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A Win for Clarity: What a Recent Federal Court Decision Means for Davis-Bacon Compliance

Following the Department of Labor's 2023 Davis-Bacon rule changes, federal construction contractors faced a pressing question: not whether paying prevailing wages is required, but how far those obligations could extend. Could they reach off-site material suppliers? Delivery drivers? Contracts that omitted Davis-Bacon clauses entirely? A recent federal court decision in *AGC of America v. US Department of Labor* answers these questions in important ways, vacating several disputed provisions and giving contractors greater certainty when pricing, bidding, and administering federal construction projects.

The ruling addresses three aspects of the 2023 regulations that sought to extend Davis-Bacon obligations beyond their traditional scope. By vacating those provisions, the decision creates a more predictable compliance environment and reinforces an important principle: Davis-Bacon enforcement works best when contractors, workers, and regulators operate under clear, objective rules.

Why Clear Rules Matter

At its core, Davis-Bacon is a construction wage statute. Contractors rely on its regulations and wage determinations to set labor costs, prepare bids, price change orders, evaluate subcontractors, and manage project risk.

When the boundaries of the law are unclear, compliance becomes harder. Contractors may struggle to determine which workers are covered, how to allocate labor costs, and whether certain activities trigger prevailing wage obligations. That uncertainty can lead to inconsistent compliance efforts, disputes during audits, and increased project costs.

The recent ruling clarifies that Davis-Bacon requirements must remain tied to the authority Congress granted—not expanded through regulatory interpretation. This creates a more predictable framework for everyone involved in federal prevailing wage enforcement.

Preserving the Construction-Manufacturing Distinction

One provision of the 2023 rule sought to extend Davis-Bacon coverage to certain material suppliers operated by contractors or subcontractors. The issue was not that contractors objected to paying prevailing wages where required—the concern was that the regulation blurred the long-recognized distinction between construction and manufacturing activities. For decades, contractors have relied on the ability to distinguish labor performed on a covered construction project from labor performed in off-site manufacturing, fabrication, or supply operations.

That distinction matters because it enables contractors to accurately determine labor costs and compliance obligations before submitting bids. By vacating this portion of the rule, the court preserved a boundary contractors have long used to assess risk and manage projects. Clearer distinctions simplify compliance and reduce disputes over worker classifications and wage coverage.

Eliminating Ambiguity for Delivery Personnel

The court also vacated a provision that would have extended Davis-Bacon coverage to delivery truck drivers who spent a “not de minimis” amount of time at a project site. The issue was not whether any transportation-related activities can fall under Davis-Bacon—the concern was the lack of a clear standard for determining when coverage applies.

Contractors need objective rules. Vague terms create compliance challenges because project personnel, subcontractors, and auditors may interpret them differently.

Delivery personnel routinely enter and exit job sites, coordinate material deliveries, and interact with field personnel. Without a clear threshold, contractors faced uncertainty about whether prevailing wage obligations would be triggered. The decision removes that uncertainty and reinforces the importance of standards that can be consistently applied across projects.

Protecting Contractors from Retroactive Obligations

Perhaps the most significant aspect of the decision is the court's rejection of a provision that would have allowed Davis-Bacon requirements to be imposed retroactively on contracts that omitted the required clauses.

Federal contracting depends heavily on predictability. Contractors calculate labor costs, obtain subcontractor pricing, evaluate productivity assumptions, and submit bids based on the contract documents. When obligations can be imposed after contract award, accurate pricing becomes significantly harder.

The court's ruling promotes fairness and transparency by ensuring that contractors can assess their obligations based on the terms set forth during procurement. Clear expectations at the outset reduce the likelihood of later disputes and encourage more accurate bid pricing.

A Positive Development for Davis-Bacon Administration

Some may view this decision primarily through the lens of regulatory authority, but its practical importance is broader. Effective enforcement depends on rules that are clear, objective, and consistently applied. When contractors understand who is covered and what obligations apply, compliance improves. Investigations become more straightforward. Audits become more predictable. Disputes become less frequent.

In that sense, the ruling strengthens Davis-Bacon administration by clarifying the distinction between covered and non-covered activities. Contractors gain greater certainty, workers see more consistent application of the law, and enforcement agencies benefit from standards that are easier to administer and defend.

Practical Compliance Checklist

- ✓ Confirm whether Davis-Bacon applies before submitting a bid.
- ✓ Verify that the applicable wage determination is included in the solicitation.
- ✓ Review worker classifications and fringe benefit calculations early in the project.
- ✓ Ensure Davis-Bacon clauses are properly incorporated into subcontracts.
- ✓ Maintain documentation supporting any distinction between on-site construction work and off-site manufacturing or supply operations.
- ✓ Monitor subcontractor compliance through regular certified payroll reviews.
- ✓ Train project managers and payroll personnel on project-specific prevailing wage requirements.
- ✓ Preserve bid assumptions and labor pricing documentation.
- ✓ Address classification and coverage questions with counsel before work begins.
- ✓ Consult counsel when project participants perform work near the boundary between covered and non-covered activities.

The Bottom Line

The AGC case does not reduce the importance of Davis-Bacon compliance, nor does it eliminate prevailing wage obligations on covered federal projects. What it does is equally significant: it promotes clearer, more predictable rules governing when and how Davis-Bacon applies.

For contractors, certainty is critical. Clearer rules lead to better bids, more accurate pricing, improved compliance, and fewer disputes. This decision represents a positive development—not only for contractors, but for the effective administration of Davis-Bacon itself.

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