

DBRA-13

June 26, 1980

This is in reference to your letter addressed to our *** Area Office, concerning the Department's interpretation of the prevailing wage provision of the Davis-Bacon Act and regulations issued thereunder, regarding the payment of fringe benefits for all hours worked including overtime hours. We regret the delay in responding; however, your letter was inadvertently misplaced.

The Davis-Bacon Act requires contractors or subcontractors performing work on a covered contract to pay "all mechanics and laborers employed directly upon the site of work, unconditionally and not less often than once a week ... the full amounts accrued at time of payment," computed at wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged in similar work in the locality.

Section 1(b) of the Act, as amended July 2, 1964, defines the term "wage rates" to include the basic hourly rate of pay and the amount of "(a) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and (b) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, ..."

Therefore, since the Davis-Bacon Act requires the payment of the prevailing wage rate (i.e., basic rate and fringe benefits) for time spent on the site of work, fringe benefits must be paid for all hours worked, including overtime hours as well as straight time hours.

The fact that the Congress included in the 1964 Amendment specific language allowing the exclusion of fringe benefit payments from the computation of the basic or regular rate on which the time and one-half overtime premium is computed is further evidence that it intended that fringe benefit payments, like all other components of wages must be paid for all hours worked. In this regard, we should also like to call your attention to section 5.32 of Regulations, 29 CFR Part 5.

We hope this explanation clarifies the Department's position in this matter. For your information, we are enclosing copies of the Davis-Bacon Act and the Regulations.

Sincerely,

Dorothy P. Come
Assistant Administrator