

2023 DBRA Final Rule impacts MDOT Prevailing Wage Compliance

2023 Final Rule DBRA MDOT Understandings

- Site of work
- Construction, Prosecution, Completion, or Repair
- Material Supplier
- Trucking impacts



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Prior MDOT Understanding- “Site of Work”

- Prior to the 2023 final rule, the “site of work” was understood to be where the “work” (roadway or bridge) would remain when completed.
- It also was understood that virtually adjacent sites may be included with “site of work” if the location was within a close proximity (½ mile).
 - This determination was determined on a case-by-case basis.

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2023 Final Rule MDOT Understanding- “Site of Work”

- The 2023 final rule definition of the “Site of Work” includes the DBRA coverage to dedicated locations that are adjacent or virtually adjacent for the performance of the contract.
- Locations that are dedicated exclusively, or nearly so, to support the primary construction site:
 - Onsite office headquarters
 - Batch plants
 - Tool yards
 - Borrow pits / Stockpile yards
 - Other similar facilities or locations

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Prior MDOT Understanding- Construction Work

- Construction work that is performed by laborers or mechanics on the “site of work” where the final work will remain.
- Trucking of materials related to the construction work was understood as a “material” and subject to to the de minimis.

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2023 Final Rule MDOT Understanding – Construction Work

- DBRA covers construction work that is performed by laborers or mechanics on the “site of work” consisting of the:
 - Primary Construction Site
 - Secondary Construction Site
 - Adjacent or Virtually Adjacent Site

- The final rule defines covered transportation (trucking) as: Transportation onsite (site of work) hauling material and supplies by contractors /subcontractors is covered by DBRA laborer or mechanics for all time spent on the “site of work”.
 - Onsite is defined as described above.
 - **There is no de minimis rule related to this work.**
 - “Material Suppliers” have been defined and excluded from a contractor or subcontractor.

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2023 Final Rule MDOT Understanding- Truck Drivers

2023 Final Rule defines two entities that employs truck drivers on a DBRA covered project.

- Truck Drivers who haul onsite and offsite, generally will fall under one of two categories of employment by an entity:
 - **Material Supplier** (Generally is not covered by DBRA)
 - **Contractor / Subcontractor** (Covered by DBRA)

A Truck Driver is employed by one or the other and cannot perform trucking duties for both entities.

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2023 Final Rule MDOT Understanding- Truck Drivers

- **“Material Supplier”** truck drivers are not considered covered by DBRA as laborers or mechanics because the time spent on the “site of work” are essential or incidental to the transportation of material or supplies to or from the “site of work”.
 - such as loading, unloading, or waiting for materials to be loaded or unloaded.
- If an entity, in addition to being engaged in the activities specified above, also engages in other construction, prosecution, completion, or repair work at the site of the work:
 - **It is not a Material Supplier but considered a Contractor.**

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2023 Final Rule - Truck Drivers

2023 Final Rule defines truck drivers for **Contractor / Subcontractor** on the “site of work”.

- The final rule codifies the Department’s current guidance that truck drivers employed by contractors or subcontractors must be paid applicable prevailing wage rates for all onsite driving time unrelated to offsite delivery.
 - (e.g., hauling materials from one location on the site of the work to another),
 - for any time spent transporting “significant portions” of public works from secondary construction sites,
 - for any time spent transporting materials to or from adjacent or virtually adjacent dedicated support sites,
 - as well as for any onsite time related to offsite delivery if such time is not *de minimis*.

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2023 Final Rule - Truck Drivers

2023 Final Rule: Updating the DBRA Regulations

- Truck drivers employed by contractors or subcontractors must be paid applicable prevailing wage rates for all onsite driving time ***unrelated to offsite delivery***.
 - (e.g., hauling materials from one location on the site of the work to another),
 - for any time spent transporting “significant portions” of public works from secondary construction sites,
 - for any time spent transporting materials to or from adjacent or virtually adjacent dedicated support sites,
 - as well as for any onsite time related to offsite delivery if such time is not *de minimis*.

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2023 Final Rule MDOT Understanding- Truck Drivers

- Truck drivers are ***covered*** under DBRA in the following circumstances:
 - Drivers of a contractor or subcontractor for the time spent on the “site of work” for transporting construction material or supplies.
 - Such as, earth and trench excavation, broken concrete, milled material, sand, aggregate or embankment, any original onsite material, etc...
 - Drivers transporting material or supplies to or from adjacent or virtually adjacent dedicated support sites (including any secondary work site).
 - Drivers hauling offsite material working for a material supplier, contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of work, **if such time is not *de minimis***.
 - **All weekly accumulated time spent on the site of work is used when determining if time is not *de minimis*.**

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2023 Final Rule MDOT Understanding- Truck Drivers

- **Truck driver are NOT covered under DBRA in the following circumstances:**
 - Any time spent off the “site of work”.
 - Material supplier meeting the definition of a “Material Supplier”.
 - **Truck drivers delivering offsite material** to or from the “site of work” whose time spent on the site of work is *de minimis*.
 - Such as only a few minutes at a time merely to pick up or drop off materials or supplies.
 - **(All weekly accumulated time spent on the site of work is used when determining if time is de minimis.)**

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The forementioned MDOT DBRA understandings are subject to change upon additional guidance or All Agency Memorandums (AAM) issued by US DOL .

Questions or concerns, please follow
up with Chris Roe?



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