



COLORADO

Department of Transportation

Certified Payroll: Guidance for Frequently Asked Questions



Certified Payroll: Guidance for Frequently Asked Questions (FAQs)

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Certified Payroll Reporting Requirements

Although basic guidance for the payroll as it relates to the Davis-Bacon and Related Acts (DBRA) provisions will be discussed here, contractors should consult the actual documents (linked throughout) for the full text for which they are responsible.

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[29 CFR 3.5 and 3.6](https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

[29 CFR 5.5](https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

There are three primary sources that govern the certified payroll reporting processes. The first source is the FHWA 1273, and the second is outlined in the 29 Code of Federal Regulation (CFR), parts 3.5, 3.6, and 5.5. Minimally outlined provisions from the FHWA 1273 are available here:

Payroll and Basic Records:

Payrolls and basic records relating thereto shall be maintained by the contractor during the course of 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. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DavisBacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

- a. b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

(2) 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 and shall certify the following: (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.



FAQs

1. Who has to follow the guidelines of the Davis-Bacon and Related Acts (DBRA)? What is considered the “site of work”?

For contracts that have been identified as having DBRA reporting requirements, laborers and mechanics who are working directly on the “site of work” while performing manual or physical labor (as distinguished from mental or managerial and include apprentices and trainees) are those that must be paid according to the guidelines of the Davis-Bacon and Related Acts. Generally, mechanics are considered to include any worker who uses tools or who is performing the work of a trade. The DBA requires payment of the applicable prevailing wage rate to all laborers and mechanics “regardless of any contractual relationship which may be alleged to exist.”

The “site of work” is defined as the physical place or places where the construction called for in the contract will remain after work has been completed; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the contract. The “site of work” would also include an adjacent or virtually adjacent location that is dedicated exclusively or nearly so to the performance of the contract or project. For more information about the “site of work”, please refer to the [29 CFR 5.2](#). It is important to note that while the site of work can be defined as adjacent or virtually adjacent, it doesn't eliminate other project sites that are miles away but dedicated exclusively. The Department of Labor has chosen not to assign a mileage amount as the definitive factor in determining whether or not a location is considered on-site.

2. What is prevailing wage and how can it be satisfied?

As it relates to DBRA, the prevailing wage includes the basic hourly rate as well as the fringe benefit rate that, together, make up the established wage for each county and confirmed classification in the state as determined by the Department of Labor (DOL). Prevailing wage is a minimum wage that must be paid. Under Davis-Bacon, fringe benefits are a component of the prevailing wage. The prevailing wage may be satisfied by a) paying the base rate and fringe benefit in cash; b) paying contributions to a bona fide fringe benefit plan, or c) any combination of the two. The prevailing wage must be paid for all hours worked. Wages may exceed the prevailing rate, but they may not fall below the prevailing rate unless a previously approved apprentice is working on the job and following all related requirements.



3. How are city and state prevailing wage rates to be applied?

Applicability of prevailing wage has several different applications. A key factor to remember is that DBRA is only one component of prevailing wage: there are also prevailing wage requirements as it relates to the state of Colorado as well as other municipalities. The City and County of Denver (Denver Revised Municipal Code (D.R.M.C.) §20-76) is one example of a municipality with prevailing wage. There are several other municipalities that are proposing new rates as well -- outside of the state of Colorado minimum. It is the contractor's responsibility to ensure that the prevailing wage is paid as it relates to DBRA, the state of Colorado, and/ or each municipality. For the two current prevailing wage rates outside of DBRA, both require the minimum amount to be met through cash. For example, DBRA allows cash and fringe to meet the prevailing wage; the state of Colorado and the City and County of Denver (CCD) mandate that the minimum wage is met through the base rate, and any amount left needed to make prevailing wage (according to the wage determination standards for DBRA) should be made up through the fringe. At that point, any part of the (remaining amount of) fringe can be paid according to the bona fide allowances or in cash in lieu of fringe through DOL.

4. What is the best way to find out project wages?

The most effective way to find out project wages is to get them from the prime through LCPtracker. The prime will access project wages by going to the Reports tab under the CDOT Compliance tab marked, and then they can choose the Project Wage Data Report. The benefit to going about things this way is that everyone will be able to see an apprentice or requested (and/or approved) classifications.

5. Can I pay my employees bi-weekly?

Per the outlined information above, taken from the FHWA 1273, "The contractor shall submit **weekly** for each week in which any contract work is performed a copy of all payrolls to the contracting agency." This is also outlined by CDOT specification -- [Certified Payroll Requirements for Construction Contracts](#). It doesn't matter if the employees agree to a bi-weekly pay schedule; convenience to the employer is not a legitimate reason to deviate from this pay schedule. Contractors **must** pay employees weekly.



6. What if the contractor's employees are performing work in more than one classification?
How is this reported?

DOL's guidance here outlines the requirement for employee pay which then sets the tone for the reporting. Employers have two options here: 1) laborers and mechanics performing work in more than one classification may be compensated at the rate specified (in the wage determination) for each classification for the time actually worked therein, or 2) laborers and mechanics must be reported in the actual classification that they worked and then paid at the highest rate. The key here is that an employer's payroll records must accurately set forth the time spent in each classification in which work is performed.

7. How do I report working on two or more different projects?

When a contractor is working on multiple projects simultaneously, the subcontractor must have a separate, written, executed agreement for work on each project. Even if one of the higher tiers is the same for two separate projects, a separate agreement and 205 are required for each. For most projects that are advertised by CDOT, there will likely be a requirement to use LCPtracker for payroll reporting, and users should see their own company name listed on the project within LCPtracker. Once the company name can be seen, then payroll can be reported for that project. If you do not see the company name, please reach out to the contract's assigned project manager so that you can be added. Bottom line: you will have to keep track of all the work for each project separately so that you can report accurately what work was performed and in what location.

8. Can't I just report my payroll under the prime's payroll or the higher tier?

No. This is not an acceptable practice. Each contractor and subcontractor must accurately report their own payroll.

9. If the state or county prevailing wage requirements are present in a project, and they are higher than Davis-Bacon wages, which one applies?

Contractors are required to pay at the highest rates applicable to the project.



10. I heard that CDOT requires contractors to pay the highest wage for each classification for all the counties that encompass work for that project. Is that a DOL regulation?

That requirement is accurate, but it is not a DOL requirement. The rule that requires contractors to pay the highest minimum wage and fringe benefits for each classification throughout the project is one that is established through CDOT. This obligation is outlined at the top of each CDOT wage determination: When work within a project is located in two or more counties, and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits (of the project wage determinations) shall apply throughout the project.

U.S. DEPT. OF LABOR DAVIS BACON MINIMUM WAGES, COLORADO
HIGHWAY CONSTRUCTION, GENERAL DECISION NUMBER - CO20230008

DATE: February 24, 2023

Decision Nos. CO20230008 dated January 6, 2023 supersedes Decision Nos. CO20220008 dated January 7, 2022.	Modifications			ID
	MOD Number	Date	Page Number(s)	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.	1	2/24/23	1	1
General Decision No. CO20230008 applies to the following counties: El Paso, Pueblo, and Teller counties.				

Example: If a job contains two (or more) sets of wages for one wage determination (Adams and Arapahoe) and the contractor is working in Adams County, the contractor would have to pay out at the highest county for that classification where work is being performed:

	CEMENT MASON/CONCRETE FINISHER:		
1015	Adams	16.05	3.00
1016	Arapahoe	18.70	3.85

In this situation, Arapahoe is the highest wage classification for cement mason, and that is what must be listed on the payroll -- the contractor will choose Adams County if that is where the work is performed, but they will have to pay at the highest rate of what is listed for Arapahoe County. The highest wage prevails.



11. As a contractor, can I add a nominal fee (for the employee) to cover administrative costs when the payroll department has to disperse child support payments and other garnishments?

While this nominal fee is allowable through the state of Colorado, it is not allowed through the Davis-Bacon and Related Acts. DBRA application relates to all FTA and FHWA (and other various) federally funded projects as well as all state funded projects advertised through CDOT. Therefore, it is not an allowable practice.

12. How long do I have to keep time cards and other project documentation?

All records must be retained (including all payroll and EEO project documentation) for a period of **at least three years** following the final payment to the prime contractor. It is the responsibility of each contractor and supplier (if applicable) to keep and maintain accurate records of the hours worked and the classifications performed by each worker.

13. What happens when our payroll person leaves the company? How do we get access to have the systems changed?

For LCPtracker, the main user will need to add a user to the account in order to allow another person to complete payroll. This is the case whether the person completing payroll changed or an additional person was added (but another user didn't have to be deleted.) When the main user at the company changes, people will need to reach out to the CDOT certified payroll specialist (vanessa.urbina@state.co.us) in order to change the main person on the account so that the new person can add and delete users. For new or updated prime approvers, please contact your region specialists.

14. What are the documents that should be kept in LCPtracker eDocuments?

All required documents associated with payroll that contain information on hours, pay, deductions, OJT, and other payroll details must be kept in the eDocuments. This includes but is not limited to OJT forms (1337, 838, 832, etc.), apprenticeship registration, garnishment documentation, owner affidavit, etc. Documents need to be uploaded into LCPtracker eDocuments. Forms that require CDOT approval will be uploaded by the region Civil Rights Office. Forms that do NOT require approval should be uploaded to LCPtracker eDocuments by the applicable contractor.



15. What if a mistake is made on payroll? What is the process to fix things?

The first step in the process is that the oversight (prime, PE, or designee) will first reject the payroll and send an admin notice asking for whatever is needed from the contractor/subcontractor. The contractor/subcontractor will pay the required restitution to the applicable employee. If multiple weeks of restitution are owed, the contractor can pay with one lump sum check; however, this amount will need to be broken down for each applicable pay period that was incorrect and must be reported on a revised certified payroll. The revised certified payroll shall include original pay information + back wages paid. By entering both the original pay detail + the restitution details for work performed on site for each applicable weekly pay period (broken down for that week) = the contractor is providing the “actual wages paid” for the weekly pay period as required to be reported.

LCPtracker Steps for correcting payroll errors:

Located in the Projects tab, Select Edit for the week-end date on the payroll record that needs to be revised.

Correct any necessary information such as the classification, hours, etc. as needed.

Navigate to the Projects tab, Certified Payroll, and Edit on the week-end date payroll was revised.

Enter your name and title and click on certify update.

Upload verification of restitution paid (the front and back of the canceled check paid to the applicable employees or receipt from direct deposit) into eDocuments.

Last step: Responding to the rejection notice to alert the prime that it is ready to be checked again.

Go into the Projects tab, Certified Payrolls for rejected week. Click on “Details.”

Go to the CPR Certification Status Details. Click on “View.”

Go to the Projects tab, Administrator Notice, choose the “Action” box, and let the prime know that you have made changes and recertified the payroll.



Save those changes.

16. Do professional service firms need to submit certified payroll?

Generally speaking, professional services firms do not need to submit payrolls; however, the requirement is situational. There are times when certified payroll is required for these types of companies/ contracts. Although the contractor may be listed as a “professional service” because of what they do or how they are paid -- in a lump sum for work completed -- if they are performing laborer / mechanic work, Davis-Bacon laws would be required. The requirement for certified payroll is based on those workers who are performing work on the site of work that is manual or physical in nature. The payment of the applicable prevailing wage rates to all laborers and mechanics on the site of work is required -- regardless of the contractual relationships which may exist.

17. What happens if I am working on a CDOT job, but I don't have a 205 for the job?

A CDOT form 205 is a Permit to Sublet. You will need to reach out to the prime contractor to make sure that they can get your company on a 205 so that you have permission to be on the job. If you are working in a manual or physical capacity on a CDOT job, you will be expected to submit payroll. You should NOT be performing work on the site of work as a subcontractor without a 205 in place.

18. What is the role of the prime contractor in compliance?

The role of the prime contractor as it relates to certified payroll is called the prime approver. Prime contractors play an important role in construction: they are responsible for compliance for themselves and all other subcontractors on the job as outlined in the FHWA 1273. “The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).” This crucial role is the first line of defense in making sure that all contractors are held to and are following the same requirements. Accordingly, prime contractors must check (and approve or reject) the payrolls of all lower-tier subcontractors within seven days after submission into LCPtracker. Payroll checking by the prime is not to be interpreted as doing payroll for the subcontractors. Subcontractors are responsible for the completion and submission of their own payroll. In this role, prime approvers do not have to assign subcontractors in LCPtracker. While they are required to add them in B2GNow, they do not have to add them in LCPtracker. The Regional Civil Rights Office will assign all subcontractors in LCPtracker.



19. Why would a prime contractor use two different roles for LCPtracker?

The answer is that there are two distinct roles in LCPtracker: The first role is used to enter a company's payroll, and the second is used to act as prime approver for all certified payroll submissions for the project. **Only prime contractors should have two different roles.** There can be multiple people in the same role for all contractors, and prime contractors can have multiple prime approvers.

20. Do contractors have to share a username to enter payroll in LCPtracker?

Payroll employees of a contractor should never share a username.

21. Are there exemptions from DBRA requirements for management or executive employees?

While there are some exemptions that are granted by DOL, they are not common. Two of those exemptions from prevailing wage are for management or executive employees if they are 541 exempt ([29 CFR 541](#)). An employee would be considered exempt from prevailing wage IF that employee was considered a bona fide executive, administrative, or professional employee. To qualify for the exemption, the employee must meet **ALL** of the following criteria:

- Earning a minimum of \$684 per week
- Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof
- Customarily and regularly directs the work for at least two or more other full-time employees or their equivalent.
- Executive employees must have the authority to hire or fire other employees, or whose suggestions and recommendations regarding personnel actions must be given particular weight.



22. Are working foremen exempt from prevailing wage?

Working foremen are sometimes exempt from prevailing wages. If the foreman does not qualify under the 541 exemption and is someone who spends more than a substantial amount of time (20%) in a given workweek as a laborer or mechanic, s/he must be paid the applicable DBRA prevailing wage rate for the classification of work performed for all hours engaged in such work as a laborer/mechanic. The contractor would then need to determine if the employee was making sufficient money to meet the Davis-Bacon rate. To do so requires that the contractor determine the hourly wage. If that hourly amount is less than prevailing wage, restitution is owed to that working foreman. [See number 14 in the Certified Payroll Section.](#)

23. What is FAML I, and what is the implication for certified payroll?

FAML I is a Colorado voter approved proposition (118) that is a state-run paid Family and Medical Leave Insurance (FAML I) program. While both employers and employees will contribute premiums to the program, for the purposes of certified payroll, contractors will only be reporting what is withheld from the employee's check. The FAML I insurance deduction must be included as a state tax.

Deductions									
Fed Tax	Social Security	Medicare	State Tax	Local Taxes/SDI	Other	Vac/Dues	Savings	Total Deductions	
163.000	101.930	23.840	52.000	0.000	0.000	0.000	0.000	340.770	

Payments (if included in paycheck)				
Travi/Subs	Gross Pay All Projects	Paycheck Amount	Check Number *	Payment Date *
0.000	1644.000	1303.230	1013	09/14/2018

Notes

Other Deduction Notes

24. For the purposes of LCPtracker, what happens if the subcontractor payday is different from the prime contractor's?

It is just fine. LCPtracker is designed so that the actual payday is unique to each contractor. As long as a regular payday is established and employees are paid weekly, there is no problem.



Fringe Benefits

Regulation / Rule / Specification:

[FHWA 1273](#)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[29 CFR 5.28](#)

[40 U.S.C. 3141](#)

<https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra>

Fringe Benefits:

Fringe benefits are the contributions that a contractor makes to count toward an employee's prevailing wage. There are two types of fringe benefits: **bona fide** and **non bona fide**. As a blanket approval, the DOL will only accept the fringe benefits that are bona fide to count toward prevailing wage. **Bona fide benefits** are those that are acceptable (without application to or approval from the Secretary of Labor) for medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents. These benefits must be irrevocably paid and not less often than quarterly.

In order to count **non-bona fide benefits** toward the prevailing wage, the contractor must submit a letter to the Secretary of Labor and have it approved. If the plan is "unfunded" or not paid out to a third party and does not have the stamp of approval from the Secretary of Labor, employers may not take credit for contributions made on behalf of the employee.

Here is the The the 40 USC, 3141, the following definitions apply:

§3141. Definitions

In this subchapter, the following definitions apply:

(1) Federal government.-The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).

(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.-The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-

(A) the basic hourly rate of pay; and



(B) for 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 forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-

(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and

(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

[\(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1150; Pub. L. 109-284, §6\(11\), Sept. 27, 2006, 120 Stat. 1213.\)](#)

Annualization:

The annualization principle determines the hourly rate of contribution that is creditable towards a contractor's Davis-Bacon prevailing wage obligation. You can determine the creditable amount by dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work). In working to determine the cash equivalent for fringe benefit payments, the period of time to be used is the period covered by the contribution: If contributions are made weekly, cash equivalents should be computed weekly, etc. Often, contractors will convert the annual cost of a benefit by converting it to an hourly cash equivalent. Consider the following scenario:

- Since construction workers often do not work a full year (2,080 hours), if a contractor makes annual payments in advance to cover the coming year cost, and actual hours worked will not be determinable until year-end, total hours worked by DB-covered workers in the preceding year (or plan year) can be considered representative of a normal work year in the computation.
- Example: Assume total annual cost of pension program is \$15,000, and that the total working hours (DB and non-DB) for the workers on whose behalf the employer made contributions in the previous year was 15,000. $\$15,000/15,000$ hours = \$1.00 per hour cash equivalent
- Where the contractor pays monthly health insurance premiums in advance on a lump sum basis, the total hours worked in the previous month or in the same month in the previous year may be used to determine (i.e. estimate) the hourly equivalent credit per employee during the current month.
 - However, keep in mind that If the employer contributes at different rates, such as under a health insurance plan for single and family plan members, credit cannot be taken based on an across the board average,



but rather must be computed to reflect the cash equivalent to be credited for each individual employee.

Fringe benefits **do not include** contractor payments required by other federal, state, or local laws such as taxes (e.g., Social Security), workers compensation, or state disability insurance requirements. Fringe benefits also **do not include** payments made to or on behalf of workers for transportation expenses, board and lodging, or required uniforms or tools. These are customarily business expenses of the contractor and not a fringe benefit for the worker. (Refer to 29 CFR Part 5, Subpart B, for guidance on providing bona fide fringe benefits under DBA.)

FAQs

1. Do I need to report insurance amounts as part of my fringe benefits if the company is paying for employees above and beyond the prevailing wage (base rate and fringe)?

No. If the contractor is already meeting the prevailing wage by paying the base rate and the cash rate in lieu of fringe benefits, then there is no obligation to disclose fringe benefits -- not on the payroll nor through the Contractor Fringe Benefit Statement (CFBS).

2. For overtime, are fringe benefits paid out at one and a half times?

No. For overtime hours, fringe benefits are to be paid (at a minimum) at the amount listed on the prevailing wage determination.

3. Can the fringe benefits be used for anything that the employer wants?

No. The fringe portion either needs to be paid in cash or in a bona fide plan, fund, or program as described above. If the contractor wants to claim fringe benefit credit for an unfunded/self-funded plan, other than as described in 29 CFR 5.28, then they must obtain approval from the Secretary of Labor (Unfunded@dol.gov).

4. Can I opt out of paying fringe benefits to employees and just increase the base rate?

Yes, you can opt out in the sense that you are paying a higher base rate so that the total still equals the total prevailing wage; however, if you do that, you need to recognize that when paying overtime, the contractor will have to pay the premium rate of one and one half times the established base rate. The contractor shall continue paying that higher base rate which has been established as a de facto rate.



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5. Why would my fringe rate be different if I am annualizing?

Per the DOL FOH [CH15f12](#), annualization is a computation strategy used to determine the hourly rate of contribution that is creditable towards a contractor's prevailing wage obligation on DBA/DBRA covered projects. This principle is important because the amount of credit a contractor may claim as an offset against the prevailing wage obligation can be as significant in determining Davis-Bacon compliance as whether a particular fringe benefit plan is a bona fide fringe benefit plan under the DBA. Annualization is particularly important for computing the fringe benefit credit when a contractor employs workers on both DBA/DBRA covered projects and projects not subject to DBA/DBRA coverage and makes contributions to fund fringe benefit plan(s) during the year.

Fringe benefit credit may be different if a contractor is annualizing because when an employee works overtime, it is possible that the fringe benefit rate is no longer sufficient to meet the prevailing wage. In annualization, when an employee works overtime, unless an employer is increasing the amount that is paid (for those overtime hours) into an approved fringe benefit plan, the OT amount could possibly fall short of prevailing wage. When a contractor seeks to offset the annual cost of a particular fringe benefit, they will do so by converting such costs to an hourly cash equivalent. For example, the hourly cash equivalent may be determined by dividing the cost of the fringe benefit by the total number of working hours (DBRA and non-covered) to which the cost is attributable. Total hours worked by employees must be used as a divisor to determine the rate of contribution per hour, since employees may work on both DBRA and non-government work during the year and employers are prohibited from using contributions made for non government work to discharge or offset their obligations on DBRA work.

The exception to this is for pension credit. If the pension contribution is based on a percentage, then it is feasible to think that the amount of the contribution also increased. However, as it relates to fringe benefits related to insurance and health care, it is unlikely that anyone provides more to the third party than necessary.



6. What is the Contractor Fringe Benefit Statement (CFBS)?

The Contractor Fringe Benefit Statement is a document that is located in LCPtracker. Per the CDOT payroll specification, [Certified Payroll Requirements for Construction Contracts](#), a CFBS is required from each contractor for each project and submitted with the first payroll AND whenever something changes on the form. You can download it from the eDocuments (template) section within LCPtracker, and then you can fill it out and upload it for the project. As described on the form, if a contractor is using self-funded fringe benefits, they must obtain a US DOL determination in writing as to whether or not the benefits and plan are bona fide and therefore approved by DOL.

7. How does a contractor fill out the Statement of Compliance for payrolls?

The requirement to fill out the Statement of Compliance comes from the Department of Labor, and it addresses how the contractor is meeting the Davis-Bacon requirement of fringe payments. CDOT is looking for information about how the wage decision requirements are being followed. The Statement of Compliance is signed by the person submitting payroll.

- 4a will be selected if all fringes are paid to approved plans, funds, or programs
- 4b will be selected if paying cash to meet the rate, no fringes to 3rd benefits
- 4a and 4b will both be selected if both cash and fringes to 3rd are being paid
- These selections would eliminate the necessity to complete 4c, because there would be no exceptions.



Deductions

Regulation / Rule / Specification:

[FHWA 1273](#)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[29 CFR 3.5 and 3.6](#)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

[29 CFR 5.5](#)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

Deductions:

Deductions are amounts that are withheld from an employee's check. They can occur a single time, weekly, monthly, or quarterly. For CDOT's certified payrolls, any deductions other than payroll taxes shall be noted in the "Other Deduction Notes" area outlined in LCPtracker by type and amount. The deductions must be voluntary and in writing, signed by the employee or listed as required through a collective bargaining agreement. Documentation of these deductions must be uploaded into the eDocuments of LCPtracker. Please note that if the deductions are not documented as outlined above, or if the deduction amounts don't add up to the total amount, payrolls will likely be rejected.

The 29 CFR 3.5 lists certain deductions that are permissible without application to or approval from the Secretary of Labor. Any deductions made to an employee's pay outside of those permissible deductions require approval from the Secretary of Labor as demonstrated through Department of Labor (DOL) approval letters. While all deductions are subject to the request of additional supporting documentation, the supporting documents for certain permissible deductions are required at the time of submission of the certified payroll. It is every contractor's responsibility to reach full compliance of payroll requirements outlined in the 29 CFR parts 3.5 and 3.6.

A US DOL approval letter is required for ANY type of deduction that does not fall under the payroll deductions that are listed as permissible (29 CFR 3.5) without application for approval by the Secretary of Labor. Any deduction that is approved must include a specified time period of approval (within the DOL letter) for the deduction. If the time frames for approval are not outlined in the letter, the letter's date from US DOL will serve as the time frame for which the deduction is approved or rejected. Any deduction that falls outside of this time frame will be subject to back pay. To request approval, send an email to DOL at: dbadeductions@dol.gov, with any supporting documentation, that specifically describes how the deduction meets the requirements from 29 CFR 3.6. Once the letter is received, it will need to be uploaded into



eDocuments in LCPtracker. The written approval is required annually. If any contractor fails to obtain a letter from DOL, the deduction will not be allowable and restitution will be owed.

FAQs

1. What are allowable deductions (without application to the Secretary of Labor) under the federal laws?

The deductions through certified payroll must be identified and legally allowable as referenced through the 29 CFR 3.5. Some examples of these legally allowable deductions are medical or hospital care, pensions or annuities, death benefits, compensation for injuries, illness, accidents, sickness, or disability, taxes, insurance, and union dues. Court garnishments require additional documentation through LCPtracker in eDocuments. For an outline of what documentation is required to be uploaded in LCPtracker for different types of deductions, please see the [Guidance for Construction Projects Requiring Certified Payrolls](#).

2. Can a company charge a fee to cash an employee's check?

No, the company cannot benefit from paying employees. Charging a fee is a violation of the Copeland Act. From the 29 CFR 3, "The Copeland Act's Anti-Kickback provision prohibits contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which he or she is entitled."

3. What are some frequent examples of deductions that are NOT approved through the Department of Labor and will REQUIRE a DOL approval letter?

Legal Shield, Uniforms, Uniform Cleaning, Gym Membership, Tools

4. What if I only have one deduction on the payroll? Do I have to list it by type and amount in "Other Deductions"?

Even if there is only one deduction on the payroll, you will need to list it by type and amount in "Other Deductions."



Overtime

Regulation / Rule / Specification:

[FHWA 1273](#)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[29 CFR 5.5](#)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

Overtime:

Overtime work on a federally funded job requires premium pay of at least one and one-half times the regular rate for hours worked in excess of 40 hours per work week. Overtime is governed by the Fair Labor Standards Act ([FLSA](#)) and the Contract Work Hours Safety Standards Act ([CWHSSA](#)).

FAQs

1. Does all overtime need to be paid at the premium rate of 1.5 times the base rate?

Yes, all overtime needs to be paid at the higher rate of 1.5 times the (established) base rate and then the fringe benefit amount should be added in for each hour.

2. How does Colorado's wage laws regarding overtime requirements factor into what is required for contractor payment for employees?

All Colorado contractors are required to follow the Colorado wage laws including those requiring overtime. Colorado Overtime and Minimum Pay Standards Order ([COMPS Order #38 is the most current](#)) is the law that went into effect in the first part of January of 2019. This law outlines that employees must be paid time and one-half of the regular rate of pay for any work in excess of the following:

- (A) 40 hours per week
- (B) 12 hours per workday
- (C) 12 consecutive hours w/o regard to the start and end time of the workday.

Whichever of the three results in the greater payment of wages shall apply in any particular situation. [See Appendix A for more information about CDOT/COMPS laws.](#)



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3. If the contractor pays above the Davis-Bacon straight time amount, can the contractor then default to the lower Davis-Bacon wage rate (as outlined in the wage determination) in overtime?

No. By paying a higher straight time amount, a new de facto rate has been established. The higher rate is the one that must be paid at time and a half.

4. We have an employee who is a working foreman, and at times, s/he works overtime. Is he exempt from overtime pay?

It depends, but it is likely that the employee is not exempt from overtime.

Generally speaking, working foremen are not exempt from prevailing wage, and they must be paid the Davis-Bacon rate for the classification of work performed.

Please see [number ten under Certified Payroll questions](#) to determine next steps.



Conformed Rates and Classifications Missing from the Wage Determination

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[29 CFR 5.5](https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

Conformed Rates:

Conformed rates are the proposed (and eventually approved or rejected) classifications and wage amounts that are missing from the wage determination(s) connected to the project.

FAQs

1. What if the contractor does not know which classification to use in order to complete the SF 1444 for submission?

The first step is to determine what the work being performed is usually called in standard industry practice. One option is to evaluate the DOL's Occupational Outlook Handbook to find the occupation that best describes what work the employee is performing. If there are no applicable classifications found and still need assistance, please reach out to the project engineer or the region's Civil Rights Office. It is important that accurate classifications are being submitted.

2. Where is the four-digit payroll classification code? Where can I find it?

There will not be a specific four-digit classification code on the printed wage determination from the Department of Labor. This is a CDOT practice completely outside of the wage determination from the DOL. Contractors can find the assigned code within LCPtracker. Please note: If contractors are using an OJT code, and that code requires a conformance request, they need to make sure to use the code assigned to that classification as a failure to do so will result in the OJT hours not being counted. That code will come from the regional Civil Rights specialist.



3. How does a contractor know what wages to propose on the (DOL SF 1444) form?

The contractor can theoretically propose any wages that they want; however, the DOL standard is that wages have to, “bear a reasonable relationship to the wage rates contained on the wage determination.” The interpretation there is that the wages have to be similar to the kind of work being performed -- a lower outlier wage will not be approved, and back pay will be owed.

4. Can the DOL form SF 1444 be submitted directly from the contractor to the DOL?

No. CDOT is the one that has to submit it as it requires our concurrence. So, if there is an SF 1444 without a signature from a CDOT Civil Rights person, please know that the 1444 was an incorrect submission. This incorrect form shall be reported to the prime, and the prime must report it to the RCRO so that appropriate action can be taken.

5. When is it required to submit a 1444?

It is required to submit a 1444 when the classification that is being used on the project is not on the wage determination. If the work that is going to be performed is not listed, then a wage has to be added to the wage determination through the conformance process.

Examples of common 1444 classification submittals: hydrovac operator, traffic signal installation, groundsman, concrete breaker operator, concrete pump operator, rotomill operator, grade checker, rock scaling and blasting, etc.

6. What are the sites to find the wage determinations through CDOT?

CDOT's webpage containing the most recent wage determinations is located [here](#). If a contractor is looking for the wage determination that is associated with a specific project, please refer to the contract documents as it must be attached. All [project wages](#) (including apprentice wages, conformed wages, etc.) will also be located within LCPtracker. Any subcontracts must also incorporate and include a physical copy of the project's wage determination(s).



Business Owners and Owner / Operator Truckers

Regulation / Rule / Specification:

[29 CFR 5.2](#)

(<https://www.govinfo.gov/content/pkg/CFR-2011-title29-vol1/xml/CFR-2011-title29-vol1-sec5-2.xml>)

[Fact Sheet #17B Exemption for Executive Employees Under FLSA](#)

(<https://www.dol.gov/agencies/whd/fact-sheets/17b-overtime-executive>)

[29 CFR, Subtitle, Chapter V, Subchapter A, Part 5451](#)

(<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-541>)

[DOL FOH 15f06](#)

(https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/FOH_Ch15.pdf)

Business Owners and Owner / Operator Truckers:

DOL makes the distinction between business owners and owner operator truckers in terms of what is required for payrolls. Please see below.

FAQs

1. Do company owners that are working on the project site need to be listed on the payrolls and be paid the prevailing wage?

Anyone performing project work on the site must be reported on certified payroll, in accordance with 29 CFR 5.2(o). In some cases, the business owner may be exempt from the contract wage requirements when the required conditions are met under the Bona Fide Executive Employees exemption (Business Owner) in 29 CFR 541.101. To fall under the exemption, the person who owns at least a bona fide 20-percent equity interest in the enterprise in which the owner is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. Under the exemption on certified payroll, they do not need to report wages earned nor hours worked. The owner will check a box within LCPtracker that indicates business ownership (owner/operator). Also, if an owner (performing work as a laborer/mechanic on the site of work does not have at least 20% ownership of the company, then they, too, will have to report wages earned and hours worked.

2. If the owner of the company qualifies for an executive exemption, do the employees also qualify?



No. Employees who do not fit the parameters of business ownership as described in the 29 CFR 541.101 do not qualify for the exemption.

3. Are owner/operator truck drivers covered by the Davis-Bacon and Related Acts contract wage requirements?

Legitimate owner-operator truck drivers, who drive and operate their own truck, are exempt from the Davis-Bacon wage requirements. Trucker owner-operators must do the following things when reporting certified payroll:

- a. They need to check the box in LCPtracker that denotes them as owner/operators. The certified payrolls must include the names of the owner-operators, but they do need not show hours worked nor rates paid.
- b. Trucker owner-operators will need to fill out an owner operator affidavit and upload it into eDocuments.

As a matter of administrative policy, the provisions of DBRA/CWHSSA **are not applied** to bona fide owner-operators of trucks who are independent contractors. This position does not pertain to owner-operators of other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, welding machines, and the like. Moreover, employees hired by owner-operators are subject to DBRA in the usual manner.

4. Do owner / operators of other types of businesses need to be reported on payroll?

If the owner/operator of the business does fall under the executive exemption for business owners (29 CFR 541.101), they will still need to report payroll; however, they will not need to report hours worked nor wages paid. Owner operators of other types of businesses need to do the following:

- a. They need to check the box in LCPtracker that denotes them as owner/operators. The certified payrolls must include the names of the owner-operators, but they do need not show hours worked nor rates paid.
- B. Owner-operators will need to fill out an owner operator affidavit and upload it into eDocuments.

If the owner has a legitimate business and can document executive exemption, they will only have to submit the notation of owner/ operator without documenting wages earned or hours worked. However, if they own less than 20% of the business, and/or are not actively engaged in management, they will have to report payroll.



Apprentices and Trainees

Regulation / Rule / Specification:

[FHWA 1273](#)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[23 CFR 230](#)

(<https://www.govinfo.gov/content/pkg/CFR-2016-title23-vol1/xml/CFR-2016-title23-vol1-chapl.xml>)

[29 CFR 5.5](#)

(<https://www.govinfo.gov/app/details/CFR-1999-title29-vol1/CFR-1999-title29-vol1-sec3-5/context>)

Apprentices and Trainees:

Apprentices and trainees are laborers and mechanics in training. They must be paid the full journey worker wages UNLESS the apprentices and trainees are in an approved On-the Job Training (OJT) program through CDOT or with other affiliate agencies like DOL. The OJT program is an implementation of a federal job training policy that aims to increase minorities and women in all phases of the construction industry.

FAQs

1. Can an apprentice or trainee be entered into the training program and still be paid full journey wages?

Yes, a contractor can always pay above the required minimum amount.

2. Can an apprentice or trainee be entered into the training program and have the contractor pay at reduced wages?

Yes, contractors can use an approved training program (or otherwise through a collective bargaining agreement), and the program will outline the percentage of the base rate that each employee should be paid or will provide the wage requirements by apprentice level.



3. Can a prime contractor add a trainee / apprentice after the project has started?

Yes, contractors will need to fill out all required CDOT OJT forms whenever adding a trainee/apprentice. Appropriate payroll codes for all participants must be used at all training hours for accurate tracking. The trainees/apprentices must be approved prior to their work counting toward the OJT goal.

4. Can a contractor pay apprentice rates (if the employee is in an approved DOL program) on a CDOT project that has no OJT goal?

Yes, the contractor can pay apprentice rates on a CDOT project with no OJT goal where the employee is enlisted into an approved DOL apprenticeship program. CDOT's PAC-UP (the state's OJT program) cannot be used in this same way. There will still be a need to submit the names of the proposed apprentices so that we can add them, their classifications, and wages into the LCPtracker system.

5. What happens when a contractor's employees are bound by a collective bargaining agreement (CBA) but also by prevailing wage?

The requirement on a CDOT state or federal job requires the payment of Davis-Bacon Wages. If the CBA is less than prevailing wage, the contractor will be held to the prevailing wage standard for each classification. That would be more than the amount that is outlined through the actual agreement. If the CBA is more than the prevailing wage, the contractor will be held to the CBA cost which will more than cover prevailing wages. DOL would only hold the contractor to the Davis-Bacon wages, and if there was a problem with the CBA amount, the complainant will need to take it up with the union.

6. Can an employee work in a number of classifications for the PAC-UP Program?

Yes, apprentices and trainees must follow their own program guidelines, but for the purposes of PAC-UP (CDOT's free OJT Program), employees can be functioning within two different classifications simultaneously. There are two main considerations: 1) Does the contractor follow the mandatory ratio of 1:1 apprentice to journey worker listed in the guidelines for CDOT's program? Are contractors paying this time appropriately? 2) How is it documented manually and through certified payroll when the employee is functioning in any other classification? Are they being paid appropriately?



7. What is the process for getting the apprentice / trainee wages in LCPtracker?

The process for getting wages into LCPtracker involves the Civil Rights region personnel and the certified payroll specialist. The region compliance specialist and/or engineer as appropriate will evaluate the mandatory forms, and if sufficient, the specialist will tag the contractor's employee in CDOT's LCPtracker system. The specialist will then submit a request to the certified payroll specialist to create the payroll codes and reduced wages in the system. Once that step is complete, the specialist will notify region personnel who will communicate with the prime or sub so that the contractors can utilize the codes.



FHWA 1391 Report

Regulation / Rule / Specification:

[FHWA 1273](#)

(<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>)

[23 CFR 230](#)

(<https://www.govinfo.gov/content/pkg/CFR-2016-title23-vol1/xml/CFR-2016-title23-vol1-chapl.xml>)

FHWA 1391 Report:

Contractors and subcontractors will submit an annual report to the contracting agency each July, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July.

FAQs

1. What is the requirement for the FHWA 1391 report?

The FHWA Annual Equal Employment Opportunity (EEO) Report is required for all federal-aid construction contracts. The Annual EEO Report collects employment data, specifically highlighting employment of racial/ethnic minorities and women, from all construction contractors with active federal-aid contracts valued at \$10,000 or more during the designated reporting period. Accurate reporting of data is imperative to maintain federal funding for future CDOT Federal-Aid Highway Construction projects.

The FHWA-1391 report effectively summarizes a contractor's project labor force as of the last full pay period prior to the end of July. **If a contractor did not perform any work (i.e. they do not have certified payroll) during the month of July, they are not required to submit 1391 information for that project.**

Any Prime Contractor and subcontractor (regardless of tier) on active CDOT Federal-Aid Highway Construction projects **valued at \$10,000 or greater** during the month of July must submit workforce employment information by mid August to successfully complete their FHWA-1391 report as required.



Contractors and subcontractors will submit their 1391 reporting information for laborers and mechanics via certified payroll reports within the LCPtracker system. In a separate process from certified payroll, Contractors and subcontractors shall report officials (foremen, supervisors, etc.) using the FHWA 1391 Additional Data Entry Status Report in LCPtracker. Contractors and subcontractors working on Local Agency Projects (LAPs), legacy projects, or on projects which do not maintain payrolls in LCPtracker will submit a completed FHWA-1391 Excel document to the project's Prime Contractor, who will then send all submitted Excel documents for the project to CDOT via email.

2. Do I have to report foremen, supervisors, and other officials even though they are not reported on certified payroll.

Foremen may or may not be listed on certified payroll depending on the role that they are playing; however, whether or not they are listed on certified payroll is not relevant in terms of the reporting for the FHWA 1391 report. "Other officials" including foremen and supervisors would have to be included in the report.



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Appendix A CDOT/COMPS Laws



What is the COMPS law?

The COMPS order, established in 2020, is a source of wage rights and responsibilities in the state of Colorado beyond the scope of federal law. It is delineated by Colorado Department of Labor and Employment (CDLE) and is updated annually to adjust for the cost of inflation. It has three primary components as it relates to CDOT work:

1) Eligibility for the Colorado minimum wage. See more information about that

[here](#). 2) Overtime pay for work as outlined below.

3) Rules on wage deductions, what work time must be paid, and the requirement to post the COMPS order for employees to see. Click here for more information about [this portion](#) of the law.

Contractor's Guide for Paying/Reporting Overtime

According to the Colorado Overtime and Minimum Pay Standards Order (COMPS ORDER) #38: Employees shall be paid time and one-half of the regular rate of pay for any work in excess of any of the following:

- (A) 40 hours per workweek;
- (B) 12 hours per workday; or
- (C) 12 consecutive hours without regard to the start and end time of the workday

Per workweek, whichever of the three calculations listed above results in the greatest payment of wages (in overtime) shall apply. Generally, the 12-hour law will be greatest if the hours worked are less than 40 or over 16 hours in a day. Contractors shall take the following steps to determine if or when overtime is required to be paid and reported.



Step 1: Determining Overtime

Contractors shall look at all overtime requirements (over 40 hours/week, over 12 hours/day, or over 12 consecutive hours) at the end of the work week to see which is greater. The scenario with the greatest amount of overtime hours is what should be paid out. Scenarios A & B below outline overtime being calculated at the over 40/hours in a week and over 12 hours/in a day rules. All hours worked for all jobs in the work week shall be considered when making the determination.

Scenario A (Over 40 hours/week rule)

	M	T	W	Th	F	S	S u	Total Number of Hours Worked in the Week
# of hours worked	8	13	8	11	8	0	0	48
# of hours over 12	1							
# of hours over 40	8							

In Scenario A, the over 40 hours/week rule prevails and will result in paying 8 hours of overtime. The overtime shall be calculated and reported in the classification worked. Therefore, the overtime will start being calculated on Friday.

Scenario B (Over 12 hours/day rule)

	M	T	W	Th	F	S	S u	Total Number of Hours Worked in the Week
# of hours worked	17	17	17	0	2	0	0	53
# of hours over 12	15							
# of hours over 40	13							

In Scenario B, the over 12 hour/day rule prevails and will result in 15 hours of overtime. The overtime should be calculated in the classifications when the employee worked over the 12 hours. Therefore, the overtime will start being calculated on Monday.



Step 2. Reporting Overtime in LCPtracker

A. Report OT hours

The following is how the hours should be reported in LCPtracker for Scenario A:

	M	T	W	Th	F	S	S u	
								Total number of hours worked: 48
S	8	13	8	11	0	0	0	Total number of OT: 8
OT	0	0	0	0	8	0	0	The over 40 hours/week rule prevails

The following is how the hours should be reported in LCPtracker for Scenario B:

	M	T	W	Th	F	S	S u	
								Total number of hours worked: 53
S	12	12	12	0	2	0	0	Total number of OT: 15
OT	5	5	5	0	0	0	0	The over 12 hours/day rule prevails

Help Needed

The Colorado Department of Labor and Employment oversee these requirements, and their contact information is as follows: email -- cdle_labor_standards@state.co.us and phone 303-318-8441.



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Appendix B Restitution



What is wage restitution, and when is it owed?

- Wage restitution is the difference between the amount that the employee was underpaid and what the employee should have been paid. The underpayment is generally the result of an error, omission, or inappropriate or forced classification. **When the payroll is found to be incorrect, restitution is owed.**

What are some of the reasons that employees are underpaid?

- Work is performed in two or more counties, and the employer did not pay at the highest wage as per CDOT requirement.
- DOL did not approve the formal request (SF1444) to add a classification at the request rate, and the employer must pay at the higher rate defined by DOL.
- Employee was misclassified:
 - The employee was performing work outside of how s/he was listed on payroll, and the employer had no documentation to identify when the employee was working in each role
 - The employer tried to force a classification meaning that they were asking the employee to do one thing but paying them in a different classification because it was easier or because they didn't want to submit the SF 1444.

What happens when discrepancy is found?

When the discrepancy (between what was paid and what was owed) is found, restitution must be paid. Here are the next steps:

- **The first step is that the prime rejects the payroll in LCPtracker and as part of that rejection, they must also send an admin notice to alert the sub.** Remember that part of the requirement for reporting payroll is reporting the proper classification. If that was incorrect (even if the pay is above Davis-Bacon), then the payroll is incorrect and will need to be redone.



The contractor that owes restitution must:

- Issue a restitution payment. (Another check [for every instance on the project] must be cut and issued to each employee that pays the difference that was short paid.)
 - a. If this is a situation where this is happening on several projects, back wages will be owed, and this will need to be documented through a contractor spreadsheet [name of employee, hours short paid, (original) listed classification, corrected classification, hours worked for each project] for all projects.
 - b. If the contractor is making a lump sum payment that extends for several pay periods, that lump sum will need to be broken down on a spreadsheet created by the contractor for each applicable pay period and entered accordingly as additional pay added to the original pay, and the totals of the multiple payments shown as reported actual wages.
- Revise the payroll to show the corrected information. This information is located in the projects tab: select the week-end date on the payroll that needs to be revised. Correct any necessary information such as the classification, hours, etc. as needed.
- Recertify the payroll.
- Upload documentation (copies of cashed checks) in eDocuments in LCPtracker (to support) the additional payments that were made.
- The sub will have to respond to the rejection notices to document that this part is complete.