

# DAVIS BACON and SERVICE CONTRACT JOBS – Friend or Foe?

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Prevailing wage contracts are becoming more and more common in the construction industry. If your business has steered clear of these jobs due to the complexity, read on to discover new reasons why it may be time to reconsider your gameplan.

The laws surrounding Davis Bacon and prevailing wages came about years ago as a result of public works contracts that were required to be awarded to the lowest bidder. Proponents of wage laws felt that a level playing field was needed among contractors and that it was in the best interest of workers to ensure that contracts were not awarded to contractors that paid subpar wages and offered no employee benefits. In other words, creating a set wage floor would ensure that workers were provided a competitive wage plus enough to provide for necessary benefits such as health insurance, vacation time and retirement savings.

So it became law. Jobs involving Federal taxpayer money would be governed by several rules, one of which is a set wage called the prevailing wage. Prevailing wages are determined by the Department of Labor and communicated in the job contract. The contract lists the wage rates for each type of employee who will work on the contract.

Prevailing wages have two basic components:

1. Base hourly rate
2. Fringe wage rate to cover the cost of benefits such as health and retirement.

Each employer covered under a prevailing wage contract can choose how to pay the fringe wage to their employees. It can be paid in cash, directly to the employee, or it can be used to fund an employee benefit program. Many employers pay the cash directly to the employee because they are unsure of how to offset the cash with their existing benefit program or to use the cash to purchase some type of new benefit program. But this can be a costly choice. Costly, because paying wages in cash must flow through payroll, which adds the burden of payroll taxes and mandated insurances like workers' compensation and unemployment. All this cuts into profits, or worse, can take a toll on your bid.

So what types of benefit plans can be used to offset those payroll taxes? The very same benefits you may already have in place like health insurance, vacation pay and 401k/profit sharing. Costs that the employer pays toward any of these benefits can offset against fringe wage. These are called "fringe credits". In addition, any fringe wage that is left over after the offset can be diverted to 401k. The result is that no fringe dollars are left to run through payroll and therefore no payroll taxes or insurances are paid on those dollars.

It sounds complicated, but usually only requires minimal change to what you have in place. It does require some administrative set-up and recordkeeping, but is well worth the effort to explore if you are doing any significant amount of work on Davis-Bacon contracts (DBRA) or Service contracts (SCA). The 401k credit is fairly simple; however, first you will need a 401k plan with a plan document that includes the DB or SCA provision.

Your employees may take some warming up to the concept. After all, it's not easy to ask an employee to part with the take-home pay he or she is used to. But this is where a little upfront educating can go a long way to the end result. Show your employees a paystub with the cost of the FICA tax on their gross dollars. Explain how the fringe 401k program can divert some of those dollars to savings without the FICA cost. Most employees will understand that this method has a 7.65% advantage over the traditional way of deferring into 401k. Employees are 100% vested in all fringe wage deposits, so they feel secure that the money is theirs to keep even if they leave the employer. The best part is that employees, who have found it difficult to save otherwise, now will see a nest egg building.

Bottom line, as prevailing wage laws are spreading beyond just Federal work, it may be time to explore your options. It may just tilt the scales in your favor by taking advantage of laws you previously thought were too complicated to tackle.

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