



Topline Takeaways of U.S. Department of Labor's Final Rule to Update the Davis-Bacon and Related Acts (DBRA)

AGC VICTORIES IN THE FINAL RULE INCLUDE BUT ARE NOT LIMITED TO:

- ✓ **Relief to multijurisdictional highway projects:** allowing use of one wage rate per classification for entire project (instead of county-by-county) and the ability to use non-counties data.
- ✓ **Exemption for certain material suppliers:** exempting material suppliers from DBRA coverage if their only contractual responsibility is product delivery and they are not solely dedicated to the project.
- ✓ **Sensible, periodic adjustment for open-shop rates:** allowing for automatic update non-collective bargained rates that are three or more years old in certain circumstances.
- ✓ **Allow for reduction of prevailing wage jurisdictional differences:** permitting U.S. DOL to adopt prevailing wage rates set by state or local officials after review.
- ✓ **Improvement in conformed rates:** publishing pre-approved, frequently conformed classifications and wage rates, providing advance notice of wage and fringe benefits required within those classifications.

WHERE U.S. DOL MISSES THE MARK:

WAGE RATES

- ✗ **Fails to address speed and accuracy of wage determination process:** Instead of focusing on collecting more accurate data and determining wages that are truly prevailing, U.S. DOL made it easier for itself to set wage determinations using less or inappropriate existing data under the 30 percent rule.
- ✗ **Return the 30 percent rule:** return to the pre-1983 methodology for determining whether a wage rate is prevailing where the likely rate will be determined when it was paid to at least 30 percent of workers.
- ✗ **Mixing rural and metro rates:** eliminates the ban on mixing rural and metropolitan data when there is not enough data to determine specific rates. In most instances, rural rates will be artificially inflated to reflect urban rates.

SCOPE OF WORK

- ✗ **Expands DBRA coverage to:**
 - ✗ A material supplier if any work is performed beyond delivery of product to a site.
 - ✗ Truck drivers calculated by adding up cumulative idle time on-site over an undefined period.
 - ✗ Worksites where “significant portions” of a project (e.g., prefabrication manufacturing facilities) are produced.
 - ✗ Flaggers.
 - ✗ Clean energy and demolition work.
- ✗ **Limits the material suppliers' exemption:** companies performing construction on a covered project that own their own material delivery arm and use it on-site would have to treat that material arm as a subcontractor and be covered under Davis Bacon.

MORE ENFORCEMENT, LIABILITY & COMPLIANCE

- ✗ **Applies even when contract fails to include it:** DBRA contract clauses and applicable wage determinations are as effective by “operation of law” even if they are not explicitly in a covered contract.
- ✗ **Expands contractors' liability:** upper-tier subcontractors, in addition to prime contractors, may be liable for lower-tier subcontractors' violations.
- ✗ **“Harmonizes” debarment standards:** the same conduct will warrant debarment under both DBA projects and Related Acts projects, a 3-year debarment will be mandatory under both the DBA and Related Acts, and the current provision allowing early removal from the debarment list under the Related Acts will be eliminated.
- ✗ **Includes cross withholding:** cross-withholding can be from any contract held by the same prime contractor, even if awarded or assisted by a different agency from the contract where the violations occurred.