

Davis-Bacon Applicability in the Private LSL Replacement Program

The Wisconsin DNR has received clarification from US EPA regarding the applicability of the federal Davis-Bacon wage rate requirements under the following conditions:

- a private lead service line replaced through a municipal program;
- for which a list of prequalified plumbers/contractors has been developed; and
- homeowners contract directly with the plumbers for the LSL work.

Note that Davis-Bacon requirements never apply to a contract of \$2,000 or less.

EPA has confirmed that under these conditions:

- Davis-Bacon applicability as it **pertains to the property** is based on **property ownership**.
- Davis-Bacon applicability as it **pertains to the plumbing contractor** is based on whether the **plumbing firm has employees**.

Property ownership

When a property is owned by a business or non-profit entity, Davis-Bacon requirements apply.

When a property is owned by an individual or individuals, Davis-Bacon requirements do not apply.

- **If someone has a small business in the residence**, as long as the building is owned by an individual(s) rather than a business entity, Davis-Bacon does not apply. More specifically, in the case of a licensed daycare being run out of an individual's home, if the home is in the individual's name, then Davis-Bacon does not apply; however, if the home is owned by an LLC or is otherwise owned by the daycare business, Davis-Bacon does apply.
- **If a property is held in trust**, Davis-Bacon applicability is also determined by ownership of the property. If the trust is in the name of an individual(s) and not a business, Davis-Bacon does not apply. If the trust is held by a business, Davis-Bacon does apply.
- **If a residence is a rental property (house/duplex/apartment building)**, Davis-Bacon applicability would still be determined by whether the property owner is an individual(s) or a business/non-profit. Many times, it will be a business in order to protect assets. If it's owned by a business, Davis-Bacon applies. If it's owned by an individual(s), Davis-Bacon does not apply.

Plumber/Contractor employee status

From a business standpoint, Davis-Bacon requirements only apply to businesses that have employees.

If a business is a sole proprietorship, or a partnership where all those who perform the work are also owners, then Davis-Bacon does not apply.

In the case of a prequalified plumber/contractor who has no employees and does 100% of the work themselves, Davis-Bacon does not apply because there are no employees. Some family businesses are similarly structured so that all entities are "owners", in which case Davis-Bacon would not apply. It must be made clear to this type of business that they must not hire help after being placed on the list in order to thwart Davis-Bacon requirements.

The diagram consists of a 2x2 table. To the left of the table is a vertical double-headed arrow labeled "Property Ownership". Above the table is a horizontal double-headed arrow labeled "Plumber/Contractor Employee Status". The table cells are shaded as follows: the top-left cell is grey, the top-right cell is light blue, the bottom-left cell is light yellow, and the bottom-right cell is white.

	Plumber/Contractor has employees	Plumber/Contractor does not have employees
Property is owned by a business entity or non-profit	Davis-Bacon applies	Davis-Bacon does not apply
Property is owned by an individual(s)	Davis-Bacon does not apply	Davis-Bacon does not apply

Steps to ensure Davis-Bacon requirements are met:

1. Identify eligible properties to which Davis-Bacon would apply (i.e. those properties owned by businesses/non-profits rather than individuals).
2. Determine if any of the plumbers/contractors on your municipality's prequalified list are exempt from Davis-Bacon due to not having any employees.
3. If possible, match business-owned properties with plumbers/contractors that are not subject to Davis-Bacon (identified in steps 1 and 2 above). Davis-Bacon terms and conditions must still be included in the agreement between the contractor and the municipality in case the plumber/contractor decides to hire an employee at some point during the life of the job.

Note: If work is being done through a municipal contract, Davis-Bacon requirements always apply. See Complying with Davis-Bacon & Related Acts (DBRA), dnr.wi.gov/Aid/documents/EIF/Guide/DavisBacon.pdf

