid project.
 - (2) Again, the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., **MUST:**

- Be located *one-half mile or less* from the closest right of way boundary to the project and
 - NOT HAVE BEEN open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (NOT awarded).
- d. 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 will remain.
- (1) In this instance, truck drivers would be transporting portions of a building or work to and from the project's final resting place.
 - (2) This is a new ruling resulting from the development of new construction technologies whereby major segments of a project can be constructed at locations some distance from where the permanent structure(s) will remain after construction is completed.
 - (3) A case in point is the Braddock Locks and Dam project in Pennsylvania that involves the construction of two massive floating structures, each about the length of a football field, which would comprise the vast bulk of the new gated dam. The actual construction of these floating structures is at an upriver location on or near the water. They are then floated down the river to the point where they are submerged into the dam and gate piers.
 - (4) USDOL will NOT specifically define the terms *significant portion* and believes it is unnecessary and unwise to do so. The size and nature of the project would dictate what constitutes a *significant portion*; and in those rare situations where projects are constructed in this manner, any questions would typically arise early in the procurement process so that advice could be obtained from USDOL in a timely manner.

2. Truck drivers ARE NOT COVERED by DBRA in the following instances:
 - a. Material delivery trucks while off the *site of the work*.
 - b. Truck drivers of a prime contractor or subcontractor traveling between a DBRA covered project and a commercial supply facility while they are off the *site of the work*.
 - c. 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, supplies, tools, etc.
 - d. Paragraphs a through c above are self-explanatory based on the definitions provided in paragraph 1 of this section (page 9).
3. See Section J, paragraph 12, g (page 51), and Section K, paragraph 8 (page 59), for information concerning truck owner-operators.

D. Payment of Predetermined Minimum Wage

1. All employees working on the *site of the work* of a federally funded highway construction contract **MUST** be paid unconditionally and **NOT** less often than **once a week**.
2. Therefore, the contractor **MUST** establish a fixed workweek (Sunday through Saturday for example) and a weekly payday (such as Friday, or the preceding day should such payday fall on a holiday). Any deviation from this schedule may indicate the contractor is attempting to circumvent the overtime requirements. [See Section F (page 20) for information concerning the payment of overtime hours.]
3. Employees **MUST** be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. [See Section G (page 23) for information concerning fringe benefit payments.]
4. Only payroll deductions authorized by law, or permitted under the regulations issued by the Secretary, USDOL, may be made from an employee's weekly paycheck. [See Section H (page 28) for information concerning payroll deductions.]
5. The payment **MUST** be computed at wage rates **NOT** less than those contained in the Davis-Bacon wage rate decision incorporated into the

contract, regardless of any contractual relationship that may be alleged to exist between the contractor, its subcontractors, and their employees.

6. Employees **MUST** be paid the appropriate Davis-Bacon wage and fringe benefits for the classification of work actually performed, without regard to skill, except those employees enrolled in approved apprenticeship and on-the-job training programs.
7. Apprentices and trainees **MUST** be paid at **NOT** less than the rate specified in the registered or approved program for the apprentice's or trainee's level of progress, expressed as a percentage of the journeyworker-level hourly rate specified in the applicable Davis-Bacon wage rate decision. Apprentices and trainees **MUST** also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. [See Section G (page 23) for information concerning fringe benefit payments.]
8. If an employee performs work in more than one job classification during a single payroll period and the classifications require different wage rates, the employee **MUST** be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicate which of the hours were included in the periods spent in each classification of work. The contractor may then pay **NOT** less than the rate specified in the Davis-Bacon wage rate decision incorporated into the contract for the job classification that describes each type of work performed. Contractors **MUST** keep accurate records of such periods of work and ensure the employee is paid at the correct rate for periods of work performed in each job classification. [See Section F (page 20) for information concerning the payment of overtime hours.]
9. If an employee's job classification is doubtful, contact the NDDOT Civil Rights Division for a ruling. [See Section R (page 67) for addresses and phone numbers.]
10. If the job classification is known but is **NOT** included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, **MUST** be conformed ***after the contract has been awarded***. [See Section L (page 60) for information concerning the conformance process.]

E. Counting and Reporting Time

1. An employee's time starts for the day whenever he or she does any of the following in any sequence:
 - a. Checks in to get instructions for the day;
 - b. Loads, services, or does preventive maintenance on equipment;
 - c. Cleans any part of the equipment; and
 - d. Drives or rides in a company vehicle or drives a piece of equipment to the project site. This includes truck drivers who transport equipment, **tools, materials, or supplies** to and from the project site or the **site of the work** and to and from the home office site.
2. An employee's time ends for the day after any of these same duties are performed at the end of the day.
3. For the time spent performing the above duties, employees **MUST** be paid at least the federal minimum wage (currently \$7.25 per hour). Davis-Bacon wages are due when the employee reaches a federal-aid project or the **site of the work**. For example:
 - a. An employee spends 1 hour each morning getting ready to go to and/or driving **to the site of the work** and 1 hour each day returning **from the site of the work**. While **at the site of the work**, he or she works 8 hours each day, Monday through Friday (10 hours each day for a total of 50 hours). The salary paid while **off the site of the work** is \$10.00 per hour while the salary paid **at the site of the work** is \$20 per hour. Overtime is paid at a rate of one and one-half times the applicable rate for all hours worked in excess of forty (40) hours per week.
 - b. The above employee would have worked 40 hours at the applicable regular rate of pay from Monday through Thursday. The employee is entitled to 8 hours at \$10.00 per hour (2 hours each day times 4 days) and 32 hours at \$20.00 per hour (8 hours each day times 4 days).
 - c. For Friday, the employee would be entitled to 2 hours at \$15.00 per hour (\$10.00 x 1.5) and 8 hours at \$30.00 per hour (\$20.00 x 1.5).

- d. **See Section F (page 20) for additional information concerning the payment of overtime hours.**
- 4. Truck drivers who have reached **a federal-aid** project or the **site of the work of a federal-aid project and** are waiting to be loaded **and/or unloaded** **MUST** also be paid Davis-Bacon wages, **including applicable fringe benefits**, for their waiting time. **[See Section C (page 9) for information concerning the application of DBRA to truck drivers.]**
- 5. **Except as noted in Section C (page 9),** truck drivers are **generally NOT** due Davis-Bacon wages when transporting equipment, **tools, materials, or supplies** to and from the home office site, or a project site **NOT** covered under DBRA, to and from a project site that is covered under DBRA. Truck drivers are **generally** due Davis-Bacon wages **ONLY** when transporting equipment, **tools, materials, or supplies** from one project to another **when both projects are covered under DBRA.**
- 6. Rounding Time
 - a. Rounding time is permitted under DBRA. For example:
 - (1) Seven minutes or less is dropped; 8 minutes through 22 minutes is 15 minutes; 23 minutes through 37 minutes is half an hour; etc. To be allowed, rounding **MUST** be fair for both the employer and the employee.
 - (2) Under the system outlined above, an employee may gain a few minutes one day and lose a few minutes another day.
 - b. Rounding is allowed but is **NOT** required. Actual minutes may be used rather than rounding.
 - c. Rounding to a number greater than the nearest 15 minutes is **NOT** allowed. In other words, rounding to the nearest half hour is **NOT** permitted.
 - d. Contractors should keep in mind that rounding to the nearest 15 minutes causes the break between 7 and 8 minutes. Under this concept, some contractors **DO NOT** allow employees to record the 15 minutes until the full 15 minutes have been worked. This is a **VIOLATION.**

7. Breaks

- a. There is no federal law covering breaks.
- b. There is a state law which reads, "On shifts exceeding five (5) hours and which consist of two (2) or more employees, there shall be a thirty (30) minute, uninterrupted **break made available to employees who desire such a break**. Collective bargained provisions will prevail over provisions of the Wage Order."
- c. If employees want a break, state law says they **MUST** be given one. Also, employees **MUST** generally be paid for meal periods unless the following conditions exist:
 - (1) The period is at least 30 minutes long;
 - (2) The employee is completely relieved of duties; and
 - (3) The employee can leave his or her work post, although he or she can be required to remain on the company premises.
- d. Rest periods and coffee breaks of 20 minutes or less are generally required to be counted as hours worked. Payment for break periods over 20 minutes depends on whether or not the employee is free to pursue his or her own activities.
- e. NDDOT **DOES NOT** enforce the state law on breaks. Any problems or questions should be addressed to the North Dakota Department of Labor (NDDOL). **[See Section S (page 67) for addresses and phone numbers.]**

8. Timecards

- a. There are no mandatory formats or procedures for employees to report their daily and weekly hours worked. Generally, it is the **employer's responsibility to provide a daily or weekly timecard to each employee and the** employee's responsibility to complete the daily or weekly timecard and to submit it to their project supervisor on a timely basis.
- b. Federal regulations only require that contractors keep accurate records of periods of work and ensure that employees are paid at

the correct wage rate for the periods of work performed in each job classification.

- c. When an employee's timecard contains an error, NDDOT **STRONGLY RECOMMENDS** any changes made to the timecard be initialed and dated by both the supervisor, or other company official, and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.

F. Overtime Hours

1. **The Contract Work Hours and Safety Standards Act (CWHSSA) applies to all federal-aid highway construction contracts subject to DBRA. CWHSSA requires prime contractors and subcontractors with covered contracts to pay laborers and mechanics (those who perform manual labor) employed in the performance of the contracts one and one-half times their *basic rate of pay* for all hours worked over forty (40) in a workweek.**
2. **The *basic rate of pay* under CWHSSA is the straight time hourly rate and CANNOT be less than the basic hourly rate required in the Davis-Bacon wage rate decision incorporated into the contract. This means the wage rate actually paid an employee for non-overtime work, when it exceeds the applicable Davis-Bacon rate, is the *basic rate of pay* on which NOT less than time and one-half for overtime MUST be computed.**
3. **Under DBRA, amounts paid as fringe benefits, both contributions made to bona fide fringe benefit plans and cash payments made to employees, are excluded in computing overtime obligations under CWHSSA. [See Section G (page 23) for information concerning fringe benefit payments.]**
4. **CWHSSA applies to laborers and mechanics (those who perform manual labor) for the time spent on DBRA covered contract work ONLY (i.e., total up all time each employee spent working on DBRA covered contracts and exclude all commercial, non-government work).**

NOTE: Commercial, non-government work is subject to the Fair Labor Standards Act (FLSA). FLSA establishes the federal minimum wage of \$7.25 per hour and requires overtime of NOT less than time

and one-half the *basic rate of pay* for all hours worked in excess of forty (40) in a workweek. NDDOT DOES NOT enforce FLSA. Any problems or questions should be addressed to either NDDOL or USDOL. [See Section S (page 67) for addresses and phone numbers.]

5. In the case of an employee working for two or more employers, all hours worked under the same contract are to be counted for purposes of CWHSSA overtime even though the employers are disassociated or otherwise separate, such as a prime contractor and a subcontractor. This also applies to employees of a temporary employment agency. [See Section O (page 63) for additional information concerning employees hired through temporary employment agencies.]
6. An employee working for the same contractor on two or more separately awarded contracts subject to DBRA and CWHSSA is entitled to have the hours worked on all such covered contracts combined and to receive overtime for all such hours worked in the workweek in excess of forty (40) as described in paragraph 8 of this section. This also applies to employees of a temporary employment agency. [See Section O (page 63) for additional information concerning employees hired through temporary employment agencies.]
7. When an employee performs two or more types of work for which different hourly rates are applicable (i.e., different job classifications, DBRA work which is all covered by CWHSSA, or non-DBRA work which is covered by FLSA, etc.), the CWHSSA overtime premium is computed under FLSA principles. This means:
 - a. The contractor can compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked; or
 - b. The contractor can use the weighted average method to determine the overtime premium pay required under CWHSSA and/or FLSA. For example:

Assume an employee is hired to perform work on a DBRA covered contract in two job classifications: Painter and Electrician. The basic hourly rate for a Painter is \$10.00 plus

\$3.00 in fringe benefits; and the basic hourly rate for an Electrician is \$12.00 plus \$2.50 in fringe benefits. The weekly certified payroll shows the employee performed painting and electrical duties as follows:

	S	M	T	W	T	F	S
Painter		8	8	8			
Electrician				8	8	4	

Step 1: Determine the straight time wages due, excluding fringe benefits

$$24 \times \$10 = \$240 \text{ (as Painter)}$$

$$20 \times \$12 = \$240 \text{ (as Electrician)}$$

$$44 \quad \$480 \text{ (total straight time wages)}$$

Step 2: Calculate the *regular rate*

$$\$480 \div 44 = \$10.91$$

Step 3: Compute the overtime premium due

$$\$10.91 \times .50 = \$5.455 \times 4 = \$21.82$$

8. In the example above, the employee is working on one federal-aid highway construction project. As stated in paragraph 6 of this section, if an employee is working for the same contractor on two or more separately awarded contracts subject to DBRA and CWHSSA, the employee is entitled to have the hours worked on all such covered contracts combined and to receive overtime for all such hours worked in the workweek in excess of forty (40). If the employee is also performing two or more types of work for which different hourly rates are applicable, the contractor can again compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked or use the weighted average method to determine the overtime premium.

NOTE: Use of the weighted average method DOES NOT preclude contractors from having to keep accurate records of the actual hours worked in each job classification in order to pay NOT less than the

basic hourly rate specified in the Davis-Bacon wage rate decision for the job classification that describes each type of work performed. If a contractor fails to do so, the employee MUST be paid the highest rate for all hours worked.

9. Contractors should also keep in mind that NDDOT, city, county, and consultant staff check all weekly certified payrolls for completeness and accuracy. If an employee is working on two or more separately awarded contracts and the contracts fall under the jurisdiction of different NDDOT districts, cities, counties, or consultants, NDDOT **STRONGLY RECOMMENDS** contractors compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked. If the weighted average method is used, contractors should provide a clear explanation (including all calculations made) in an attachment to each separate payroll.
10. When an employee performs two or more types of work for which different hourly rates are applicable and the employee works on DBRA covered contracts and commercial, non-government work in a single workweek, USDOL requires that the hours be segregated. This means they MUST be broken down as to the actual hours worked on the DBRA covered contracts and the actual hours worked on the commercial, non-government work using two separate weekly payrolls. The contractor **CANNOT** combine the DBRA hours and the non-DBRA hours and use the weighted average method to determine the overtime premium.
11. See Section E (page 17) for information concerning the counting and reporting of time.

G. Fringe Benefit Payments

1. When hourly fringe benefits are listed on the Davis-Bacon wage rate decision, they may be paid in the following manner:
 - a. Making payments in the amount of the required fringe benefits to an established program, funded or unfunded. Funded programs are those programs in which the payments are irrevocably made to a trustee or a third person, i.e., the program is established separately from the contractor's own organization, such as Blue Cross/Blue Shield. Unfunded programs are those in which the fringe benefit

payments are made directly to a program provided from the general assets of the contractor's organization, such as vacation programs.

- b. Making payments to the employee in the amount of the required fringe benefits.
 - c. A combination of the above methods.
2. For example, assume the Davis-Bacon wage rate decision provides that an employee is entitled to a basic hourly wage of \$15.00 per hour plus \$2.50 per hour for health and welfare and \$2.50 per hour for a pension or retirement program. The employer may do any one of the following:
- a. Pay **NOT** less than \$15.00 per hour to the employee, plus make payments to established health and welfare and pension programs in amounts which total **NOT** less than \$5.00 per hour for either health and welfare, or for pension, or for both.
 - b. Pay **NOT** less than \$15.00 per hour to the employee, plus pay an additional \$5.00 per hour to the employee for fringe benefits (the employee would receive a straight-time rate of \$20.00 per hour).
 - c. Pay **NOT** less than \$15.00 per hour to the employee, plus an additional payment of \$2.50 per hour to the employee, plus a contribution of \$2.50 per hour to either health and welfare or pension programs. In this example, the employer is combining the methods discussed above. This method could be used in those cases where an employer provides some but **NOT** all of the fringe benefits set forth in the Davis-Bacon wage rate decision.
3. If the payments made by the employer to health and welfare, or pension programs, or to both programs, is greater than the combined total of \$5.00 per hour, the excess may be applied toward the \$15.00 basic hourly wage rate, i.e., the employer could satisfy the obligations by paying an hourly wage rate of \$14.00, plus \$6.00 per hour in fringe benefits. However, an employee's basic hourly wage can **NEVER** fall below the lowest established laborer rate contained in the Davis-Bacon wage rate decision. In addition, overtime compensation **MUST** be computed on the \$15.00 basic hourly wage rate contained in the Davis-Bacon wage rate decision regardless of any collective bargaining agreement (see 29 CFR Part 5.32*). For example:

Hours 1-40 (at published rates)

$\$15.00 + \$5.00 = \$20.00 \times \text{hours}$

Hours over 40 (at published rates)

$\$15.00 + \$7.50 (\$15.00 \div 2) + \$5.00 = \$27.50 \times \text{hours}$

Hours 1-40 (excess fringes applied to basic hourly rate)

$\$14.00 + \$6.00 = \$20.00 \times \text{hours}$

Hours over 40 (excess fringes applied to basic hourly rate)

$\$14.00 + \$7.50 (\$15.00 \div 2) + \$6.00 = \$27.50 \times \text{hours}$

*29 CFR Part 5.32 states:

“(a) The Act excludes amounts paid by a contractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act ***whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act*** or its related prevailing wage statutes. It is clear from the legislative history that ***in no event can the regular or basic rate upon which premium pay for overtime is calculated*** under the aforementioned federal statutes ***be less than the amount determined by the Secretary of Labor as the basic hourly rate*** (i.e., cash rate) under Section 1(b)(1) of the Davis-Bacon Act. ***Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed*** under these statutes; that is, ***an employee’s regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee’s contributions to fringe benefits***. The ***contractor’s contributions*** or cost for fringe benefits ***may be excluded*** in computing such rate ***so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination***.

(b) The legislative report notes that the phrase contributions irrevocably made by a contractor to a trustee or to a third person pursuant to a fund, plan, or program was added to the bill in Committee. This language in essence conforms to the overtime provisions of Section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the Committee was to prevent any avoidance of overtime requirements under existing law.

(c)(1) The Act permits a contractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate

under the federal overtime laws mentioned in paragraph (a). For example, W Construction pays their laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3.00 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because the contractor has made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases, a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (c)(3) of this section.

(c)(2) X Construction has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3.00 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X Construction rather than the \$3.00 rate determined as prevailing by the Secretary of Labor.

(c)(3) Under the same prevailing wage determination discussed in paragraph (c)(2) of this section, Y Construction who has been paying \$3.00 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under Section 1(b)(2)(B) as \$1.00 an hour. In this example, the regular or basic hour rate would continue to be \$3.00 an hour.”

4. The cost of transportation and board and lodging is considered as payment of travel expenses ***properly reimbursable by the employer and incurred for its benefit***. Such payments are ***NOT considered bona fide fringe benefits*** within the meaning of DBRA, are ***NOT part of the employee's wages***, and ***DO NOT constitute board, lodging, or other facilities customarily furnished, which are deductible from the predetermined wage pursuant to Regs 3.5(j)***.

NOTE: 3.5(j) is in reference to Section 3(m) of the Fair Labor Standards Act. According to USDOL, ***board, lodging, or other facilities***

customarily furnished, which are deductible from the predetermined wage are rare and **DO NOT** apply to the highway construction industry.

5. It is the ***contractor's choice*** whether the fringe benefits are paid into an approved plan, directly to the employee, or a combination of partial payment directly to the employee and partial payment to a plan.
6. To convert the annual cost of a particular fringe benefit to an hourly cash equivalent, the following formula may be used:

Divide the annual cost of the fringe benefit by the total number of working hours to which the cost is attributable (52 weeks per year times 40 hours per week equals 2,080 hours). For example, if the annual cost to the employer for a pension program is \$5,000 per employee, divide 5,000 by 2,080. This equals a cash equivalent of \$2.40 per hour.

7. Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the Davis-Bacon wage rate decision, is **NOT** calculated at time and one-half when figuring the overtime rate. For example, if an employee's basic hourly rate is \$15.00 per hour plus \$5.00 per hour in fringe benefits, and the employee works 50 hours in one week, the employee would be entitled to 50 hours at \$20.00 per hour (basic hourly rate plus fringe benefit amount) and 10 hours at \$7.50 per hour (one-half of the basic hourly rate of \$15.00).
8. Fringe benefits for electricians and line construction workers are different from power equipment operators and truck drivers. For example, as of June 4, 2010, the prevailing rate for a lineman is \$31.16 plus \$4.75 and 29.5% or \$45.10 per hour ($\$31.16 \times .295 = \$9.19 + \$31.16 + \$4.75 = \45.10). [See Section I, paragraphs 3, b and c (page 31), and Section J, paragraph 8 (page 46), for additional information concerning electrician and line construction classifications.]
9. Apprentices and trainees **MUST** be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. If the apprenticeship or training program **DOES NOT** specify or mention fringe benefits, apprentices and trainees **MUST** be paid the full amount of fringe benefits listed in the wage rate decision for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprenticeship classification, fringe benefits **MUST** be paid in accordance with that determination. If that

is the case, trainees **MUST** receive the same fringe benefits as apprentices.

10. NDDOT's on-the-job training program specifies that on-the-job trainees be paid full fringe benefits where applicable.

H. Payroll Deductions

1. Only deductions authorized by law may be made from an employee's weekly paycheck. Authorized payroll deductions include:
 - a. **Federal and state withholding income taxes and federal social security taxes.**
 - b. Sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest and in such a manner as to give the employee complete freedom of disposition of the advanced funds. NDDOT **STRONGLY RECOMMENDS** that any advanced payment of wages be documented, signed, and dated by the employer and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.
 - c. Amounts required by court process to be paid to another, unless the deduction is in favor of the employer, or any affiliated person, or when collusion or collaboration exists.
 - d. Contributions made on behalf of the employee to funds established by the employer, or representatives of its employees, or both, for the purpose of providing, either from principal or income, or both, medical or hospital care; pensions or annuities on retirement; death benefits; compensation for injuries, illnesses, accidents, sickness, or disability, or for insurance to provide any of the foregoing; or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the employees, their families, and dependents providing, however, that the following standards are met:
 - (1) The deduction is **NOT** otherwise prohibited by law.
 - (2) The deduction is either voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is **NOT**:

- (a) A condition either for the obtaining of or for the continuation of employment; or
 - (b) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.
- (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the employer, or any affiliated person, in the form of commission, dividend, or otherwise.
- (4) The deduction shall serve the convenience and interest of the employee.
- e. Contributions made on behalf of the employee toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- f. Deductions requested by the employee to enable him or her to repay loans to, or to purchase shares in, credit unions organized and operated in accordance with federal and state credit union statutes.
- g. Deductions voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- h. Deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- i. Deductions to pay regular union initiation fees and membership dues, **NOT** including fines or special assessments; provided, however, a collective bargaining agreement between the employer and representatives of its employees provides for such deductions and the deductions are **NOT** otherwise prohibited by law.
- j. Deductions **NOT** more than for the ***reasonable cost*** of board, lodging, or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and 29 Code of Federal Regulations Part 531. When such deductions are made, the additional records required under 29 Code of Federal Regulations Part 516.25(a) **MUST** be kept.

NOTE: USDOL has indicated these instances are rare and **DO NOT** apply to the highway construction industry.

- k. Deductions for the cost of safety equipment of nominal value purchased by the employee as his or her own property and personal protection in his or her work, such as safety shoes, safety glasses, safety gloves, and hard hats:
 - (1) If such equipment is **NOT** required by law to be furnished by the employer;
 - (2) If such deduction is **NOT** violative of FLSA or prohibited by other law;
 - (3) If the cost on which the deduction is based **DOES NOT** exceed the actual cost to the employer where the equipment is purchased from him or her and **DOES NOT** include any direct or indirect monetary return to the employer where the equipment is purchased from a third person; and
 - (4) If the deduction is either:
 - (a) Voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is **NOT** a condition either for the obtaining of employment or its continuance; or
 - (b) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.
 - l. Deductions for which the employer has applied and received permission to make from the Secretary, USDOL, Washington, DC.
2. Deductions ***specifically prohibited*** include:
- a. Deductions from an employee's wages to pay for damage caused by the employee to company equipment, such as trucks, or for the theft of company property.
 - b. Deductions for the cost of lost or destroyed clothing and other items issued to the employees for use in performing their jobs.

- c. Deductions for purchasing, renting, and laundering protective clothing, coveralls, etc., where the use of such clothing is required either by the employer or the nature of the job.
- 3. In addition, the practice of **docking** an employee a stated period of time or money (other than for the actual time lost) for being late for work, failing to punch a time clock, or other violation of an employment rule is considered a **kickback, rebate, or unlawful deduction**.

I. Payroll Requirements

- 1. Weekly certified payrolls and basic records relating thereto **MUST** be maintained by the prime contractor and each subcontractor during the course of the work of a federally funded highway construction contract for all employees working at the **site of the work**.
- 2. Weekly certified payrolls are **NOT** required **by NDDOT** for employees working on state funded **ONLY** contracts and **are generally NOT required** for employees working at locations considered **NOT** to be a **site of the work** of a federally funded contract.

NOTE: This DOES NOT preclude contractors from having to maintain payrolls for such work. [See Section C (page 9) for information concerning the application of DBRA to truck drivers and Section F (page 20) for information concerning the payment of overtime hours.]

- 3. There is no mandatorily prescribed format for contractor payrolls. However, all contractors **MUST** uniformly complete weekly certified payrolls using the job classifications found in the Davis-Bacon wage rate decision incorporated into the contract. For example:
 - a. Laborers **MUST** be listed as **Laborer** and either **Group 1, 2, 3, or 4**. Unacceptable terms are **Laborer, General Laborer, Unskilled Laborer, Semi-skilled Laborer**, and **Skilled Laborer**.
 - b. When electrical work is performed on or within a commercial building **ONLY**, such as a rest area, the job classification **Electrician** **MUST** be used. **Any other electrical work on a federal-aid highway construction project is covered by line construction**. Electrician rates are listed in the Davis-Bacon wage rate decision by county. Consequently, the county in which the project is located **MUST** also be included after the job classification **Electrician**.

- c. Line construction workers **MUST** be listed as either ***Lineman, Cable Splicer, Line Equipment Operator***, or ***Groundman***. Use of the term ***Journeyworker*** standing alone is unacceptable. [See Section G, paragraphs 7-9 (page 27), and Section J, paragraph 8 (page 46), for additional information concerning electrician and line construction classifications.]
 - d. Power equipment operators **MUST** be listed as ***Power Equipment Operator*** and either ***Group 1, 2, 3, 4, 5, or 6***. Listing the type of equipment operated after the group number is optional but **NOT** required.
 - e. Truck drivers **MUST** be listed as either ***Single-axle Truck, Tandem- or Tri-axle Truck, Tandem- or Tri-axle Semi, Lowboy, Off Road Heavy Duty End Dump***, or ***Euclid***. [See Section J, paragraph 12 (page 49), for additional information concerning truck driver classifications.]
4. In addition, all weekly certified payrolls **MUST** contain:
- a. The employee's full name and an individual identifying number (e.g., the last four digits of the employee's social security number);

NOTE: Addresses and social security numbers **MUST** be maintained by the prime contractor or subcontractor and provided, upon request, to NDDOT, USDOL, FHWA, or the prime contractor (when a subcontractor), for purposes of an investigation or audit of compliance with prevailing wage requirements.
 - b. The employee's correct job classification or classifications;
 - c. The employee's hourly wage rate or rates (regular and overtime) and, where applicable, fringe benefits;
 - d. The daily and weekly hours worked in each job classification, including actual overtime hours worked;
 - e. Total earnings;
 - f. Itemized deductions made; and
 - g. Actual or net wages paid.

5. The contractor **MUST** ensure that all employees are included on the weekly certified payroll and that the employees are properly classified and properly paid.
6. Each weekly payroll submitted **MUST** be accompanied by a completed *Statement of Compliance* (formerly *USDOL Form WH-348*) signed **(preferably in blue ink)** by the contractor, or his or her agent who pays or supervises the payment of the persons employed under the contract. The *Statement of Compliance* certifies that:
 - a. The weekly payroll contains the information required to be maintained and that such information is correct and complete;
 - b. The persons employed on the contract during the payroll period have been paid the full weekly wages earned without rebate, either directly or indirectly, and that no deductions have been made, either directly or indirectly, from the full wages earned other than the permissible deductions set forth in the regulations; and
 - c. Each employee has been paid **NOT** less than the applicable wage rate and fringe benefits, or cash equivalent, for the classification of work performed as specified in the applicable Davis-Bacon wage rate decision incorporated into the contract.
7. For the convenience of contractors, USDOL has made available a payroll form which includes the *Statement of Compliance* on the reverse side. *Payroll Form (WH-347)* may be purchased directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. See **Exhibit 1** for samples of *Payroll Form (WH-347)*, the *Statement of Compliance* (formerly *WH-348*), and instructions for completing both forms.
8. An electronic version of *Payroll Form (WH-347)* can also be accessed through the following Internet link:

www.dol.gov/whd/forms/wh347.pdf
 - a. Use the blue down arrow on the toolbar to get the *Statement of Compliance* on the reverse side of the payroll form.
 - b. *Adobe® Acrobat® Reader®* version 5 or later is needed to view, fill out, and print PDF forms. This may be downloaded for free at:

www.adobe.com/products/acrobat/readstep2.html

- c. To save the completed forms on a workstation, use the **Save...As** method to save the file. For example, move the cursor over the PDF link described in paragraph 8 of this section and right-click. This will cause a menu to be displayed, from which the proper save option may be selected – depending upon which browser is being used:
 - For Microsoft IE users, select **Save Target As**.
 - For Netscape Navigator users, select **Save Link As**.
- d. Once the proper save option has been selected for the browser being used and the file has been saved to the location specified, go to the program menu and start the *Adobe® Acrobat® Reader®*. Once open, locate the PDF file that was saved and open (right-click) it directly in *Acrobat®*.
- e. The instructions for completing *Payroll Form (WH-347)* and the *Statement of Compliance* can also be accessed through the following Internet link:

www.dol.gov/whd/forms/wh347instr.htm

- f. In addition, a completed, sample *WH-347* and *Statement of Compliance* can be accessed through the following Internet link:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

9. NDDOT requires that **ALL contractors working on federal-aid highway construction contracts in North Dakota** use the *Statement of Compliance (formerly WH-348)* included in **Exhibit 1** or the electronic version available through the Internet link described in paragraph 8 of this section.

NOTE: Some states have modified the form to include other requirements under their state law, which **DO NOT** pertain to North Dakota.

10. The contractor **MUST** furnish, to the project manager-engineer (NDDOT, city, county, or consultant), at least one **signed (preferably in blue ink)** copy of the certified payroll for each week in which any contract work is

performed. This **signed** copy of the weekly certified payroll is placed in the project file that is sent to NDDOT when the contract is finalized. Except as noted in paragraph 14 of this section, whether additional copies are required will be at the NDDOT district management's discretion. Consequently, check with the project manager-engineer (NDDOT, city, county, or consultant) to determine if more than one copy is required.

NOTE: Weekly certified payrolls may be submitted electronically with proper use of electronic signatures. These are digital signatures, which are ONLY available through an electronic payroll system. If a contractor completes *Payroll Form (WH-347)* and the *Statement of Compliance* (formerly *WH-348*) online, they MUST be printed out and hand signed (preferably in blue ink). Once *Payroll Form (WH-347)* and the *Statement of Compliance* (formerly *WH-348*) are in paper form, they MUST remain in paper form; and the signed weekly certified payroll MUST be submitted to the project manager-engineer (NDDOT, city, county, or consultant). In addition, submitting weekly certified payrolls by use of a FAX machine DOES NOT satisfy the electronic signature requirement.

11. Payrolls and compliance statements are due within **seven (7) calendar days** after the regular payment date of the payroll period.
12. Prime contractors are responsible for the submission of weekly certified payrolls by all subcontractors. This includes ensuring timely submittal and reviewing the weekly certified payrolls for completeness and accuracy **BEFORE** furnishing a **signed** copy to the project manager-engineer (NDDOT, city, county, or consultant). When there are problems, the prime contractor should be working with the subcontractor to resolve the issues. This is **NOT** the responsibility of the project manager-engineer (NDDOT, city, county, or consultant).
13. **NDDOT's DBE supportive services consultant is available to assist contractors and/or project managers-engineers (NDDOT, city, county, or consultant) who are having difficulty in obtaining weekly certified payrolls from DBE firms. The DBE supportive services consultant will work with the DBE firm to ensure weekly certified payrolls are completed correctly and submitted timely. The current DBE supportive services consultant is Agency MABU. Contact:**

Mike Mabin
Agency MABU
1003 Gateway Avenue
Bismarck, ND 58503
Email: mmabin@agencymabu.com
Phone: 701-250-0728

14. On a cyclical basis, USDOL conducts a wage survey to determine the prevailing wages being paid in the state on federally funded highway construction projects. For this reason, NDDOT districts and city, county, and consultant engineers will be asked to request and retain an additional copy of all weekly certified payrolls issued for such projects. At the end of the construction season, the weekly certified payrolls are forwarded to the NDDOT Civil Rights Division for submission to USDOL in Dallas, Texas. Contractors will be notified by the project manager-engineer (NDDOT, city, county, or consultant) when an additional copy of the weekly certified payrolls is required.
15. All payroll records **MUST** be maintained and preserved by the contractor for a period of **three (3) years** following the completion and final acceptance of the project. In addition, the payroll records **MUST** be made available, at the request of FHWA; the Secretary, USDOL; and NDDOT, at any time during that period.

J. Classifications

1. Carpentry

The Davis-Bacon wage rate decision for highway construction in North Dakota includes the classification *Carpenter* and the classification *Carpenter Tender* under the Laborer Group 2.

a. Carpenter:

- (1) **A *Carpenter* is a tradesperson who builds and assembles forms and their components for concrete used in engineering and construction projects (bridges, box culverts, retaining walls, etc.). Typically, a *Carpenter*:**
 - (a) **Reads construction plans and sketches.**
 - (b) **Lays out structures.**

- (c) Measures, cuts, and shapes materials with power and hand tools.
 - (d) Rigs and places forms and materials.
 - (e) Assembles forms by hand with nails, bolts, and arc welding processes.
 - (f) Handles a range of manual and power saws, drills, screw drivers, and hammers, among other tools.
- (2) Carpentry work performed in connection with bridges and structures generally involves:
- (a) Pier, pile, and cap formwork;
 - (b) Decking formwork;
 - (c) Endwall formwork;
 - (d) Box culverts, inlet, and headwall formwork; and
 - (e) Preparation of steel and other metals for use.

b. **Carpenter Tender:**

A Carpenter Tender is a laborer who directly assists a Carpenter by performing specific or general duties of lesser skill. Tending consists of the handling and conveying of materials and tools to be used by Carpenters.

- (1) According to USDOL, helpers or tenders are permitted on DBRA covered contracts if the helper or tender classification is included in the applicable wage rate decision incorporated into the contract, or if conformed rates are approved by USDOL pursuant to 29 CFR Part 5, Subpart A, Section 5.5(a)(1)(ii). In either case, area practice determines the allowable duties of helpers or tenders; and their use is NOT restricted in a ratio to the number of journeyworkers employed by the contractor on a federal-aid project or the *site of the work*. A request for a conformed helper or tender wage rate will be approved by USDOL ONLY where the helper or tender

in question *constitutes a separate and distinct class of worker* whose use is prevailing in the area and *whose scope of duties can be differentiated from those of the journeyworker*. A helper or tender may NOT be used as an informal apprentice or trainee, and it is NOT permissible for helpers or tenders to use the *tools of the trade* in assisting a journeyworker.

(2) ***A Carpenter Tender typically:***

- (a) **Moves and lifts building materials, tools, and supplies.**
- (b) **Hands materials, tools, and supplies to *Carpenters*.**
- (c) **Dismantles, moves, and cleans forms for reuse.**
- (d) **Cleans materials, equipment, and tools and clears all debris from the construction area.**

(3) **According to USDOL, a *Carpenter Tender* CANNOT saw wood, CANNOT nail a board to a wall, etc., because that is what a *Carpenter* does. The moment an employee pounds a nail or cuts a piece of wood, he or she **MUST** be classified and paid as a *Carpenter* for all of the hours he or she works in connection with the carpentry work.**

2. Concrete Finishing

The Davis-Bacon wage rate decision for highway construction in North Dakota includes the classification ***Cement Mason/Finisher***; the classifications ***Sack Shaker (cement and mineral filler)*** and ***Salamander Heater and Blower Tender*** under the Laborer Group 1; the classifications ***Bulk Cement Handler***, ***Concrete Bucket Signalman***, ***Concrete Curing Man (not water)***, ***Concrete Finisher Tender***, ***Concrete Vibrator Operator***, and ***Power Buggy Operator*** under the Laborer Group 2; and the classification ***Concrete Mixer Operator (one bag capacity)*** under the Laborer Group 3.

a. **Cement Mason/Finisher:**

A **Concrete Finisher**, also known as a **Cement Mason**, is a tradesperson who works with concrete. Duties include placing, finishing, protecting, and repairing concrete used in engineering and construction projects. Typically, a **Concrete Finisher**:

- (1) Sets (or directs the setting of) the forms for holding the concrete, checks, and properly aligns the forms to ensure they have the correct depth and pitch or angle.
- (2) Supervises **Concrete Finisher Tenders** who direct the placement of the concrete and use shovels and rakes to spread the poured concrete into inaccessible sections of the forms.
- (3) Levels, smooths, edges, and finishes surfaces of poured concrete floors, walls, sidewalks, curbs, etc., to specified textures by performing the following steps using the **tools of the trade**:
 - (a) Guides a **straightedge** back and forth across the top of the forms to **screed**, or **level**, the freshly placed concrete to the specified depth and workable consistency.
 - (b) Immediately after leveling the concrete, carefully smooths the concrete surface using either a **hand masonry trowel** (a long-handled **bull float**) or a **powered float** to bring water to the surface and produce a soft topping.
 - (c) After the concrete has been leveled and floated, presses an **edger** between the forms and the concrete and guides it along the edge and the surface. This produces slightly rounded edges and helps prevent chipping or cracking.
 - (d) Uses a special tool called a **groover** to make joints or grooves at specific intervals that help control cracking.
 - (e) Trowels the surface using either a **powered** or **hand trowel** (a small, smooth, rectangular metal tool).

- (f) Applies architectural, exposed, patterned, stamped, broomed, or smooth finishes. The concrete surface is retroweled back and forth with **powered** and **hand trowels** to create a smooth finish. For a coarse, nonskid finish, the surface is brushed with a **broom** or **stiff-bristled brush**. For a pebble finish, small gravel chips are embedded into the surface. Any excess cement is then washed from the exposed chips with a mild acid solution. Colored premixed concrete is used for color. [See paragraph **f** for information concerning decorative concrete.]
 - (g) Smooths any rough surfaces that remain when the pouring forms have been removed. High spots and loose concrete are cut away with a **hammer** and **chisel**, and any large indentations are filled with Portland cement paste. Any high spots are rubbed with a **brick** or **carborundum stone** to smooth them. A rich mixture of cement is then rubbed in with a **sponge-rubber float** or with **burlap**.
 - (h) Applies hardening and sealing components to cure the surfaces.
- (4) Throughout this entire process, **Concrete Finishers** monitor how the wind, heat, or cold affects the curing of the concrete. They **MUST** have a thorough knowledge of concrete characteristics so that, by using sight and touch, they can determine what is happening to the concrete and take measures to prevent defects.

b. **Group 1 Laborers:**

- (1) **Sack Shaker (cement and mineral filler)** – Empties, cleans, and bundles cement bags typically at a concrete mixing or batch plant.
- (2) **Salamander Heater and Blower Tender** – Tends a portable, forced air heater used to dry concrete. The heater may be propane or kerosene fueled. This includes the connection and disconnection of fuel tanks and the turning on and off of the heater.

c. **Group 2 Laborers (excluding *Concrete Finisher Tenders*):**

- (1) ***Bulk Cement Handler*** – Hauls cement from storage in bulk or bags typically at a concrete mixing or batch plant.
- (2) ***Concrete Bucket Signalman*** – Directs the placement of the bucket used to deliver concrete by means of a tower crane. Signals the ***Tower Crane Operator*** when he or she cannot see the point of placement.
- (3) ***Concrete Curing Man (not water)*** – Covers the new concrete with sheet plastic or sprays a liquid curing compound onto the new concrete to seal in moisture.
- (4) ***Concrete Vibrator Operator*** – Operates a machine that vibrates the concrete to remove air pockets.
- (5) ***Power Buggy Operator*** – Drives a self-propelled buggy to transport concrete from the mixer or source of supply to the place of deposit.

d. **Group 3 Laborers:**

Concrete Mixer Operator (one bag capacity) – Operates a portable concrete mixer.

e. **Concrete Finisher Tender:**

- (1) A ***Concrete Finisher Tender*** is a Group 2 Laborer who directly assists a ***Concrete Finisher*** by performing specific or general duties of lesser skill. Tending consists of the preparation of materials and the handling and conveying of materials and tools to be used by ***Concrete Finishers***, whether such preparation is by hand or any other process.
- (2) According to USDOL, helpers or tenders are permitted on DBRA covered contracts if the helper or tender classification is included in the applicable wage rate decision incorporated into the contract, or if conformed rates are approved by USDOL pursuant to 29 CFR Part 5, Subpart A, Section 5.5(a)(1)(ii). In either case, area practice determines the allowable duties of helpers or tenders; and their use is **NOT** restricted in a ratio to the number of journeyworkers

employed by the contractor on a federal-aid project or the **site of the work**. A request for a conformed helper or tender wage rate will be approved by USDOL ONLY where the helper or tender in question **constitutes a separate and distinct class of worker** whose use is prevailing in the area and **whose scope of duties can be differentiated from those of the journeyworker**. A helper or tender may NOT be used as an informal apprentice or trainee, and it is NOT permissible for helpers or tenders to use the **tools of the trade** in assisting a journeyworker.

- (3) Under a **Concrete Finisher's** supervision, a **Concrete Finisher Tender** typically:
 - (a) Measures distances from grade stakes, sets stakes, and stretches string line.
 - (b) Directs the placement of the concrete either from the concrete wagon chute, concrete pump, concrete skip, or wheelbarrow. Signals the concrete deliverer to position the truck to facilitate the pouring of the concrete. Moves the discharge chute of the truck to direct the concrete into the forms.
 - (c) Spreads the poured concrete into inaccessible sections of the forms using shovels and rakes.
 - (d) Dismantles, moves, and cleans the forms once the concrete is set.
 - (e) May rub concrete surfaces with abrasive stone to remove rough spots.
 - (f) Ages and cures the finished concrete by any mode or method. For example, places mats on newly poured concrete and keeps them moist for curing purposes.
 - (g) Cleans equipment and tools and clears all debris from the construction area.
- (4) **According to USDOL, a Concrete Finisher Tender CANNOT use a straightedge, bull float, edger, groover, etc., because those are the tools used by a Concrete**

Finisher. The moment an employee uses any tools of the trade, he or she MUST be classified and paid as a Concrete Finisher for all of the hours he or she works in connection with the concrete work.

f. **Decorative Concrete:**

- (1) The transformation of concrete into decorative concrete is achieved through the use of a variety of materials that may be applied during the pouring process or after the concrete is cured. These materials and/or systems include stamped concrete, acid staining, decorative overlays, polished concrete, etc.
- (2) Stamped concrete is the process of adding texture and color to concrete to make it resemble stone, brick, slate, cobblestone, and many other products found in nature including wood, fossils, shells, etc.
- (3) The installation consists of pressing molds into the concrete while the concrete is still in its plastic state. Color is achieved by using dry shakes or color hardeners, powder or liquid releases, integral colors, or acid stains. All these products may be combined to create even more intricate designs.
- (4) According to USDOL, concrete stamping is work that could be performed by a ***Concrete Finisher Tender if it is NOT already being performed by a Concrete Finisher.*** Tasks include:
 - (a) Hand broadcasting the color hardener onto the concrete surface.
 - (b) Once a ***Concrete Finisher*** has troweled the hardener into the concrete, hand broadcasting the release agent onto the concrete surface.
 - (c) Placing textured mats onto the concrete surface and tapping the mats down with a pounder.
 - (d) Removing the stamping mats.

- (e) After the concrete has been allowed to dry for 24 hours, washing any excess release agent from the concrete surface with a water hose.

3. Concrete Saw Operators

The Davis-Bacon wage rate decision for highway construction in North Dakota includes a **Concrete Saw (power operated)** under the Power Equipment Operator Group 5 and a **Concrete Saw Operator** under the Laborer Group 2. An employee who walks behind a concrete saw is considered a **Group 2 Laborer** and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage. It **DOES NOT** matter what size the engine is or whether it is self-propelled. An employee who rides a concrete saw is considered a **Group 5 Power Equipment Operator** and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including applicable fringe benefits.

4. Core Sampling

- a. Some federal-aid concrete projects, mainly on the interstate and major expressways, now contain a separate bid item for cored samples (specification 950, code 9700). An employee who cuts the core samples is considered a laborer and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage for **Group 1 Laborers** (similar to **Drill Runner Tender**). For example:

To cut the cores, the contractor employee stands alongside a trailer on which the coring machine is mounted. The coring machine is powered by a generator and has a metal bit. The employee spins a wheel to drill up and down. The employee **DOES NOT** ride the machine. The core sample is taken out and laid along the roadway for an NDDOT employee to pick up. NDDOT personnel perform the actual testing.

- b. The employee driving the truck that is pulling the trailer would receive the wages of a truck driver for the type of truck being driven as described in paragraph 12 of this section (page 49).

5. Dowel Basket and Dowel Bar Placement

Contractor employees placing dowel baskets and dowel bars on federal-aid concrete pavement projects are considered laborers and **MUST** be paid

NOT less than the appropriate Davis-Bacon wage for **Group 4 Laborers (Reinforcing Steel Setters/Tiers)**.

6. **Flaggers**

- a. According to USDOL and FHWA, flagging is NOT considered hazardous work under federal and state child labor laws. Therefore, the minimum age for *Flaggers* is 16. [See Section M (page 61) for additional information concerning child labor laws.]
- b. Other Standards For Flagging are specified in Section 704.03X of the 2008 Standard Specifications For Road and Bridge Construction (Volume 1), which is available online at:

www.dot.nd.gov/dotnet/supplspecs/standardspecs.aspx
- c. In addition, FHWA encourages contractors to check out information from:

www.workzonesafety.org
- d. See Section F, paragraphs 5-6 (page 21), and Section O (page 63) for additional information concerning *Flaggers*.

7. **Joint Sealing**

- a. Contractor employees performing joint sealant work on federal-aid projects are considered laborers and **MUST** be paid NOT less than the appropriate Davis-Bacon wage for **Group 4 Laborers** (similar to **Powderman, Gunite And Sandblast**, and **Nozzleman**). For example:

The employees operate an air compressor and tar kettle (hot pour sealant) mounted in the box of a pickup. The pickup also pulls a trailer on which an air compressor and silicone drums with a pump are mounted. The employees use a sandblasting nozzle to clean the joints before the sealant is applied. Either a hot pour or a silicone sealant is applied with a nozzle. Before the silicone sealant is applied, backer rod is placed into the cracks.

- b. The employee driving the pickup would receive the wages of a **Group 1 Laborer (Light Truck and Pickup Driver)** as described in paragraph 12 of this section (page 49).

8. Line Construction and Electricians

- a. When electrical work is performed on or within a commercial building **ONLY**, such as a rest area, the job classification **Electrician** **MUST** be used. **Any other electrical work on a federal-aid project is covered by line construction.** The following types of electrical construction are considered line construction:
 - (1) Pole line construction (whether built of wood, metal, or other material); digging and backfilling of holes for poles or anchors (by hand or mechanical equipment); and the handling, assembling, or erecting of all materials, including the guying, stringing of conductors, or other work necessary, on through to the ultimate completion of such pole line work.
 - (2) Highway lighting systems and motor vehicle traffic controls (traffic signals, flashing beacons, etc.). Handled in the same manner as pole line construction.
 - (3) Electrical underground construction, including the placing of fish wires, the pulling of cables or wires through such raceways, and the splicing of such conductors.
 - (4) Underground construction, including excavation, trenching, and installation of raceways or ducts; construction of manholes, transformer vaults, and hand holes; backfilling; installation of fish wire; and pulling, splicing, and laying of wire or cables installed in raceways, ducts, or direct burial.
 - (5) Underground construction, including apparatus and fixtures on public property such as street lighting, highway lighting, lines, or equipment.
- b. This includes **NOT ONLY** new installation work but also the repair, maintenance, or dismantling of all above structures, lines, or equipment.
- c. The job classifications and duties performed in line construction are:

- (1) **Lineman** – Responsible for all aerial work performed, whether from a bucket or by the use of belts and climbers. May perform any underground work, including but not limited to: installing duct work, raceway, pulling cables or wires, installing direct burial cable or wires, junction boxes, terminating cable or wire, setting poles, and assembling lights or signals.
- (2) **Cable Splicer** – In addition to the same duties as lineman, may be required to splice and terminate high voltage cable and multi-conducted cable when special procedures or kits are required to accomplish the task.
- (3) **Line Equipment Operator** – Operates any equipment needed to complete the project, including but not limited to: backhoe, front-end loader, trencher, and hole auger.
- (4) **Groundman** – Performs basic laborer work such as hand excavation; assists in pouring cement, site cleanup, etc.; and assists other crafts while they are performing aerial work.

NOTE: This is the ONLY laborer classification that can be used in connection with line construction work.

- d. See Section G, paragraphs 7-9 (page 27), and Section I, paragraphs 3, b and c (page 31), for additional information concerning electrician and line construction classifications.

9. Mechanics, Greasers, Oilers

The Davis-Bacon wage rate decision for highway construction in North Dakota includes **Mechanics**, **Greasers**, and **Oilers** under the following Power Equipment Operator groups:

a. **Group 2: Master Mechanic**

The employee supervises five or more **Mechanics** employed on the same project.

b. **Group 3: Mechanic or Welder, Heavy Duty**

The employee operates a service truck used in the repair and maintenance of equipment, using **Mechanic's** tools, welding equipment, and hoists.

c. **Group 4: *Truck Mechanic***

The employee operates a smaller service truck used in the repair and maintenance of equipment, without the use of welding equipment and hoists.

d. **Group 4: *Greaser***

The employee operates a self-contained service truck used in greasing equipment and adding fluids such as gas and oil.

e. **Group 5: *Oiler***

The employee assists the operating engineer of a track or truck crane by greasing and oiling the crane while the operating engineer runs it.

10. Pipelayers

The Davis-Bacon wage rate decision for highway construction in North Dakota includes **Pipelayers** under the following laborer groups:

a. **Group 1: *Pipe Handler***

The employee loads and unloads pipe from a truck, boxcar, etc. When unloading, the employee stockpiles the pipe ONLY.

b. **Group 2: *Multiplate Pipelayer, Culvert Pipelayer***

The employee places galvanized pipe and some PVC (plastic pipe) into trenches and assembles. The employee may also work with 6- and 8-inch PVC sanitary sewer pipe.

c. **Group 3: *Bottom Man (sanitary sewer, storm sewer, water, and gas lines)***

The employee is lowered into a tunnel, well, or caisson (elongated box that is put into a sewer – no water runs through) with a bucket and cleans out the bottom of the hole making it wider or ready for concrete pouring. The employee cleans out loose dirt.

- d. **Group 4: Pipelayer (sanitary sewer, storm sewer, water, and gas lines)**

The employee places special, low pressure type pipe into trenches and assembles. The employee may also work with some 18- to 48-inch reinforced concrete pipe and some 24- to 60-inch reinforced concrete storm sewer pipe.

11. **Rumble Strip Machine Operators**

Some federal-aid projects now contain a separate bid item for rumble strips. An employee who operates the *Rumble Strip Machine* (grinder with rotating blade) is considered a Group 3 Power Equipment Operator and **MUST be paid NOT less than the appropriate Davis-Bacon wage, including applicable fringe benefits.**

12. **Truck Drivers**

- a. An employee driving a pickup around a federal-aid project or the ***site of the work*** to load, deliver, or transport materials, **supplies, tools, etc.**, is considered a **Group 1 Laborer (Light Truck and Pickup Driver)** and **MUST** be paid NOT less than the appropriate Davis-Bacon wage.
- b. An employee driving a pickup on a federal-aid project or the ***site of the work*** that has an air compressor or a generator mounted in its box, or that is pulling a trailer mounted with an air compressor or a generator, would receive the wages of a **Group 1 Laborer (Light Truck and Pickup Driver)**.
- c. An employee driving any other type of truck on a federal-aid project or the ***site of the work*** that has equipment mounted in its box, or on a trailer or a wagon being pulled by the truck, is considered a truck driver and **MUST** be paid NOT less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for the type of truck being driven. For example:
- (1) An employee driving a tandem-axle truck with a water tank mounted on the back of the truck **MUST be classified and paid as a Tandem-axle Truck Driver.**
- (2) An employee driving a semi that is pulling a water tank mounted on a trailer or a wagon **MUST be classified and paid as a Tandem- or Tri-axle Semi Driver.**

- d. An employee operating a tractor or a modified scraper on a federal-aid project or the **site of the work** that is pulling a water tank mounted on a trailer or a wagon is considered an equipment operator and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for the Power Equipment Operator group under which the tractor or scraper falls.
- e. An employee driving a pickup carrying a signal or message board behind or ahead of other equipment on a federal-aid project or the **site of the work** is considered a **Group 1 Laborer (Pilot Car Driver)** and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage.
- f. Subcontractors
 - (1) If the prime contractor is using subcontractors for hauling, whether on the **site of the work** of a federal-aid project or **NOT**, approved *Prime Contractor's Request to Sublet* (SFN 5682 - Rev. **06-2011**) forms and subcontract agreements between the prime contractor and the subcontractors are required **PRIOR** to performing any hauling. When the contract is federally funded, the *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 3-94)** **MUST** also be included in the subcontract agreements because it contains more than just the labor standards provisions. This applies to all tiers of subcontracts.

*The USDOL regulations concerning employees' social security numbers and addresses on Davis-Bacon weekly certified payrolls were changed effective **January 18, 2009**. The USDOT Form FHWA 1273 has **NOT**, as yet, been revised to reflect the changes. Consequently, NDDOT has modified the FHWA 1273 to incorporate the changes. The NDDOT version (Rev. January 18, 2009) **MUST** be used until USDOT revises Form FHWA 1273. The NDDOT version is available online at:

www.dot.nd.gov/divisions/civilrights/docs/1273.pdf
 - (2) If the prime contractor is using subcontractors for hauling on a federal-aid project or the **site of the work**, the labor standards provisions and the applicable Davis-Bacon wage

rate decision **MUST** be incorporated into the subcontract agreements. The subcontractors **MUST** pay their employees the appropriate Davis-Bacon wage, including applicable fringe benefits, and provide weekly certified payrolls. This applies to all tiers of subcontracts.

- (3) This **DOES NOT** apply to the transportation of materials and manufactured component products that the contractor purchases from off-site commercial producers.

g. Truck Owner-Operators

- (1) Bona fide owner-operators of trucks **ONLY** are **NOT** covered under DBRA. However, if the prime contractor or a subcontractor is using owner-operators for hauling on a federal-aid project or the ***site of the work***, they **MUST** appear on either the prime contractor's or the subcontractor's weekly certified payrolls as:
 - (a) Owner-operator's name and an individual identifying number (e.g., the last four digits of the owner-operator's social security number), with the notation ***owner-operator*** after the name.
 - (b) Vehicle identification number or license plate number of the vehicle being driven.
 - (c) Truck number being used on scale tickets and haul sheets.
 - (d) Neither the hours worked nor the wages paid need be shown.
- (2) When on the ***site of the work*** of a federal-aid project, the actual owner-operator **MUST *drive the truck at all times***. If, for any reason, he or she **DOES NOT** drive the truck, even for a short period of time, the replacement driver **MUST** be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, and **MUST** appear on weekly certified payrolls showing the hours worked and the wages paid.
- (3) The prime contractor is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and weekly certified payrolls

as required, as well as monitoring and verifying the status of all truck owner-operators working on a federal-aid project or the **site of the work** either directly for the prime contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor **MUST** request and verify the following:

- (a) Owner-operator's name.
- (b) Valid commercial driver's license.
- (c) Vehicle registration in the owner-operator's name.
- (d) Current vehicle license number.
- (e) Truck number that will or is being used on scale tickets and haul sheets.
- (f) Copies of any signed lease or rental agreements for owner-operator trucks. The lease **MUST** be between the driver and a reputable dealership (i.e., Nelson International, Inc., Peterbilt of Fargo, Inc., W.W. Wallwork, etc.); **NOT** the driver and the prime contractor or the driver and a subcontractor on the project.

h. Equipment Owner-Operators

- (1) Owner-operators of other types of equipment are considered employees under DBRA. Consequently, they **MUST** be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, and be included on weekly certified payrolls showing the hours worked and the wages paid.
- (2) When a contractor pays an equipment owner-operator a lump sum amount, it may be difficult to determine whether the owner-operator was paid the correct hourly wage. If a wage dispute ensues, USDOL suggests that NDDOT:
 - (a) Research the open market for the rate required to rent the same piece of equipment by the hour;
 - (b) Multiply that figure by the total number of hours the owner-operator worked;

- (c) Figure the wages the owner-operator should have been paid based on the total number of hours worked and the required rate of pay (straight time, overtime, and fringe benefits);
 - (d) Add the two figures together; and
 - (e) Compare the total to the lump sum amount.
- (3) If the total is substantially greater than the lump sum amount, the owner-operator would be due the difference.

13. Water Spraying Equipment

The Davis-Bacon wage rate decision for highway construction in North Dakota includes ***Water Spraying Equipment, Self-propelled*** under the Power Equipment Operator Group 5. This is a piece of equipment that is **NOT** being pulled by another piece of equipment or a truck. If an employee:

- a. Is driving a tandem-axle truck with a water tank mounted on the back of the truck, the employee **MUST be classified and paid as a *Tandem-axle Truck Driver***.
- b. Is driving a semi that is pulling a water tank mounted on a trailer or a wagon, the employee **MUST be classified and paid as a *Tandem- or Tri-axle Semi Driver***.
- c. Is operating a tractor or a modified scraper that is pulling a water tank mounted on a trailer or a wagon, the employee would **be considered an equipment operator and MUST be paid NOT less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for** the Power Equipment Operator group under which the tractor or scraper falls.

14. Weed Sprayers

Some federal-aid thin lift overlay projects now contain a separate bid item for spraying herbicide on the shoulders to kill weeds and grass. An employee who sprays the weeds and grass is considered a laborer and **MUST be paid NOT less than the appropriate Davis-Bacon wage for *Group 1 Laborers***. The employee should be listed on the weekly certified payrolls as: ***Group 1 Laborer (Weed Sprayer)***. For example:

The contractor employee rides a four-wheeler or ATV with attached spraying equipment and sprays the weeds and grass on the shoulders of the road.

15. Welders

- a. The Davis-Bacon wage rate decision for highway construction in North Dakota states: ***Welders receive rate prescribed for craft performing operation to which welding is incidental.*** In the case of ***Welders*** employed on structural projects during pile driving operations, NDDOT has determined:
 - (1) The ***Carpenter*** rate will apply when an ACTUAL ***Carpenter*** is working with the ***Welder*** (NOT a person classified as a ***Foreman*** who has carpentry skills).
 - (2) The ***Crane Operator*** rate will apply when it is the ONLY other skilled craft present during the welding.
- b. Whatever rate is chosen **MUST** be used for the life of the project. For example, if the ***Crane Operator*** rate is used and all the piling is in place and the crane has left, those individuals who later weld ice nose angle or rebar on the piling should continue to receive the ***Crane Operator*** rate. This would be so even though an ACTUAL ***Carpenter*** is also present on the project.

K. **Exemptions from DBRA Coverage**

- 1. The *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 3-94)**, which is included in every federal-aid highway construction contract and is further required to be included in all subsequent subcontract agreements, states in part:

"All ***mechanics and laborers*** employed or working upon the ***site of the work*** will be paid unconditionally and ***not*** less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR Part 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates ***not*** less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist

between the contractor or its subcontractors and such **laborers or mechanics.**"

*The USDOL regulations concerning employees' social security numbers and addresses on Davis-Bacon weekly certified payrolls were changed effective **January 18, 2009**. The USDOT Form FHWA 1273 has **NOT**, as yet, been revised to reflect the changes. Consequently, NDDOT has modified the FHWA 1273 to incorporate the changes. The NDDOT version (Rev. January 18, 2009) **MUST** be used until USDOT revises Form FHWA 1273. The NDDOT version is available online at:

www.dot.nd.gov/divisions/civilrights/docs/1273.pdf

2. In addition, Title 29, Code of Federal Regulations, Part 5.2(m) states:

"The term **laborer or mechanic** includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term **laborer or mechanic** includes apprentices, trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term **does not** apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity, as defined in Title 29, Part 541, are **not** deemed to be **laborers or mechanics**. Working foremen who devote **more than 20 percent of their time** during a workweek to mechanic or laborer duties, and who **do not** meet the criteria of Part 541, are **laborers and mechanics** for the time so spent."

3. Title 29, Part 541, includes the following definitions for **Executive Employees**:

- a. "Business Owners

The term **employee employed in a bona fide executive capacity** in Section 13(a)(1) of the Act also includes any employee who **owns at least a bona fide 20 percent equity interest** in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

b. Management

Generally, **management** includes but is not limited to activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandise to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures."

4. In consideration of the foregoing, NDDOT requires:

a. Company Owners

Those individuals who **own at least 20 percent** of the company (prime contractor or subcontractor) and who perform the work of a **laborer or mechanic on a federal-aid project or the site of the work** are **NOT** due Davis-Bacon wages. However, the owner **MUST** be listed on the weekly certified payroll with **ONLY** their name; applicable job classification, with the notation **owner**; and daily total hours worked.

b. Supervisory Personnel

(1) As a general rule, those employees who work in a supervisory capacity **on a federal-aid project or the site of the work** are **NOT** covered under DBRA. However, the mere fact that an employee is called a **working supervisor DOES NOT** necessarily mean the worker is **NOT** a **laborer or mechanic** as defined under DBRA (one who performs manual labor) and is, therefore, subject to the provisions of DBRA.

- (2) If a person employed in a supervisory capacity performs the work of a **laborer or mechanic more than 20 percent of the time** in any given workweek, he or she is subject to the provisions of DBRA during the periods while so employed as a **laborer or mechanic**. Consequently, he or she **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for the job classification of work performed.
- (3) In either case, the supervisor **MUST** be listed on the weekly certified payroll. When the supervisor performs nonmanual labor, **ONLY** their name, with the notation **salaried**, and daily total hours worked need be shown. When the supervisor performs manual labor **more than 20 percent of the time**, the proper job classification, hours, and wage rate information **MUST** be included on the weekly certified payroll.

5. Surveyors, Gravel Testers, Technicians, Scale Operators

- a. Contractor employees working in the capacity of **Surveyors**, **Gravel Testers**, **Quality Control Technicians** (testing and/or laboratory technicians), and **Scale Operators** (operating a scale and a computer) **on a federal-aid project or the site of the work** are **NOT laborers or mechanics** within the definition of DBRA (one who performs manual labor) and are, therefore, **NOT** covered. They are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on the weekly certified payrolls.
- b. The above includes **Bituminous Mix Testers**, **Bituminous Pavement Inspectors**, **Bituminous Mix Controllers**, and **Aggregate Testers** as defined in the *NDDOT Transportation Technician Qualification Program (TTQP)*.

6. Field Office Employees

Contractor employees whose duties are primarily administrative, executive, or clerical in nature are **NOT** considered **laborers or mechanics** within the definition of DBRA (one who performs manual labor). Those duties include but are not limited to: bookkeeping; recordkeeping; inspecting; operating computers; receiving, reviewing, and otherwise handling material invoices; collecting scale tickets and haul sheets; collecting oil samples from transport tankers; transferring oil from transport tankers to storage tanks and from storage tanks to haul trucks

and distributors; flushing hoses, pumps, and distributor spray bars; etc. These employees are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on the weekly certified payrolls.

7. Traffic Control Suppliers

- a. Employees of a traffic service company operating as a subcontractor on a federal-aid project or the ***site of the work*** to set up and service traffic control devices (e.g., barricades, directional signs, lights, arrowboards, etc.) are generally covered by DBRA. However, a traffic service company that rents equipment to the prime contractor or a subcontractor and performs **ONLY** incidental functions on a federal-aid project or the ***site of the work*** in connection with delivery of the equipment is regarded as a material supplier whose employees would **NOT** be subject to DBRA, unless the employees spend a substantial amount of time (***20 percent or more***) in the workweek on the federal-aid project or the ***site of the work***.
- b. A traffic control supplier on a federal-aid project or the ***site of the work*** who furnishes traffic control devices, delivers the devices to the ***first use*** location, sets the devices up at the ***first use*** location, and picks the devices up after the project has been completed is considered a material supplier if, after the initial setup, the prime contractor or subcontractor maintains the devices on the project or the ***site of the work*** and assumes the responsibility of relocating the devices on a day-to-day basis. Bona fide material suppliers are **NOT** covered under DBRA. Thus, their employees are **NOT** due Davis-Bacon wages and weekly certified payrolls are **NOT** required **by NDDOT**.
- c. If, after initial setup, the traffic control supplier performs any of the following ***more than 20 percent of the time in any given workweek***, it is treated as a subcontractor in the same manner as a temporary employment agency:
 - (1) Provides regular surveillance, cleaning, routine maintenance, and repair of devices or
 - (2) Changes the system between stages.
- d. The traffic control supplier's employees would be subject to the provisions of DBRA during the periods while so employed on the

federal-aid project or the **site of the work**. Consequently, the employees **MUST** be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, for the job classification of work performed. The contractor **MUST** acknowledge joint employment and either put the traffic control supplier's employees on its weekly certified payrolls or require the traffic control supplier to generate and provide weekly certified payrolls.

NOTE: If the traffic control supplier's employees are working on two or more federally funded highway construction contracts (held by one or more contractors) in any given workweek, all of the hours worked on the contracts MUST be combined and considered in determining whether the employees met the 20 percent. Hours worked on commercial, non-government work may be excluded. See Section F (page 20) for information concerning the payment of overtime hours.

8. Owner-Operators

- a. Owner-operators of trucks **ONLY** are **NOT** covered under DBRA. However, if the prime contractor or subcontractor is using truck owner-operators for hauling on a federal-aid project or the **site of the work**, they **MUST** appear on either the prime contractor's or the subcontractor's weekly certified payrolls as:
 - (1) Owner-operator's name and an individual identifying number (e.g., the last four digits of the owner-operator's social security number), with the notation **owner-operator** after the name;
 - (2) Vehicle identification number or license plate number of the vehicle being driven;
 - (3) Truck number being used on scale tickets and haul sheets;
 - (4) Neither the hours worked nor the wages paid need be shown.
- b. Owner-operators of other types of equipment are considered employees under DBRA. They **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including applicable fringe benefits, and **MUST** be included on the prime contractor's or subcontractor's

weekly certified payrolls showing the hours worked and the wages paid.

9. Utility Relocations, Adjustments, and Accommodation

Whenever federal-aid funds are included in utility work, DBRA applies to **ONLY** that work which is included as part of an NDDOT-let contract. DBRA is **NOT** applicable to utility-let contracts, including continuing contracts.

10. Relatives

There are **NO** exceptions from coverage under DBRA on the basis of family relationships, or for relatives who are performing the work of ***laborers or mechanics on a federal-aid project or the site of the work.*** They **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, ***including applicable fringe benefits,*** for the job classification of work performed and **MUST** be included on weekly certified payrolls.

L. Conformance Process

1. When a job classification is **NOT** included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, **MUST** be conformed ***after the contract has been awarded.*** This means the contractor **MUST** submit a proposed job classification and base hourly rate, plus any fringe benefits, to the NDDOT Civil Rights Division. The Civil Rights Division forwards the contractor's request to USDOL for approval. Included with the contractor's request **MUST** be the following supporting documentation:

- a. *Request For Authorization of Additional Classification and Rate (SF-1444);*
- b. Copies of payrolls issued for the project or other projects located in the area showing the current rate of pay and fringe benefits, where appropriate, for the job classification in question, or

If the contractor belongs to a union, a copy of the current collective bargaining agreement showing the required rate of pay and any appropriate fringe benefit amounts for the job classification in question and the project area; and
- c. Statements by the employees involved concerning whether they agree or disagree with the proposed job classification and wage rate, including fringe benefits where appropriate, or

If the employees are unknown, a statement to that effect.

NOTE: Contractors may use Block 16 of the *Request For Authorization of Additional Classification and Rate (SF-1444)* to provide this information or the *Classification & Wage Rate Request – Employee Information (SFN 50043)* form provided by NDDOT.

2. See **Exhibit 2** for additional information concerning the conformance process, including:
 - a. A sample letter to NDDOT requesting a job classification and wage rate determination;
 - b. The federal requirements;
 - c. The USDOL form *Request For Authorization of Additional Classification and Rate (SF-1444)*; and
 - d. The *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08/2006)* form developed by NDDOT for providing the employee statements.

M. Child Labor Laws

1. There are federal and state child labor laws:
 - a. Prohibited Employment - State Law

State child labor provisions establish a minimum age of 14 to be employed and regulate the employment of teens ages 14 and 15. Generally, persons age 14 and 15 are required to file an ***Employment and Age Certificate*** (work permit) with NDDOL, are limited in the hours they can work, and are prohibited from performing certain types of work. Prohibited work includes construction work other than cleaning, errand-running, moving, stacking, and loading or unloading materials by hand.
 - b. Prohibited Employment - Federal Law

Federal child labor laws further limit the types of work that can be performed by teens 14 and 15 years of age and prohibit teens ages 16 and 17 from working in certain occupations USDOL deems to be hazardous. Hazardous work includes:

Manufacturing and storing of explosives; driving a motor vehicle and being an outside helper on a motor vehicle; coal mining; logging and sawmilling; power-driven woodworking machines; exposure to radioactive substances; power-driven hoisting apparatus; power-driven metal-forming, punching, and shearing machines; mining, other than coal mining; meat packaging or processing (including the use of power-driven meat slicing machines); power-driven bakery machines; power-driven paper-product machines; manufacturing brick, tile, and related products; power-driven circular saws, band saws, and guillotine shears; wrecking, demolition, and shipbreaking operations; roofing operations; and excavation operations.

2. When state and federal child labor provisions differ, the more stringent standard prevails and **MUST** be followed. For example, if federal law prohibits a type of employment that is allowed under state law, the federal law would apply and the work would be prohibited.
3. In consideration of the foregoing, the following will apply to highway construction:
 - a. Individuals age 14 and 15 may **NOT** work in any construction or repair jobs.
 - b. Individuals age 16 and 17 may perform **ONLY** non-hazardous work (laborer or grunt work).
 - c. Individuals age 18 and older may perform any job, whether hazardous or **NOT**.

NOTE: According to USDOL and FHWA, flagging is NOT considered hazardous work. Therefore, the minimum age for *Flaggers* is 16. [See Section J, paragraph 6 (page 45), and Section O (page 63) for additional information concerning *Flaggers*.]

4. If it is found that an under-aged individual was employed on a federal-aid project or the **site of the work**, he or she **MUST** be paid **the appropriate Davis-Bacon wage, including applicable fringe benefits**, and be shown on the weekly certified payrolls for the time worked.

N. Unclaimed Paychecks

If, for any reason, a contractor is unable to deliver a paycheck to a current or former employee, the money **MUST** be turned over to the Unclaimed Property

Division of the North Dakota Department **of Trust Lands**. The Unclaimed Property Division makes every effort to reunite the money with its rightful owner or with the rightful owner's heirs. The procedure for turning over unclaimed property to the Department **of Trust Lands** can be found on their Web site at: www.land.nd.gov. Contact Linda Fisher at llfisher@nd.gov or 701-328-2800 for needed assistance.

O. Employees Hired Through Temporary Employment Agencies

1. Employees, such as **Flaggers**, who are hired through temporary employment agencies **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, **including applicable fringe benefits**, and **MUST** appear on either the contractor's weekly certified payroll or the temporary employment agency's weekly certified payroll when employed on a federal-aid project or the **site of the work**. Since the temporary employment agency is the employer, it is treated as a subcontractor in the same way a company providing traffic control devices would be treated.
2. The contractor **MUST** acknowledge joint employment and either put the employee on its weekly certified payroll or require the employment agency to generate and provide a weekly certified payroll. If the employee has a wage grievance, the employee would file against the employment agency.
3. According to USDOL, **NO** subcontract agreement between the contractor and the temporary employment agency is required. Therefore, **NO Prime Contractor's Request to Sublet (SFN 5682)** is required. However, NDDOT cautions prime contractors and subcontractors that any agreement they have with a temporary employment agency should clearly indicate that the employees **MUST** be paid full Davis-Bacon wages, including fringe benefits where applicable. Any additional charges or fees to be paid to the temporary employment agency **MUST** be above and beyond the required Davis-Bacon wages. If an employee has a wage grievance, the prime contractor will be held ultimately responsible for compliance with DBRA. This means if the wages cannot be recouped from the temporary employment agency, the prime contractor will be held responsible for paying the wages.
4. **See Section F, paragraphs 5-6 (page 21), and Section J, paragraph 6 (page 45), for additional information concerning Flaggers.**

P. Bulletin Boards

1. The following **MUST** be displayed on federal-aid highway construction projects or the **site of the work** in an area readily accessible to all employees, applicants for employment, and other interested parties:
 - a. *Important Wage Rate Information Federal-aid Highway Project (Form FHWA-1495 - Rev. 09/1981)**
 - b. *Employee Rights Under the Davis-Bacon Act (WH-1321 - Rev. 04/2009)**
 - c. *Employee Rights Under the Fair Labor Standards Act (WHD-1088 - Rev. 07/2009)**
 - d. *Employee Rights For Workers With Disabilities Paid at Special Minimum Wages (WH-1284 - Rev. 07/2009)**
 - e. *Labor Rates From U.S. Department of Labor***

*Contained on *Poster Board (DOT 3350 - 2 of 3 - Rev. 05/2010)* provided by NDDOT, or their equivalents.

**Davis-Bacon wage rate decision incorporated into the contract.

2. On American Recovery and Reinvestment Act (ARRA) projects **ONLY**, the *U.S. Department of Transportation, Office of Inspector General, Whistleblowers Know Your Rights* and the *Recovery Act Fraud Hotline* posters **MUST** also be displayed (provided by NDDOT).
3. Other EEO, USDOL, OSHA, etc., posters and notices are required to be displayed on federal-aid highway construction projects or the **site of the work**. These posters and notices are contained on *Poster Board (DOT 3350 - 1 of 3 - Rev. 05/2010)* and *Poster Board (DOT 3350 - 3 of 3 - Rev. 05/2010)* provided by NDDOT, or their equivalents. EEO requirements are included with the labor standards provisions incorporated into the contract as *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 3-94)**, which is available online at:

www.fhwa.dot.gov/programadmin/contracts/1273.cfm

*The USDOL regulations concerning employees' social security numbers

and addresses on Davis-Bacon weekly certified payrolls were changed effective **January 18, 2009**. The USDOT Form FHWA 1273 has **NOT**, as yet, been revised to reflect the changes. Consequently, NDDOT has modified the FHWA 1273 to incorporate the changes. The NDDOT version (Rev. January 18, 2009) **MUST** be used until USDOT revises Form FHWA 1273. The NDDOT version is available online at:

www.dot.nd.gov/divisions/civilrights/docs/1273.pdf

4. Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster boards, ARRA posters (when applicable), and Davis-Bacon wage rate decision.
5. When a subcontractor is on a federal-aid project or the **site of the work** for less than one week (**seven calendar days**), or when a subcontractor is extremely mobile on a federal-aid project or the **site of the work** (e.g., paint stripers, guardrail installers, fencers, etc.), the subcontractor will **NOT** be required to provide a **project-site** bulletin board if:
 - a. The subcontractor's home office is located in North Dakota.
 - b. The subcontractor maintains a bulletin board at their home office location in an area readily accessible to all employees, applicants for employment, and other interested parties.
 - c. The bulletin board contains all of the required notices and posters.
 - d. The subcontractor provides documentation that their employees are required to check in at the home office on a daily and/or weekly basis and do so.
 - e. The subcontractor employees know where the bulletin board is located.
6. The district in which the subcontractor's home office is located will conduct an annual supplemental review of the subcontractor's bulletin board at the location identified to ensure all of the required notices and posters are displayed, current, and legible. The district will initiate the supplemental review whenever the subcontractor begins working on a project **within its jurisdiction**, or whenever another district requests a supplemental review

be conducted. The supplemental review will then be shared with the other seven NDDOT district offices.

7. In cases where a subcontractor works away from their home office location and hires local individuals who **DO NOT** check in at the home office, a copy of each of the required notices and posters **MUST** be given to those individuals. The subcontractor **MUST** obtain an acknowledgement of receipt from each individual and provide a copy of each acknowledgement to the district in which the project is located.
8. During routine labor compliance job-site interviews, contractor employees are asked if they know where the bulletin board is located. Any negative answers by the subcontractor's employees will be brought to the attention of the subcontractor. The allowance for the subcontractor to display the required notices and posters at their home office rather than at the project site will be re-evaluated at that time.

Q. Labor Compliance Job-Site Interviews

1. Systematic spot interviews with the contractor's project employees may be conducted by the project manager-engineer (NDDOT, city, county, or consultant), or a representative of the contracting agency (NDDOT). The interviews are used to determine whether the Davis-Bacon wage rate decision and other labor standards provisions of the contract are being fully complied with, and that there is no misclassification of employees.
2. Each prime contractor and subcontractor will have job-site interviews conducted on at least one federal-aid project in each NDDOT district annually.
3. All answers and statements made by the employees, whether orally or in writing, are treated as confidential. An employee's identity will **NOT** be disclosed to the contractor without the employee's written consent.
4. A good cross-section of the contractor's project employees will be selected for interviews. Selection criteria will include race, sex, job classification, and age. One minority, one nonminority, and one female in each trade, job classification, or occupation will possibly be interviewed.
5. Contractors **MUST** allow their employees to be interviewed.

R. NDDOT Civil Rights Division Personnel

For further information or assistance, contact either of the following:

E. Diane Laub, Director
dlaub@nd.gov

Phone: 701-328-2576

Jackie Schmalz,
Civil Rights Program Administrator
jschmalz@nd.gov

Phone: 701-328-2605

Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
civilrights@nd.gov

FAX: 701-328-0343

S. Federal and State Department of Labor Personnel

Elaine Jacobson
Wage and Hour Specialist
U.S. Department of Labor
Room 323
220 East Rosser Avenue
Bismarck, ND 58501-3869
Phone: 701-250-4320

North Dakota Department of Labor
Thirteen Floor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0340
Phone: 701-328-2660 or
In-state, toll-free: 1-800-582-8032
Email: labor@nd.gov

EXHIBIT 1: INSTRUCTIONS AND LINKS TO PAYROLL FORMS

U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION INSTRUCTIONS FOR COMPLETING *PAYROLL FORM (WH-347)* AND *STATEMENT OF COMPLIANCE*

These instructions can be accessed through the following Internet link:

www.dol.gov/whd/forms/wh347instr.htm

A completed, sample *Payroll Form (WH-347)* and *Statement of Compliance* can also be accessed through the following Internet link:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their federal or federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and Related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on federally financed or assisted construction contracts to respond to the information collection contained in 29 CFR §§ 3.3, 5.5(a). The Copeland Act (40 USC § 3145) requires contractors and subcontractors performing work on federally financed or assisted construction contracts to **furnish weekly a statement with respect to the wages paid each employee during the preceding week**. U.S. Department of Labor (USDOL) Regulations at 29 CFR § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project, accompanied by a signed **Statement of Compliance** indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. USDOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and Related Acts, the contractor is required to pay not less than the prevailing wage, including fringe benefits, as predetermined by the U.S. Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds, or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies paid to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll Number: Beginning with the number "1," list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 – Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 – No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3 – Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification, provided an accurate

breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 – Hours Worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours and Safety Standards Act, enter hours worked in excess of forty (40) hours a week as ***overtime***.

Column 5 – Total: Self-explanatory.

Column 6 – Rate of Pay (Including Fringe Benefits): In the ***straight time*** box, for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, ***\$12.25/.40*** would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See ***Fringe Benefits*** below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the ***overtime*** box for each worker; otherwise, you may skip this box. See ***Fringe Benefits*** below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours and Safety Standards Act of 1962 if the prime contract exceeds \$100,000. In addition to paying not less than the predetermined rate for the classification in which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds, or programs or shall pay as cash in lieu of fringe benefits. See ***Fringe Benefits*** below.

Column 7 – Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in ***Column 7*** first the amount earned on the federal or federally assisted project and then the gross amount earned during the week on all projects, thus ***\$163.00/420.00*** would reflect the earnings of a worker who earned \$163 on a federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 – Deductions: Five columns are provided for showing deductions made. If more than five deductions are involved, use the first four columns and show the balance deductions under the ***Other*** column; show the actual total under the ***Total Deductions*** column; and in the attachment to the payroll, describe the deduction(s) contained in the ***Other*** column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If an individual worked on other jobs in

addition to this project, show the actual deductions from his/her weekly gross wage, and indicate that the deductions are based on gross wages.

Column 9 – Net Wages Paid for Week: Self-explanatory.

Totals: Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the ***Statement of Compliance*** need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 USC § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1 and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the ***Deductions*** column above, state ***See Deductions column in this payroll.*** See ***Fringe Benefits*** below for instructions concerning filling out ***Section 4*** of the statement.

Item 4 FRINGE BENEFITS – Contractors Who Pay All Required Fringe Benefits:

If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check ***Section 4(a)*** of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in ***Section 4(c)***.

Contractors Who Pay No Fringe Benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the ***straight time*** of the ***Rate of Pay*** column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half-time premium of the basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check ***Section 4(b)*** of the statement on page 2 of the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in ***Section 4(c)***.

Use of Section 4 (c), Exceptions: Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to **Section 4(a)** or **4(b)** in **Section 4(c)**. Enter in the **Exception** column the craft, and enter in the **Explanation** column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in **Section 4(c)** to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the federal or federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in **Column 6** on the payroll. See paragraph on **Contractors Who Pay No Fringe Benefits** for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, Northwest, Washington, DC 20210.

NOTE: In order to view, fill out, and print PDF forms, you need *Adobe® Acrobat® Reader®* version 5 or later, which you may download for free at:

www.adobe.com/products/acrobat/readstep2.html

To save the completed forms on your workstation, you need to use the **Save...As** method to save the file. For example, move your cursor over the PDF link and click on your **RIGHT** mouse button. This will cause a menu to be displayed, from which you will select the proper save option—depending upon which browser you are using.

- For Microsoft IE users, select **Save Target As**.
- For Netscape Navigator users, select **Save Link As**.

Once you've selected the proper save option for your browser and have saved the file to a location you specified, go to your program menu and start the *Adobe® Acrobat® Reader®*. Once open, locate the PDF file you saved and open it directly in *Acrobat®*.

PAYROLL - FORM WH-347 AND STATEMENT OF COMPLIANCE

To access Form WH-347 and the Statement of Compliance, click on the following:

www.dol.gov/whd/forms/wh347.pdf

NOTE: A completed, sample WH-347 can be accessed at:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

EXHIBIT 2: CONFORMANCE PROCESS

SAMPLE LETTER TO NDDOT

 Date

Ms. **E. Diane Laub**, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Dear Ms. **Laub**:

Subject: Job Classification and Wage Determination For
 Project _____ (number) _____
 _____ County

I am hereby requesting a wage determination for (classification) on the above referenced project. I am proposing a base rate of \$. per hour (with no/plus \$. in) fringe benefits. Enclosed is documentation supporting this request.

If you have any questions, contact me at (telephone number) .

Sincerely,

(name)

(title)

ri
Enclosures

REQUESTS FOR ADDITIONAL CLASSIFICATIONS AND WAGE RATES

Criteria for the approval of additional classifications and wage rates are set forth in the Code of Federal Regulations, Title 29, Part 5, Subpart A, Section 5.5 (a) (1) (ii). Section 5.5 (a) (1) (ii) (A) states:

"The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination."

Section 5.5 (a) (1) (ii) (B) further states:

"If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and will so advise the contracting officer, or will notify the contracting officer within the 30-day period that additional time is necessary."

The U.S. Department of Labor's policy in conforming a job classification and wage rate is:

1. If the proposed classification is a skilled craft, the proposed rate cannot be less than the lowest rate already established for a skilled job classification in the wage determination.
2. Exceptions to the skilled job classifications are the Power Equipment Operator and Truck Driver groups.
3. If the established rate for a skilled job classification varies between counties, the proposed rate cannot be less than the established rate for the county in which the project is located.
4. If the established rate for a skilled job classification includes a fringe benefit amount, the proposed rate does not have to specify an amount for fringe benefits. The fringe benefit amount could be added to the hourly wage. In other words, the proposed rate must be equal to or higher than the total of the established hourly rate plus the amount designated for fringe benefits.

NOTE: Requests for Additional Classifications and Wage Rates should be made prior to commencement of work on the contract. For necessary forms and procedures, contact:

E. Diane Laub, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
Telephone: (701) 328-2576 FAX: (701) 328-0343
Email: civilrights@nd.gov

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

Standard Form 1444 (Rev. 12-2001)

To access SF-1444, click on the following:

[contacts.gsa.gov/webforms.nsf/0/BD4C92A05177FD9C85256A2600553378/\\$file/SF%201444.pdf](https://contacts.gsa.gov/webforms.nsf/0/BD4C92A05177FD9C85256A2600553378/$file/SF%201444.pdf)

Instructions:

- Block 1 Pre-printed on form.
Block 2 To be completed by Contracting Officer (NDDOT).

The contractor completes:

- Block 3 Enter complete name and mailing address.
Block 4 Enter date of request.
Block 5 Enter contract number.
Block 6 Enter date bid opened. If not sure, call NDDOT to obtain.
Block 7 Enter date of contract award. If not sure, call NDDOT to obtain.
Block 8 Enter date contract work started.
Block 9 Enter date contract option was exercised (if applicable).
Block 10 Enter name and address of subcontractor (if applicable).
Block 11 Enter summary of project's statement of work.
Block 12 Enter location of project (city, county, and state).
Block 13 List numbers and dates of all applicable wage determinations (consult proposal/contract).
Block 13a List the classification title and level and provide the job description for the work of the classification being conformed. (If the work to be performed is the same as the work described in the SCA Directory for the title and level entered here, do not repeat the job description.) Also list the Federal Grade Equivalency (FGE) and the source of the FGE for the classification being conformed.
Block 13b Enter the proposed wage rate.
Block 13c Enter the required fringe benefits already established on the applicable wage determination.
Block 14 Enter the signature(s) and title(s) of the subcontractor's representative (if applicable). Attach additional sheet(s) if necessary.
Block 15 Enter the signature and title of the prime contractor representative.
Block 16 If there is an official representative of the employees who are working under the proposed conformed rates, contact that individual and inform him/her of the conformance proposal. Ask that individual to sign Block 16 and indicate whether or not there is agreement with the conformance proposal, and the reasons for the position. Also, make sure the applicable box in Block 16 is checked.

If there is no duly elected representative, ask each employee working in the class being conformed to sign a separate sheet, indicating agreement or disagreement with the proposal. These employees also must be offered an opportunity to explain their position(s).

If no employees have been hired yet, indicate in Block 16.

Once the contractor has completed the form, send it to the Contracting Officer (NDDOT). **DO NOT** send directly to the Department of Labor's Wage and Hour Division.

The Contracting Officer (NDDOT) completes the bottom of the form, checking the applicable box, signing, dating, providing a commercial telephone number at which he/she may be reached, and presenting the agency recommendation and other relevant information as an attachment. If the Contracting Officer does not agree with any proposed classes or rates, a statement of the agency's position and rationale must be attached.

NOTE: After receipt/review of SF-1444, the Contracting Officer completes bottom of form and forwards, with contractor supporting documentation, to the DOL address listed in Block 1.

**CLASSIFICATION & WAGE RATE REQUEST
EMPLOYEE INFORMATION**
North Dakota Department of Transportation, Civil Rights Division
SFN 50043 (Rev. 08-2006)

To access SFN 50043, click on the following:

www.dot.nd.gov/forms/sfn50043.pdf

NOTE: May be used in lieu of filling out Block 16 of *Request For Authorization of Additional Classification and Rate (Standard Form 1444)*.

**EXHIBIT 3: *REQUIRED CONTRACT PROVISIONS, FEDERAL-AID
CONSTRUCTION CONTRACTS (USDOT FORM FHWA 1273)***

To access *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 3-94)**, click on the following:

www.fhwa.dot.gov/programadmin/contracts/1273.cfm

*The USDOL regulations concerning employees' social security numbers and addresses on Davis-Bacon certified payrolls were changed effective **January 18, 2009**. The USDOT Form FHWA 1273 has **NOT**, as yet, been revised to reflect the changes. Consequently, NDDOT has modified the FHWA 1273 to incorporate the changes. The NDDOT version (Rev. January 18, 2009) **MUST** be used until USDOT revises Form FHWA 1273. The NDDOT version is available online at:

www.dot.nd.gov/divisions/civilrights/docs/1273.pdf