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CERTIFIED PAYROLL: HOW TO GET IT RIGHT

Learn the Consequences of Inaccurate Certified Payroll and How to Nail It Every Time

INTRODUCTION

Certified Payroll is a weekly payroll report that must be filed by employers who are working on publicly-funded government projects. These contractors must submit very specific forms with very specific and accurate data, in order to be paid for the work they do.

Unfortunately, many contractors either don't get the process right and, thereby jeopardize their chances of being paid on time or, worse, will avoid these government projects altogether because they want to avoid the burden of certified payroll reports.

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WHAT IS CERTIFIED PAYROLL?

Certified Payroll for construction is a specific type of process that is necessary to work on publicly-funded government projects. Contractors who do these kinds of projects must file a weekly report with federal form WH-347 and, often, a state equivalent.

In 2019, public construction made up $329B of construction spending in the U.S. Construction makes up a large portion of the US gross domestic product (GDP) and "has come to essentially be part of the broad category of building, construction and infrastructural public works projects for use by the general public which is typically financed by state, local, or federal governments," according to experts.

If you are interested in being a part of this billion-dollar industry, you will need to be familiar with Certified Payroll, the Davis Bacon Act, Prevailing Wage Law, and more.

THE DAVIS BACON ACT

Certified Payroll is based on the Davis Bacon Act (DBA) which was passed in 1931 to ensure equality and safe work environments among construction workers. Since then, it has been expanded upon by other Related Acts (DBRA) such as:

- The Copeland Anti-Kickback Act
- Contract Work Hours and Safety Standards Act (CWHSSA)
- The Walsh-Healey Public Contractors Act (PCA)
- McNamara Service Contract Act (SCA)
- And other executive orders.

These DBAs apply to "contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works."

These jobs include:

- Plumbers
- Carpenters
- Masons
- Concrete work
- Electricians
- Insulation
- Laborers

- Lathers
- Painters
- Power equipment operators
- Roofers
- Sheet metal workers
- Truck Drivers
- Welders

When performing projects that are covered under the Davis Bacon Act, it is critical to get all data collected and organized accurately to avoid penalties and, most importantly, to get paid for the work.

CONSEQUENCES OF INACCURATE CERTIFIED PAYROLL

While there are Federal standards for government contracts, there are also state and local regulations that must be followed and can vary depending on the location of the job being done.

Technically, filing inaccurate certified payroll reports can lead to fines or even debarment if the violations are found to be willful but in some cases, even accidental mistakes can have consequences.

In a case dating back 20 years, a Pennsylvania court held a contractor - The Fairfield Company - liable for over $1m in damages and $1m in attorney's fees for filing a false certified payroll report, even though they did not intentionally violate the DBA.

Specifically, the findings say (among other things), "...although the evidence does not demonstrate that Farfield intentionally submitted false statements regarding the work performed by its employees on the Wayne Junction Project, it acted in reckless disregard of the truth or falsity of this information, largely by allowing its foremen to determine which workers did which tasks, without regard for the workers' classifications, 9 despite Farfield's awareness of its prevailing wage obligations..."

Conversely, a 2014 lawsuit found two men guilty of conspiring to defraud the government on a federally funded project by underpaying workers. They were sentenced to four years of probation including 18 months of home confinement, and ordered to pay $164,627 in restitution.

In addition to federal offenses, states have specific regulations when it comes to government projects. For example, Washington state issues "strikes" to contractors for violating prevailing wage laws which impacts the jobs they can bid on, depending on the severity of their violations and, in Illinois, contractors or subcontractors who are found to violate prevailing wage law twice within five years, "may be disbarred from public works projects for four years."

That's why contractors performing government projects should familiarize themselves with the specific state and local requirements before bidding and/or undertaking these projects.

COMMON MISTAKES TO AVOID WITH CERTIFIED PAYROLL

Even if a mistake is unintentional, it can be costly. But mistakes can be avoided by taking the right steps.

EMPLOYEE MISCLASSIFICATION

By far, the largest problem associated with Certified Payroll is the misclassification of employees and/or determining the right prevailing wage. One study done in Michigan found that 26.4 percent of construction employers misclassified employees or employee statements and, overall, studies have found the federal government loses at least three to four billion dollars each year due to misclassification of employees.

Our own poll showed just over half of respondents - 52 percent - said they have had issues with paying the right prevailing wage and the majority - 26.5 percent - confessed applying the right wage determination was the hardest part of doing certified payroll.
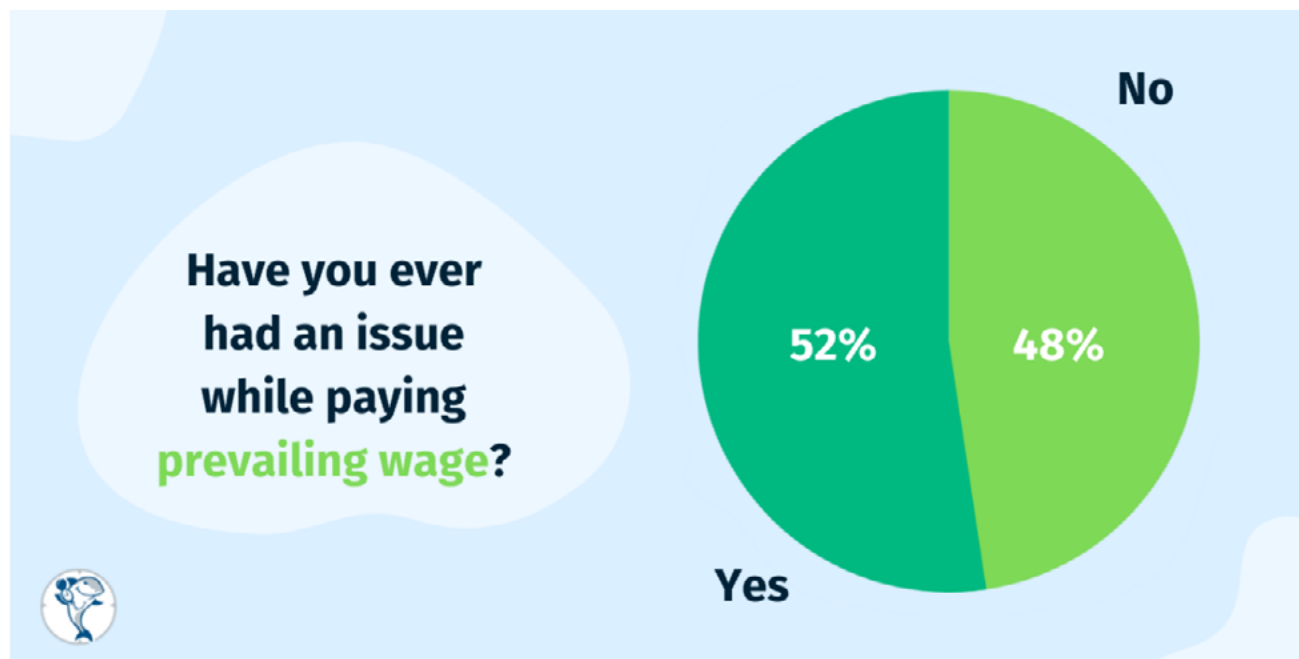
When you misclassify a worker, you risk violating prevailing wage laws which comes with a hefty fine. Prevailing wages vary, depending on where the work is being performed. Prevailing wage is defined by the Department of Labor, based on surveys conducted of various contractors in different areas.

To avoid this common mistake - and the resulting headaches that come with it - be sure your workers are logging their hours based on the work they are doing. While a journeyman might make a higher hourly wage, if they are doing a laborer's job, that pay rate will be different. Travel pay, as well, will likely be a different wage so it is important to have these categories aligned and used properly to avoid accidentally misclassifying work being done.

USING THE WRONG FORMS

Certified Payroll has to be done with precision and accuracy. Sometimes companies will use their own forms, thinking it is okay. Or, they won't file the forms at all. For Federal certified payroll, you must fill out form WH-347 but this form is not enough for state and local projects.

It's important to research different states' forms, regulations, and submission requirements because they do vary. Wage determinations, too, can vary from state to state and even locale to locale.

If you're not sure, consider finding a local attorney, accountant, or payroll professional to assist you when working on government projects.

INCOMPLETE/INACCURATE EMPLOYEE DATA

Another common mistake that can throw off a certified payroll report is a lack of the correct information. This is particularly true for companies that are not using technology to disseminate the data.

Certified Payroll reports require very specific information to be completed correctly. Using technology to track workers' jobs and tasks makes it much easier to have accurate, complete information so when you sit down to do the reports, you're less likely to have errors that can impede getting paid for the work you've done.

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NECESSARY TIMESHEET DATA FOR CERTIFIED PAYROLL

If you wish to file your certified payroll report manually, be prepared to spend a few hours a week, depending on the size of your company and number of workers.

You can get the information from the Department of Labor on how to fill out the federal form yourself here. Before sitting down to fill out the reports, you'll need to have the following information:

- Company name and whether you are a contractor or subcontractor
- Company address
- Payroll number (beginning with #1)
- For week ending (date)
- Project name and location
- Employees' names and employee number
- Number of withholding exemptions
- Work classifications (i.e., laborer, skilled trades, managers, etc.)

- Hours worked
- Rate of pay
- Gross amount earned
- Deductions
- Net pay
- Descriptions of deductions
- Descriptions of fringe benefits
- Exceptions

Essentially, when doing certified payroll reporting, have as much information and data as possible and try to have it as organized as possible to avoid missing information or delays.

# TIPS TO GET CERTIFIED PAYROLL RIGHT

Even if a mistake is unintentional, it can be costly. But mistakes can be avoided by taking the right steps.

INVEST IN TECHNOLOGY

As construction and engineering projects become more and more technical and advanced, the most competitive organizations will adopt technology to accommodate these complexities.

Technology helps with everything from design and materials to quality control, safety, and contract management. According to McKinsey, on-site execution relates to "one of the most important aspects of construction" where many construction companies run into issues with many things ranging from low productivity to delays.

To mitigate these issues, technology helps with field productivity by "tracking crew deployment in real time, including the number of active working hours for each team member."
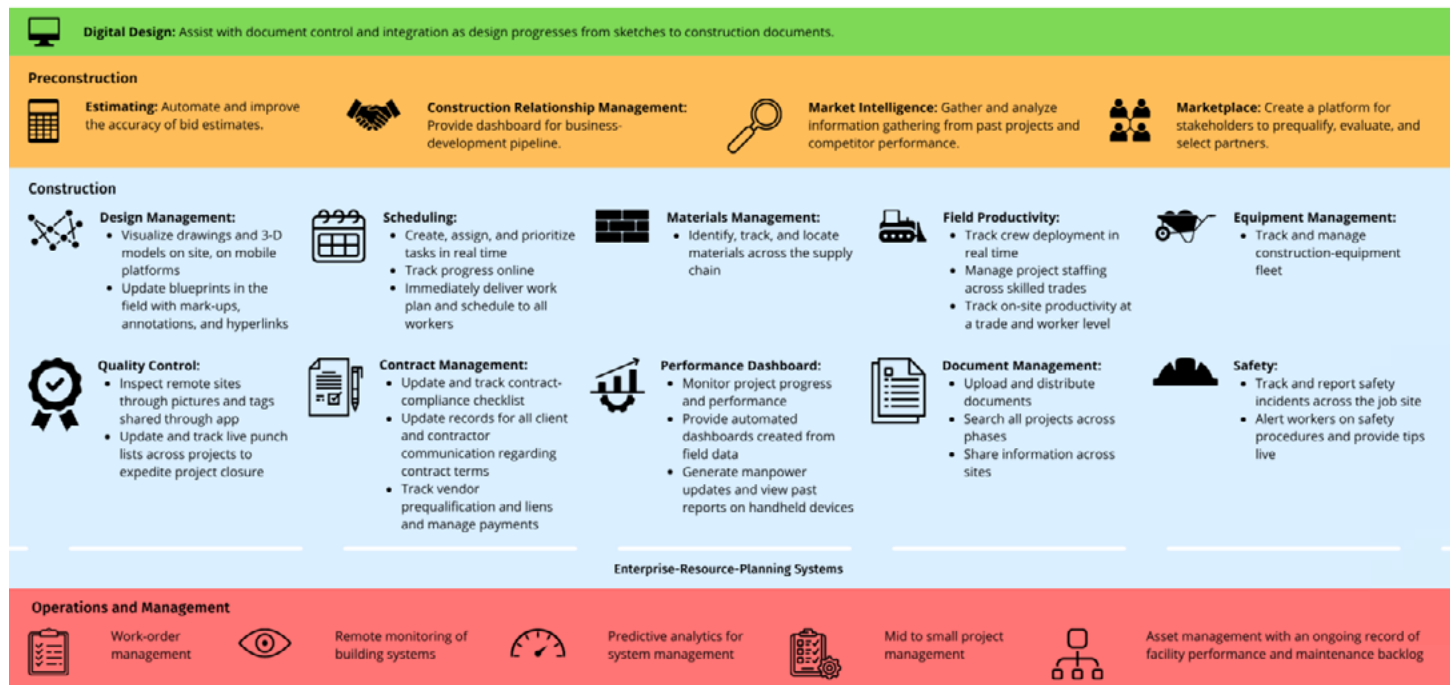
When it comes to government projects - and certified payroll - the assistance of technology cannot be understated. Tracking crew work, tasks, and hours, will help prevent the misclassification of workers and accidentally paying the incorrect prevailing wage.

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OUTSOURCE IT

If you're not a numbers person or simply don't have the time or patience to fill out the required forms and reports accurately and on time, consider outsourcing the job to a qualified professional.

The IRS suggests there are four common third party arrangements companies can make, depending on the specific circumstances:

- Payroll Service Provider (PSP)
- Reporting Agent (RAF)
- Section 3504 Agent
- Certified Professional Employer Organization (CPEO)

They warn, however, regardless of who you choose to hire as a third party, ultimately the employer is still responsible for Federal income taxes.

There are also organizations that specialize in Certified Payroll Reporting such as Points North, who can take care of the process for you.

Be sure to vet any third party you decide to go with, before moving forward.

GET CERTIFIED

The American Payroll Association offers a Certified Payroll Professional Examination which provides you with additional training to become a Certified Payroll Professional (CPP). There are multiple benefits to obtaining a CPP certification, not the least of which is learning to get it right. Before you can apply to take the examination, the APA says the payroll professional applying must:

- Have practiced at least a total of three years out of the last five years either
- Payroll Production, Payroll Reporting, Payroll Accounting, Payroll Systems, and Payroll Taxation
- Payroll Administration
- Payroll Education/Consulting

Following these criteria, you must complete additional courses offered by the APA.

These courses will help educate you (and/or your administrators) on best practices, laws, and requirements for fulfilling certified payroll requirements.
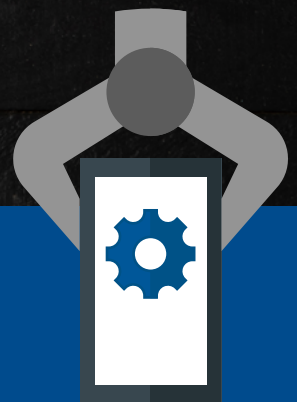
CONCLUSION

Government projects can be a lucrative option for today's construction professionals but without the right knowledge, training, and technology, you risk losing these projects before you even begin.

Certified Payroll is a requirement when performing these projects and it's a tedious and complex process that can hold up your payments or, worse, get you debarred if done incorrectly. Before embarking on these types of projects, invest time in researching the best practices so you can take on more government projects with confidence.