



# THOMPSON HINE

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## CONSTRUCTION AND LABOR UPDATE

### Projects Funded With ARRA Funds Must Include Davis-Bacon Wages

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law. Certain provisions of ARRA make substantial funds available for state and local construction projects. With the appropriation of federal money for state and local construction projects, many public owners, and the general contractors and construction managers assisting those owners, will need to determine whether Davis-Bacon wages must be paid on such projects—particularly where the project is only partially funded by ARRA.

On May 29, 2009, the U.S. Department of Labor (DOL) issued a memorandum making it clear that the DOL requires owners and contractors to pay Davis-Bacon wages on any project that is funded, in whole or in part, by ARRA.

The memorandum notes that ARRA Section 1606 reinforces Davis-Bacon coverage for construction projects receiving *any* financial assistance under ARRA. Section 1606 was included specifically to prevent owners and contractors from partitioning construction projects into multiple contracts and only using ARRA funds on certain contracts in an effort to avoid paying Davis-Bacon wages on the other contracts within a larger project. The DOL will not allow such partitioning of projects, as its longstanding view is that a project consists of “all construction necessary to complete the building or work regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place.”

However, the DOL recognizes that Davis-Bacon coverage of an ARRA project does not last in perpetuity. Where the major construction activities are “clearly undertaken in segregable phases” that are distinct in purpose, time or place, Davis-Bacon wages are only required for those phases that are funded in whole or in part by ARRA.

Finally, the DOL’s memorandum addresses the situation in which an ongoing project subsequently receives ARRA funding after bids have been accepted without Davis-Bacon coverage. In that situation, the DOL instructs that the agency involved in the project should insert the applicable wage determinations in relevant contracts effective as of the date the ARRA assistance is approved for the project.

To view the DOL’s May 29, 2009 memorandum in its entirety, go to [www.dol.gov/whd/recovery/AAM207.pdf](http://www.dol.gov/whd/recovery/AAM207.pdf).



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