

FREQUENTLY ASKED QUESTIONS

Payroll:

Q: The wage schedule in my contract does not have a work classification for a type of work my company will be doing on the project. What do I need to do? How will I know what rate of pay I need to pay my workers?

A: Whenever the wage rates appearing in the NHDOT contract does not have an approved work classification for the work your company will be performing, you need to send a request letter to the NHDOT Office of Federal Compliance (OFC) at (603) 271-8048. Subs should info copy their Prime. The OFC will in turn forward the request to the USDOL for consideration/approval. Please visit our web site for a sample letter as specific information must be provided.

Q: How long do requests for additional work classifications take to come back from the USDOL? Do I wait until they decide on this request before I can begin working on the job?

A: Typically it takes from 4 to 6 weeks to get a response back from the USDOL. No, you do not need to wait until approval is received to employ workers on site. Companies can employ the worker(s) on site immediately and pay the worker(s), as a minimum, the rate of pay that was proposed by the company. The OFC will contact the company once approval is received. If the USDOL stipulates a higher rate than the one proposed by the contractor, your company will be notified and we will assist you through the restitution process.

Q: When are payrolls due and where to I send them?

A: Payrolls are due weekly. Primes and subcontractors, including lower-tiers, must submit payrolls to the collecting authority no later than 7 calendar days from the end of the week in which work was performed.

Payroll Submissions on State Managed Projects:

If you are a subcontractor, you must submit your payrolls to the Prime Contractor with ample time so the Prime can meet the deadline. Primes shall submit payrolls to the on-site NHDOT Contract Administrator unless otherwise instructed.

Payroll Submissions on Municipally Managed Projects:

Primes shall forward all payrolls to Town or to the Consultant who is providing oversight of the project. This will be clarified at the Pre-construction Meeting.

Q: Our company has some employees who receive benefits and some who do not. How does this need to be reflected on payrolls?

A: A company who provides benefits to most of their people and are taking an hourly fringe benefit towards the “total rate,” must check 4a on their payroll certifications. A fringe benefit breakout must also be provided and attached to each payroll as applicable. Fringe breakouts must show the hourly cost of providing benefits to each employee, as applicable. As for those people who are receiving no benefits, companies must ensure these individuals are paid a rate of pay equal to or higher than the total rate (combination of the base rate and fringe rate). No other entry on payrolls is required.

Q: I am an out-of-state contractor and I will be providing subcontractor services for a company in your state. I will be providing travel and subsistence for my workers. Are these costs considered bona fide fringes and will I be entitled to take a fringe benefit credit?

A: No. Payments generally made for travel and subsistence do not qualify for fringe benefits under the Act. See 29 CFR 5.29.

Q: If a person operates numerous types of equipment on site, can I just annotate “equipment operator” on payrolls?

A: No. Work classifications must be specific because rates can vary. If making a single payroll entry only, companies must ensure he/she is classified in and paid the highest rate of any equipment being operated. If a company wishes to pay only the rate of pay required for each piece of equipment, the worker must be entered on the payroll once for each classification worked in and paid a rate of pay required of that equipment. Companies must ensure daily time sheets reflect the actual time spent in each classification. Failing to keep accurate records could result in paying the worker the highest rate of pay for all work performed (29 CFR 4.179).

Q: Our company provides benefits to all our workers and we check 4a on payroll certifications. How are fringes figured in if overtime is involved?

A: Fringes are not included in the time and one half calculation, rather they are added in afterwards. The formula to use is: base rate x 1.5 + fringe = overtime rate.

Q: My contract has two (2) sets of wage rates, how do I know which one applies to my company?

A: There are a couple of reasons why a contract can have two sets of rates. First, and probably most common, is that the on-site work crosses county lines. Each county has its own set of rates so a copy for each county is inserted into the contract. If this is the case, contractors need to be aware that rates for the same work classification may vary. Contractors have a choice—they can pay the highest rate for all work performed, or they can show workers twice on the same payroll showing the number of hours worked in each

county. If the latter, contractors must ensure that daily time records accurately reflect the number of hours worked in each county. Failing to do so can result in paying the highest wage rate for all work performed. The second reason why a contract might have two sets of rates is because two separate types of construction is being accomplished, building and highway for example. The building rates would be utilized for all work called for under the building specifications and the highway rates would apply for all work called for under the contract for roadwork (parking lots, roadway, etc.). Rates between the two can vary significantly so contractors must ensure they are utilizing the correct rates so that workers are being properly compensated.

Q: I am a subcontractor and I have a contract with a Prime to do work that is less than \$2,000. Whereas my contract is less than \$2,000, do I still need to do payrolls

A: Yes. The \$2000.00 threshold applies to the overall contract, not to an individual contract. Regardless of the amount of work performed, a certified payroll is required.

Q: I am the owner of my company and I've been hired by the Prime to do a specific piece of work on site. I will be the only person working on site for my company (no employees). Do I still need to submit payrolls?

A: Yes. Owners of subcontractor firms who are themselves performing the work of laborers or mechanics are entitled to the applicable prevailing wage rate for the classification of work performed. If the subcontract price covers the applicable prevailing rate for the number of hours worked as a laborer or mechanic, the Dept of Labor (DOL) considers the owner/subcontractor to have been paid in compliance.

Q: I am a Prime Contractor for a job and I will have a subcontractor who has told me that his company will employ two owner/operator truck drivers. The truck drivers actually own the vehicles they drive. Do the truck drivers need to be on payrolls?

A: Yes. These drivers qualify as Owner/Operator Truck Drivers since they actually own and operate their own trucks (if they didn't a subcontractor approval would be needed for the company from the company who owns the trucks). In the situation you have described, these drivers would need to appear on the subcontractor's payrolls with only the annotation "owner/operator truck driver." The hours worked and the rates of pay do not need to be entered.

Q: Do the same owner/operator provisions as for truck drivers also apply to owner/operators of equipment?

A: No. The USDOL's position on owner/operators do not apply to owner/operators of equipment such as bulldozers, backhoes, cranes, etc. Owner/operators of equipment described here are considered subcontractors and will need to complete subcontractor approvals prior to working on site.

Q: Do Subcontractors have more time to submit payrolls than the Prime Contractor?

A: No. Every contractor working on a Federally funded construction project must submit payrolls weekly. Payrolls are due no later than 7 calendar days following the company's pay date.

Q: Once construction has begun, are the workers' wage rates affected when the wage determination for the county, where the work is being performed, changes?

A: No. The wage determination incorporated into the contract when awarded shall apply to work performed under the contract for the entire term of the contract.

Q: Do salaried supervisors/foremen need to be on payrolls?

A: Yes. Whereas NHDOT funds are being expended, we need a payroll to account for the work on site (auditors will ask for them). Contractors can simply put the salaried employee's name and annotate salary. No other information is needed.

Q: Is there ever a case when a salaried supervisor or foreman would be subject to Davis-Bacon act?

A: Yes. While bona fide supervisory employees are not covered by Davis-Bacon when their duties are primarily administrative or executive in nature (rather than those of laborers or mechanics), if these employees devote 20% or more of their time during a workweek to mechanics or laborer duties, they become subject to the Act. As such, employers must list these employees on payrolls with all information shown (classification, hours worked, rate of pay, gross amount earned, all deductions, and net pay earned).

EQUAL EMPLOYMENT OPPORTUNITY (EEO):

Q: I am a subcontractor and my portion of the work amounts to less than \$10,000. Do the EEO requirements under the Required Contract Provisions, Form FHWA 1273, apply to my company?

A: No. EEO requirements apply to only those contracts that total \$10,000 or more, including subcontracts.

APPRENTICESHIP & ON-THE-JOB (OJT) TRAINEES

Q: My company is the low bidder on a project that has a NHDOT OJT requirement and I've never had one before. What are my responsibilities?

A: As soon as the project receives Governor and Council approval, the OFC will notify the contractor in writing of the requirement and further instructions will be provided. The first item a contractor is required to provide is an OJT Form 1, Training Acknowledgement and Statement of Intent. This form must be sent to the NHDOT **at least 1 week prior** to the start

of construction. The form serves as a training plan and requires the approval of the OFC External EEO Officer. Contractors should contact the External EEO Officer if questions, or if a list of referral sources is needed.

Q: I have an employee who was previously enrolled in and completed a NHDOT OJT Trainee Program. The project has a second OJT requirement. Can I enroll this same person in the program again in order to complete the second requirement?

A: Yes, as long as you will be entering the person in a classification that shows progression, for example, a bridge construction trainee to an equipment operator, etc. A second OJT Form 1 must also be provided and approved.

Q: I am a Prime Contractor who has an OJT requirement in my contract. We had someone enrolled in the program that quit on his own accord, at no fault of the company, after completing nearly 90 percent of the training requirement. Considering that the person completed nearly all of the training hours, can I still get credit?

A: Unfortunately No. Your company must recruit another person and start from the beginning. If there is insufficient time to complete the program in the current contract, the requirement will automatically shift to another project that is on-going or to the next project the contractor is the winning bidder.

Q: I have 2 apprentice electricians who work for my company. How should these people be reflected on payrolls?

A: First, these employees must be enrolled in a USDOL approved Apprenticeship Program. Second, these employees should be classified as "Electrician Apprentice" and paid a rate of pay consistent with the USDOL approved Apprenticeship Approval Agreement. A copy of the Apprenticeship Agreement must be attached to each payroll as applicable.

MISCELLANEOUS:

Q: I am a subcontractor on a NHDOT construction project and the Prime on the job has not paid my company in over two months. Is there a requirement for the Prime Contractor to pay his or her subcontractors within a certain timeframe?

A: NHDOT Standard Specifications 109.09: Within 21 days of the issuance of progress payments, the Contractor shall pay, in full, all subcontractors and suppliers for the value of satisfactorily completed work and materials placed under the contract and for materials in accordance with 109.07 or 109-08 paid for in the progress payments.