

State of Wisconsin Department of Administration
Division of Energy, Housing and Community Resources

FLEXIBLE FACILITIES PROGRAM IMPLEMENTATION HANDBOOK

CHAPTER 7: LABOR STANDARDS



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CHAPTER 7: LABOR STANDARDS

1.0 Introduction

It is important that investments in Flexible Facilities Program (FFP) projects be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Projects funded by the FFP must comply with all applicable federal laws and regulations, and with all requirements for state, local, and Tribal laws and ordinances to the extent that such requirements do not conflict with federal laws.

Grantees and subrecipients are to help ensure that FFP projects incorporate fair labor practices and high labor standards, including but not limited to:

- Having project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hiring provisions;
- Prioritizing the hiring of workers from historically disadvantaged communities, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers;
- Promoting a workforce that meets high safety and training standards, including professional certification, licensure and/or robust in-house training is promoted.
- Prioritizing contracting with employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws as a further measure that may minimize project disruptions and delays.

Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

2.0 Relevant Laws

Relevant laws and the related requirements for FFP projects pertaining to the fair labor practices and labor standards are summarized in the sections that follow. Additional labor laws and regulations may apply to contractors/employers and the grantee's project. Subrecipients are subject to the same laws and requirements as grantees. Grantees, subrecipients, prime contractors and their subcontractors are responsible for ensuring compliance with all applicable laws.

2.1 Contract Work Hours and Safety Standards Act (CWHSSA)

In accordance with Treasury Capital Projects Fund (CPF) requirements and *2 CFR Part 200 Appendix II(E)*, the *CWHSSA (29 CFR Part 5.5(b))* is applicable to FFP projects. *CWHSSA* requires that workers receive "overtime" pay at a rate of one and one-half times their regular "base" hourly pay rate or one and one-half times the federal basic rate of pay, whichever is higher, for hours worked over forty (40) hours within a work week on federally funded projects.

The *CWHSSA* does not apply to prime contracts of \$100,000 or less. However, the overtime provisions of the Fair Labor Standards Act (FLSA) will apply and are applicable to all FFP contracts, as summarized in section 2.2 of this chapter. If the prime contract exceeds \$100,000, *CWHSSA* applies to the prime contractor and all its subcontractors, regardless of the subcontract value.

Violation of the *CWHSSA* makes the contractor liable for unpaid wages, liquidated damages per the terms of *29 CFR Part 5.8* (currently \$32 per employee per day of violation, updated periodically) in cases of intentional violation, a fine of \$1,000 and/or six months imprisonment for each offense (per *229 CFR Part 5.8* and the *USDOL 2024 update* at <https://webapps.dol.gov/elaws/elg/cwhssa.htm>, effective 01/16/2024). Violations may also result in termination of the contract. Wage restitution should be paid to employees, copy of each check placed in the project's Labor Standards file. If liquidated damages are deemed applicable, the contractor will be liable to the United States government for payment, computed at \$32 per day per violation. DEHCR may make a determination that liquidated damages charges may be waived. The grantee should contact DEHCR for a determination.

2.2 Fair Labor Standards Act (FLSA)

Employers/contractors working on the FFP project are all subject to compliance with the *Fair Labor Standards Act (FLSA)*, including the *FLSA overtime provisions* (at <https://www.dol.gov/agencies/whd/overtime>), requiring an overtime pay rate of one and one-half times their regular "base" hourly pay rate for employees aged sixteen (16) and older for hours worked over forty (40) hours within a work week for any employer (with some exemptions). Forty (40) hours within a work week applies to all hours worked by the employee for that contractor on all federally funded job sites.

3.0 Fair Labor Practices

Terms, conditions, considerations, and activities pertaining to ensuring compliance with the fair labor practices and standards for FFP projects are summarized in the sections that follow.

3.1 Wage Rate

Competitive wages and payroll documentation are required for construction laborer and mechanic job classifications. Workers in a laborer or mechanic job classification must be paid wages and benefits in accordance with the applicable provisions summarized as follows:

- Davis-Bacon and Related Acts (DBRA) and the Federal Wage Determinations **do not** apply to FFP projects *unless* the FFP project is partially funded with other funding sources that are subject to the DBRA requirements, in which case all DBRA requirements must be met for the FFP project.
 - The federal funding source that is subject to DBRA will be the responsible agency for monitoring DBRA compliance. The grantee and DEHCR will be responsible for monitoring compliance with the fair labor practices summarized in the summary that follows within this section of the chapter.
- If DBRA is confirmed to not apply to the contract for the FFP project, the requirement to have fair labor practices will still apply as follows:
 - If the laborer or mechanic is a member of a collective bargaining agreement, the laborer or mechanic shall be paid wages and benefits in accordance with the collective bargaining agreement.
 - If the laborer or mechanic is not a member of a collective bargaining agreement, the laborer or mechanic is entitled to wages and benefits in accordance with whichever is the higher of:
 - Their regular hourly wage and fringe benefits rate for other similar work they perform for the contractor;
 - An hourly wage rate (including cash wage plus fringe benefits rate) not less than the wage rate specified in Federal [Executive Order 14026](#) for work performed on or in connection with covered federal contracts, which is an hourly rate totaling **\$17.20** per hour as of January 1, 2024, per the [Notice of Rate Change for 2024](#); increasing to **\$17.75** per hour starting January 1, 2025, per the [Notice of Rate Change for 2025](#)); and **subject to an annual inflation increase in 2026**. The State and grantees must demonstrate fair wages are being paid for work on the FFP project.
 - Apprentices shall be compensated according to the provisions of their Federal or State recognized apprenticeship documentation.

3.2 Payroll Records

Prime contractors and subcontractors for construction activities are required to submit payroll documentation to verify fair labor practices, due to the grantee (or subrecipient) no later than **seven (7) days** after the conclusion of each payroll period for all pay periods in

which their employees worked on the FFP project. Records are to be submitted weekly or bi-weekly, depending on the employer's regular payroll cycle.

In accordance with the CWHSSA recordkeeping requirements specified on the [USDOL CWHSSA guidance](#), the payroll documentation must include the following:

- Prime contractor or subcontractor company name;
- Payroll period dates;
- Employee names – for each laborer or mechanic working on the FFP project for construction (i.e., new construction, renovation, rehabilitation, expansion, demolition, and related infrastructure and equipment installation at the FFP project site)
- Each employee's unique identification (ID) number (the assigned employee ID number or last four digits of their social security number);
- Each employee's address
- Each employee's telephone number
- Each employee's job classification for work performed
- Number of hours each employee worked per day and total hours worked each week on the FFP project;
- Hourly rate of pay, including the hourly wage rate for straight-time (ST) hours (hours worked that total 40 and less during the work week) and overtime (OT) hours (hours worked over 40 in the work week);
- The total gross wages amount earned, and net wages amount paid to the employee after deductions;
- Hourly fringe benefits rates, including the hourly rate cash equivalent of each fringe benefit;
- Payroll deductions made for the pay period; and
- Additional payroll supporting documentation related to wages, fringe benefits plans and rates, records of payments made to employees and fringe benefits plans, and deductions (types, employee authorizations, etc.) on file, which must be provided upon request to the grantee, subrecipient, DOA, the U.S. Department of Treasury, and/or other state and federal agencies.

3.3 Payroll Record Templates

While not required, contractors may use the payroll record templates from state or federal agencies. This may include the State of Wisconsin Department of Transportation's [Weekly Payroll Report](#) and [Compliance Statement](#) (found on the [WisDOT payroll compliance website](#)), which is recommended by DEHCR; or the U.S. Department of Labor's [WH347 Weekly Payroll Record Form](#). If the required contact information listed above is not listed on the payroll for each employee, it must be available and provided in a separate document.

3.4 Contractor Payroll Records Retention

The payroll records must be retained by a *construction prime contractor and their subcontractors* for a period of three (3) years after all work on the FFP project by the prime contractor is completed, in accordance with *CWHSSA (29 CFR Part 5.5(b))*. Grantees are to retain all payroll, labor standards, and contracting related records they collect from construction prime contractors and subcontractors in the FFP project file for seven (7) years, in accordance with the records retention specifications in Chapter 2: *Grant Administration of the FFP Implementation Handbook*.

4.0 Bidding

REQUIREMENT: The grantee must comply with the FFP procurement requirements, as summarized in Chapter 3: *Procurement & Contracting of the Handbook*; and include related required language (conflict of interest, equal opportunity, labor standards, lobbying, contractor clearance, etc.) in the bid documents and contracts.

PROCEDURE: In advertising for bidders, include a notice that fair labor practices and standards provisions apply to the project. Refer to Chapter 3: *Procurement & Contracting of the Handbook* for guidance on the advertisement for bids and bid packet specifications. Refer to the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03) and Chapter 3: *Procurement & Contracting of this Handbook* for guidance on language and documents required or recommended to be included in procurement solicitation and bid packet documents and all prime contracts and subcontracts for construction.

5.0 Contractor Clearance

REQUIREMENT: Grantees must verify that the successful bidders and all subcontractors are eligible to work on federally funded contracts.

PROCEDURE: Because of past practices, certain contractors have been debarred, suspended, or otherwise made ineligible to work on federally funded contracts. An exclusion record identifies parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. Exclusions are also referred to as suspensions and debarments. FFP grantees must ensure that awards for construction, service, and purchasing contracts are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federally assisted programs or projects, to comply with federal regulations (*2 CFR Part 180* and *2 CFR Part 200.214*).

Contract Language Insertion

All prime contracts and subcontracts must include the contractor debarment clearance and certification language that appears in *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03 for Chapter 3 of this *Handbook*). When a contractor enters into federally assisted contracts, they certify their eligibility and that they will not employ ineligible subcontractors to perform the work.

Correction of any infractions of the aforesaid conditions, including infractions by any of the contractor's subcontractors is the contractor's responsibility.

Debarment Check Instructions

Debarment checks are to be conducted for all prime contractors and subcontractors prior to the execution of their contracts to ensure they are eligible for contracting for a federally assisted project. Refer to the "Contractor Clearance (Debarment Checks)" section of Chapter 3: *Procurement & Contracting* for guidance and requirements pertaining to contractor clearance and debarment checks in the System for Award Management (SAM) at <https://sam.gov/content/entity-information>. If any contractor or their owner or officers have a current "exclusion" that appears on their SAM record, it must be reviewed to determine if contractor is excluded from eligibility for contracting for the FFP project. Contact the assigned DEHCR project representative for guidance as needed.

The grantee must also maintain a record of all debarment checks in the FFP project file.

6.0 Contracting and Documentation

REQUIREMENT: Grantees must include the applicable wage determination(s), related labor standards provisions, equal opportunity language, conflict of interest language and contract or clearance language in all contracts.

PROCEDURE: ALL SUB-CONTRACTS MUST BE IN WRITING and must contain all applicable language and attachments specified for the prime contract (as listed in the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03 for Chapter 3 of the *Handbook*). Inclusion of the required regulatory language and clauses only by reference to the prime contract or regulatory citation is **NOT** acceptable.

A copy of each contract and subcontract must be kept in the FFP project files.

BIDDING/CONTRACTING DOCUMENT SUBMISSION AND RECORDKEEPING:

The following documents related to bidding and awarding construction contracts must be maintained in the project file and submitted to DEHCR:

- Advertisement for bids, with the publisher's affidavit; and
- Bid tabulation summary (to be submitted to DEHCR upon contract award).

The following additional documents related to bidding and awarding construction contracts must be maintained in the project file:

- Bid packet (all contents) for each contract awarded;
- Bids submitted by contractor(s) awarded the contract(s) and all other bidding contractors, including bids not selected;
- Meeting minutes for the meeting(s) in which the grantee's governing body approved the contract(s);
- Records of debarment checks conducted on the [SAM Entity Information site](#) for all prime contractors, subcontractors, and owners/officers (these checks should occur prior to awarding contracts);
- Signed contracts, including the prime contract(s) and all subcontracts (including documentation verifying the contracts contain the required FFP language as specified in *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03 for Chapter 3 of the [Handbook](#));
- Signed *Potential Conflict of Interest Disclosure* forms (Attachment FFP-03-01 for Chapter 3 of the [Handbook](#)) or similar type of potential conflict of interest disclosure forms (for *prime* contracts);
- Signed *Lobbying Certification* forms (Attachment FFP-03-04 for Chapter 3 of the [Handbook](#)) from all prime contractors and subcontractors; and
- Completed *Disclosure of Lobbying Activities* forms (Attachment FFP-03-05 for Chapter 3 of the [Handbook](#)), if any contractors had lobbying activities to disclose.

7.0 Pre-Construction Meeting

Grantees are strongly encouraged to hold a pre-construction meeting to ensure that all contractors understand the applicable fair labor practices and standards and other FFP program requirements. If a pre-construction meeting is held, keep a copy of the meeting minutes or notes, including the attendance sheet, if any, in the FFP project file. Also submit these documents to the DEHCR Project Representative.

8.0 Compliance Monitoring

REQUIREMENT:

The grantee must monitor the performance of all contractors in complying with the wage rates and other requirements. DEHCR, the grantee, and any agent working on behalf of the Grantee has the right to request any additional information from the contractors and subcontractors working on a FFP funded project to verify compliance with federal labor standards regulations. This information includes, but is not limited to job classification, payroll, benefits and deductions.

PROCEDURE:

1. Make sure that each contractor and subcontractor submits, on a weekly or bi-weekly basis (depending on whether the contractor's payroll cycle is weekly or bi-

weekly), the payroll information and documentation listed section 3.2 of this chapter.

- Payroll records should be numbered sequentially from **first to final**.
 - Payroll records must be submitted to the grantee of the FFP project within 7 days after the end of the pay period, using the words “First” and “Final” to identify them.
 - All payrolls must be signed by a principal of the firm or by an authorized agent.
 - “No work” payrolls should be submitted for weeks when no work occurs. If payrolls are numbered consecutively, “no work” payrolls are not necessary. However, it is recommended for contractors and subcontractors that will not be working on the project for a period of time to inform the grantee in writing of the break and provide an approximate date of return. The DEHCR Project Representative may ask for verification of a lapse in work. An email record is sufficient for this notification.
2. Review the payrolls upon submission (weekly or bi-weekly) to make sure that at least the minimum wages and fringe benefits rates paid to each employee comply with fair labor wage rate requirements specified in section 3.0 of this chapter, and that any overtime worked is paid at the overtime rate. Fringe benefits include health insurance, retirement, life insurance, vacation, and some contributions to training funds. Fringe benefits **do not include** employer payments or contributions required by other federal, state, or local laws, such as the employer’s contribution to Social Security or some disability insurance payments, nor travel reimbursement payments.
- The grantee does not need to review those project workers listed on the payroll who perform work which is descriptive of any of the following job titles which are exempt from labor requirements: project superintendent, project engineer, messenger, clerical workers, timekeepers, bookkeepers, payroll clerks, and Supervisory foreman (*less than 20% of time as a working foreman*).
3. Review the payrolls weekly to make sure that employee wages and benefits conform to the appropriate rates, as specified in section 3.1 of this chapter.
4. Apprentices and trainees may be paid less than the fair wage rate of [Executive Order 14026](#) only if they are registered in bona fide programs approved by and registered with the Employment and Training Administration of the USDOL. **Make sure all necessary apprenticeship indentured papers and training certifications have been filed** for employees on the job, and that the documents are valid.
5. Maintain a labor standards file with the payroll records, statements of compliance, employee contact information, and other documentation obtained and reviewed during payroll compliance monitoring.

9.0 Compliance Enforcement

REQUIREMENT

Grantees shall take the necessary steps to enforce the requirements when a contractor or subcontractor has not paid the minimum required wage or has violated other requirements.

PROCEDURE

Violations of the FFP fair labor practices requirements may be found as a result of worker complaints or through routine monitoring of payroll reports.

1. Make sure that the unpaid wages are paid. The grantee must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payroll #1 through and including Payroll #6; or a beginning date and an ending date). The correction payroll will list:
 - i. Each employee to whom restitution is due and their work classification;
 - ii. The total number of work hours involved (daily hours are usually not applicable for restitution);
 - iii. The adjustment wage rate (the difference between the required wage rate and wage rate paid);
 - iv. The gross amount of restitution due, deductions, and the net amount to be paid; and
 - v. A signed Statement of Compliance (e.g., must be attached to the correction Certified Payroll.
2. The grantee shall review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
3. If the violation involved the overtime provisions of the Contract Work Hours and Safety Standards Act (CWHSSA), the grantee is to notify DEHCR and the contractor of the estimated penalty that may be assessed (\$32 per employee per day that overtime is earned but not paid) [*updated by USDOL 01/16/2024: <https://www.dol.gov/agencies/whd/government-contracts/cwhssa#cmp>], in accordance with *29 CFR Part 5.8(a)* and *29 CFR Part 5.5(b)(2)*. The grantee is to submit the copies of payrolls with the violations and a summary of investigative activities to DEHCR. DEHCR, as the granting agency, may allow a waiver of the liquidated damages or may forward underpayment violations under review to*

the USDOL and/or Treasury if further investigation is deemed necessary, which may result in penalties being assessed and collected from the contractor. Payment should be withheld from the contractor for **the estimated penalty amount** until the liquidated damages have been paid by the contractor, if a penalty is imposed, or the contractor has received an answer to any appeal, if applicable.

Contractors or subcontractors who intentionally violate the requirements of CWHSSA may be subject to fines, imprisonment, or both. Contractors found to have committed violations of CWHSSA's overtime requirements may have their contracts terminated. Contractors found to have disregarded their obligations to workers or subcontractors may be debarred from receiving future contracts for three (3) years.

4. Documentation of such violations is extremely important. All enforcement actions shall be carried out in writing and have the following information in the file:
 - i. A description of the violation;
 - ii. The sources of information about the violation. Complaints and other statements from employees should be in writing, and signed;
 - iii. The computation of the back wages due each employee;
 - iv. The computation of the liquidated damages, if any;
 - v. Actions taken by the contractor to correct the violation, if any; and
 - vi. Copies of supplemental payrolls and/or canceled checks, if any.

10.0 Construction Progress and Timely Completion

Construction activities must be completed by September 30, 2026. Grantees must reach “substantial completion” of the project by October 31, 2026. Substantial completion based on Treasury standards for projects assisted by the Capital Projects Fund (CPF), including FFP projects, is defined as the date for which the project can fulfill the primary operations that it was designed to perform, delivering services to end-users. At substantial completion, service operations and management systems infrastructure must be operational.

11.0 Chapter Attachments List

The attachments for Chapter 7 of the *FFP Implementation Handbook* are listed below and are linked to the template source on the *FFP Implementation Resources website* under the “Chapter Attachments/Fillable Forms” section.

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| ATTACHMENT FFP-07-01 | WISCONSIN DEPARTMENT OF TRANSPORTATION WEEKLY PAYROLL REPORT TEMPLATE (<i>OPTIONAL</i>) |
| ATTACHMENT FFP-07-02 | WISCONSIN DEPARTMENT OF TRANSPORTATION COMPLIANCE STATEMENT TEMPLATE (<i>OPTIONAL</i>) |
| ATTACHMENT FFP-07-03 | U.S. DEPARTMENT OF LABOR WH347 WEEKLY PAYROLL RECORD FORM TEMPLATE (<i>OPTIONAL</i>) |