

SECTION 224 Labor Compliance

224.1 Labor Compliance Background

Contracts let to bid and entered into by the department for the construction of highways contain provisions governing the employment and payment of persons hired by contractors, subcontractors, and suppliers to perform the contract work. They are discussed in the following subsections.

224.1.1 Required Contract Provisions - Federal Aid Construction Contracts

These are required only in contracts with federal funding.

224.1.1.1 FHWA-1273 Part 1 - General

Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23. The contractor or sub-contractor must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts.

224.1.1.2 Part II - Nondiscrimination and Part III Non-Segregated Facilities

Nondiscrimination requires goals and timetables for minority and female participation to be stated in the contract. In addition, the contractor must not discriminate against any employee or application for employment because of race, religion, sex, color, national origin, age or disability. The contractor is required to do the following:

- Take affirmative action to ensure equal employment opportunity.
- Will designate and make known to the contracting officers and EEO office.
- Will disseminate the contractor's EEO policy to staff who are authorized to hire, supervise, promote and discharge employees.
- When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer."
- Wages, working conditions, and employee benefits must be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, must be taken without regard to race, color, religion, sex, national origin, age or disability.
- Will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees.
- If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women.
- Must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under.
- Must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result.

224.1.1.3 FHWA 1273 Part IV - Davis-Bacon and related Act Provisions

Minimum wages

Laborers and mechanics 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 allowed by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at 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 and such laborers and mechanics. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked.

Payroll and basic records

Payrolls and basic records relating thereto shall be maintained by the contractor during the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in

the applicable programs. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract.

Apprentices and trainees

Apprentices will be allowed to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program.

Except as provided in 29 CFR 5.16, trainees will not be allowed to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

224.1.2 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

This notice lists, by county, the goals for minority group and female participation for each construction trade (Executive Order 11246).

224.1.3 Federal Wage Decision

A schedule of minimum prevailing wages for the county in which the work will be done is included in the contract. Issued by the United States Department of Labor (US DOL). **WI 10** wages are inserted in every contract with federal funding (applies to all work except work over a navigable waterway). **WI 15** wages are inserted into a contract if there is a bridge or structure located over a navigable waterway as defined by USDOL and the US Coast Guard (applies to all work occurring on the bridge/structure from bank to bank). **WI 08** wages are inserted into a contract if it contains sewer work that is over 20% of the contract amount. Building wages (**WI XX**-by county) are added when there is a building in the contract, for example a salt shed or bridge tender house. Wage determinations included in the contract remain in effect for the life of the contract. Contractors are responsible for determining the appropriate crafts necessary to perform the contract work. If a classification considered necessary for performance of the work is missing from the WD, the contractor must initiate a request for approval for a proposed wage and benefit rate by preparing an SF-1444, Request for Authorization of Additional Classification and Rate, for the unlisted craft. (Reference Title 29 CFR Part 5, Section 5.5(a)(1)(ii) and FAR 22.406-3).

224.1.3.1 Overtime

Overtime will be paid for all hours worked over 40 per week, at a rate not less than 1.5 times the basic rate of pay.

224.1.4 WisDOT Supplemental Required Contract Provisions

These are required for all contracts administered by WisDOT.

224.1.4.1 ASP9-S (State-Funded Only Projects)

WisDOT must report labor data to other agencies, Wisconsin's Native American Tribes, and various stakeholders. Labor data will be collected through labor reports in the Civil Rights Compliance System (CRCS).

<https://wisconsin.gov/hccidocs/contracting-info/asp-9.pdf>

224.2 Native American Hiring Provision (NAHP)

Contractors need to follow the meeting set up and reporting provisions found in the contract Native American Hiring Provision (NAHP) special provision. Regional tribal liaisons, labor compliance specialists, and WisDOT's Tribal Affairs staff can help field staff implement and monitor compliance.

224.3 Trucking

Prevailing wages are required for:

1. Hauls from a dedicated AND virtually adjacent source (round trip). Borrow pit, stockpile site, concrete or asphalt batch plant source, etc., that has NOT been open and making sales of that material to the general public within the previous twelve months of the day the project was let to contract (bid opening date - not awarded), AND adjacent or virtually adjacent to the site of the work. Generally, WisDOT will consider any borrow pit, stockpile site, concrete or asphalt batch plant source whose boundary is located a half mile or less (as the crow flies) of the closest right of way boundary or termini to the project as adjacent or virtually adjacent.
2. Hauling materials or supplies from one location on the site of work to another location on the site of work. Entire haul is covered when hauling material from any point or place within the project limits to any other point or place within the project limits regardless of de minimis. Truck drivers who haul materials or supplies from one location on the site of the work to another location on the site of the work are "mechanics and laborers employed directly upon the site of the work," and therefore, entitled to prevailing wages.

3. Time spent loading/unloading materials on the site of work if such time is more than de minimis. There is no commonly accepted percentage of time used to determine de minimis. WisDOT will not determine or approve a percentage. In determining whether a truck driver's time spent on the site of the work is more than de minimis, USDOL recommends basing the percent of time spent on the site of the work on all of the hours the truck driver works in any given workweek rather than the truck driver's daily hours.
4. Excavated material or spoil hauled to a site indicated in contract (round trip). That location becomes part of the site of work and hauling material or spoil to that location would be prevailing wage, round trip.

224.4 Posting Requirements

The following material is furnished to the contractor for posting in at least one conspicuous place on the project accessible to both workers on the project and the public. The contractor is required to do the posting. The engineer will check that the contractor erects and maintains the proper postings on display and in good condition at all times during the performance of the contract work. Refer to the following for a listing of required document postings.

224.4.1 Posting Required for ALL Wisconsin DOT Projects (regardless of funding)

The postings listed are required for all WisDOT Projects regardless of funding:

- Front page of proposal with prime contractor listed (distributed by labor compliance specialist at precon)
- Contractor's EEO policy statement including name/signature of EEO officer and date signed
- Contractor's letter appointing EEO officer to the project signed by company CEO/President
- Construction Project Contact List (Emergency/Contact Phone Numbers)
- Employee Rights Employee Polygraph Protection Act (WH1462 REV 07/16)
- Employee Rights Under the Fair Labor Standards Act (WH1088 REV 07/16)
- Employee Rights Under the Family Medical Leave Act (WH1420 REV 04/16) Prior version okay.
- Equal Employment Opportunity IS THE LAW" [EEOC-P/E-1 (Revised 11/09)]
- "EEO is the Law" Poster Supplement
- La Igualdad de Oportunidades en el Empleo es LA LEY (EEOC-P/E-1 (Revised 11/09))
- Suplemen to del document "IOE es La Ley"
- Job Safety and Health: IT'S THE LAW! (OSHA 3165-04R 2015) 8.5x14 Previous version okay.
- Notice to Employees About Applying for Wisconsin Unemployment Benefits [(UCB-7-P (R. 10/2017))]
- Pay Transparency Nondiscrimination Provision (undated) (OFCCP 12/2016) Either format acceptable.
- Wisconsin Department of Transportation Notice of Title VI and ADA Compliance (8/1/2017)
- Wisconsin Department of Transportation Notification Del Titulo VI Y Cumplimiento De La Ada (8/1/2017)
- Wisconsin Fair Employment Law [(ERD-4531-P (R.05/2014))]
- Wisconsin Family Medical Leave Act [ERD-7983-P (R-06/2014)]

224.4.2 Posting Required for Federal Aid Projects

The postings listed above in [CMM 224.4.1](#) plus the item(s) listed below must be posted on federal aid projects.

- NOTICE - The highway construction under way at this location... [FHWA Form 1022 (Revised May2015)]

224.4.3 Posting Applicable to Projects with Federal Davis-Bacon Act

The postings listed are applicable to projects with Federal Davis-Bacon Act funding:

- Contract Wage Rates (US DOL, all pages - correct county/counties)
- Employee Rights Under the Davis-Bacon Act [WH 1321 Revised April 2009)]
- Derechos Del Empleado Bajo la Ley Davis-Bacon [(WH 1321 SPA (Revised April 2009))]

224.5 Enforcement of Contract Labor Provisions

224.5.1 General

The department is responsible for enforcement of the contract labor provisions to the same extent as any of the other contract requirements. The region labor compliance specialist will assist engineers with the detailed enforcement duties connected with contract labor provisions.

The enforcement duties are to be carried out on the same basis for state funded construction contracts and for federal aid contracts. Frequent reference should be made for guidance to the U.S. Department of Labor's Field Operations Handbook.

Project personnel should inform the contractor that the contractor's Equal Opportunity program may be selected for a compliance review by either state or federal personnel. If the project is selected for review, the contractor will be asked to verify that contract requirements are complied with. The engineer or other personnel may be asked for corroborating observations or statistics at these interviews.

224.5.2 Detailed Enforcement Procedures

The region labor compliance specialist will:

1. Make systematic spot interviews with laborers and mechanics engaged in contract work. Record their name, classification, wage rate, and employer's name.
2. Observe the type of work being performed.
3. Conduct sufficient interviews to ensure the rates being paid are not less than contract minimum rates for the work being performed.
4. Determine if the contractor's method of timekeeping ensures proper payment of workers and if not, suggest changes that will ensure proper payment.
5. Ascertain employee's paydays and examine some individual paychecks to determine if they conform to the employee's version of work performed and hours worked. Keep a record of these examinations.
6. When questionable practices are discovered, or complaints are received, try to have the matter adjusted through contacts with the contractor's office or job personnel.
7. When it appears violations may be taking place, make an examination of time cards, payrolls and other employment records as appropriate to establish the facts. Once there is evidence of a violation, the prime contractor will be notified and will be expected to ensure compliance.
8. If a question of the applicability of labor provisions to various construction activities arises, refer to the U.S. Department of Labor's Field Operations Handbook Davis-Bacon Resource Book, the WisDOT EEO/Labor Compliance Manual or consult with Central Office bureau of project development.
9. Advise the Chief, Labor Compliance/EEO in Central Office of possible violations and furnish copies of correspondence with contractors.
10. Check each project for required postings and arrange to have deficiencies corrected.
11. Have the engineer spot check records for construction contracts to verify all classification of laborers and mechanics performing work on the contract are listed.
12. Spot-check available records for correctness of rates, fringe benefit payments, and improper deductions.
13. Keep a record of payroll and final employment statements submitted and advise contractors that timely submission is required. If a contractor is consistently tardy with these submissions, appropriate action should be taken.

224.5.3 Role of the Engineer

The project engineer should discuss suspected violations of the employment provisions first with the contractor, whether they involve workers or practices of the contractor, subcontractors, or suppliers. Complaints and confirmed violations are to be brought to the attention of the region, to consult with the region labor compliance specialist as appropriate. Matters relating to Disadvantaged Business Enterprises should be brought to the attention of OBOEC in Central Office by the region labor compliance specialist.

224.6 Weekly Payroll and Compliance Statement Reports

Contractors must use the Civil Rights Compliance System (CRCS) to produce and submit an electronic weekly payroll report to the regional oversight Labor Compliance Specialist for all physical work performed on all let federal aid contracts. A compliance statement form must accompany the contractor's weekly payroll statement. The Weekly Payroll Report, [DT1929](#) and the Compliance Statement to Accompany Contractor's Weekly Payroll, [DT1816](#). These forms must be submitted electronically by all tier contractors within seven calendar days following the close of the payroll period.

Payroll submission requirements are further detailed online through the Labor and wage compliance page on the WisDOT website at:

<https://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/default.aspx>

General information contained in ASP-9 can be found at:

<https://wisconsindot.gov/hcciDocs/contracting-info/asp-9.pdf>

Additional Special Provision 9 (ASP-9) that is in the contract should be reviewed by the contractor for contractual payroll submission requirements.