



THE
Contractors
PLAN®
Provided by Fringe Benefit Group



Fringe Benefits Done Right

Presented by: The Contractors Plan
Provided by Fringe Benefit Group



Agenda: Topics and Strategies Discussed



- Davis-Bacon Basics: Origins and complexities
- Review some of the most common mistakes contractors face (and how to avoid them)
- Potential repercussions for various violations
- Effective management of the wage to decrease payroll costs
- How to use the fringe to comply with both the employer and employee mandate of the Affordable Care Act
- Compliant use of the hour bank and other highly effective accounting strategies
- Leveraging the fringe in retirement plan design

Davis-Bacon Basics



Where are the rules and regulations that interpret Davis-Bacon found?

- Code of Federal Regulations
- General and permanent rules are that have been published in the Federal Register by the Executive Department and other agencies of the Fed are codified in Title 29 CFR Part's 1,3,5, 6 and 7

Davis-Bacon Basics



- Enacted in 1931
- Protects communities and workers from competition caused by non-local contractors
- Requires payment of locally PREVAILING WAGES and FRINGE BENEFITS
- Requires pay to all LABORERS and MECHANICS employed on work site at least once a week and certified payroll reports to be submitted

Davis-Bacon Basics



- Contract in excess of \$2,000
- Construction, Alteration, and/or Repair including painting and decorating
- Public Buildings or Public Works of U.S. or D.C.
- Within geographic limits of U.S.

Davis-Bacon And Related Acts (DBRA)



Congress extended DB to over 60 related acts that provide federal assistance for construction:

- Grants
- Loans
- Loan Guarantees
- Insurance
- See Regulations Part 5 section 5.1(a)

(DBRA) Examples



- HUD financed low income residences on housing authority projects
- EPA furnishes grant for construction of sewage plant
- Federal Highway Admin (FHA) provides grants to states for reconstruction of roads and bridges on interstate highway system

DBA vs. (DBRA)



- Direct DB projects:
 - Federal gov't agency signs contract
- DBRA projects:
 - Agency other than federal gov't signs contract

Davis-Bacon Complexities



Where can contractors
get off track???





Davis-Bacon Wage Determinations



Davis-Bacon Wage



Determinations Types:

- General Wage Determinations
- Project Wage Determinations



DBA Wage Determinations



Selecting The Proper Wage Determinations General WD's

- Location: State and County
- Type of Construction: Building; Heavy; Highway; Residential
- Current WD: question or disputes concerning appropriate classification of project should be submitted to Wage and Hour Division for resolution

DBA Wage Determinations



Project Wage Determinations

- Issued on case-by-case basis where no general WD is in effect or where all work on a contract will be performed by a classification that is not listed in general WD



DBA/DBRA Current Wage Determinations



- Contracting agency must assure that up to date WD is included in bid/RFP documents, and mods are included up to the time of award
- On negotiated contracts (RFPs), contracting agency must use most up to date WD issued at time of contract award date

DBA/DBRA Current Wage Determinations



- Mods to DBA WDs and supersedes WD issued after award do not apply to contract
- During pre-bid conferences, Contractors should be encouraged to review WDs and raise any objections or questions during advertising period. Later complaints may be deemed untimely and not be acted upon



Misclassification

No classification



Misclassification



- Plumber vs. Pipe layer (Laborer)
 - Pipe laying - Inside - Plumber
 - Outside – Laborer
- Roofer vs. Sheet Metal Worker (Depends on Materials)
 - Roofer - Asphalt & Concrete Tiles
 - Mop & Hot Tar
 - Sheet Metal Worker - Flashing/Sheet Metal
 - Carpentry - Wood Shingles
- Fence Erector
 - Chain link - Ironworkers
 - Wood - Carpentry
 - Poles - Laborers



Other Common Cited Violations



- Failure to pay full wage for all hours worked
- Inadequate recordkeeping
- Overtime crediting
- Failure to maintain apprenticeship docs
- Certified payroll errors and timing issues
- Apprentice ratios (both ways)

Types of violations...



- Face of the record
 - Inadvertent
 - Easily resolved
 - If early, not too costly
- Concealed (falsification)
 - Willful
 - Independent validation / investigation
 - Bigger bucks / bigger impact

Increased Compliance Enforcement



- Significant budget increase request in 2015
- Hired hundreds more auditors in FY 2015
- Hiring 300 new auditors in 2016
- 300 of 305 new employees will be investigators/auditors
- “Law Enforcement Organization”
- Directed Investigations
- Auditors are using sweeps; general contractors are liable for every tier of subs

Increased Compliance Enforcement



- 400 Davis-Bacon investigations in past years; goal of more than 1,000 this year
- W&H goal of debarring 90 companies compared to 10-20 in past years
- Public database of violators is available online (Not updated in real time)
- http://ogesdw.dol.gov/views/data_summary.php

Options and Obligations



- Employers working under DBA/DBRA have certain options and obligations regarding how to satisfy the Prevailing Wage requirements
- (Title) 29 CFR 5.31

A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for payment of both straight time wages and fringe benefits by **paying in cash, making payments or incurring costs for “bona fide” fringe** benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by any combination thereof.

Options and Obligations



Contractors typically pay the base amount in cash* but have options regarding how to pay the fringe benefit portion:

- Into a third party sick leave and/or vacation fund
- Into an approved apprenticeship program
- Furnish “bona fide” fringe benefits. Or,
- Pay as *cash* and have it treated as wages.

*On Federal projects Contractors may dip into the base to level the wages as long as they pay a base higher than the Federal minimum wage

Allowable Fringes Statute



- 29 CFR § 5.5(a)(1)(iv)
- The fringe benefits enumerated in the Davis- Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits

What Makes a Fringe Benefit Plan “Bona Fide”?



- Plan must be legally enforceable
- Specified in Writing - Communicated to covered employees in writing
- Irrevocable employer contributions made to a third party or trust not less often than quarterly
- Convey a benefit to the person actually performing the work
- Accounted for on an hourly basis (weekly payroll reporting form WH347)*

* Required on Davis-Bacon projects

Annualization Principle



- Applies to benefits of a continuous nature (e.g., health insurance, dental, vision, life insurance)
- Determine hourly rate of contribution that is creditable toward contractor's Davis-Bacon prevailing wage obligation by:
 - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work); and
 - Allocating fringe benefit credits so that Davis-Bacon work is not be used to fund benefits on private (non-Davis-Bacon) work

Allowable Fringes : Health Insurance (Fully Insured)



- Davis-Bacon allows credit against the fringe for health insurance
- Payment must be made directly to the insurance company or a third party or trust
- HRA, HSA and Gap plans are allowable fringes as long as they meet the annualization and vesting requirements
- Wellness programs and smoking cessation plans can be considered a bona fide fringe if they meet the outlined standards

Allowable Fringes : Health Insurance (Credit for Self-funded Health Plans)



- Can be submitted for specific approval
- Must use consistent accounting and be actuarially sound
- Costs for an “unfunded” FB plan count towards WD obligation if the following criteria are met:
 - Costs reasonably anticipated to provide bona fide FB
 - Pursuant to an enforceable commitment
 - Carried out under a financially responsible plan
 - Has been communicated in writing to affected workers

Allowable Fringes : Ancillary Benefits



- Dental insurance
- Vision insurance
- Hearing insurance
- Employee Assistance Programs (EAP)
- Disability insurance (Short-term and long-term)
- Life insurance
- Critical Illness and accident plans

Allowable Fringes : Retirement Plans



- 401K
- Money Purchase
- Traditional pension plan
- Profit-sharing plan (Must make estimated payments)

Allowable Fringes : Supplementary Unemployment Benefits (SUB Plans)



- Exempt from annualization (maybe)
- Exempt from FICA
- Can only disburse when employee is laid off
- Appropriate for contractors with consistent downtime
- May be exempt from state income tax
- Employees receive 1099
- Includes federal income tax withholding



Allowable Fringes: Vacation/Holiday/PTO/Sick Pay



- Generally considered an unfunded plan
- Best practice is to segregate the funds
- Must comply with the following:
 - Reasonably anticipated to provide benefits
 - Financially responsible plan
 - Legally binding agreement
 - Communicated in Writing



Allowable Fringes: Apprenticeship Programs



- Bona Fide apprentice program
 - Recognized by the State Agency approved by ETA
 - Recognized directly by ETA
- Only costs actually incurred
- Trade specific
- Tuition, books, tools and materials



Benefits Can Make All The Difference



Sample Wage Determination



$$\begin{array}{rcl} \text{BASE} & & \text{FRINGE} \\ \text{WAGE} & + & \text{BENEFIT} \\ \$30 & & \$10 \end{array}$$

TOTAL HOURLY WAGE

\$40

The Problem When Performing Government Work....



Many contractors pay some or all of the mandatory fringe benefit package as wages because it is the easiest way to satisfy DOL compliance. It is also the most costly method.....



Why ?



All cash wages subject to payroll burden:

- FICA 7.65%
- FUTA & SUTA* 2.00%
- General Liability* 2% - 15%
- Workers' Comp* 10% - 40%

The actual payroll burden can be 11%-60%
This increases your labor costs!!!

*varies by company & state

The average payroll burden is between 20%-40%
This Increases Your Labor Costs!!!

How it works...

Plumber



Pay Fringe in Paycheck

Base Wage	\$34.52
Fringe	<u>\$10.33</u>

Total Wage	\$44.85
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Payroll Burden (30%)	<u>\$13.46</u>
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Bid Cost	\$58.31
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Pay Fringe to “Bona Fide” Plan

Base Wage	<u>\$34.52</u>
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Total Wage	\$34.52
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Payroll Burden (30%)	\$10.36
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“Bona Fide” Plan	<u>\$10.33</u>
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Bid Cost	\$55.21
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\$3.31/hr savings
per person.
Bid is 5.7% lower



Plumbing Contractor

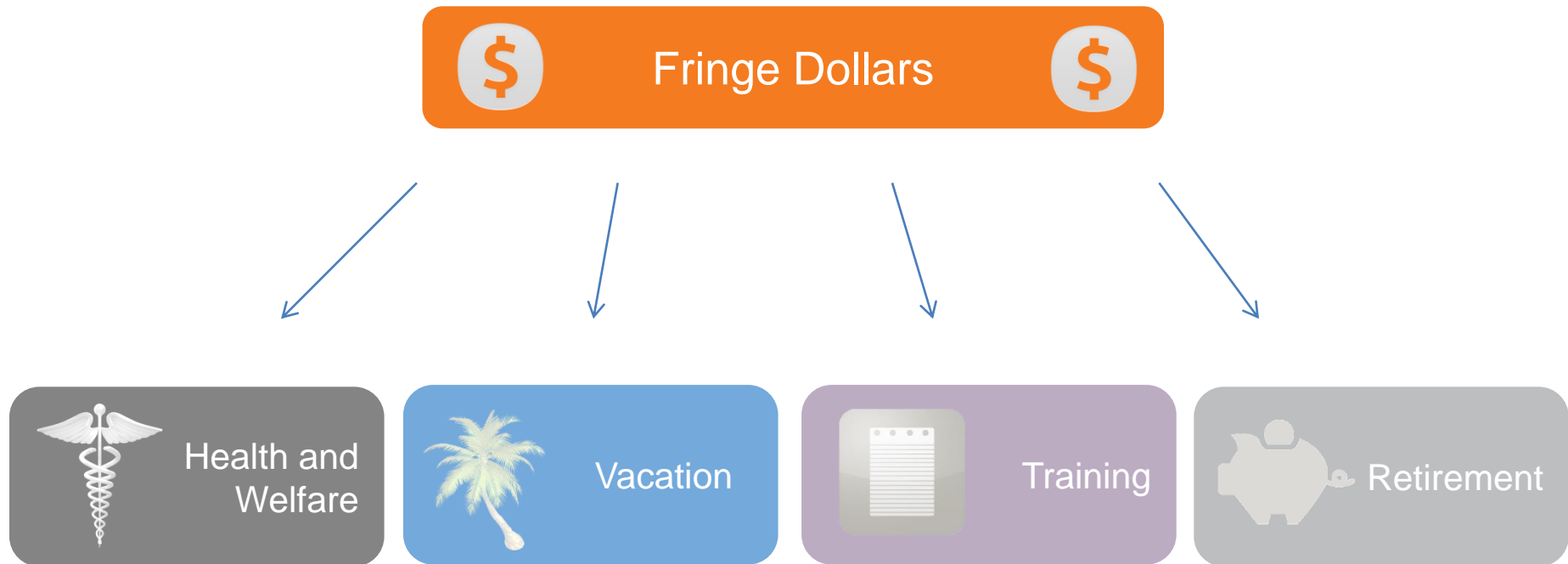


- About 75% of this contractor's work is government
 - 2080 annual hours x 75% = 1560 hours
- There are 25 hourly employees
- The hourly savings by removing the fringe from payroll is \$3.31
- The annual savings:
 - 1560 hours x 25 EEs x \$3.31 hour = \$129,090

The Solution



Remove fringes from payroll and allocate into “bona fide” benefits programs.



ACA and Prevailing Wage



- Wage and Hour division is working on a document detailing their positions
- Expect no major changes
- Penalties are not creditable
- Expectation is that defined contributions will be creditable
- Rates will mostly rise, reducing pension contributions
- Benefits will be allowed to remain as credit-worthy, despite now being mandated (unlike workers comp, FICA etc.)

ACA and Prevailing Wage



- Age banded rates are a new problem
- Contractors may not average the costs
- TPA's and carriers are allowed to do averaging
- Partially self-funded plans are one additional option

Calculating Benefit Credit for Group Medical and Ancillary Programs

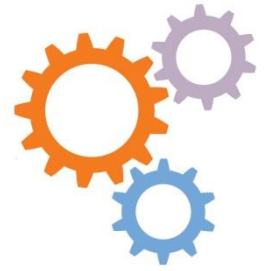


- Take the annual employer cost
 - Divide by 2,080 hours per year*
 - Gives hourly equivalent
- Concern is overtime hours, over-funding the benefit
- Alternative is to pay for benefits by hours worked

*varies by state and actual hours worked



Hour Bank Accounting Helps Because..



- The required hours of work credit will qualify an eligible employee (and his/her eligible dependents) for (1) calendar month of benefits
- Employees may accumulate hours of work credit for excess hours worked
- Avoids possible ineligibility under traditional programs
- Protects employees from layoffs, inclement weather, etc.
- Allows employees to bank up to 6 months of health care
- Allows employer to pay for actual hours worked

Hour Bank Example



Month Worked	Month Benefit Provided	Hours Worked	Hourly Rate	Premium Submit	Hours of Credit Required	Depleted From Hour bank	Hour Bank account
Aug	Sep	160	\$1.00	\$160	-130	0	30
Sep	Oct	180	\$1.00	\$180	-130	0	80
Oct	Nov	100	\$1.00	\$100	-130	30	50



Calculation



Fringe rate	\$15.00
Medical single	\$2.00
Vacation	\$1.00
Apprentice	\$0.25
Retirement	\$11.75

Fringe rate	\$15.00
Medical Family	\$4.00
Vacation	\$1.00
Apprentice	\$0.25
Retirement	\$9.75



Retirement Plans



- Takeover of existing plan or stand alone
- “Fringes only” plan
- Employer makes contributions on chosen projects only (not annualized like health)
- Fringe contributions are considered employer contributions
- Contributions have to be 100% vested

Retirement Plans



Plan design is critical to success:

- **“The Boost”** - Helps increase HCE contributions
- **“The Offset”** - Use fringe to satisfy profit sharing and save more money!
- **Safe Harbor** - Use fringe for mandatory match and / or to offset minimum non-elective contribution
- **New Comparability** - Helps owners max out up to \$52,000
- **Schedule A** - Identify individuals for QNEC

How Your Prevailing Wage Contributions Benefit Owners and Top Staff



Example #1: 401(k) with Prevailing Wage “Boost”

NHCEs	Pay	Deferrals	PW Contributions*	PW Contributions*	Avg* Deferral %	Avg** Deferral %	Test	Test
Secretary	\$25,000	\$1000	N/A	N/A	4%	4%	4%	4%
Bookkeeper	\$35,000	\$1400	N/A	N/A	4%	4%	4%	Test 4%
20 PW Employees	\$1,000,000	\$10,000	\$0	\$100,000	1%	11%	20%	220%
Total NHCEs		\$12,400		\$100,000			28%	228%
Divide total % by # of NHCEs (22) for NHCE Actual Deferral Percentage							1.27%	10.36%
Computed Maximum HCE Deferral Percentage							2.54% ¹	12.95% ²

*Prevailing Wage if paid in Cash

**Prevailing Wage Used as “Boost”

¹If NHCE ADP is <2%, the HCE Deferral % is 2x the NHCE ADP

²If NHCE ADP >8%, the HCE Deferral% is 1.25 x the NHCE ADP

How Your Prevailing Wage Contributions Benefit Owners and Top Staff



Example 2: Profit Sharing “Offset”

Employees	Compensation	PW Contributions	PW as % of Pay	10% of Pay Profit Sharing Calculation	Profit Sharing Contribution Due	Profit Sharing Saved
Jones (PW)	\$30,000	\$6,000	20%	\$3,000	\$0	\$3,000
Smith (PW)	\$40,000	\$3,000	7.5%	\$4,000	\$1,000	\$3,000
Owner	\$100,000	\$0	0%	\$10,000	\$10,000	\$0
Accountant	\$60,000	\$0	0%	\$6,000	\$6,000	\$0
				\$23,000	\$17,000	\$6,000

Advantages to Employer



- Competitive bids and / or higher profits
- Free up cash flow
- Equalize wages between public and private work
- Increase retirement savings for owner and other HCEs
- Simple to administer
- Helps keep employer compliant

Total Fringe Solution



- “Bona fide” retirement plans
- Major Medical; multiple PPO / HMO options
- Ancillary benefits; Dental, Vision, LTD, STD, Life insurance
- MEC plans
- Minimum Value plans



Prevailing Wage / SCA Expertise



- Compliance assistance available
- Audit support for IRS, DOL, ACA, GC, local compliance officers inquiries
- Familiar with certified payroll reports, fringe benefit statements, wage determinations, etc.
- Industry experts on staff and consultant in Washington, DC to help clients

Next Step



Contact us to get additional information at
www.thecontractorsplan.com.



Thank You!



Questions & Answers

