

Prevailing Wage Laws and Archaeologists

Dr. Ellen Chapman and Katherine Sorrell
March 2023

Jeff Altschul at the Coalition for Archaeological Synthesis/SRI Foundation asked us to look into how wage protection laws apply to archaeological staff and why archaeologists are significantly underpaid compared to the equipment operators and other construction crew they work alongside on cultural resources management projects. Although the Davis-Bacon Act of 1931 (DBA) requires contractors and subcontractors on federally funded or assisted construction projects to pay prevailing wages and fringe benefits, the Act only covers employees physically involved in project construction. As a result, archaeologists are not covered by the DBA, and so are not required to be paid prevailing wages on transportation projects. Archaeological technicians are covered by the McNamara-O'Hara Service Contract Act of 1965 (SCA), which requires contractors and subcontractors on federal contracts to pay prevailing wages and fringe benefits. However, SCA only applies to direct federal contracts, and states mostly do not adopt these requirements.

Davis-Bacon Act of 1931 (DBA)

- The Davis-Bacon Act applies “for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers.”¹
 - DBA applies to all prime contractors and subcontractors
 - DBA applies to all “federally funded or assisted” contracts²
 - DBA is specific to people characterized as “mechanics or laborers”
- As a result of federal funding for all state departments of transportation and how most roads are funded in the U.S., the vast majority of DOT road construction would be classed as Davis-Bacon applicable. DBA is applied to any Federal-aid highway construction projects over \$2000 that are located in the existing ROW of a Federal-aid highway; are linked or dependent upon a Federal-aid highway; or are funded under the Transportation Alternatives Program. However, some forms of preliminary engineering and other services needed before the construction are not required to abide by prevailing wage rates.³
- On Davis-Bacon projects, general wage determinations exist for every county (see e.g. Washington State⁴). General categories for DBA work includes Residential, Building, Heavy, and Highway. None of the wage classifications (available on the System for Award

¹ The Davis-Bacon Act, as Amended. DoL Wages and Hours Publication 1246 (Revised April 2009).
<https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra>

² Davis-Bacon and Related Acts. Department of Labor Website. <https://www.dol.gov/agencies/whd/government-contracts/construction>

³ Davis-Bacon and Related Acts: Questions and Answers. State of Oklahoma Website.
<https://oklahoma.gov/content/dam/ok/en/odot/documents/davis-bacon-q-%26-a.pdf>

⁴ Davis-Bacon Act Wage Determination # WA20230001 <https://sam.gov/wage-determination/WA20230001/0>

Management website) consulted included any archaeological or environmental positions; they are all positions directly involved in construction.

- DBA classifications also do not include any other types of monitoring positions, like a safety monitor of any sort, which could be an analogous role to an archaeological monitor. The roles listed in DBA wage determinations are directly involved in the physical construction of the project deliverable.
- DBA trumps SCA, so if both laws could apply, the job must abide by DBA rather than SCA.

McNamara-O'Hara Service Contract Act of 1965 (SCA)

- The SCA applies “to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services in the United States through the use of service employees.”⁵
 - SCA only applies when the contractor contracts with the federal government directly, so federally funded projects that go through a state entity to be disbursed (like a FHWA-funded highway project contracted by a state Department of Transportation) would not apply.
 - SCA does not apply to contracts covered under DBA, public utility services, a contract for direct services from an individual, for any contract with the U.S.P.S, or a few other exemptions provided in Section 7 of the Act.⁶
 - SCA only applies to jobs where work happens in the US and its territories.
 - SCA does not apply to people who are “bona fide executive, administrative, or professional employees” under the Fair Labor and Standards Act, or for projects for “professional services” such as engineering contracts where everyone on the contract meets the exemption requirements under the FLSA.
 - SCA does apply to all prime and subcontracted portions of an eligible contract, and the prime contractor on a job is jointly and severably liable with their subcontractors for compliance with SCA.
- On many CRM projects subject to federal law, such as Section 106 of the National Historic Preservation Act, CRM firms are hired by project proponents and not the responsible federal agency. In such cases, the contracted CRM firms are not required to pay SCA wage determinations because SCA only applies to direct federal contracts. SCA only applies to CRM services when the Forest Service, U.S. Army Corps of Engineers, National Park Service, Bureau of Land Management, military installation, or similar federal entity is hiring a CRM firm directly or indirectly for CRM work.
- Archaeological personnel job descriptions are included in the SCA for certain technician-level positions. These positions are 30021 Archaeological Technician I, 30022

⁵ Frequently Asked Questions Pertaining to the Issuance of Wage Determinations Under the McNamara-O'Hara Service Contract Act (SCA) of 1965, as Amended. Department of Labor Website. <https://www.dol.gov/agencies/whd/government-contracts/service-contracts/faq#:~:text=The%20Service%20Contract%20Act%20applies,the%20use%20of%20service%20employees>; The McNamara-O'Hara Service Contract Act. FOH Modernization revision 683, published 3/31/2016.

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch14.pdf; Service Contract Act of 1965, as Amended. Department of Labor Website. <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/serv01.pdf>

⁶ Fact Sheet #67: The McNamara-O'Hara Service Contract Act (SCA). Department of Labor Website.

<https://www.dol.gov/agencies/whd/fact-sheets/67->

[sca#:~:text=The%20SCA%20does%20not%20apply,the%20Davis%20Bacon%20Act\)%3B](https://www.dol.gov/agencies/whd/fact-sheets/67-sca#:~:text=The%20SCA%20does%20not%20apply,the%20Davis%20Bacon%20Act)%3B)

Archaeological Technician II, and 30023 Archaeological Technician III.⁷ These positions are roughly equivalent to archaeological field tech and crew chief positions. In addition to field tasks, the descriptions reference non-field activities such as project planning, archival research, graphics, and report completion, but do not reference any laboratory artifact analysis activities.

- The current SCA wages for central Virginia are \$18.52, \$20.71, and \$25.67 for the three levels of Archaeological Technician. County wage determinations can be found for all regions of the US through searching in the SAM.gov website.⁸ In addition, SCA wages require either health and welfare benefits meeting a financial minimum or paying employees an hourly cash equivalent (currently around \$4.80/hour) in lieu of benefits.⁹ SCA also requires some sick leave accrual (1 hour of paid leave for every 30 hours worked) and federal holidays when the employee worked the day before and the day after. Because of the temporary nature of most CRM technician positions, CRM contractors commonly pay the hourly benefit requirement in cash.
- During the late 1990s, the Department of Labor (DoL) classified Archaeological Technician as an SCA-eligible worker and set wage rates for Archaeological Technicians based on analogous positions of Cartographic Technicians and Civil Engineering Technicians. These wages significantly exceeded the prevailing wages in the archaeological industry at the time. At the same time, a labor union called the United Archaeological Field Technicians began to request information through the Freedom of Information Act about archaeological wages from federal agencies and advocating for these DoL wages to apply for archaeological contracts entered into by the federal government.¹⁰ In some cases, the application of SCA wage standards led to cancellation of contracts due to budget overages, or potential liability for the CRM company to pay the higher wages. ACRA hired a labor attorney and developed a Labor Relations Committee, which along with the U.S. Forest Service and other federal agencies sought to reduce the federal prevailing wage rates. This lobbying created a three-tiered technician description that characterized archaeological work as less independent and less skilled than the existing description, and significantly reduced the set federal prevailing wages for archaeologists.¹¹

⁷ SCA Directory of Occupations. Department of Labor Website. Fifth Edition.

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/SCADirectVers5.pdf>

⁸ System Award Management Wage Determination Search

https://sam.gov/search/?index=sca&page=1&pageSize=25&sort=-modifiedDate&sfm%5BsimpleSearch%5D%5BkeywordRadio%5D=ALL&sfm%5BsimpleSearch%5D%5BkeywordEditOrTextarea%5D=&sfm%5Bstatus%5D%5Bis_active%5D=true

⁹ Robbins, Bicknell. Service Contract Act Health & Welfare Benefits: Contractor Obligations, Options and Best Practices. Professional Services Council.

https://www.pscouncil.org/a/Content/2020/Service_Contract_Act_Health_Welfare_Benefits_-_Contractor_Obligations_Options_and_Best_Practices.aspx#:~:text=SCA%20regulations%20provide%20that%20the,a%20combination%20of%20the%20two.

¹⁰ American Cultural Resources Association. 1995. ACRA News: Vol 1(1): 4.

<https://core.tdar.org/document/381024/acra-news-and-acra-edition-october-19>

¹¹ Pape, Kevin. 1997. A Summary Of ACRA's Involvement in the Archaeological Technician Position Description and Wage Determination Issue. ACRA Website preserved on the Internet Archive

<https://web.archive.org/web/19981203142953/http://mindspring.com/~wheaton/wagedetermination.html>; UAFT Committee for Prevailing Wage Compliance: <http://www.archfieldtech.com/cpwc.html>. UAFT Handbook: <http://www.archfieldtech.com/handbook.html>

- In some cases, the requirements of SCA may provide firms with an incentive to hire workers with an MA and/or salaried workers who can be considered exempt and not subject to SCA, on federal contracts. Using exempt workers may also avoid recordkeeping associated with sick leave accrual requirements and workers' hourly wages changing between contracts.

State Prevailing Wage Laws

- States can also pass their own prevailing wage laws, and just over half of them have such laws on the books.
- Currently 24 states do not have prevailing wage laws. While 7 of these states may never have had a prevailing wage law, 6 of these laws were repealed in the 2010s and many others repealed or invalidated their prevailing wage laws in the late 1970s and 1980s during a larger anti-union movement.¹²
- Contract requirements for state prevailing wage laws to go into effect vary widely, from applying to all contracts (Washington) to only applying to projects that exceed \$1m for new construction or \$100k for remodeling (Connecticut). Some laws only apply if the project is a state-initiated or funded project, or if a municipality has passed prevailing wage laws (Virginia).¹³
- In the states that we consulted to better understand this background, the states with prevailing wage laws appear to have based these labor requirements much more closely on DBA than SCA, resulting in a similar exclusion of archaeological workers and similar environmental workers.
 - The State of Washington states that “Chapter 39.12 RCW requires local government contractors and subcontractors to pay prevailing wages to all workers for all public works and maintenance contracts, regardless of the dollar value of the contract.”
 - The State of Washington scopes of work listing prevailing wage rate requirements by job title list laborer, mechanic, and tradesman type jobs and also positions like construction site surveyor, electronic technicians, power line construction electricians, and telecommunications technicians. There are no archaeological or environmental consulting positions included in this list, perhaps because these positions are not considered to be “public works and maintenance.”¹⁴
 - Virginia’s code defines the employees covered by the act as “mechanics, laborers, or workers” engaged in “the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency or locality, including transportation infrastructure projects.”¹⁵
 - The Virginia list of prevailing wages are set based on county, vary between \$12 and \$50 depending on job classification and locality, and only includes jobs

¹² Rosenfeld, Jake. 2015. The rise and fall of US labor unions, and why they still matter. The Conversation. <https://theconversation.com/the-rise-and-fall-of-us-labor-unions-and-why-they-still-matter-38263>

¹³ Dollar Threshold Amount for Contract Coverage. January 1, 2023. Department of Labor Website. <https://www.dol.gov/agencies/whd/state/prevailing-wages>

¹⁴ Public Works Projects Scopes of Work. Washington State Department of Labor and Industries. <https://lni.wa.gov/licensing-permits/public-works-projects/scopes-of-work>

¹⁵ Code of Virginia § 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty. <https://law.lis.virginia.gov/vacode/title2.2/chapter43/section2.2-4321.3/>

that directly involve construction, not any environmental, historic preservation, or other monitoring staff.¹⁶ This restriction again seems based on the definition of the covered workers in code as being related to construction types of activities at a “mechanic, laborer, or worker” type of level (no construction managers are included in these lists either).

- California’s prevailing wage requirements are similar, the types of listed employees covered are laborer and mechanic type roles.¹⁷

Inflation Reduction Act (IRA) of 2022

- The IRA had a total value of \$485 billion in federal grants, programs, tax breaks, and initiatives, including \$3 billion for road construction.¹⁸
 - The Act includes some funding likely to support cultural resources survey or planning, such as the \$260 million was appropriated for climate resilience planning to protect Tribal and Native Hawaiian communities and natural and cultural resources.¹⁹
- The IRA directs a tremendous quantity of complex funding and programs, and some details of these grant programs are still under development through public consultation and administrative actions. Federal agencies are developing regulations under the IRA and putting them out for public comment, such as the siting of interstate and offshore electricity transmission lines contemplated by the Act²⁰ and the timing of archaeological and other technical surveys during the BOEM offshore lease permit review process.²¹
- The number of IRA programs subject to SCA prevailing wages will depend on whether projects funded by the IRA have a potential to affect historic properties, whether federal and state regulators determine that archaeological survey is needed to assess impacts to historic properties, and how many of these projects will be implemented through direct federal contracts with archaeological firms and their prime contractors as opposed to through grants or other incentives.

Infrastructure Investment and Jobs Act (IIJA) of 2021²²

¹⁶ Virginia Prevailing Wage Rates. Virginia Department of Labor and Industry. <https://www.doli.virginia.gov/wp-content/uploads/2023/01/WEBSITE-Virginia-Prevailing-Wage-Rates-01.2.xlsx>

¹⁷ Index 2020-1 Southern California basic trade journeyman rates. State of California Department of Industrial Relations. <https://www.dir.ca.gov/oprl/2020-1/PWD/Southern.html>

¹⁸ Strupp, Julie. August 23 2022. Inflation Reduction Act includes \$3B to improve roads. <https://www.constructiondive.com/news/inflation-reduction-act-ira-3b-neighborhood-access-equity-grants-roads/630285/>

¹⁹ Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act’s Investments in Clean Energy and Climate Action. <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>, see page 174-176.

²⁰ Notice of Request for Information Regarding Grant Program To Facilitate the Siting of Interstate Electricity Transmission Lines. Federal Register 2023-01820. <https://www.federalregister.gov/documents/2023/01/30/2023-01820/notice-of-request-for-information-rfi-regarding-grant-program-to-facilitate-the-siting-of-interstate>

²¹ Renewable Energy Modernization Rule. Federal Register 2023-00668. <https://www.federalregister.gov/documents/2023/01/30/2023-00668/renewable-energy-modernization-rule>

²² See Building a Better America: A Guidebook to the Bipartisan Infrastructure Law from State, Local, Tribal, and Territorial Governments, and Other Partners. <https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf>

- This law provides \$550 billion between fiscal years 2022 and 2026 for new Federal investment in infrastructure, including roads, bridges, mass transit, water infrastructure, resilience, and broadband. \$350 billion provided in the Act will cover improvements to the Federal highway programs – which would fall under DBA but not SCA.
- Similar to the IRA, federal agencies are regularly posting rulemakings and program reviews related to implementation of the IIJA to the Federal Register for public input.
- A variety of activities funded under the law are likely to require CRM work, such as highway improvements, energy improvement in rural or remote areas, dam rehabilitation and capital improvements, habitat and watershed rehabilitation, investments in wind, hydropower, and solar development, and improving recreation sites on federal land. Some of these projects will likely be direct Federal projects covered under SCA.
- A few of the programs funded in the Act, such as the \$86 million Tribal Climate Resilience – Adaptation Planning program to the Bureau of Indian Affairs, explicitly list support for climate resilience planning for natural and cultural resources as a focus for funding.
- Investments approved in the law are a combination of direct Federal spending, grants programs, and cooperative agreements. Direct Federal spending is overall a smaller portion of the legislation than grant programs. As a result, the majority of the CRM work funded by the IIJA will likely not be covered under the SCA.

Recommendations

- Based on our research, it does not seem likely that an advocacy effort to add archaeological workers to Davis-Bacon prevailing wage classifications would be successful. Archaeological work is too far removed from the “laborer and mechanic” definitions used and there are no analogous jobs currently included in eligible worker classifications.
- It would be helpful if the CRM-affiliated professional societies (e.g., Register of Professional Archaeology, Society for American Archaeology, Society for Historical Archaeology) and CRM trade association (ACRA) could publicize the requirements of the SCA for CRM contracts. It is possible that in some cases CRM workers might not be getting paid SCA wages when a project requires them. Conversations conducted as part of our background research suggest that this issue is not well understood in some cases.
- CRM-affiliated professional societies should consider petitioning the DoL to review wage determinations for Archaeological Technician 30021-30023. It does not appear that these determinations have been significantly modified since they were adopted in the 1990s. At that time, SCA wage determinations were often 50-100% higher than prevailing wages paid for archaeological technicians on non-SCA projects. Today, they are at best equivalent, and often lower, than prevailing wages in many jurisdictions.
- CRM-affiliated professional societies should monitor the Federal Register to look for additional opportunities to comment on IRA and IIJA notices and provide input regarding how cultural resources assessments should be conducted. However, based on what is covered under DBA and the exclusion of SCA when DBA applies, we expect that relatively little infrastructure work will qualify for SCA wage rates.

Archaeological Technician Definitions

Pre-revision 1990s definition of Archaeological Technician:

29020 Archeological Technician

Provides technical support to professional Archeologist, utilizing a basic understanding of anthropological and archeological field techniques in connection with locating, testing and evaluating cultural resource sites. Conducts prefield office research, field surveys and site testing, using a variety of reference materials, interviews with source individuals, aerial photographs and technical instruments. Searches areas of proposed projects for evidence of historic and prehistoric remains. Determines exact location of sites and marks them on maps and aerial photographs. Records information on site survey form and prepares an archeological reconnaissance report needed for evaluation and management of the project. Insures that work assignments are carried out in a safe and timely manner according to established standards and procedures. Reviews work in progress and reports to superiors relative to the completion date and other standards set in report. Cleans and catalogs artifacts recovered from inventories and excavations.

Current definitions of Archaeological Technician (subcategorized by experience and skill level):

30021 ARCHEOLOGICAL TECHNICIAN I

Under the direct supervision of archaeological crew chiefs and under the general supervision of field director/project, the Archeological Technician I performs unskilled and semi- skilled tasks at archaeological field sites. This person assists crew chief in activities associated with the excavation of project areas and found features, walks over project searching for archaeological materials such as historic and prehistoric remains, excavates, screens, back-fills excavated areas, assists in preparation of sketch maps and forms, and field photography, conducts simple surveys using compass, topographical map and aerial photographs. This worker determines the exact locations of sites and marks them on maps and/or aerial photographs, records information on archeological site survey form and prepares simple reports, and cleans, packages, and labels artifacts recovered from inventories and excavations and assists in the flotation of soil samples.

30022 ARCHEOLOGICAL TECHNICIAN II

Under the general supervision of field director/project, this archaeologist, performs skilled tasks, conducts hand excavations, completes plan and profile maps of excavated units, and completes standard feature and level forms, screens soils to recover artifacts. This technician performs flotation of soil samples, walk over, and shovel testing, catalogs, packages and labels archaeological artifacts, maintains field equipment and supplies, and conducts 102 inventories of cultural resources in areas of proposed projects. This incumbent researches reference material such as state and national register files, historic documents.

30023 ARCHEOLOGICAL TECHNICIAN III

Under the general supervision of field director/project, this archaeologist, performs skilled tasks, conducts hand excavations, completes plan and profile maps of excavated units, and completes standard feature and level forms, screens soils to recover artifacts. This technician performs flotation of soil samples, walk over, and shovel testing, catalogs, packages and labels archaeological

artifacts, maintains field equipment and supplies, and conducts inventories of cultural resources in areas of proposed projects. This incumbent researches reference material such as state and national register files, historic documents, archeological reports, maps and aerial photos, and interviews source individuals concerning project areas, performs on-the-ground area searches for surface and subsurface evidence of historic and prehistoric archeological remains. This technician identifies and records historic and prehistoric cultural resource sites, prepares Archeological Reconnaissance Reports (AARF's) and maps, and ensures that archeology work assignments are carried out in safe, timely manner according to established standards and procedures. This technician maintains the Archeological Reconnaissance schedule by estimating and reporting and expected time of completion of each project and updating the project planning board, reviews work in progress to see that standards for pre-field research, survey design, site recording, graphics and final report are being met, and advises other employees on methods of cultural resource inventory. This worker also provides written instructions, research materials and supplies to all involved in planning and operation of natural resource activities.