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This is in reply to your letter of January 15, 1973, requesting an interpretation of section 5.31 of Regulations, 29 CFR Part 5.

In accordance with section 5.31(a) of the Regulations, a contractor may not discharge his minimum wage obligations under the Davis-Bacon and Related Acts by making payments or incurring costs for bona fide fringe benefits unless such fringe benefits are "of the types listed in the applicable wage determination or otherwise found to be prevailing by the Secretary of Labor, or by a combination thereof.

Thus, since it is apparent in the example cited in your letter that the applicable wage determination does not list any fringe benefit, the contractor must pay his employees a basic hourly rate of not less than $6.36 per hour and cannot take any credit for fringe benefit payments in meeting his obligations under the Davis-Bacon and Related Act wage determination in this case.

As you may be aware, specific fringe benefits are included in Davis-Bacon and Related Acts wage determinations only when information available to the Department of Labor indicates that the payment of such benefits is a prevailing practice in the locality. If your agency has such information with respect to the instant case, we would be glad to consider it in making any future revision of the wage determination.

Sincerely,

Warren D. Landis
Assistant Administrator

[redacted]

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