



Associated General Contractors of  
New Hampshire

# 2011 Davis Bacon Wage Analysis

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# Preface

Davis Bacon Wage Rates are wage rates set by the U.S. Department of Labor (DOL) to be applied on federally funded projects. Davis Bacon Wage Rates were established to ensure that construction workers received a fair wage across county and state lines. The rates are established through a voluntary survey that is distributed to General Contractors and Subcontractors by the Department. DOL considers the receipt of wage information on at least three workers from two different employers per job classification to be sufficient to calculate the prevailing wage.

According to regulations, the Department then calculates the prevailing wage by determining if the same wage rate is paid to the majority of workers employed in a specific job classification on similar projects in the area. If there is not a majority wage, then the average of the wages will be used. Additionally, the DOL must be able to calculate prevailing wages for at least fifty percent of key job classifications in order to issue a wage determination<sup>1</sup>. If there is insufficient data, the Department of Labor will combine counties into groups, effectively setting the same rates for those counties.

The survey and data collection methods have long been questioned for their accuracy. Lack of response and timeliness of analyzing the data have made the wage determinations somewhat unreliable. Survey participants have also reported a lack of transparency in determining the wage rates. On the highway side, the DOL began to use certified payrolls from the Department of Transportation as a primary data source because they provide accurate and reliable wage information. This also eliminates the need for the DOL to verify the data reported in the surveys. To collect data for Building and Heavy job classifications, the DOL changed the survey reporting time to better manage the quantity of data received.

Also of concern is the requirement that wage rates be set on a county-by-county basis. In a state as small as New Hampshire, it makes more sense to set rates for the entire state. A report by the Government Accountability Office (GAO) highlighted this issue; "...one way to improve accuracy is to survey areas other than counties because counties are arbitrary geographic divisions whereas other geographic groupings, such as the economic areas that used by the Bureau of Economic Analysis are based on regional markets that frequently cross county and state lines<sup>2</sup>." This would eliminate the problem whereby a contractor's project spans over two counties requiring the contractor to pay employees two different wages.

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<sup>1</sup>Key job classifications across all four construction types include bricklayer, boilermaker, carpenter, cement mason, electrician, heat and frost insulator/asbestos worker/pipe insulator, iron worker, laborer-common, painter, pipefitter, plumber, power equipment operator, roofer, sheet metal worker, tile setter, and truck driver.

<sup>2</sup>Government Accountability Office, *Davis Bacon Act Methodological Expertise Critical for Improving Survey Quality*, GAO-11-486T, (Washington, D.C., April 14, 2011)

# Wage Inequalities In New Hampshire

In October 2011, the Associated General Contractors of America (AGC) contacted state chapters regarding Davis Bacon Wage Rates. AGC stated that some state Departments of Transportation (DOT) were reporting that the Department of Labor (DOL) issued new rates for federal-aid projects that are significantly higher than current rates. This prompted the Associated General Contractors of New Hampshire (AGC of NH) to look at New Hampshire's Davis Bacon Wage Rates. The most recent survey was completed in August 2010, leading to new wage determinations for 2011.

## Action Timeline At-A-Glance

### October:

- Began conducting preliminary research & noticed significant increases in Highway Job Classifications
- Contacted NH DOT & US DOL about anomalies
- Contacted members to see who had submitted data

### November:

- Received information from US DOL that showed DOT submitted certified payrolls for the Highway wage data for 6 months worth of projects
- After reviewing responses from DOT and US DOL, determined that fringes were a main factor in the increased wage rates

### December:

- Presented new information to Board of Directors
- Decision whether to request new survey?

AGC of NH conducted a preliminary review of two counties (Belknap and Hillsborough), and compared rates from 2010 to 2011 in the Highway category only. The comparison showed that there were several job classifications that increased wage rates from 2010 to 2011. Most notably are the "Pounder" classification in Belknap County (increase of \$16.60), the "Guardrail Installer" classification in Hillsborough County (increase of \$30.12), the "Paver" classification in Hillsborough County (increase of \$30.28), and the "Pounder" classification in Hillsborough County (increase of \$20.99). See Figure 1: Comparison of Two Counties (pg. 3) for the complete chart.

The Association's Board of Directors reviewed the comparison and noted several concerns with the most critical being the wage increases. Tied to the wage rates are the fringe benefits, which also increased significantly in a number of classifications. Furthermore, there are inaccuracies between job classifications. In some instances, less-skilled classifications were making as much or more than skilled classifications. In an attempt to answer these questions, the Board requested AGC of NH contact the NH Department of Transportation and the U.S. Department of Labor. Members were also contacted to gauge how many companies submitted data, and if they had noticed rate increases on their federally funded projects.

Following the Board of Directors' discussion, AGC of NH completed a review of all counties and job classifications for Highway, Building and Heavy from 2010 to 2011<sup>3</sup>. This extensive review showed that the most frequent and significant rate increases occurred in the Highway job classifications. There were a few significant rate increases in the Heavy category, but they were not as prevalent as in the Highway category.

<sup>3</sup> The complete comparison of the Davis Bacon Wage Rates are available on the AGC of NH website at <http://www.agcnh.org>

**Figure 1: Comparison For Two Counties**

County: Belknap

Construction Type: Highway 2010 (3/12/2010); 2011 (8/26/2011)

Job Classification	2010 Rate/Fringe	2010 Total	2011 Rate/Fringe	2011 Total	Difference
Carpenter (fm. wk)	12.12/0.72	12.84	19.32/1.83	21.15	8.31
Cement Mason	18.00/0.00	18.00	18.50/0.00	18.50	0.50
Flagger	11.39/2.13	13.52	11.79/0.00	11.79	-1.73
General Laborer	10.00/0.19	10.19	13.54/2.95	16.49	6.30
Guardrail Installer	15.71/4.06	19.77	22.28/8.09	30.37	10.60
Backhoe Operator	15.79/0.00	15.79	22.08/6.00	28.08	12.29
Bulldozer Operator	16.40/0.00	16.40	19.70/0.00	19.70	3.30
Excavator Operator	17.00/0.00	17.00	21.98/0.00	21.98	4.98
Front End Loader	15.83/0.52	16.35	18.48/2.41	20.89	4.54
Grader	17.33/0.53	17.86	23.64/0.53	24.17	6.31
Paver	16.00/6.00	22.00	17.92/5.77	23.69	1.69
Pounder	22.21/5.82	28.03	30.73/13.90	44.63	16.60
Roller	13.05/4.09	17.14	16.16/4.91	21.07	3.93
Truck Driver	13.60/0.41	14.01	17.70/0.41	18.11	4.10

County: Hillsborough

Construction Type: Highway 2010 (3/12/2010); 2011 (8/26/2011)

Job Classification	2010 Rate/Fringe	2010 Total	2011 Rate/Fringe	2011 Total	Difference
Carpenter (fm. wk)	14.46/1.06	15.52	20.73/1.06	21.79	6.27
Flagger	10.18/1.37	11.55	11.79/1.37	13.16	1.61
General Laborer	12.98/2.60	15.58	17.23/2.60	19.83	4.25
Guardrail Installer	11.27/0.17	11.44	25.91/15.65	41.56	30.12
Crane Operator	17.75/1.92	19.67	23.14/2.08	25.22	5.55
Grader	19.93/5.08	25.01	25.75/6.00	31.75	6.74
Paver	15.65/0.00	15.65	28.88/17.05	45.93	30.28
Pounder	17.29/2.34	19.63	28.32/12.30	40.62	20.99
Roller	17.01/4.32	21.33	25.23/9.69	34.92	13.59
Truck Driver	13.60/0.41	14.01	17.47/3.47	20.94	6.93
Electrician	22.00/2.78	24.78	23.22/2.78	26.00	1.22
Landscape Laborer	11.18/0.00	11.18	14.40/0.00	14.40	3.22
Pipelayer	13.29/4.33	17.62	18.16/4.33	22.49	4.87
Mechanic	16.92/3.44	20.36	25.12/3.44	28.56	8.20

## Filing An Appeal & Working With Agencies

In light of the anomalies, AGC of NH contacted AGC of America for more information on how to approach the issue. AGC of America highlighted the nation-wide problems with Davis Bacon<sup>4</sup>. AGC of America also provided AGC of NH with the steps to file a formal appeal (Figure 2), as that would be the best course of action to correct the state problem.

### Figure 2: Wage Determinations Appeals Process

1. Has there been an initial decision in the matter? This can be:
  - an existing published wage determination
  - a survey underlying a wage determination
  - a Wage & Hour Division letter setting forth a position on a wage determination matter
  - a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage & Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in steps 2 & 3 should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

**Branch of Construction Wage Determinations  
Wage & Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210**

2. If the answer to the question in 1 is “yes,” then an interested party (those affected by the action) can request review and reconsideration from the Wage & Hour Administrator. Write to:

**Wage & Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210**

The request should be accompanied by a full statement of the interested party’s position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issued.

3. If the decision of the Administrator is not favorable, and interested party may appeal directly to the Administrative Review Board. Write to:

**Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210**

AGC of NH began the appeals process by contacting the the New Hampshire Department of Labor, who directed the Association to the Philadelphia Regional Office of the U.S. Department of Labor (NH is located within this jurisdiction). The Association was put in contact with Maria Duffy from the Regional Office who would assist AGC of NH is answering questions related to the wage rate increases.

At the same time, AGC of NH contacted the New Hampshire Department of Transportation (DOT) in regards to the increased wage rates. AGC of NH was put in contact with the Chief of Labor Compliance, who ensures compliance with DOL regulations. DOT responded that they were contacted by the DOL’s Philadelphia regional office in August 2009 to submit certified payrolls for one year’s worth of projects by December 2009. DOT stated that there was not enough time to adequately complete the request, and therefore the DOL allowed the department to submit six of the busiest consecutive months worth of payroll information<sup>5</sup>.

In working with Maria Duffy, it was determined that the DOT submitted the 6 months of payroll, but the DOL is not able to determine how DOT selected the projects

<sup>4</sup>AGC of America’s background information is available in Appendix A

<sup>5</sup> A full explanation of the DOT’s process in submitting the payroll information is available in Appendix B

that were submitted. Ms. Duffy noted that the DOL received submittals from New Hampshire contractors. She also told the Association that prior to issuing the wage determination, DOT had the opportunity to comment on the wages.

After reviewing the submittal process with DOT and DOL, AGC of NH presented this information to the Board of Directors during their November meeting. The Board of Directors requested the following information from DOL and DOT:

- If contractors submitted project way information to be included in the 2010 wage survey, can that information be retrieved for review by the DOL?
- What portion of those submittals is duplicate information that DOT sent, or new project information that was not included in the rate determination?
- If contractor submittals were not used, how would they affect the wage determination if added in a new calculation?
- How are the fringe benefits determined? Some job classifications have rates of \$13 or \$16, but added fringes of \$19.
- Continued concern over less skilled job classifications receiving wages equal to those of more skilled job classifications

The DOT responded with the process outlined in Appendix A. DOL responded that contractor submittals were not included in the calculation of the wage determinations. Furthermore, if they were included, they would not have significantly changed the rates. Neither DOT nor the DOL offered an explanation as to how the fringe benefits are calculated.

### **Remaining Concerns & Future Actions**

Working with the DOT and the DOL has helped the Association understand the process of 2011 wage determinations for New Hampshire. However, after reviewing the research, and the email correspondence with DOT and DOL, AGC of NH has a few remaining concerns:

1. How are the fringe benefits calculated, as some classifications had dramatic increases in fringe benefits from year to year?
2. Why do some less skilled classifications have a higher wage determinations than other, more skilled classifications?
3. Why do the wage determinations for New Hampshire include classifications that contractors do not use (i.e. Oiler)?

The DOL has informed AGC of NH, that if the Association wants to correct these issues, the next step would be to re-survey the construction industry.

# Appendix A

## **AGC of America Information on Davis Bacon Wage Rates**

***From email correspondence with Tamika Carter, Director Construction HR, AGC of America***

***Dated October 31, 2011***

AGC of America is starting to hear more from state chapters about significant jumps in new wage determinations (WD) in various states. The Association anticipated this, particularly as DOL has been under pressure to update old WDs that had outdated, too-low wage rates from too-old surveys. It's also a problem in areas where DOL relies on union (collectively bargained) rates in areas where open shop construction dominates. The Association is also finding significant errors made by staff processing new WDs, e.g., using the wrong sector data. AGC of America has begun to track these issues and plans to discuss the general problem with DOL.

The national office does not normally submit formal challenges to particular WDs. If AGC of NH has statistical information to support the claims made in the appeal, it would be advantageous.

# Appendix B

**Department of Transportation Process For Submitting Certified Payrolls**  
***From email correspondence with Jay Ankenbroch, Chief of Labor Compliance,***  
***DOT dated November 29, 2011***

The request for payrolls came from Rick Lopez of the Philadelphia US DOL Office around August 2009. Initially Rick asked for 1 years worth of payrolls by December 1, 2009 and the DOT office realized that this would not be possible in the time frame we had. Rick lowered the request to 6 of the busiest consecutive months. He was sent all payrolls of projects from April 2009 to September 2009. On December 1, 2009 Jay Ankenbroch sent the payrolls to Rick Lopez with a printout of classifications that had been requested in the past months. The reason DOT sent the classification request was to show the US DOL how often some of the requests were made, and with hope that the frequently used classifications would be added to the new wage rates. DOT is unable to print out an accurate copy of the wage rate request sent to the US DOL, as the system deletes the requests once the project closes.

DOT collected payrolls directly from the project Contract Administrator and/or consultant. All payrolls that were sent to the US DOL were copies of payrolls and fringe breakouts that had been submitted by contractors. Employees' personal information was redacted. DOT did not include any information that was not directly supplied to DOT by the contractors. The Office of Compliance did not copy all of the payrolls sent to the US DOL, as it was four (plus/minus) large boxes, and adequate storage space was not available. All the original payrolls were returned to the project site for safekeeping. Once the project was completed the payrolls went to either Construction Audit for archiving, or to the town to keep for three years from the end date of the project (as required by FHWA 1273).

At the time of the request from Rick Lopez, DOT was in the first year for ARRA projects. Most, if not all, projects from 2009 have completed the construction audit, or the payrolls are stored by the town. Retrieving all the payrolls, copying them, and redacting personal information will be extremely time consuming.

Sometime in 2012, the US DOL sent surveys to all contractors requesting what classifications their companies used and what cash and fringe rate was paid to employees in the classification. This information was also used to determine what was the "going rate" for the counties. This survey is a volunteer survey and not all contractors will respond.