

Legal Update Article

Construction: Labor Department Proposes Rule to Expand Coverage of Davis-Bacon Act and Regulations

By Brian P. Lundgren &

March 31, 2022

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The U.S. Department of Labor (DOL) has [announced](#) proposed rulemaking to update and expand the prevailing wages and other regulations under the Davis-Bacon Act, which applies to federal and federally assisted construction projects.

The Davis-Bacon Act was created in 1931 to require contractors and subcontractors performing on federally funded or assisted contracts for the construction, alteration, or repair (including painting and decorating) of public buildings or public works to pay employees wages and benefits locally “prevailing” for similar work on projects in the area.

Historically, the Davis-Bacon Act has applied only to onsite construction work. The DOL’s [proposed rule](#) includes changes to long-standing definitions that would significantly expand the coverage of the Davis-Bacon Act to reach work not previously covered or for which coverage was not always clear.

To illustrate, the DOL proposed a change in the definition of covered “building or work” by including solar panels, wind turbines, broadband installation, and installation of electric car chargers to the list of construction activities. The proposed rule changes clarify that “building or work” and “public building or public work” also include construction activity involving a portion of a building, structure, or improvement, or the installation of equipment or components into a building, structure, or improvement.

Another example is the proposed inclusion of new language on when demolition and similar activities meet the definition of covered “construction, prosecution, completion, or repair,” which would add, among other circumstances, where subsequent covered construction is planned at the site of demolition or removal. The proposed rule indicates that Davis-Bacon would likely not cover such activity if it were to make the land more desirable for sale to private parties for a purely private construction.

Some offsite manufacturing or fabrication of building materials also could be affected by the proposed revisions to the “site of the work” requirement. Under these proposals, the definition of “site of the work” would be changed to apply to off-site construction of “significant portions” of a building or work. Presently, these are usually excluded from coverage unless the work is performed at facilities established by the contractor specifically for the performance of a contract or project.

Further, for truck drivers, the proposed rule seeks to amend the definition of “construction, prosecution, completion, or repair” to include transportation that takes place entirely on the site of work, between a secondary construction site and primary construction site, and between a dedicated support site and a primary or secondary construction site, as well as onsite activities essential or incidental to offsite transportation, and under any other statute that extends coverage to laborers and mechanics employed in the construction or development of a project.

Beyond these examples, the breadth of the DOL’s proposed rule to the Davis-Bacon Act includes many other changes to coverage, wage rates, and administration and enforcement. The DOL has invited interested persons to submit written comments to the proposed rulemaking by May 17, 2022.

Employers who have questions about these and other issues should reach out to the Jackson Lewis attorney with whom they regularly work.

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