

Truck Drivers

Davis Bacon Requirements (DBRA)

Truck drivers employed by a prime contractor or subcontractor to transport materials or equipment between a DBRA project and a plant or yard specifically --- or nearly so --- dedicated to the project are covered. The transportation of materials or equipment between a DBRA project and an established, commercial plant or a contractor's home offices or general materials and equipment yards are not covered. The occasional and incidental sale of material from a plant primarily established to produce material for a DBRA project will not qualify that plant as an established, commercial plant.

Drivers employed by a prime contractor or subcontractor transporting materials or equipment from one DBRA project to another DBRA project are also covered, and the time so spent is compensable at the DBRA rate required to be paid on the project to which the materials or equipment are being delivered.

Drivers employed by a prime contractor or subcontractor transporting materials or equipment away from a DBRA project to another project not covered by DBRA are also covered, and the time so spent is compensable at the DBRA rate required to be paid on the project from which the materials or equipment are being delivered.

Truck drivers engaged in the hauling away of excavated material, debris, dirt, asphalt for recycling, etc. from a DBRA-covered site are covered for the time spent loading, transporting, and unloading. Coverage is continuous until the last load of the day has been delivered. All truck drivers engaged in such activities are covered regardless of their employer's status as a materialsman or construction contractor. These truck drivers are covered because they are engaged in activities which are required by --- and directly related to --- the construction contract.

Truck drivers who are employed by an independent contractor or bona fide materialsman to haul material to a covered project from a non-covered commercial supply source such as a sand or gravel pit or an established, commercial asphalt or concrete plant ***servicing the public in general*** would not be covered.

When the materials are going to be used on the DBRA project, truck drivers employed by an independent contractor or materialsman to haul materials from a supply source such as a batch plant, borrow pit, or stockpile which was established to exclusively --- or nearly so --- serve the covered project would be covered.

Subcontracting or Employing Truck Drivers

For DBRA-covered projects and Non-DBRA-covered projects, a contractor or subcontractor may wish to use another individual owner-operator or trucking company to supplement his or her hauling fleet. (The Department will not recognize multiple individuals claiming to be collectively identified as a single "owner operator.") This supplemental individual or company must either become a subcontractor (first tier or lower tier, as the case may be) or be otherwise documented by the utilizing contractor or subcontractor by entering into a lease agreement for the trucks and showing the driver (or drivers) from the supplemental company on the prime contractor's or subcontractor's payrolls in the manner described below. Payrolls will only be accepted from the prime contractor or approved subcontractors.

If the decision is made to subcontract the hauling, the prime contractor must first notify the NDOR Construction Office (Sharron Magnuson) to request subcontract approval. As part of the subcontract approval process --- at any tier --- the proper certificates of insurance must be provided before approval will be granted. Additionally, on DBRA-covered projects, the prime contractor must submit payrolls for all subcontractors --- at any tier.

Owner/Operators of trucks hired by a contractor or subcontractor to supplement his or her hauling fleet are not subject to Davis Bacon. However, they must still be shown on a payroll prepared by the contractor or subcontractor for whom they are working with the notation "owner/operator." Any other employees of the "owner/operator" must appear on the certified payroll in complete detail and must be compensated according to the wage rates established for the project.

In the event a prime contractor or subcontractor elects to not subcontract the supplemental driver or drivers but instead chooses to "carry the workers/truckers on their payroll," the following requirements must be met:

- 1 - The prime contractor's or subcontractor's certified payroll must contain the names of all workers/truck drivers, and the payroll should identify their supervisors (including "owner-operators").
- 2 - Pay checks for the workers/truckers in question must be drawn against the prime contractor's or subcontractor's payroll or other account.
- 3 - Owner/Operators need only be identified as such on the payroll. Additional drivers, if any, from the "owner-operator's" ~~same~~ company must appear on a payroll in complete detail and be compensated according to the wage rates established for the project.
- 4 - The prime contractor or subcontractor must enter into a lease agreement for the trucks driven by such drivers, and the lease agreement must show that the compensation for the leased equipment is on a time basis and not based on the amount of work accomplished. The lease agreements must be available for inspection by NDOR personnel.

5 - Any supplemental truckers employed under this arrangement must still carry the minimum automobile liability coverage specified in the contract. Evidence of proper insurance must be presented for verification by NDOR personnel in the field.

Here are some example situations.

Scenario #1

ABC Construction utilizes John Smith and John Smith's truck to haul asphaltic concrete.

1 – ABC can request John Smith Trucking as a subcontractor. Then, John Smith will have to furnish a certified payroll, and all it need show is John Smith's name ---- and identify him as an "owner-operator." ABC will compensate John Smith according to the subcontract agreement.

or

2 – ABC can place John Smith on the ABC payroll, and he only needs to be identified as "owner-operator." Additionally, ABC must enter into a lease agreement with John Smith to lease his truck by the hour. ABC will compensate John Smith according to the lease agreement.

Scenario #2

John Smith owns John Smith Trucking and has two trucks. John drives one, and his son Dave drives the other. ABC Construction utilized John Smith Trucking to haul asphaltic concrete with both trucks.

1 – ABC can request John Smith Trucking as a subcontractor. Then, John Smith Trucking will have to furnish a certified payroll, and all it need show for John Smith is his name ---- and identify him as an "owner-operator." The payroll from John Smith Trucking must also show Dave Smith as an employee of John Smith Trucking and be complete in every detail regarding Dave. Dave must be compensated according to the DBRA requirements and must be paid with a check drawn on John Smith Trucking. ABC will compensate John Smith Trucking according to the subcontract agreement.

or

2 – ABC can place both John Smith and Dave Smith on the ABC payroll. John Smith can be shown as an "owner-operator," but Dave Smith must be shown on the ABC payroll in every detail. ABC must enter into a lease agreement for both of John Smith's trucks. Dave Smith must be compensated according to DBRA requirements and must be paid with a check drawn on an ABC account. ABC will compensate John Smith according to the lease agreement for the trucks.