

# Ohio Department of Transportation

## Prevailing Wage Trucking Guidelines

### Site of Work

Laborers and mechanics must be paid prevailing wage rates and fringe benefit rates at the site of work. Site of work is defined in the Federal code of regulations as follows.

Title 29 CFR 5.2 (l)(1) states "*The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project*".

Title 29 CFR 5.2 (l)(2) states that other work areas not located on the site of permanent construction (e.g. job headquarters, tool yards, batch plants, borrow pits, etc.), may be part of the site of the work " . . . *provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work.*"

The Federal regulations do not define what is considered to be "*virtually adjacent*", however the Ohio Transportation Department has determined that all work areas located within a 1-mile radius of the project site will be considered to be virtually adjacent.

Any non Owner-Operators who are hauling materials within the Site of Work as described above, are entitled to the appropriate prevailing wage rate.

### Owner/Operator

The legal test that is utilized to determine if the owner-operator is in fact an independent contractor stems from the right to control test. An owner-operator has the right to agree or disagree upon whether he or she chooses to work on a particular project. The owner-operator should evidence this relationship by a written contract.

Additionally, an owner-operator makes a significant financial commitment when he or she purchases or enters into a bona fide lease agreement. The term of that lease must be substantial (in the proximity of 1 year or longer), and not subject to cancellation at any time. A lease agreement which simply provides the driver a percentage of revenue is not a bona fide lease agreement. In short, the financial commitment must be real.

Furthermore, the legitimate owner-operator must assume all responsibility for the maintenance of the equipment, and bears the principal burden of the operating costs such as fuel, repairs, supplies, vehicle insurance, permit fees, and personal expenses while on the road.

Driver documentation such as driver's license, vehicle registration, insurance and lease agreements will be reviewed by ODOT project personnel. It also must be demonstrated that there is no close or continued supervision of the operation of the truck by the company leasing the truck.

In some cases, an owner-operator has more than one truck employed on a contract and must be a subcontractor. The other truck operators are **not** classified as an owner-operator.

## DBE Trucking Subcontractors

The DBE trucking subcontractor receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

DBE firms may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE will receive credit for only the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

## Trucking Firm

Any legal business entity that owns more than one vehicle and hires those vehicles to broker firms or contractors on public works projects. The owner/s of a trucking firm may either drive the vehicle or hire employees to drive the vehicles. If the owner/s hire an employee to drive, that employee driver is subject to the appropriate prevailing wage rate.

## Exemptions

Truck drivers who come onto a site of work location to drop off construction materials are often exempt from the payment of prevailing wages. If however, the **total of all time** that a driver spends on-site (as described above), loading and unloading materials, is equal to or greater than 20% of their total work week, he or she would be entitled to the appropriate prevailing wage rate for that time.

Truck drivers operating between two “sites of work” areas are not exempt. Davis Bacon wage rates are *not* applicable to truck drivers under the following types of situations:

- A truck driver is dropping off material from a project material source that is not considered adjacent or virtually adjacent.
- A truck driver is dropping off material from a commercial supplier.
- A truck driver is removing material from the project and taking it to a commercial facility or waste area that is not considered “*virtually adjacent.*”
- An Owner-Operator meeting the criteria in the definition noted above.

Please contact the ODOT project personnel if you have any additional questions regarding which truck drivers are exempt.