

Truck Driver Stakeholder Meeting/Teleconference
July 20, 2010 9:30 am – 12:30 pm
Summary of Comments

Commenter #1, a representative of truck drivers, indicated that the policy letter of June 19, 2009 is inconsistent. The policy excludes from LDBA coverage drivers who transport materials from an offsite location and “merely deliver” the materials at the site of work. The policy goes on to state that windrowing materials or deliveries that are an integral part of construction work at the site are covered. The commenter stated that all delivery of asphalt, concrete and gravel is integral to construction at the site, so it should all be covered, as it all needs to be placed in a specific location at a specific time.

Commenter #2 agreed with the first commenter and stated that it does not make sense that a driver would be covered when hauling material away from the project but not for going and picking up a load of gravel and hauling it back to the project.

Commenter #3 indicated that there are 4,000 truckers and companies affected and that a clear strategy needs to be developed to clarify and or change the LDBA requirements. The commenter voiced frustration with confusion from Wage and Hour Investigators and stated that the regulations were being abused and were not being enforced. The commenter indicated that some truck drivers are living in poverty due to the wages for off-site work dropping to minimum wage.

Commenter #4, a trucking industry member, indicated a need to focus attention on solutions and indicated that the LDBA regulation was no longer being applied as written. The commenter provided analysis of court precedents and indicated that the current policy is based on a court decision that is legally flawed and that the current situation does not level the playing field for trucking labor costs which results in an inequitable bidding process. The Department of Labor and Workforce Development (DOLWD) has communicated its intent to evaluate previous interpretations and consider legal changes. The case interpretations should be that the regulation is valid and the definitions as written should apply and that companies who don't wish to pay prevailing wages shouldn't participate in public works contracting.

Commenter #5, a truck driver, was unhappy that the meeting had been scheduled during the workday and suggested that an evening meeting would have more trucker participations. Truck driver owner/operators are not making enough to cover costs and that the law is not being enforced. The commenter concluded by saying that future meetings should be scheduled in the evening.

Commenter #6, a trucking company owner, agreed with commenter #1 and #4 and said that material import to a public construction project should be covered by LDBA requirements when drivers perform services for non-material supplier working under contract for a prime contractor or subcontractor at any tier. Full LDBA coverage should apply regardless of the type of material being hauled. All drivers should receive prevailing wages regardless of contractual relationships. The commenter proposed that a separate classification should be established for truck driver owner/operators and a prevailing rate of pay should be established that accounts for costs. The commenter concluded with a statement that it is outrageous and unacceptable that policies are written without any public comment or due process and that no office should be allowed to wield that kind of power without oversight.

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Commenter #7, a trucker in the past now in trucking company management, agreed with commenter #4 and said that it is not right that a truck driver gets paid minimum wage for material delivery and prevailing wage for hauling material away. It is unfair to the driver and to the contractors bidding on projects. The commenter concluded by saying that drivers are being abused and are afraid to complain due to fear of retribution.

Comment #8, a trucking company owner, agreed with most of the previous comments and said that there needs to be some level of consistency. There is too much room for liberal interpretation. The current regulations are written in a way that a person can find a way around them. Some companies are finding a way around by not having employees. The industry needs consistency and the policy or regulation needs to address all of aspects of trucking – not just dirt haulers. The current policy and regulations are not clear and it is difficult to figure out how to comply. The rules need to be clarified on the general contractor's responsibility, the trucking company's responsibility and the material supplier's responsibility. Some material suppliers hire truckers to deliver materials and are under common ownership with construction contractors, so they can underbid other truck driving companies. This does not support competitive bidding and allows suppliers to monopolize material delivery to public construction projects. It also allows material suppliers to have exclusive contracts with trucking companies and brokers to the detriment of the rest of the trucking companies.

Commenter #9, a trucker and trucking company owner, indicated that problems go back to 1983. Prior to that time, every driver got paid prevailing wage regardless of what they were delivering to a public project or where it came from. After that owner/operator wages were not sufficient to cover prevailing wage after deducting the cost of operating the truck, but the state did not address the problem. Truckers should get paid the prevailing wage whenever there is government money on the project. There should be no room for negotiation and the state should enforce payment of prevailing wage and benefits all the time. It is too difficult to count minutes while a driver is on the project footprint and very difficult to determine whether an employee is paid correctly. There are too many loopholes now. The commenter said that truck drivers working in his company are currently paid prevailing wages 100% of the time when they are dispatched to a public construction project.

Commenter #8 made an additional statement to request DOLWD to clarify the regulation, so the competitive market is in place along with the fair market (level playing field for labor costs). Companies in compliance aren't able to competitively bid. The determination process needs to be streamlined. The commenter would like to see the issue addressed to require prevailing wage for material suppliers that also have trucks or that have exclusive contracts with trucking companies, so that they are on an equal competitive ground and there isn't a monopoly for material suppliers who have their own trucks.

Commenter #9 added that each trucker, owner/operator and employee driving a truck should be paid prevailing wages each Friday. The rate for the truck tractor, belly dump, etc. should be paid separately. Drivers and equipment are different. The general contractor should be responsible to monitor everything. Responsible people should do what they are supposed to and follow the law. Prior to 1983 it worked well. It's impossible to make a living on these wages today.

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Commenter #10, a trucking owner for 30 years, has no employees and believes that most drivers do not understand what Davis Bacon is and they take it for granted that their employer is honest. Davis Bacon wages are not being paid properly or on time even under existing law, regulation and policy. Most employees don't understand or realize they are getting cheated and are in fear of losing their job. That's an enforcement problem, and the laws are on the books, but nobody is enforcing them. Davis Bacon wages should be paid 100% of the time. It doesn't make sense to pay non-Davis Bacon wages for material delivery to a public construction project. The truck has material that is integral to the site and the project. This meeting is bogus. The commenter wants an in-person meeting.

Commenter #11, a trucking owner, provided support for comments made so far the drivers and owner/operators need to be paid fairly. Right now, they are not being paid fair and not being paid weekly. The commenter supports the current regulations as written and believes that they mean truck driving activity must be paid at Davis Bacon wages 100% rather than just on the project footprint. DOT project staff should confirm and verify accurate and consistent pay. Wage and Hour does not know what's going on in the daily job. Wage and Hour policy letters don't provide an equitable bidding process as companies may not know the policy exists. The commenter complained of inconsistent answers to email questions posed to Wage and Hour. Policies are updated without public notice and policies are not included in project specifications. The court agrees that Davis Bacon intends broad coverage, but where we are now is no Davis Bacon, just the lowest process however that can be achieved, which is usually to cut owner/operator earnings. Investigators can't enforce and truckers can't agree and make a united stand. Most want 100% Davis Bacon. Out of state drivers are willing to make less money and are taking local drivers' jobs. The commenter would like to get clarification on what is the difference between regulations and policies. The regulations have not been changed, but policy letters have been changed and truckers are being hurt, especially owner/operators and employees.

Commenter #1 added that the law is and was intended that round trip drivers be paid Little Davis Bacon wages the entire time specific to that job. Multiple stops or delivering water – those aren't covered.

Commenter #2 added that any employees working as truckers on public project should be covered whether hauling materials to the job or away from the job. Most general contractors have their own gravel pits which are usually dedicated to a public construction job they have and yet they still don't pay properly. The state isn't enforcing correctly, as there is a loophole even though most of their pit is for public construction. This also creates a loophole for a contractor to cheat because they are also a supplier. Truck drivers are waiting as much as eight months to get paid on public construction jobs. In Fairbanks, some companies pay Davis Bacon wages to truck drivers and a separate wage for the truck and trailer. Trucking companies can't compete on bids when pay is lower than Davis Bacon.

Commenter #11 added that certified payrolls need to be check and get a copy of the cancelled check. Contractors may report a check on the payroll, but it isn't actually issued and owner/operators are not getting paid timely.

Commenter #2 added that drivers who lease trucks have huge problems. Drivers who own truck and trailer have to pay insurance and fuel and then lease the truck to a driver. But on public works

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and prevailing wage jobs that shouldn't happen. There is no overtime or fringe benefits paid. Drivers of leased trucks should be considered employees and should be paid prevailing wages. Companies are saying those drivers aren't employees and don't have to be paid prevailing wages.

Commenter #8 added that drivers of leased trucks are a problem and suggested that Wage and Hour review payrolls and confirm cancelled checks to ensure drivers are paid. This commenter indicated that conflicting information had been provided by Wage and Hour in the past and questioned how the law was enforced and what the penalties are for non-compliance. The commenter indicated that the current situation almost encourages illegal activity among trucking companies and contractors.

Commenter #7 added that the regulations need to be simplified with an aim of 100% Davis Bacon wages for all work on a public construction project. Pamphlet 400 says owner/operators should receive wages above operating costs, but there is no clear definition of what operating expenses are.

Commenter #1 added that there was a court case in Anchorage this spring where an owner/operator sued for prevailing wages.

Commenter #4 indicated that owner/operators have not come forward with complaints, because the off-site wage determination makes it near impossible to establish costs of operation for the time covered by prevailing wage. Delivery from offsite is not covered, but haul away from project is covered, so hours are mixed up and so are operating costs. The department needs to go back to enforcing the regulation as written. Every hour under contract should be paid Davis Bacon wages. The department should go back to the Alaska Supreme Court and request a clarification on the Board of Trade case. We do not need more meetings. Just enforce the regulation as written. Suggested the state have a standard put in bid documents that truck drivers are paid per regulation no questions asked.

Commenter #12 stated that Senator French's letter of May 24, 2010 should be entered into the record of the meeting as well as the Letter of May 4, 2010 from the Department of Law to Ms. Emerson.

Commenter #11 indicated that participation was low due to confusion about the meeting.

Commenter #3 indicated that there is no good time to have a meeting of this nature until the end of October, because drivers work all day and night. The department is not listening and there should be an outline for follow-up meetings. The commenter indicated he had not been paid for 6 months and Wage and Hour Investigators are not enforcing the rules. Employment Security Tax letter of 4/23/2009 should be followed. Trucks in dirt business go on scale and are not paid so trucks are not maintained. Unions are scared of labor coming down on them. Drivers won't comment or complain because they are scared.

Commenter #6 added that the department should enforce pamphlet 400 and its definition of on-site. The 205 Wage and Hour Policy Letter and amendments are conflicting with the regulations. Enforce the regulation as written. If it says 100% Davis Bacon, then the playing field will be leveled and we won't need more of these meetings.

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Commenter #13 stated that this issue concerns hundreds of thousands of employees and employers working in the industry. State and federal law are in place to protect worker's wages not to protect contractors. Truck drivers are an intricate part of work on projects. Excuses are being made pointing at the lawsuits and their interpretations. In bid projects, all work and costs should be included. Maintenance, repair, insurance and worker's compensation are costs that need to be included. Drivers are coming from lower 48 to take Alaskan jobs. The Department of Law letter indicates Department of Labor will be reviewing policy. We have an opportunity to move forward due to these comments. Worker misclassification letter sent to the Attorney General from the Teamsters in March of 2010 should produce legislative action from the State. Set rules for owner/operators and contractors that are clear and can be followed and enforced.

Commenter #11 would like all e-mail, written comments and transcript of meeting available.

Commenter #8 added that some drivers have been advised to contact an attorney, but they don't have the resources to do so. Lease truck drivers have no investment or ability to determine profit. Operating costs are evaluated after the project ends and then the driver or company realized they didn't make prevailing wages. Some owner/operators will skip maintenance and show profit, the upline contractor may have no say in operational costs. Is this within the Department of Labor's jurisdiction or is this a legal issue for the courts? What is a contractor's level of responsibility when hiring independent business owners?

Commenter #1 added that the prevailing rate should be split out and paid separately. Maintenance cost is part of the business choice, but prevailing wages are not. Cost of doing business is part of the free market and right now we're talking about prevailing wages.

Commenter #8 added that owner/operators must make prevailing wage after operating expenses, but how do they determine what operating expenses are? Can the department establish a classification for operating costs?