



COLORADO

Department of Transportation

Certified Payroll - Guidance for Frequently Asked Questions

September 2024

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Labor Compliance Federal Regulations

Who is Impacted?

All contractors working on CDOT advertised state and/or federal-aid projects must comply with federal law. The laws also apply to federally funded local agency projects as well.

Regulation/Rule/Specification

Davis-Bacon and Related Acts (DBRA)

This law requires prevailing wage (minimum), fringe benefits, and pay covered employees every seven days for the work being done. DBRA is monitored and enforced by CDOT.

Fair Labor Standards Act (FLSA)

FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards and is enforced by the US DOL. Contractors objecting under the governance of FLSA will be referred to the US DOL. The common objection under FLSA is regarding travel time. Any travel time (company truck or travel to the project is governed under FLSA, not DB) beyond a normal home to work will count towards the 40 hours.

Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires contractors to pay laborers and mechanics overtime which is enforced by CDOT. This law requires all hours worked over 40 in the work week to be paid at 1.5 times the base rate of pay. It is not limited to project hours but on the worker's total hours in a workweek. Fringe benefits are paid hour for hour. The consequences of non-compliance can include fines, imprisonment, or both. This act covers watchmen and guards.

Copeland Act

The Copeland "anti-kickback" act of 1934 regulates the deductions from an employee's paycheck allowed - enforced by CDOT. Deductions by law, taxes, and health benefits are allowed. Other deductions that benefit the employee may be allowed, but no deductions are allowable that reduce the wage below the contract minimum wage (Davis-Bacon wages on federal projects). After the close of the project, there is a three-year retention requirement for all project documents. Damages could be up to \$5000 and five years of jail time.

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. The three primary sources that govern the certified payroll reporting processes are as follows: The first source is the FHWA 1273, and the second is outlined in the 29 Code of Federal Regulation (CFR), parts 3.3, 3.4, 3.5, 3.6, and 5.5.

[FHWA 1273](#)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 3.3](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec3-3/summary>

[29 CFR 3.4](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec3-4>

[29 CFR 3.5](#)

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

[29 CFR 3.6](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec3-6>

[29 CFR 5.5](#)

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

FAQs

1. Do all federal regulations apply to all projects?

Federal regulations apply to those projects that are paid for with federal dollars. Through the Senate Bill 19-196, these regulations also apply to state funded, CDOT advertised projects.

Prevailing Wage

Prevailing Wage Overview:

Prevailing wage is 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). The prevailing wage rate listed on the wage determination for a particular classification of work is the minimum rate that the contractor shall pay workers who are working in that job classification on the project. 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 rate in cash
- b) paying the base rate and contributions to a bona fide fringe benefit plan, or
- c) paying the base rate and any combination of cash and fringe benefits

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. Prevailing wage is the Davis-Bacon minimums for each classification; however, there can also be local and state prevailing wage requirements that contractors are held to when working within those areas. Just like in Davis-Bacon wages, these wages are not suggestions or hopes. They are requirements and wages must be paid accordingly.

Who is Impacted?

Prevailing wage rates apply to estimators so that bids can be computed accurately. These rates also apply to all contractors and subcontractors on a CDOT project that are responsible for entering and certifying weekly payroll while actively working on the project. Contractors need to be aware of local, state, and national prevailing wage requirements so that employees are paid at least the minimum amounts.

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/construction/cqit/form1273.cfm)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[23 U.S.C. 113](https://www.govinfo.gov/content/pkg/USCODE-2011-title23/html/USCODE-2011-title23-chap1-sec113.htm)

<https://www.govinfo.gov/content/pkg/USCODE-2011-title23/html/USCODE-2011-title23-chap1-sec113.htm>

[40 U.S.C. 3142](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra)

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

FAQs

1. How are city and state prevailing wage rates applied?

Applicability of prevailing wage can have 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 wage. 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 for each municipality. 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.

2. If the state or city 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.

3. 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 – CO20240006

Date: August 2, 2024

Decision Nos. CO20240006 dated January 5, 2024 supersedes Decision Nos. CO20230006 dated January 6, 2023.	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	7/5/24	1	1
	2	8/2/24	1	2
General Decision No. CO20240006 applies to the following counties: Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.				

Example: If a project contains multiple counties resulting in multiple counties resulting in two sets of wages for a classification (for example: 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.

	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.

4. 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 in the 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.

Site of Work

Site of Work Overview:

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.

Who is Impacted?

Contractors need to know what constitutes actual site of work so they can pay appropriately. Workers on the site of work are covered by Davis-Bacon and must be paid the proper wage and appear on certified payrolls. Employees need to know what is considered site of work so that they can monitor how much to be paid.

Regulation / Rule / Specification:

[FHWA 1273](#)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 5.2](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-2>

[40 U.S.C. 3142](#)

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

FAQs

1. How does “Site of work” impact prevailing wages?

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.”

2. What is the rule surrounding the secondary “Site of Work” in the newly released DBRA changes?

Under the final rule, DBRA labor standards will apply at a “secondary construction site,” which is defined as any other site where a significant portion of the building or work is constructed, provided that such construction is for specific use in that building or work and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time.

3. Is the right-of-way considered to be part of the site of work?

Yes, the right-of-way is considered to be part of the site of work.

4. Are batch plants and yard pits ever considered as part of the site of work?

It depends.

No. It would NOT be considered site of work if fabrication plants, batch plants, borrow pits of a material supplier, which are established by a material supplier for the project before the opening of bids and not on the primary construction site or a secondary construction site, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Yes. It would be considered site of work for any adjacent or virtually adjacent dedicated support sites, defined as:

- (A) Job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a contractor or subcontractor that are dedicated exclusively, or nearly so, to performance of the contract or project, *and* adjacent or virtually adjacent to either a primary construction site or a secondary construction site, and
- (B) Locations adjacent or virtually adjacent to a primary construction site at which workers perform activities associated with directing vehicular or pedestrian traffic around or away from the primary construction site.

5. Is there a standard mileage where a location can be considered a site of work?

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.

Wage Determinations

Wage Determination Overview:

A wage decision, also known as a wage determination, is a list of basic hourly wage rates and fringe benefit rates for each classification of mechanic and laborer that the U.S. Department of Labor (DOL) has determined to be prevailing in each area for a particular type of construction. CDOT obtains the wage determinations from the US Department of Labor, and creates a separate document to include a table format utilizing four digit payroll codes.

Who is Impacted?

This information applies to all contractors and subcontractors on a CDOT project that are responsible for entering and certifying weekly payroll while actively working on the project. The wage determinations dictate what wages must be paid for work that is on the site of work.

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 1](https://www.ecfr.gov/current/title-29/subtitle-A/part-1)

<https://www.ecfr.gov/current/title-29/subtitle-A/part-1>

[40 U.S.C. 3142](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra)

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

FAQs

1. What is the best way to find out project wages (from the wage determinations)?

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 in LCPtracker, and then they can choose the Project Wage Data Report. The benefit to seeking the prevailing wages in this way is that all contractors will have the ability to see an apprentice or requested (and/or approved) wage conformance classifications.

2. Are wage determinations required?

Wage determinations are required for all projects advertised by CDOT. For projects that have federal funding (FHWA, FTA, or ARPA funding) certified payroll is required. Also, because of the Senate Bill 19-196, wage determinations will be required for all projects that are state funded as well. The wage determinations will be attached to the contract.

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

DOL's guidance 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.

4. What if a mistake in classification (or other item) is made on payroll? What is the process to correct the payroll?

The first step in the process is that the oversight (prime, PE, or designee) will first reject the payroll and send an admin notice outlining the area of the payroll that is out of compliance. 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 -- redacted) 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.

Fringe Benefits

Fringe Benefits Overview:

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.

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.)

Who is impacted?

Fringe benefits impact the majority of employees of most contractors that work on a CDOT DBRA job. The prevailing wage must be paid weekly.

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/construction/cqit/form1273.cfm)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 5.25](https://www.ecfr.gov/current/title-29/subtitle-A/part-5#5.23)

<https://www.ecfr.gov/current/title-29/subtitle-A/part-5#5.23>

[40 U.S.C. 3141](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra)

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

FAQs

1. 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.

2. 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).

3. 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.

4. What is 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 \$2,400, 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 2,400. $\$2,400 / 2,400 \text{ hours} = \$1.00 \text{ per hour cash equivalent}$.

- 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.

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. The form is available to download from the eDocuments (template) section within LCPtracker, and then shall be filled out and uploaded for the applicable 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. What should be reported in LCPtracker if company fringe benefits are provided to employees, but prevailing wage is met with cash only payments?

Company fringe benefits should not be reported on the certified payroll. Section 4b on the statement of compliance should be checked in LCPtracker and Section B9c should be marked “yes” on the Contractor Fringe Benefit Statement.

8. 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. The Statement of Compliance, in LCPtracker, should reflect how the certified payroll indicates that prevailing wage is being met. 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.

Example 1: If company fringe benefits are provided to employees and these benefits are necessary to meet prevailing wage, the contractor shall report the company fringe benefits in LCPtracker and check 4a in the Statement of Compliance section.

Example 2: If a contractor provides company fringe benefit plans to employees, but prevailing wage is met with cash only payments, the contractor shall report cash only payments and not the company fringe benefits in LCPtracker. Additionally, the contractor will check 4b in the Statement of Compliance section.

Example 3: If fringe benefits are paid exclusively in cash and no company fringe benefits are provided, the contractor shall report cash payments in LCPtracker and check 4b in the Statement of Compliance section.

Example 4: If company fringe benefits are paid in combination with cash payments and both of these benefits are necessary to meet prevailing wage, the contractor shall report the

company fringe benefits and cash payments in LCPtracker and check 4a and 4b in the Statement of Compliance section.

Deductions

Deductions Overview:

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.

Who is Impacted?

Deductions affect all contractors and their employees because the laws surrounding deductions dictate what can be legally taken from an employee's pay.

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/construction/cqit/form1273.cfm)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 3.5](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec3-5>

[29 CFR 3.6](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec3-6>

[29 CFR 5.5](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-5>

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.

2. Is additional documentation required to be uploaded in LCPtracker if the deductions fall under 29 CFR 3.5?

For an outline of what documentation is required to be uploaded in LCPtracker for different types of permissible deductions, please see the [Guidance for Construction Projects Requiring Certified Payrolls](#). The contractor shall only upload in LCPtracker documentation that has all personal information redacted.

3. 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."

4. 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

5. 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."

6. 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.

7. What is FAMLI, and what is the implication for certified payroll?

FAMLI is a Colorado voter approved proposition (118) that is a state-run paid Family and Medical Leave Insurance (FAMLI) 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 FAMLI 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
123.000	+	32.000	+	4.000	+	63.000	+	0.000	+	120.000	+	0.000	+	0.000	=	342.000
Payments (If included in paycheck)																
Trav/Subs		Gross Pay All Projects		Paycheck Amount		Check Number *		Payment Date *								
0.000		799.470		457.470		1234		05/03/2024								
Notes																
<div></div>																

Overtime

Overtime Overview:

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](#)). Colorado minimum wage requirements are governed by the Colorado Division of Labor and Employment.

Who is Impacted?

Overtime pay affects employers in the amount that is paid and employees in the amount that they can earn.

Regulation / Rule / Specification:

[FHWA 1273](#)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 5.5](#)

<https://www.ecfr.gov/current/title-29/subtitle-A/part-5/subpart-A/section-5.5>

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) is the law that went into effect in the first part of January of 2019. The most current COMPS Order can be found at the [CDLE website](#). 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.

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 s/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.

Conformed Rates and Classifications

Conformed Rates Overview:

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.

Who is Impacted?

This process impacts contractors in that they have to submit a description of work to be used as a payroll classification. This request takes time and directs the contractors what they must pay. This process impacts employees in that they are protected from random, capricious classification amounts that are not similar to the wage determination amounts.

Regulation / Rule / Specification:

[FHWA 1273](#)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR 5.5](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-5>

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. What form is used to get an additional classification?

It is a Department of Labor form, SF-1444.

4. 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.

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

No. CDOT is required to submit the form as it requires the agencies’ concurrence. If an SF-1444 was submitted to DOL without a signature from CDOT civil rights staff, 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.

6. When is it required to submit an SF-1444?

It is required to submit an SF-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 SF-1444 classification submittals are as follows: hydrovac operator, traffic signal installation, groundsman, concrete breaker operator, concrete pump operator, rotomill operator, grade checker, rock scaling, and blasting, etc.

7. What are the websites to find the wage determinations through CDOT?

CDOT’s web page containing the most recent wage determinations is located [here](#). Select the current year construction specifications. Select "Standard Special Provisions" and "Revisions to Miscellaneous section." The current wage determinations listed according to counties will be available. 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.) can 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

Business Owner and Owner/Operator Trucker Overview:

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

Regulation / Rule / Specification:

[29 CFR 5.2](#)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-2>

[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 541](#)

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

[DOL FOH 15f06](#)

<https://www.dol.gov/agencies/whd/field-operations-handbook>

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 Davis-Bacon work on the site of work 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. 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.

3. If the owner of the company qualifies for an executive exemption, do their 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.

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

Legitimate owner-operator truck drivers, who own, drive, and operate their own truck, are exempt from the Davis-Bacon wage requirements; however, US DOL does mandate that trucker owner-operators are required to submit certified payroll. Using CDOT's LCPtracker system, they must complete the following steps:

- a. 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. 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.

5. 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. Using CDOT's LCPtracker system, they must complete the following steps:

a. 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. 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 hours worked and rate of pay on the certified payroll.

6. 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.

Apprentices and Trainees

Apprentice and Trainee Overview:

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.

Who is Impacted?

Employers are impacted in that they can pay reduced amounts to apprentices and trainees thereby gaining a potential project cost savings in terms of wages. Employees are impacted in that they may get crucial training to ultimately become journey workers and earn more money in the long term.

Regulation / Rule / Specification:

[FHWA 1273](https://www.fhwa.dot.gov/construction/cqit/form1273.cfm)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[23 CFR 230](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-C/part-230)

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-C/part-230>

[29 CFR 5.5](https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-5)

<https://www.govinfo.gov/app/details/CFR-2023-title29-vol1/CFR-2023-title29-vol1-sec5-5>

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, and that program will outline the percentage of the base rate that each employee must 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 OJT 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 contract 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?

If there is no OJT goal for a contract, CDOT will not require the submission of OJT- related forms. However, if contractors would like to count hours toward an apprentice's DOL approved training program on a CDOT job (that doesn't have a goal) -- one where they are paying less than prevailing wage, they must submit the current Apprenticeship Certificate from the Office of Apprenticeship Training (OAT) as well as the wage breakdown schedule and any other documents requested. Once the proper documents are submitted, an LCPtracker code will be provided to the Contractor.

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

Yes, employees can be functioning within one craft area and up to four different classifications simultaneously.

6. What are some considerations for contractors to get credit for OJT?

Main considerations are as follows:

- a) All apprentices/trainees are required to have the required OJT forms be submitted and approved to CDOT (Form 1337, Form 838, and Form 832).
- b) Does the contractor follow the mandatory ratio of 1:1 apprentice to journey worker listed in the guidelines for CDOT's program?
- c) Are contractors using the appropriate apprentice/trainee OJT classification in LCPtracker?

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

The process for getting wages into LCPtracker involves the rights civil region specialist and the CDOT HQ. The CDOT region civil rights specialist and/or project engineer 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 CDOT HQ to create the payroll codes and reduced wages in the system. Once that step is complete, the specialist will notify the CDOT project engineer who will communicate with the prime contractor or subcontractor so that the contractors can utilize the codes.

FHWA 1391: Federal-Aid Highway Construction Contractors Annual EEO Report

FHWA 1391 Form Overview

The FHWA Annual Equal Employment Opportunity (EEO) Report is required for all FHWA-funded construction contracts. The FHWA-1391 report effectively summarizes a contractor's project labor force for the last full pay period ending in July. The Annual EEO Report collects employment data, specifically highlighting employment of racial/ethnic minorities and women, from all construction contractors.

Who is Impacted?

All contractors and subcontractors (regardless of tier) on active CDOT Federal-Aid Highway construction projects valued at \$10,000 or greater during the final full pay period of July must submit workforce employment information within LCPtracker.

What is Required?

For all federal-aid projects let by CDOT, contractors and subcontractors will submit their EEO reporting information via LCPtracker. For ALL CDOT projects let by local agencies outside of the city and county of Denver, they will also submit all 1391 data via LCPtracker just like all other projects.

Regulation/Rule/Specification

[23 CFR, Appendix C to Subpart A of Part 230](#)

FAQs

1. What if subcontractors are not filling out the forms?

Please notify the project engineer so that s/he can be aware of the problem and address it at a project level. Please note that the prime is always responsible for the compliance of the sub, and if a sub is not compliant with the requirement to fill out the necessary paperwork associated with the project, financial disincentives may apply.

2. Does the CDOT project number refer to the five-digit sub-account number or the long number with letters, numbers, and dashes?

For CDOT purposes, always refer to the project number with the five-digit (sub- account) number.

3. What needs to be reported?

The data requested is for the project workforce only. This information is NOT required for state projects, nor is it needed for professional services. Organizations performing only professional services and no onsite labor do not need to complete the FHWA 1391 Report.

4. Where can contractors find directions for the FHWA 1391?

Contractors can find directions for the FHWA 1391 on this CDOT [website](#).

Miscellaneous

Miscellaneous Overview:

All of these questions are outside of specific areas, but they are all questions that are asked regularly. The links that are listed below relate to general regulations surrounding the Davis-Bacon and Related Acts.

Regulation / Rule / Specification:

Since this is not just one area, the references are broadly based in terms of payroll requirements.

[FHWA 1273](https://www.fhwa.dot.gov/construction/cqit/form1273.cfm)

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

[29 CFR](https://www.ecfr.gov/current/title-29)

<https://www.ecfr.gov/current/title-29>

[40 U.S.C. 3142](https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra)

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

FAQs

1. 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 section of LCPtracker. This includes but is not limited to OJT forms (1337, 838, 832, etc.), apprenticeship registration, garnishment documentation (redacted), 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.

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

Generally speaking, professional services firms do not need to submit certified payrolls; however, the requirement is situational. There are times when certified payroll is required for professional service 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.

3. What happens if I am working on a CDOT job, but I don't have a CDOT Form 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 the company on a 205 and enter that company's 205 so that permission is granted 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.

3. 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.

4. How do I report working on two or more different projects within CDOT's LCPtracker?

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 the vast majority of projects that are advertised by CDOT, there will 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.

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

This is not an allowable practice. Each contractor and subcontractor must accurately report their own payroll.

6. 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.

7. 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.

8. 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.

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

Payroll employees of a contractor should never share a username.

10. 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, the contractor is in compliance.

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.
- 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.

Contractor's Guide for Paying/Reporting Overtime

According to the Colorado Overtime and Minimum Pay Standards Order (COMPS ORDER): 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 12 hours in a day. Contractors shall take the following steps to determine if or when overtime is required to be paid and reported.

Calculating Overtime

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	Su	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	Su	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	Su	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	Su	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.

Restitution

1. 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.

2. 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 (SF-1444) 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.

3. 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 approver 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 resubmitted.

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 redacted 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.