



U.S. Department of Labor
in the 21st Century



www.dol.gov

Search

[By Topic](#) | [By Audience](#) | [By Top 20 Requested Items](#) | [By Form](#) | [By Organization](#)

Content Last Revised: 12/19/80

---DISCLAIMER---

CFR Code of Federal Regulations Pertaining to U.S. Department of Labor

↳ **Title 20** Employees' Benefits

↳ **Chapter V** Employment and Training Administration, Department of Labor

↳ **Part 656** Labor Certification Process for Permanent Employment of Aliens In the United States

↳ **Subpart D** Determination of Prevailing Wage

20 CFR 656.40 - Determination of prevailing wage for labor certification purposes.

- **Section Number:** 656.40
- **Section Name:** Determination of prevailing wage for labor certification purposes.

(a) Whether the wage or salary stated in a labor certification application involving a job offer equals the prevailing wage as required by Sec. 656.21(b)(3), shall be determined as follows:

(1) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a et seq., 29 CFR part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq., 29 CFR part 4, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards Administration wage specialists if they need assistance in making this determination.

(2) If the job opportunity is in an occupation which is not covered by a prevailing wage determined under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the prevailing wage for labor certification purposes shall be:

(i) The average rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

(ii) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it shall be considered the ``prevailing wage'' for labor certification purposes.

(b) For purposes of this section, except as provided in paragraph (c) of this section, ``similarly employed'' shall mean ``having substantially comparable jobs in the occupational category in the area of intended employment,'' except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, ``similarly employed'' shall mean:

(1) ``Having jobs requiring a substantially similar level of skills within the area of intended employment''; or

(2) If there are no substantially comparable jobs in the area of intended employment, ``having substantially comparable jobs with employers outside of the area of intended employment.''

(c) For purposes of this section, similarly employed in the case of researchers employed by colleges and universities, Federally Funded

Research and Development Centers (FFRDC's) administered by colleges and universities or Federal research agencies, means researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies in the area of intended employment.' ' If no researchers are employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies other than the employer applicant, researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies outside the area of intended employment shall be considered ``similarly employed.' '

(d) A prevailing wage determination for labor certification purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

[45 FR 83933, Dec. 19, 1980, as amended at 63 FR 13767, Mar. 20, 1998]

Effective Date Note: At 63 FR 13767, Mar. 20, 1998, Sec. 656.40 was amended in paragraph (b) introductory text by adding the phrase ``except as provided in paragraph (c) of this section,' ' immediately after the phrase ``For purposes of this section,' '; paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, effective May 4, 1998.

 [Back to Top](#)

<http://>

[Frequently Asked Questions](#) | [Freedom of Information Act](#) | [Customer Survey](#)
[Privacy & Security Statement](#) | [Disclaimers](#) | [E-mail to a Friend](#)

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USA-DOL, TTY: