Today's Program

• What is Prevailing Wage?
• Prevailing Wage Regulations
• Compliance & Enforcement Rules
• Fringe Benefit Options
• Designing Retirement Plans Using Prevailing Wage Features

Federal Prevailing Wage Rules

• The Davis-Bacon Act (DBA) was enacted in 1931
• Fringe benefits, including health and retirement benefits, added in 1964
• The purpose of the DBA is
  To protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels
Federal Prevailing Wage Rules

- The DBA requires the locally prevailing wages determined by DOL to be included in the bid specifications for covered contracts and paid to workers employed under such contracts.
- The DBA applies to federal government and District of Columbia contracts in excess of $2,000 for construction, alteration, or repair (including painting and decorating) of public buildings and public works.
  - Examples:
    - General Services Administration contracts to build federal office buildings.
    - Department of Defense contracts to paint and remodel a military base office building.

Federal Prevailing Wage Rules

- Prevailing wages are determined in advance by the DOL National Office and included in the bid specifications for covered contracts.
- The language of the Davis-Bacon Act requires contractors and subcontractors to pay all mechanics and laborers employed directly on the site of the work, unconditionally not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics. 40 U.S.C. § 3142.

Federal Prevailing Wage Rules

- DBA requirements apply to contractors and subcontractors.
- "Laborers or mechanics" must be paid at least "prevailing wages".
- DBA applies only to employment on the "site of the work".
- The laborers and mechanics must be paid weekly.
- Persons performing the duties of laborers and mechanics must be paid the prevailing wage rate regardless of any contractual arrangement, e.g., an independent contractor or owner-operator relationship.
- The wage determination (including additional classifications and wage rates approved under the "conformance" process) and the Davis-Bacon poster (WH-1321) must be posted by the contractor and its subcontractors at the site of the work in a prominent and accessible place where they can be easily seen by the workers.
Federal Prevailing Wage Rules

DBA Coverage

• The DBA applies to contracts “in excess of $2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works.” 40 U.S.C. § 3142

• In considering DBA coverage on contracts in excess of $2,000, three criteria apply:
  • Is the agreement a contract to which the Federal Government or the District of Columbia is a party?
  • Is the agreement a “contract for construction”?
  • Is the “contract for construction” a contract for the construction of a public building or public work of the United States or the District of Columbia?

Federal Prevailing Wage Rules

Within the meaning of the DBA, “public building or public work” includes a “building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.” 29 C.F.R. § 5.2(k)

State Prevailing Wage Laws

• 35 states have their own version of DBA, known as “little” Davis-Bacon laws and are normally called prevailing wage laws
• States make wage determinations for their state and municipal funded contracts
• State prevailing wage laws operate very similarly to federal law
State Prevailing Wage Rules

• California Prevailing Wage Determinations
  • Issued by the Department of Industrial Relations

• Washington, Nevada and Oregon Prevailing Wage Determinations
  • Issued by their state agencies

• Arizona Prevailing Wage Determinations
  • Since there is no separate Arizona prevailing wage statute, the Federal Department of Labor makes determinations

California Prevailing Wage Rules

• What is a “Public Works” project?
  • Calif. Labor Code Section 17200(a)
    (1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

California Prevailing Wage Rules

• Who is covered?
  • All “Workers” employed in the execution of the contract
    • Calif. Labor Code Section 1774
      The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract

10/30/2019
Compliance & New Enforcement Rules

- Division of Labor Standards Enforcement
- Unions require strict enforcement
- Labor Compliance Programs

2014 Public Works Contractor Registration Law
- Established a public works contractor registration program to replace prior Compliance Monitoring Unit (CMU) and Labor Compliance Program (LCP) requirements for bond-funded and other specified public works projects
- The fees collected through the program established by SB 854 are used to fund Department of Industrial Relation’s public works activities

Payment of Prevailing Wages

- Base wage
  - Must be paid to employee
  - Overtime rates apply
- Fringe benefits paid directly
  - Training fees paid to apprenticeship agency
  - Vacation fringe paid as wages

Payment of Prevailing Wages

- Fringe benefits
  - Health and welfare plans
  - Retirement
- Employer decides about how, when, and what benefits to provide
  - May implement with less than 100% of fringe allowance
Advantages for Employers to Pay Fringe Benefits in Lieu of Cash

• Reduce employer payroll tax liability
• Reduce Workers’ Compensation wage base
• Eliminate double payment for benefits
• Improve 401k plan testing and allocations
• Benefit pool available during slow months

Employer Decides Benefits

Options for employer decision on using Prevailing Wage fringe to buy benefits:
• Job classification
• Location of project

Highly Compensated Employees often excluded from retirement plan
Contributions may be required for eligible, non-excluded employees who don’t have fringe deductions

Paycheck

Lower Base Pay reduces:
• Payroll Taxes
• Workers’ Comp Premium
• Liability Insurance

Fringe

401k

Premium

L.A. MERCHANDISE MARKET
Savings example

<table>
<thead>
<tr>
<th>Base Wage</th>
<th>BASE WAGE</th>
<th>BRINGS WAGE</th>
<th>PAYROLL TAXES</th>
<th>WORKERS’ COMP</th>
<th>GENERAL LIABILITY</th>
<th>TOTAL COST PER HOUR</th>
<th>BENEFITS COST</th>
<th>NET COST PER HOUR</th>
<th>ANNUAL SAVINGS AT 1500 HOURS FOR 15 EMPLOYEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>$38.60</td>
<td>$38.60</td>
<td>$38.60</td>
<td>$6.43</td>
<td>$3.86</td>
<td>$1.31</td>
<td>$8.60</td>
<td>$0.00</td>
<td>$8.60</td>
<td>$7.74</td>
</tr>
</tbody>
</table>

**Insurance Fringe**

- Insurance premiums paid from fringe
- Allows employer to reduce out-of-pocket premium expense

**Retirement Fringe**

- Contributions are made to the retirement plan on behalf of each employee
- Contributions must be 100% vested immediately
- Deposits must be made at least once per calendar quarter
Helping Pass 401(k) Tests

- Prevailing Wage component considered a QNEC. As a result:
  - The deposit ratio for employees increases, and
  - The overall average for NHCEs increases, so
  - Overall higher average that is allowed for the HCEs increases

ADP Test Example

<table>
<thead>
<tr>
<th>Favorite Plumbing Contractor</th>
<th>EE (w/o PW Fringe)</th>
<th>PW (w/o PW Fringe)</th>
<th>PW (w/ PW Fringe)</th>
<th>Total (w/ PW Fringe)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Compensation</td>
<td>200,000</td>
<td>19,000</td>
<td>9.50%</td>
<td>219,500</td>
</tr>
<tr>
<td>HCE 1</td>
<td>125,000</td>
<td>5,000</td>
<td>4.00%</td>
<td>130,000</td>
</tr>
<tr>
<td>HCE 2</td>
<td>125,000</td>
<td>5,000</td>
<td>4.00%</td>
<td>130,000</td>
</tr>
<tr>
<td>HCE 3</td>
<td>125,000</td>
<td>5,000</td>
<td>4.00%</td>
<td>130,000</td>
</tr>
<tr>
<td>Apprentice, Andy</td>
<td>35,000</td>
<td></td>
<td>0.00%</td>
<td>35,000</td>
</tr>
<tr>
<td>Employee 1</td>
<td>45,000</td>
<td></td>
<td>0.00%</td>
<td>45,000</td>
</tr>
<tr>
<td>Employee 2</td>
<td>50,000</td>
<td></td>
<td>0.00%</td>
<td>50,000</td>
</tr>
<tr>
<td>Employee 3</td>
<td>50,000</td>
<td></td>
<td>0.00%</td>
<td>50,000</td>
</tr>
<tr>
<td>Employee 4</td>
<td>52,000</td>
<td>2,600</td>
<td>5.00%</td>
<td>54,600</td>
</tr>
<tr>
<td>Employee 5</td>
<td>54,000</td>
<td>2,700</td>
<td>5.00%</td>
<td>56,700</td>
</tr>
<tr>
<td>Employee 6</td>
<td>58,000</td>
<td>2,900</td>
<td>5.00%</td>
<td>60,900</td>
</tr>
<tr>
<td>Owner 1</td>
<td>200,000</td>
<td>19,000</td>
<td>9.50%</td>
<td>219,500</td>
</tr>
<tr>
<td>Owner 2</td>
<td>200,000</td>
<td>19,000</td>
<td>9.50%</td>
<td>219,500</td>
</tr>
<tr>
<td>HCE Total</td>
<td>525,000</td>
<td>43,000</td>
<td></td>
<td>568,000</td>
</tr>
<tr>
<td>HCE Average</td>
<td>7.67%</td>
<td></td>
<td></td>
<td>7.67%</td>
</tr>
<tr>
<td>Employee 1</td>
<td>45,000</td>
<td>3,600</td>
<td>8.00%</td>
<td>48,600</td>
</tr>
<tr>
<td>Employee 2</td>
<td>50,000</td>
<td>4,000</td>
<td>8.00%</td>
<td>54,000</td>
</tr>
<tr>
<td>Employee 3</td>
<td>50,000</td>
<td>4,000</td>
<td>8.00%</td>
<td>54,000</td>
</tr>
<tr>
<td>Employee 4</td>
<td>52,000</td>
<td>2,600</td>
<td>5.00%</td>
<td>54,600</td>
</tr>
<tr>
<td>Employee 5</td>
<td>54,000</td>
<td>2,700</td>
<td>5.00%</td>
<td>56,700</td>
</tr>
<tr>
<td>Employee 6</td>
<td>58,000</td>
<td>2,900</td>
<td>5.00%</td>
<td>60,900</td>
</tr>
<tr>
<td>NHCE Total</td>
<td>419,000</td>
<td>11,950</td>
<td>37,260</td>
<td>467,260</td>
</tr>
<tr>
<td>NHCE Average</td>
<td>2.50%</td>
<td></td>
<td></td>
<td>11.25%</td>
</tr>
</tbody>
</table>

Profit Sharing Offset

- Prevailing Wage Retirement contribution is considered an employer contribution
- It can be used to offset profit sharing or other DC contributions
- It favors HCEs, so there is a potentially larger contribution
- It can also be used as an offset with Employee Stock Ownership Plans
**Profit Sharing Offset Example**

<table>
<thead>
<tr>
<th>NAME</th>
<th>Compensation</th>
<th>Profit Sharing</th>
<th>Non-Qualified</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Owner 1</td>
<td>200,000</td>
<td>10,000</td>
<td>-10,000</td>
<td></td>
</tr>
<tr>
<td>Owner 2</td>
<td>200,000</td>
<td>10,000</td>
<td>-10,000</td>
<td></td>
</tr>
<tr>
<td>Key Employee 1</td>
<td>125,000</td>
<td>6,250</td>
<td>-6,250</td>
<td></td>
</tr>
<tr>
<td>HCE Total</td>
<td>525,000</td>
<td>26,250</td>
<td>-26,250</td>
<td></td>
</tr>
<tr>
<td>Plumber, Pete</td>
<td>75,000</td>
<td>3,750</td>
<td>-7,500</td>
<td></td>
</tr>
<tr>
<td>Apprentice, Andy</td>
<td>35,000</td>
<td>1,750</td>
<td>-2,800</td>
<td></td>
</tr>
<tr>
<td>Employee 1</td>
<td>45,000</td>
<td>2,250</td>
<td>-3,600</td>
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<tr>
<td>Employee 2</td>
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<tr>
<td>Employee 3</td>
<td>50,000</td>
<td>2,500</td>
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<td>Employee 4</td>
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<td>Employee 6</td>
<td>58,000</td>
<td>2,900</td>
<td>-5,800</td>
<td></td>
</tr>
<tr>
<td>NHCE Total</td>
<td>419,000</td>
<td>20,950</td>
<td>-37,260</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>472,000</td>
<td>37,260</td>
<td>-26,250</td>
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</tr>
</tbody>
</table>

**Hour Banking**

- Fringe in excess of premium payments and retirement contributions may be banked to pay future premiums
- Banked fringe is used when hours worked in a month are not sufficient to pay premiums
- Up to 1-year of premiums may be banked
- Annualization requirement

**Hour Banking Example**

<table>
<thead>
<tr>
<th>NAME</th>
<th>HOURS</th>
<th>SOCIAL SECURITY</th>
<th>MEDICAL</th>
<th>DENTAL</th>
<th>RETIREMENT</th>
<th>TOTAL</th>
<th>NET WORKED</th>
<th>END BAL</th>
<th>MONTHS IN BANK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plumber, Pete</td>
<td>180</td>
<td>1800</td>
<td>980</td>
<td>80</td>
<td>173</td>
<td>1085</td>
<td>1200</td>
<td>543</td>
<td>1.64</td>
</tr>
<tr>
<td>Apprentice, Andy</td>
<td>180</td>
<td>1800</td>
<td>450</td>
<td>80</td>
<td>968</td>
<td>555</td>
<td>300</td>
<td>278</td>
<td>1.09</td>
</tr>
<tr>
<td>Employee 1</td>
<td>150</td>
<td>1500</td>
<td>650</td>
<td>80</td>
<td>556</td>
<td>755</td>
<td>900</td>
<td>189</td>
<td>1.49</td>
</tr>
<tr>
<td>Employee 2</td>
<td>150</td>
<td>1500</td>
<td>650</td>
<td>80</td>
<td>556</td>
<td>755</td>
<td>750</td>
<td>189</td>
<td>1.29</td>
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<td>800</td>
<td>980</td>
<td>80</td>
<td>77</td>
<td>723</td>
<td>300</td>
<td>0</td>
<td>0.28</td>
</tr>
<tr>
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<td>800</td>
<td>980</td>
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<td>950</td>
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<tr>
<td>Employee 5</td>
<td>40</td>
<td>400</td>
<td>450</td>
<td>80</td>
<td>215</td>
<td>185</td>
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<td>0</td>
<td>0.00</td>
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<td>650</td>
<td>80</td>
<td>148</td>
<td>252</td>
<td>0</td>
<td>0</td>
<td>0.00</td>
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</tbody>
</table>
Advantages/Disadvantages to Implementing Prevailing Wage

- Cost benefit analysis
- Amount of public works jobs
- Labor costs/savings
- Internal expenses
- Payroll revisions
- Payment remittance
- Communication to employees

Resources on Prevailing Wage Issues

- The Department of Labor publishes the Prevailing Wage Resource Book
  - It is a 200 plus page document that contains vast amounts of helpful information about how Davis-Bacon operates
  - It can be found at dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book
- The California Office of The Labor Commissioner publishes the Public Works Manual with a helpful discussion of prevailing wage rules
  - It can be found at https://www.dir.ca.gov/dlse/PWManualCombined.pdf

Questions?

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