

## FAQs

These are some of the questions asked by attendees during our national ABC webinar. If you have questions about prevailing wage benefit plans, please don't hesitate to [email us](#) or call 1-800-328-1519.

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### GENERAL INFORMATION ABOUT THE DAVIS-BACON AND RELATED ACTS

**Q: *Where can we find literature about the Davis-Bacon Act?***

A: You can find information about the Davis-Bacon Act on the [US Department of Labor website](#) and also on [our website](#).

**Q: *Why does the government allow us to put the fringe into wages if there is so much tax on it, other than the government trying to get additional tax money?***

A: The fringe benefit amounts shown on the wage determination are designed for fringe benefits. The Department of Labor gives you flexibility as a contractor to pay them as cash wages if no benefit plans exist.

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### THE ARRA AND DAVIS-BACON REQUIREMENTS

**Q: *Is there a minimum contract size for ARRA projects and when Davis-Bacon rates apply? If so, is it entire contract amount or labor value of the contract?***

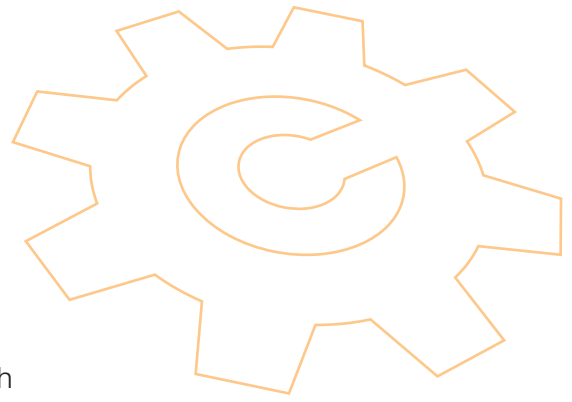
A: On ARRA projects, there is no minimum contract size. All ARRA projects fall under Davis-Bacon.

**Q: *Under ARRA, do federal Davis-Bacon rules and regulations apply if the contract is a state-awarded ARRA contract?***

A: All construction contracts awarded as a result of ARRA, regardless of the awarding government agency (i.e. federal, state, local), are covered by the federal Davis-Bacon Act.

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## WHAT CAN AND CANNOT BE COUNTED TOWARD THE FRINGE PORTION OF THE PREVAILING WAGE



***Q: With a group benefit health plan, is the employee premium allowed to be considered part of the fringe benefit amount?***

A: If the employer is paying the employee only rate for a group health plan, that can be used as credit toward the fringe benefit amount.

***Q: If the employee drives a company truck home every day, can that be counted toward the fringe benefit amount?***

A: The use of a truck is not considered a fringe benefit and no credit can be taken toward the fringe amount.

***Q: Is overhead associated with providing a bona fide benefit plan allowed to be included in the cost? For example, if I have a bookkeeper and fees associated with holiday pay, health care or administrative costs to provide these benefits can these dollars be included in the cost of the benefit?***

A: The costs for an employee to handle and administer a fringe benefit plan are not allowable costs toward the wage determination.

***Q: Workers comp is not required in Texas. If we provide it, can it be claimed as part of our Davis-Bacon fringe?***

A: Even though workers comp is not required in Texas, you are unable to take credit toward the fringe benefit amount for workers comp premiums.

***Q: Can per diem be counted for wage or fringe?***

A: Per diem cannot be counted toward the wage or fringe. However, it is still a cost of doing business and therefore is a deductible business expense.

***Q: Can a bonus be applied to the fringe?***

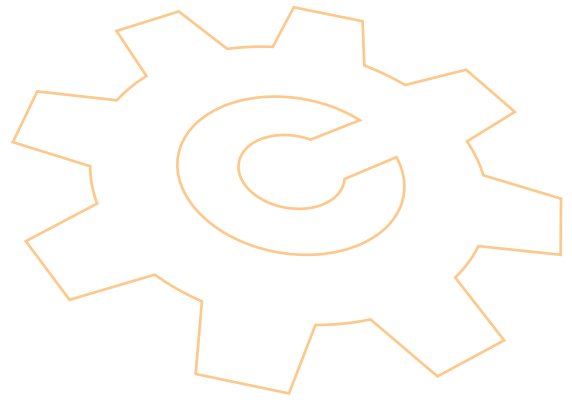
A: This can vary state by state, but generally a contractor can meet its fringe obligation by providing a benefit, cash or any combination of the two. A contractor could use fringe amounts to increase an employee's cash payments. It would have to be done in a timely manner, however. For example, a contractor could not reduce fringe in January but not make the cash payment until December.

***Q: How do I find out if Wisconsin recognizes holiday and/or vacation as an approved benefit?***

A: For a fringe benefit to be bona fide in Wisconsin, it must meet the criteria in Ind 90 and 92 of the Wisconsin Administrative Code and all the criteria for fringe benefits for purposes of the Davis-Bacon Act. Both holiday and vacation are bona fide benefits for use in Wisconsin on state or federal projects.

**Q: Does the Connecticut 3rd party fringe administration cost allowed to be included in the fringe credit have to be prorated?**

A: Connecticut states: “If costs are incurred by a third party administering an insurance or pension plan, etc., it seems reasonable to allow as part of cost incurred...”



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## DETERMINING WHICH HOURS WORKED MUST BE PAID AT THE PREVAILING WAGE

**Q: When traveling to and from job (out of town) and on the clock, are all hours paid at Davis Bacon rates or just time actually working on job?**

A: This can vary from state to state, but generally the time actually working on the job is paid at Davis-Bacon rates and the travel time would be a regular rates.

**Q: What if workers are traveling to a job site and they are taking fuel for machines?**

A: Travel and site of work issues may include many variables. It is best to consult the US Department of Labor or appropriate state office to ask about your specific scenario.

**Q: Please confirm that “shop time” for materials required for prevailing wage jobs is not required to be paid at prevailing wage rates.**

A: If the shop is dedicated exclusively — or nearly so — to the project and is adjacent or virtually adjacent to the site of work then it would be. It wouldn't be if the shop's location and operation is wholly without regard to the project.

**Q: Is the time a foreman/job superintendent spends studying plans in the office or shop (not onsite) paid at prevailing wage rate?**

A: If the shop is dedicated exclusively or nearly so to the project and is adjacent or virtually adjacent to the site of work then it would be. It wouldn't be if the shop's location and operation is wholly without regard to the project.

**Q: If a crew foreman is in meetings are they required to be paid prevailing wage?**

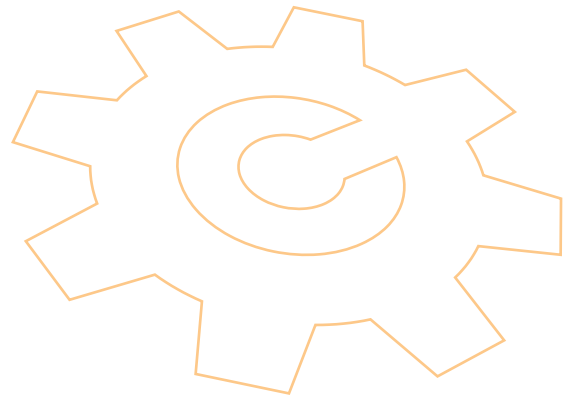
A: If the meeting relates to their job duties for the contract then the answer would be yes. However, if they are in meetings off site that don't relate to the contract then the answer would be no.

**Q: Can a non-union company pay fringe benefits to employees working on a Davis-Bacon job and not pay them to employees working on non-Davis Bacon projects? Such as profit sharing or health insurance?**

A: If retirement plan contributions are fully vested, such as in The Contractors Plan, a company can contribute on Davis-Bacon/prevaling wage work and not on private work. Because health insurance contributions are annualized, these have to be made for all hours worked and not just for Davis-Bacon work.

**Q: For a non-union company with a Department of Labor approved training program, are we required to pay any fringe benefits to employees in training?**

A: Normally the fringe benefit amount for trainees/apprentices is the same as for journeymen. This should be covered in the approved trainee/apprentice program documents.



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## DETERMINING APPROPRIATE PREVAILING WAGE RATES/JOB CLASSIFICATIONS

**Q: We've been told our competition is paying one journeyman prevailing wage rates and paying everyone else laborer prevailing wage rates. Can that be done?**

A: Possibly, but that certainly raises some red flags. The laborers are required to perform laborer work and not journeymen work. If they are performing journeymen tasks, they are required to be paid as journeymen and not laborers.

**Q: Will you raise a flag and face a potential audit on a Davis-Bacon job if an employee was making \$20.00 as a carpenter, but was laid off 2 months ago and was now rehired as a laborer at \$10.00/hr (the DB rate)? If so, can this be defended adequately?**

A: As long as the rehired employee is performing laborer tasks and not carpenter tasks then this should not raise a red flag. To defend, detailed information would need to be given regarding the work he was performing.

**Q: If you have a tradesperson doing laborer work, can they be paid laborer rates?**

A: If the tradesperson is performing laborer work then they can be paid laborer rates.

**Q: Do fringes have to be calculated per individual (i.e. vacation, health, etc) or can this be done by class (ie foreman, helper, etc)?**

A: An employee's fringes and base wage would be based on his/her job category and the actual hours worked. No averaging can be done over an entire job category.

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## PREVAILING WAGE AND SUBCONTRACTORS

**Q: How important is this information for subcontractors providing prices to a prime?**

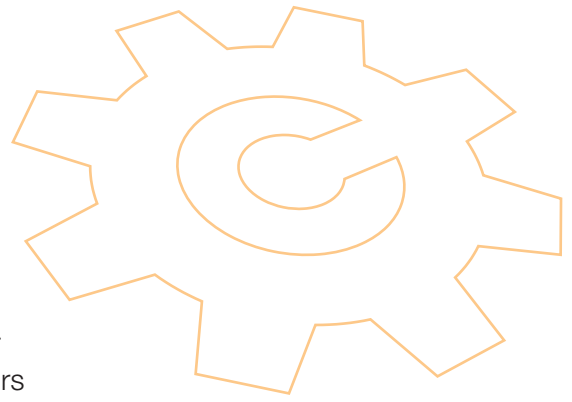
A: Subcontractors working with primes are subject to all the same Davis-Bacon rules as the primes.

**Q: How are sub-subcontractors affected by Davis-Bacon or Prevailing Wage?**

A: All the applicable Davis-Bacon rules and Prevailing Wage rules are applicable for sub-contractors as well as primes.

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## RETIREMENT PLANS



***Q: We already have a retirement plan. Can I set up this plan as separate retirement plan dedicated for prevailing wage jobs only?***

A: Many of the contractors utilizing The Contractors Plan have other retirement plans in place. You can definitely set up The Contractors Plan just for prevailing wage jobs only.

***Q: Does the worker pay a penalty to pull his money from The Contractors Plan?***

A: Before age 59 1/2, an employee would pay normal income taxes plus a 10% penalty for early withdrawal from a qualified retirement plan. There could also be an early surrender charge from the plan if the employee had been in The Contractors Plan less than 3 years.

***Q: If you pay 3% match on a simple IRA, what is the rule on annualization when all employees do not always work prevailing wage and some work more prevailing wage than others?***

A: The 3% match on a SIMPLE IRA would be for all deferrals up to 3% whether public or private work, so in effect you are annualizing because of the SIMPLE plan rules.

***Q: Flexibility is key. In a safe harbor plan, can we start and stop the mandatory contributions anytime?***

A: In general with some limited exceptions, if you choose safe harbor for a particular plan year then you can't stop until the beginning of the next plan year.

***Q: Does use of a "vested" employee in a bona fide retirement plan (profit sharing component) count, or is it just the fact that the program itself requires vesting?***

A: It is the fact that there is a vesting schedule in the plan.

***Q: How does this work with an ESOP?***

A: The Contractors Plan can be utilized alongside an ESOP. The two plans would be tested together for the nondiscrimination tests.

***Q: Can we take the remaining fringes and put it in an employee's 401(k) plan rather than paying it as additional cash wages?***

A: The remaining fringes after other fringe benefit payments are made can be contributed by the employer into The Contractors Plan for that employee. These contributions are employer contributions and not employee elective deferrals.

***Q: Can a terminated employee roll over their retirement into a mutual fund to avoid tax and penalties?***

A: Terminated employees can rollover their accounts into an IRA with a mutual fund company to avoid normal taxes and the early distribution tax penalty.

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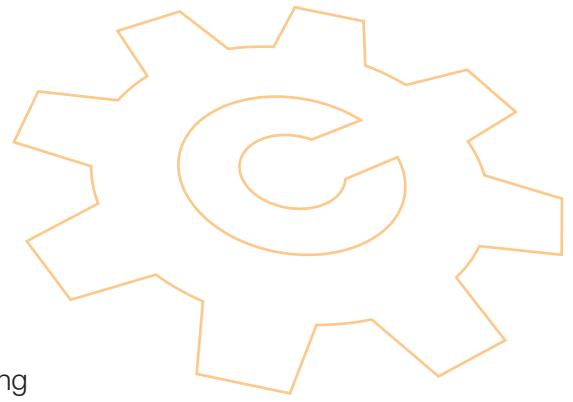
## HRAS AND HSAS

**Q: On an HRA insurance plan where the employer pays the deductible, how is this computed for hourly fringe cost?**

A: We have requested a letter from the USDOL regarding HRA's but have not received a response. Clearly, the high deductible health plan premiums could be counted toward the fringe by taking the annual cost and dividing by 2080 hours to come up with a monthly cost.

**Q: Can benefit be used to offset employees contribution to health insurance or HSA?**

A: The fringe benefit cannot be used to offset employee contributions for a health insurance plan or HSA. The fringe benefit amount can only be used for employer contributions, not employee contributions.



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## SELF-FUNDED HEALTH INSURANCE PLANS

**Q: Self funding health insurance — how does it differ?**

A: The requirements for self-funding health insurance differ depending on whether it's federal or state work. The federal requirement, for example, requires that self-funded plans be approved in writing by the USDOL. Contributions made to an insurance plan or funded trust, however, do not require prior approval. Again, state requirements will vary.

**Q: How is the health fringe calculated for a self-insured plan?**

A: You can only take credit for the actual costs for your self-insured health plan on an annualized basis.

**Q: How are the costs of a partially self funded health insurance plan calculated into an hourly rate?**

A: The requirements for self-funded or self-insured plans vary depending on whether the plan is used for federal or state projects. If it's a federal project the self-funded plan would need to be approved in writing by the USDOL and only amounts used to pay claims by the employer could be counted towards meeting the fringe obligation.

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## HOUR BANKING

**Q: What happens if an employee leaves and has significant hours banked?**

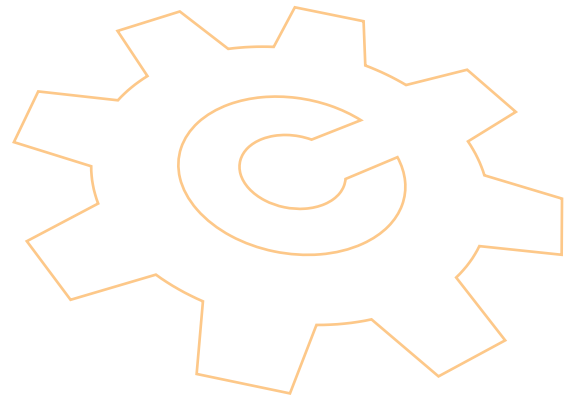
A: Those hours would be used to provide an additional month or months of coverage, then be used to offset part of the COBRA premium, or forfeited.

**Q: If California requires \$6.91/hr paid for Health & Welfare and your health plan only costs \$3.60/hr, can you only hour bank the rest?**

A: California no longer requires adherence to the line item fringe amount shown on the wage determination, except for training. The only requirement is that the total fringe amount be used for bona fide benefits or be paid in cash.

**Q: Why is the company responsible for the cost of the premium if the employee is no longer working the company?**

A: The company is not required to pay the premium if an employee leaves the company except in the case of the COBRA subsidy brought about by ARRA. In that case you are required to subsidize the COBRA premium.



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## “THIRD-PARTY” CRITERIA FOR A BONA FIDE BENEFIT PLAN

**Q: How does vacation and holiday pay meet the “third party” criteria?**

A: The USDOL Prevailing Wage Resource Book states the following: “To insure that such plans are not used to avoid compliance with the Act, the DOL directs the contractor to set aside, in an account, no less often than quarterly, sufficient assets to meet the future obligation of the plan.”

**Q: We currently pay for health insurance for all of our employees. Is our insurer considered a third party?**

A: If you are currently paying the health insurance premiums for your employees, you would be able to take credit toward the fringe for a portion of those premiums. You would annualize the premium then divide by 2080 to come up with an hourly equivalent cost for credit toward the fringe.

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## BIDDING PROCESS

**Q: You stated the low bid always wins, is that true for VOB & VOSB companies?**

A: There is no nationwide preference for VOB or VOSB. It would depend on the agency conducting the procurement. On a state level, some states may provide a preference for VOSB where others would not.

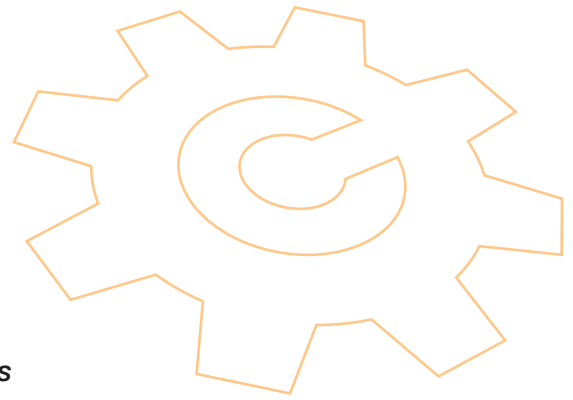
**Q: We are bidding a snow removal job for a school district on Long Island, and the bid form does not mention prevailing wage rates nor a rate schedule. When we requested clarification, they wrote: It is assumed that the contractor will be in conformity with the provisions of New York State Law. What does that mean?**

A: This appears to be a prevailing wage job that would fall under the New York Prevailing Wage Law and the applicable wage determinations and rules.

**Q: When preparing the small business plan for bidding, how do the reviewers grade the plans? If you have a \$1M contract and award 20% of the contract to subcontractors which are small businesses, 100% of the subcontracts totals \$200,000. Or, we may use 50% subcontractors and 30% small businesses for \$150,000. In the first example, you spend more money but miss the 23% small business requirement. The second case meets the 23% small business requirement but is only 15% of the total contract. During review of these factors how will each example be considered?**

A: It depends on the source selection criteria for the procurement. If the contract includes a small business subcontracting requirement and it's indicated that preference is given to greater amounts

subcontracted to small business, then the first example would probably be more favorably viewed by the government. In the second case, the government likely wouldn't consider the amount of work subcontracted to firms who were not small businesses.



**Q: How do you bid a Davis-Bacon project if your classification is not posted?**

A: For advice regarding proper classification of workers and for guidance on the need to conduct an area practice survey to determine proper classifications on DBRA covered projects, consultation with the WHD Regional Wage Specialist is appropriate. (See <http://www.dol.gov/esa/programs/dbra/regions.htm> .)

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## SUPPLEMENTAL UNEMPLOYMENT BENEFIT (SUB) PLANS

**Q: Why not use a supplemental unemployment plan (SUB Plan) rather than a 401(k)? When employees use 401(k) they take money out early and get a 10% penalty for early withdrawal from the retirement plan, whereas with a SUB plan there is no early withdrawal penalty. Is there a way around the penalty for early withdrawal from the 401(k)?**

A: The purpose of a retirement plan is to enable employees to save for retirement. The 10% penalty enacted by Congress is meant to create a disincentive for employees to withdraw funds that are meant for retirement. Additionally, a bona fide severance benefit must include a substantial risk of forfeiture which means the employee is not guaranteed a benefit. When sufficient fringe exists it is best to structure a comprehensive benefit package with a mix of benefits that take into consideration current and future financial requirements.

**Q: Michigan ABC Merit magazine in Spring 2008 ran an article about BCT Benefits which is an approved Supplemental Unemployment Insurance Plan — so using a bona fide plan like this reduces my payroll burden. What other types of bona fide plans are there?**

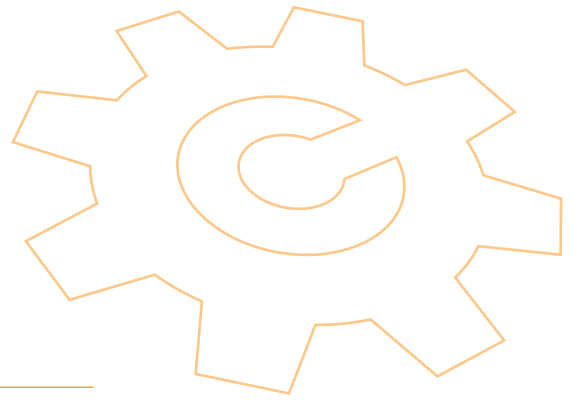
A: Other types of bona fide benefits include group health insurance and vacation, holiday and sick leave. We work with a number of contractors who have supplemental unemployment benefit plans for part of the fringe and The Contractors Plan and/or group medical for the rest.

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## LEASED AND CONTRACT WORKERS

**Q: How do I deal with leased employees when it comes to Davis-Bacon or Prevailing Wage situations?**

A: For leased employees, the leasing company would need to adopt The Contractors Plan since the leased employees are employees of the leasing company. If we are talking about a PEO, you would adopt the plan.



**Q: How do you calculate fringe if you have 1099 labor?**

A: Even if you are utilizing independent contractors and giving them a 1099 at the end of the year, they have to be paid the prevailing wages and fringes for the applicable wage determination and job category for the project.

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## DIFFERENCES BETWEEN UNION AND NON-UNION REQUIREMENTS

**Q: How can the union claim Davis-Bacon fringe on a worker who is not eligible to receive benefits?**

A: The unions play by different rules than merit shop contractors.

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## PROJECT LABOR AGREEMENTS

**Q: How does this work with projects that have labor agreements and you have to pay fringe benefits to the union trusts?**

A: For projects with project labor agreements, as stated, the fringe benefits go to the union. On those types of projects, you normally would not be able to contribute to The Contractors Plan since the fringes have to be paid to the union.

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## ACCEPTABLE RATIO OF JOURNEYMEN TO APPRENTICES

**Q: Where can I find what the allowable ratio is for apprentices to journeymen in a specific area/county?**

A: This varies by specific state and location and job category. There is not one location where you can find this information. To determine the acceptable ratio of apprentices to journeymen, you would go to the approved apprentice program in a given area. The allowable ratio is specified in the approved program for that area.

**Q: Journeyman to apprentice ratio: are you saying a 4 to 1 ratio is 4 Journeyman to one apprentice? I've always known it to be the reverse.**

A: 4 to 1 ratio is describing 4 journeymen to 1 apprentice.

**Q: What if there is only one journeyman?**

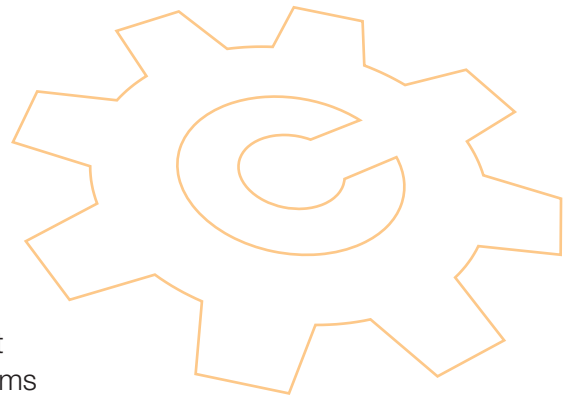
A: For example, if there is a 4 to 1 ratio of journeymen to apprentices but there is only 1 journeyman, no apprentices could be used.

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## MINORITY PARTICIPATION

### ***Q: Will you discuss minority participation?***

A: There is no single standard regarding minority participation on government contracts that applies to all federal, state, and local contracts. While specific requirements may vary extensively, most government agencies have programs to assist minority-owned firms in gaining government contracts. For example, the federal government requires that 23% of all prime contracts be awarded to small business. Within the 23% there are also various goals for specific types of firms. States may have similar but differing requirements. It is best to check with the specific government office with which you are working.



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## DETERMINING THE COST/BENEFIT RATIO FOR A IMPLEMENTING A PREVAILING WAGE PLAN

### ***Q: What does the recommended rated work dollar amount spent per year need to be to offset the administrative costs associated with setting up a program?***

A: You could probably do as little as 10% rate work to offset any additional internal administrative cost of handling the plan.

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## ESCROWING THE FRINGE BENEFIT

### ***Q: Can you bank the fringe into a escrow account for the employee?***

A: The USDOL has addressed this regarding profit sharing contributions that are normally made annually. To take credit toward the wage determination, these contributions would have to be escrowed at least quarterly or more frequently for credit to be taken toward the wage determination for these escrowed contributions.