Fredrikson

Contractor's Guide to IRA Prevailing Wage and Apprenticeship Mandates

By Nena Lenz, Fredrikson & Byron, P.A. Updated August 2025

Introduction

The Inflation Reduction Act (IRA) changed clean energy tax incentive rules, extending them and tying their value to compliance with prevailing wage and apprenticeship (PWA) requirements during construction and operation of energy projects. Although PWA compliance is the ultimate responsibility of taxpayers, PWA requirements impose obligations on the construction companies that build the energy projects. As a result, owners of clean energy projects are pushing all PWA obligations down to their contractors, imposing steep consequences for noncompliance.

This guide aims to help contractors succeed on contracts that include the PWA compliance as an owner[1] mandate. I explain PWA requirements, highlight differences between IRA and Davis-Bacon Act (DBA), and offer tips and best practices.

Part 1: Understanding PWA Compliance from the Owner's Perspective

Part 2: Changes Under the Trump Administration and the One Big Beautiful Bill Act (OBBBA)

Part 3: Who – Covered Workers

Part 4: Where – Covered Worksites

Part 5: When – During Construction and for 10 Years of Operation

Part 6: How – Basic Prevailing Wage Requirements

Part 7: How – Project-Specific Prevailing Wage Rates

Part 8: Special Rules for Tribes

Part 9: How – Apprenticeship Requirements

Part 10: Troubleshooting PWA Mistakes

Part 1: Understanding PWA Compliance from the Owner's Perspective

In this part, I offer a high-level view of the benefits and risks of PWA compliance from the owner perspective.

Contractors who understand how and when PWA compliance benefits project owners will be able to (1) negotiate better terms with owners, especially when it comes to indemnification; (2) structure their own compliance programs to minimize friction with owners during contract performance, particularly when correcting noncompliance; and (3) develop effective lower-tier subcontractor agreements and monitoring programs.

1 – Throughout this article, I use the term "owner" in place of the term "taxpayer," because from a contractor perspective, PWA requirements are coming down as an owner mandate. Most guidance on this topic, including all IRS documents, refer to "taxpayer."

Where Law and Business Meet®

 ©2025 Fredrikson & Byron, P.A.

Clean Energy Projects

IRA expanded the types of clean energy projects eligible for tax credits beyond wind and solar energy production and manufacturing facilities to a wide variety of projects including combined heat and power, advanced energy storage, clean hydrogen production, carbon capture and storage, geothermal, electric vehicle manufacturing, microgrids, and retrofitting existing infrastructure.

Like all construction projects, the ownership and management of IRA projects will vary. Often, an owner will hire a company to oversee the whole project through an engineering, procurement and construction (EPC) contract. EPC contractors are responsible for the entire project and will hire construction firms to perform the construction work for the project.

For private owners of IRA projects, the tax credits are direct offsets of taxes. In lieu of tax credits, entities that are exempt from federal taxes, including local governments and nonprofit organizations, can get direct payments from the Internal Revenue Service (IRS). In addition, tax credits are transferrable, which has created a private market for the credits.

Owners Mandate PWA Compliance to Get 5x Tax Credit (6% to 30%)

Under IRA, owners earn a 5x tax credit enhancement (from 6% to 30%) if they comply with specific PWA requirements during construction of the facility and the first ten years of facility operation. For example, if qualifying facility costs are $200 million, PWA compliance increases the tax benefit from $12 million to $60 million.

PWA Obligations Enforceable When Tax Credit Claimed

Unlike in the DBA context, PWA requirements do not follow the flow of funds from a federal agency. Instead, project owners choose to follow the PWA requirements based on a future intention to seek tax credits. Long before there is any federal interest in a project, a project owner will structure project financing and build tax credits into their project financial model and impose PWA obligations on contractors.

PWA requirements do not become federal compliance requirements until the owner files a tax return claiming credits. As a result, PWA noncompliance will not be evaluated by the IRS until it performs an audit after the tax return is filed—which could be years after a contractor finishes working on a project. By the time the IRS identifies PWA noncompliance, the penalties are steep and, even with good records, it could be extremely difficult to correct mistakes.

Noncompliance With PWA Requirements Creates Significant Exposure for Contractors

The consequences of noncompliance start with modest penalty payments to the IRS, then escalate to larger penalties, and finally result in losing eligibility for the PWA tax credit enhancement.

The project owner is ultimately responsible for compliance. Unlike DBA, there is no joint and several liability of primes and general contractors, as all consequences fall to the owner. The stakes are high for owners, and contractors control compliance. To guard against this risk, owners seek indemnification from contractors.

If a contractor's actions result in an owner losing access to PWA tax credit enhancement, the indemnification obligation of a contractor could be catastrophic. In the $200 million project example above, losing the PWA enhancement could trigger a $48 million indemnification obligation for a contractor. And these indemnification obligations could spring from projects that contractors completed years before.

Keep Records and Monitor Closely

To avoid the risk of steep penalties, it is essential for contractors to build a PWA compliance program that allows them to promptly identify and correct noncompliance, such as underpayment of wages, misclassification of workers, or missing apprentice labor hour requirements.

Contractor recordkeeping requirements may vary between IRA projects, depending on the recordkeeping strategy adopted by the owner. Owners can satisfy their PWA recordkeeping requirements in any of the following ways: (1) by collecting and physically retaining relevant records from every contractor and subcontractor; (2) by having all parties provide relevant records to a third-party vendor to physically retain on behalf of the owner; or (3) by having all contractors and subcontractors physically retain the relevant unredacted records for their own employees. Under the first two options, personally identifiable information (PII) can be redacted to comply with applicable privacy laws. Under all three alternatives, owners are required to make unredacted records available to the IRS upon request. And all three options require contractors to collect substantial documentation to prove compliance with all PWA requirements.

 ©2025 Fredrikson & Byron, P.A.

Part 2: Changes Under the Trump Administration and the One Big Beautiful Bill Act (OBBBA)

On July 4, 2025, President Trump signed into law the One Big Beautiful Bill Act (OBBBA) which accelerated repeal schedules for most IRA tax credits and compressed the deadlines for projects to qualify. OBBBA has fundamentally changed the market in which contractors are navigating PWA compliance requirements. Investors and owners are scrambling to accelerate project schedules to preserve tax credit eligibility, and contractors will feel this pressure. In addition, the Trump Administration's distaste for IRA tax credits, combined with the Administration's aggressive efforts to root out fraud in government programs, may lead to enhanced taxpayer audits, which would include scrutiny of contractor project records.

Part 3: Who – Covered Workers

In this part, I explain the prevailing wage (PW) portion of PWA requirements by defining which workers must be paid PW.

The PWA mandate requires that all laborers and mechanics employed by the owner, contractor or subcontractor must be paid PW for all hours spent performing construction, alteration and repair on the project.

Prevailing Wages Must Be Paid to "Laborers and Mechanics"

Like DBA, laborers and mechanics working on IRA projects must receive PW. "Laborers and mechanics" are defined as those workers whose duties are manual or physical in nature, including workers who use tools or who are performing the work of a trade, including apprentices and helpers. Working forepersons who spend more than 20% of their time in a work week performing laborer or mechanic duties must be paid PW for their time spent on that manual labor.

The term "laborers and mechanics" does not include workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity (those who are generally exempt under the Fair Labor Standards Act (FLSA)) are not laborers or mechanics. PW requirements apply to workers regardless of whether they would be characterized as an employee or an independent contractor for other federal tax purposes.

Given the expansion of PW requirements under IRA to new types of workers and projects, it may not be obvious whether a worker meets the definition of a laborer or mechanic. When in doubt, evaluate the worker's specific duties to determine if they are manual or physical in nature. If you are still not sure whether a worker is covered by PW requirements, consult DBA guidance, ask for assistance from counsel, or confer with the owner and, if you decide that a worker is not covered by PW requirements, document your decision.

Part 4: Where – Covered Worksites

In this part, I explain which locations of work are covered by PWA requirements.

Prevailing Wages Must Be Paid for Work on the "Qualified Facility"

Under DBA, PW must be paid for all construction, alteration and repair work performed by laborers and mechanics at the "site of work." PWA requirements are different; they require PW only for work on the "qualified facility."

Because PWA requirements are driven by tax incentives that attach to specific projects, PW requirements apply only to work on the portion of a project that earns tax credits, called the "qualified facility" under IRS rules. This is narrower than DBA requirements, which are triggered by federal funding and spread to all work performed at the "site of work." For clarity throughout this article, I refer to a "qualified facility" simply as a "project."

Given the wide variety of possible types of PWA projects, contractors should take care to understand which

 ©2025 Fredrikson & Byron, P.A.

specific scopes of work require PWA compliance by consulting with the upstream customers. There could be scenarios where not all workers on a jobsite are subject to PW requirements, which could create confusion and worker frustration. Contractors should also pay attention to significant changes in scopes of work to ensure that all parties agree on whether PWA requirements apply to the new or changed work.

Prevailing Wages Must Be Paid for Work at "Secondary Sites"

Consistent with DBA, under certain conditions, the PWA Rule requires payment of PW for work on a qualified facility that occurs at a location other than the actual project. When the work performed at a secondary site meets **each** of the following conditions, then PW must be paid:

1. The work is for specific use on the project and does not simply reflect the manufacture or construction of a product made available to the general public.
2. The site is established specifically for work on the project or it is dedicated exclusively to work on the project for a period of weeks, months, or more. Your workplace will not become a secondary site if you dedicate it exclusively to a single project for a few hours or days to meet a deadline, or if you are working on multiple projects but focus on just one for a while.
3. The work done at the secondary site is a "significant portion" of the project. This means the work involves one or more entire portions or modules of the project, such as completed rooms or structures that require minimal construction work (e.g., installation or final assembly) once they arrive at the permanent project location. "Significant portion" does not include materials or prefabricated component parts such as prefab housing components.

Evaluating potential secondary sites for PWA purposes can be tricky, but you can consult DBA for guidance. When in doubt, request assistance from counsel and confer with the owner and, if you decide that a location is not a secondary site, document your decision.

Special Considerations for Manufacturers

PWA requirements do not apply to manufacturers unless their manufacturing facilities become secondary sites.

Unrelated third-party manufacturers that produce materials, supplies, equipment and prefabricated components for multiple customers or the general public are not subject to the PWA requirements. Merely shifting the workforce to focus exclusively on an IRA project order for a few hours or days to meet a deadline will not trigger PWA requirements. But manufacturers who accept responsibility for constructing a significant portion of an IRA project at their own manufacturing facilities—or who set up a temporary location to support such an order—could find themselves subject to PWA requirements.

Manufacturers that receive large orders related to IRA projects should review the orders carefully to ensure that PWA obligations are not included in their terms. Vigilant manufacturers should be prepared to alert customers upon receiving orders that could inadvertently create a secondary work site subject to PWA. Even though the ultimate responsibility for PWA compliance resides with the owners, manufacturers will be well-served to monitor their potential exposure to PWA secondary site obligations and be mindful of accepting indemnification clauses in IRA project orders.

Part 5: When – During Construction and for 10 Years of Operation

In this part, I explain how PWA requirements apply differently during the construction phase and operation phase of an IRA project.

During the construction phase, both PW and apprenticeship requirements apply to all work. During the operation phase, apprenticeship requirements do not apply and PW is not required for maintenance work.

Construction Phase – "Construction, Alteration, or Repair"

Consistent with DBA projects, contractors must pay PW to laborers and mechanics for construction, alteration, and repair work performed during the construction phase of the project. Unlike DBA, PWA mandates include apprenticeship requirements.

The PWA Rule defines "construction, alteration or repair" as consistent with the DBA concept of "construction, prosecution, completion or repair" in 29 CFR 5.2, which includes all types of work done by laborers and mechanics, ranging from equipment installation to painting to demolition. As soon as a laborer or mechanic performs any work on an IRA project that fits that definition, the PWA obligations start and continue until the facility is placed into operation.

 ©2025 Fredrikson & Byron, P.A.

If it is unclear whether and when a scope of work becomes an "IRA project" triggering the PWA requirements, contractors should consult the owner. IRS rules regarding when PWA requirements start are nuanced and evolving and even IRS guidance documents contain conflicting information. Owners are responsible for sorting out those details. Contractors should look to their contract terms and, when in doubt, ask the owner for written clarification.

Be cautious when consulting the DBA regulations and guidance for clarity on the scope of "construction, alteration, or repair" because certain elements of the DBA definition are currently subject to a nationwide preliminary injunction, as I discussed in a series of blog posts about the extension of DBA to truck drivers and material suppliers.

PWA requirements apply to maintenance activities performed by laborers and mechanics during the construction phase, but they do not apply to the same maintenance activities if they occur after the facility is placed into operation.

Operation Phase – Prevailing Wage Still Required, but Not for Maintenance Work

The first ten years after the IRA project is placed into service is the operation phase. During the operation phase the PWA requirements are more limited in scope. The apprenticeship requirements do not apply. In addition, the requirement to pay PW continues to apply to repair work but not routine maintenance tasks. Distinguishing between the two can be difficult.

Distinguishing Between Repair Work and Maintenance Work

Repair work normally includes work that improves a facility, either by fixing something that is not functioning properly or by improving the facility's existing condition. Repair involves the correction of individual problems or defects as separate and segregable scopes of work and is not continuous or recurring. Repair work could also improve a facility's structural strength, stability, safety, capacity, efficiency, or usefulness.

Maintenance is work that is ordinary and regular in nature and designed to maintain existing functionality of a facility. It typically involves regular facility inspections, regular cleaning and janitorial work, regular replacement of materials with limited lifespans such as filters and light bulbs and the regular calibration of equipment.

In describing the difference between repair work and maintenance work, the PWA Rule draws from U.S. Department of Labor (DOL) guidance regarding the difference between DBA-covered construction work and maintenance work performed by service employees and subject to a different federal prevailing wage law, called the Service Contract Act. The intersection of construction work and service work is complex, and contractors will need to consult owners if it is not clear whether a particular scope of work during the operation phase requires PW compliance.

Part 6: How – Basic Prevailing Wage Concepts

In this part, I introduce basic prevailing wage concepts, highlighting the differences between DBA and IRA requirements.

Prevailing Wage Rates Same as DBA Rates; Set by DOL in DBA Wage Determinations

Consistent with DBA, contractors must pay laborers and mechanics working on IRA projects no less than the "prevailing wage rate" for each hour worked. Prevailing wage rates are hourly rates comprised of a base wage rate and a fringe rate.

PWA wage requirements for IRA projects are tied to the PW set by the DOL for DBA projects, which are defined in wage determinations (WD). Each WD includes a list of job classifications along with basic hourly rates and fringe benefit rates required for each.

Each covered worker must be assigned to a job classification on the applicable WD. For traditional trades, locating the proper job classification will be straightforward (e.g., electrician, carpenter, pipefitter). For other, newer jobs on clean energy projects, like wind technician, there will not be a corresponding job classification on existing WDs. In that case, contractors will need to ask DOL to set wages for those workers.

WDs are publicly available and regularly updated by DOL. Each WD covers a specific location, usually a county or several counties, and within a given area there will be different WDs for different types of work: highway, heavy, commercial and residential.

 ©2025 Fredrikson & Byron, P.A.

Fringe Benefit Requirement

The fringe rate may be paid entirely through cash, or through a combination of cash wages and employer-provided bona fide fringe benefits.

Fringe benefits generally include health and welfare insurance, life insurance, paid time off and retirement benefits, and they must meet specific criteria to qualify for fringe benefit credit. Contractors planning to take credit for providing benefits should be aware that funded fringe benefit plans qualify for fringe benefit credit, but unfunded benefits plans do not qualify unless they meet certain conditions. Under a funded plan, contributions are made irrevocably to a trustee or third party; this usually occurs with union benefits.

Unfunded fringe benefits plans, often referred to as company plans or self-funded plans, are funded by employer assets rather than by payments to a trust or third party. They only count as creditable benefits if certain requirements are met: (1) the plan must be reasonably anticipated to provide bona fide benefits; (2) the company's commitment to the plan must be legally enforceable; (3) it must be communicated in writing to the employees; (4) the funds must be set aside quarterly to meet future obligations under the plan and those funds must be used for that purpose; and (5) the company must request and receive prior approval of the plan from DOL. Most company plans will meet the first three requirements, but not the final two.

No Certified Payroll or Weekly Submission Requirements; Keep Records

Unlike DBA, the PWA Rule does not require weekly or certified payroll, providing that contractors may use ordinary payroll and pay workers in the time and manner as they usually do. That said, owners are required to ensure that all PWA requirements are met and are required to maintain detailed records, so contractors should expect to see contract terms outlining payroll requirements.

Contractors can expect to see payroll recordkeeping obligations in their contracts that are similar to DBA projects, including, for example, identifying information (including addresses, telephone numbers, and email addresses) for laborers and mechanics, the labor classifications applied to each laborer and mechanic, the applicable WD's, and records to support contributions to bona fide fringe benefit programs.

Unions and Project Labor Agreements

There is no requirement in the PWA Rule to enter into a collective bargaining agreement (CBA) or use union labor on IRA projects. But there is a lower risk of penalties if the work is done pursuant to a qualifying project labor agreement (PLA), and unions are actively organizing and encouraging owners to sign PLAs.

Other Federal Labor Laws

Unlike DBA projects, PWA requirements do not trigger the following federal labor laws: the Contract Work Hours and Safety Standards Act (CWHSSA), Federal Paid Sick Leave Executive Order 13706, and the Copeland Act (certified payroll).

Part 7: How – Project-Specific Prevailing Wage Rates

In this part, I explain how PW rates are set for IRA projects and how they may change over time.

Owner Chooses the Wage Determination, Includes It in Contract

For DBA projects, the government selects the WD for each project; but for IRA projects, owners are responsible for selecting the WD. Owners are directed to select the WD that covers the geographic area where the work will be performed, which is the location of the project or a secondary work site.

Wage Determination in Effect at Contract Execution Date to Be Included in Contract

The WD in effect on the date a contract is executed should be incorporated into the contract between the owner and the contractor. This requirement may pose a practical challenge given the frequency with which DOL updates its WDs, and an update could occur between the date a contractor (or its subs) price the work and when the contract is ultimately signed.

When estimating project costs, contractors should be mindful of the risk that increased PW rates may be included in the contract at the execution date via incorporation of an updated WD. They should have a plan in place to address those cost increases before signing the agreement. In the IRA context, contractors do not have the same rights to request an equitable adjustment (REA) as they do under DBA, so contractors will need to review contract clauses carefully and negotiate for that right.

 ©2025 Fredrikson & Byron, P.A.

If no WD was included in a contract between an owner and a contractor, if the date of contract execution is not clear, or if there is no contract, then the owner is directed to select the WD based on the start of construction for that contract. If an owner attempts to impose PWA requirements or incorporate a WD after contract execution, contractors should evaluate the cost and risk of PWA changes and negotiate contract price changes accordingly.

All Subcontracts Subject to Same Wage Determination

As on DBA projects, once a WD is incorporated into the construction contract between a contractor and the owner, then all subcontracts under that agreement will be subject to the same WD. Contractors should flow down the WD to their subcontractors and require them to pass it down, as well.

It Is Possible to Have Multiple Wage Determinations on One Project for Different Types of Work

Owners are instructed to assign WDs to a project based on the type of work being performed. In certain cases, projects involving multiple types of work (e.g., heavy and commercial) will have more than one WD. In that case, the applicable WD will depend on a contractor's scope of work. If your project has multiple WDs for different types of work and it is unclear which WD is applicable to your scope, seek guidance from the owner and document your decision.

It Is Possible to Have Multiple Wage Determinations on One Project for the Same Type of Work

Under PWA rules, owners are required to identify a WD for each contract they enter into based on the contract execution date. If an owner has multiple contracts with contractors, then contractors working at the same facility could be subject to different PW rate requirements, meaning that workers in the same job classification could be paid different rates. Contractors should be aware that this could lead to confusion and frustration among workers, particularly if they are used to working on DBA projects with uniform wage requirements.

If There Is No Wage Determination or the Wage Determination Lacks Labor Classifications – Submit Request to DOL

If there is no WD for the type of work proposed in a certain geographic area (e.g., no WD for heavy construction in a certain county), or if the WD lacks labor classifications and rates for types of workers that will perform work on the project, then the owner, contractor or subcontractor may request a supplemental WD or additional labor classifications from the DOL.

Requesting a Supplemental Wage Determination

Supplemental WD requests may not be made more than 90 days before contract execution or beginning of construction, because the IRS and DOL want to avoid "hypothetical" requests. A supplemental WD is good for 180 days, but if it is not incorporated into a contract during that period, a new one must be requested from DOL. IRS has acknowledged that a contract may take more than 180 days to negotiate – but would not grant additional time.

Requesting Supplemental Labor Classifications

Requests for PW rates for additional labor classifications can be made any time after construction starts or no more than 90 days before construction starts. There may be situations in which construction has started and laborers and mechanics are already working in labor classifications for which rates are not set under the WD. In that case, a contractor must request the additional classifications as soon as possible. DOL will provide the additional rate within 30 days or send notification that additional time is needed.

If a supplemental WD or additional classification and wage rate is issued after construction started, those rates **will apply retroactively** to the starting date. To avoid owner penalties, contractors must correct any underpayments within 30 days after receiving the revised WD through payment of back wages to underpaid workers.

Wage Determination Must Be Updated for Substantial Scope Change, Option Exercise and Annually for IDIQS

Consistent with DBA, once a WD has been incorporated into a contract, the applicable PW requirements will not change unless additional substantial construction work is added to the contract or if the contract is extended (e.g., an option is exercised). In those cases, the amended contract should include the current WD. A new WD is not required if additional time is awarded for the original statement of work (SOW) or if the scope change is incidental.

A multi-year contract for repair or maintenance work that is not tied to any specific statement of work (e.g., master service agreement) requires annual updates to the WD on the anniversary of the agreement date.

 ©2025 Fredrikson & Byron, P.A.

Part 8: Special Rules for Tribes

There are a few special rules for application of PWA requirements on tribal land. First, Indian Tribal governments are exempt from PWA requirements for the laborers and mechanics employed by the government or by any entity jointly owned with the government (tribally-owned businesses). This is the same as the "force account exception" under the DBA.

Second, when Indian Tribal governments or a tribally-owned business perform construction, alteration or repair of a facility on Indian Land, the Tribe can choose the WD rather than the owner. The Tribe can select any of the WD's that apply to any portion of the Indian Land; they are not limited to the WD that encompasses the geographic location of the work. If the Tribe chooses to select a WD in this manner, then the Tribe must maintain documentation. Third, Tribes can create their own apprenticeship program.

Part 9: How – Apprenticeship Requirements

In this part, I introduce the PWA apprenticeship (APR) requirements, which apply to the construction phase of a project but not to alterations or repairs after a facility is operational. APR requirements have three parts: a labor hours requirement, a participation requirement, and a ratio requirement.

DBA Permits Apprentices; IRA Mandates Them

Unlike the PW requirements discussed in prior parts of this article, the IRA APR mandate does not have a DBA counterpart. As a result, owners, contractors, IRS and DOL cannot consult decades of DBA regulations, guidance and case law to interpret them. Although DBA does not require participation of apprentices, it does permit them, subject to regulations. Contractors struggling to apply APR requirements can consult DBA regulation of apprentices for guidance. In addition, some contractors may be familiar with union-specific APR requirements in CBAs.

APR Basic Requirements

An apprentice is a person who is learning a skilled trade under the guidance of an experienced tradesperson known as a journeyman or journeyworker (JW). The PW rates on WDs are JW rates. Because they are still learning the trade, contractors subject to DBA and PWA are permitted to pay apprentices less than JW rates, if certain conditions are met, including the following five key requirements. First, the apprentice must be participating in a registered apprenticeship program (RAP) approved by the DOL.

Second, the contractor must pay the apprentice not less than the hourly rate specified in the RAP for the apprentice's level of progress expressed as a percentage of the JW rate for the apprentice's classification in the applicable WD. PWA guidance does not offer guidance on how to convert the RAP rate to the WD rate, but DBA guidance on this issue is instructive. For example, in certain cases, the RAP may express the apprentice wage rate as a set dollar amount, rather than a percentage of the JW rate. In that case, DBA guidance directs contractors to convert the dollar amount to a percentage of the JW basic rate in the RAP, and then apply that percentage to the JW rate in the WD.

Third, each apprentice will be assigned a specific job classification, and the lower hourly rate may only be paid for hours worked by the apprentice in that job classification. Fourth, apprentices must be paid fringe benefits in accordance with the RAP. If the RAP does not address fringe benefit rates, then the apprentice must be paid the JW fringe benefits. Fifth, contractors must honor the RAP apprentice-to-JW ratio each day.

APR Labor Hours Requirement: Apprentices Must Perform 15% of Total Project Labor Hours

To earn the PWA enhancement, owners must demonstrate that apprentices performed a minimum percentage of the total labor hours worked by laborers and mechanics over the life of the construction phase. That minimum percentage escalates over time and is 10% for projects started before 2023, 12.5% for projects started in 2023, and 15% for projects started in 2024 or later. The applicable minimum percentage will be defined in construction contracts.

Note that total labor hours do not include the hours spent by working foremen performing the duties of a laborer and mechanic.

Achievement of this overall project goal is measured across the entire project, and owners will expect

each contractor to meet the project percentage for its SOW. Contractors that subcontract should pass the requirements down to each subcontractor. The overall labor hour tally will be kept by the owner. Owners will expect contractors to track and report APR participation hours for their own workforce and that of their subcontractors.

APR Participation Requirement: Applies When Contractor Employs Four or More Workers

Contractors that employ four or more laborers or mechanics who work on the IRA project at any point during the construction phase must participate in the APR goals and hire at least one apprentice. The participation requirement is triggered once a contractor has employed four workers over the course of the project. They do not need to be working at the same time or even in the same location.

Labor Hours Requirement and Participation Requirement Are Separate

Note that the labor hours requirement applies even if the participation requirement does not. This means that even if contractors are not required to hire an apprentice, the total labor hours worked by employees of that contractor will count toward the overall participation goal for the project. As a result, owners may try to impose the 15% APR labor hours requirement on contractors even when they don't meet the 4-worker threshold that requires participation. This may be particularly likely if a contractor's few employees will make a significant contribution to overall project labor hours.

APR Ratio Requirement: Contractors Must Follow RAP Ratio Rules

Generally, the required ratio of JW to apprentices depends on the requirements of the RAP that provided the apprentices. However, if apprentices are performing work in a geographic area that is outside the area covered by their RAP, and the RAP in the location of the work (Local RAP) requires a higher apprentice ratio than the apprentice's RAP, then the contractors must follow the higher Local RAP requirement. Compliance with ratio requirements requires daily monitoring, and contractors should be prepared to keep daily records.

Reciprocity of RAP Ratios and Wage Rates

Contractors may bring their apprentices to project locations that are outside of the geographic area where the apprentice's RAP is located. But when they do, contractors must give reciprocity to the Local RAP's ratio requirement (see above) and wage rates. If the Local RAP requires payment of a higher percentage of the JW than the apprentice's RAP, then contractors must pay the Local RAP wage rate.

How to Request Apprentices

Contractors can request apprentices from Local RAPs that serve the geographic area where the project is located. Contractors often work through local unions to request apprentices, but you can also find existing RAPs and post apprenticeship positions on U.S. Office of Apprenticeship's website at apprenticeship.gov. Contractors can also create their own RAP (Contractor RAP) in accordance with DOL regulations.

Good Faith Effort Exception if Apprentices Are Unavailable

Recognizing that it may not be possible for contractors to achieve the APR metrics, the IRS established a good faith effort exception (GFE). As long as a contractor submits a formal written request for apprentices from a Local RAP that offers apprentices in the requested trades at least 45 days before the work starts, the contractor is eligible for a GFE if apprentices are unavailable.

Contractors that normally request apprentices directly from a union will need to request apprentices from a Local RAP to access GFE. Similarly, if your Contractor RAP cannot provide the needed apprentices, then you must submit a written request to a different Local RAP in order to claim a GFE.

The contractor will be excused from meeting the APR requirements for those specific apprentices if: (1) the RAP denies the request through no fault of the contractor; (2) the RAP responds that there are no registered apprentices that meet the contractor's need; or (3) the RAP does not provide a substantive response to the request in five business days. There is no requirement to follow up on the request if there is no response.

If no Local RAP can provide the type of apprentices needed by a contractor, then the GFE applies for the apprentices that the contractor would have requested for that occupation.

The GFE is good for one calendar year but only for the specific portion of the request that was not met. For example, if you asked for electrician apprentices and were denied, then you are still required to submit a request for carpenter apprentices when you need them.

Contractors should keep a copy of their request letter, and, if applicable, the denial letter. The contractor only needs to submit the request to one local RAP. If a contractor needs additional apprentices after construction is started, then another request needs to be submitted at least 14 days before new apprentices are required.

GFE hours are treated as APR labor hours. Contractors will receive GFE credit only for the number of labor hours that were requested from the RAP. The requested labor hours

must be based on a reasonable estimate of the contractor's needs; they cannot be wildly overstated or entirely speculative. Contractors should keep records justifying their labor hour estimates, including projected and actual labor hour needs to support the number of GFE hours claimed.

GFE and RAP Compliance Requirements

When contractors get apprentices from a RAP, they should be prepared to comply with RAP-specific requirements. For nonunion contractors, the RAP requirements may be challenging or even disruptive to your business.

In the PWA Rule, the IRS made it clear that RAPs can impose requirements on contractors that wish to participate in the RAP with few limitations. For example, IRS explained that if a RAP offers to provide the apprentices but requires all contractors to enter into an agreement, sign a CBA, and pay user fees, then the contractors must do so or be out of compliance, because the GFE exception is not available to contractors that decline to accept RAP conditions. In defending this stance, IRS explained that the employer can simply request apprentices from another Local RAP. In practice, this may not always be an option.

Part 10: Troubleshooting PWA Mistakes

In this part, I explain how IRS will levy penalties for PWA mistakes and explain how contractors can correct errors quickly to avoid disputes and future liability.

Project owners are ultimately responsible for compliance with PWA requirements, but when contractor errors lead to penalties, owners will pass those costs back to contractors. The consequences of noncompliance start with modest penalty payments to the IRS, then escalate to larger penalties, and finally result in a loss eligibility for the PWA tax credit enhancement.

Common Prevailing Wage Errors

PW mistakes on IRA projects are likely to mirror many of the mistakes that contractors frequently make on DBA projects, which include worker misclassification, failure to pay full PW (base rate plus fringe rate) for all hours worked and inadequate recordkeeping to demonstrate all hours were counted and classified properly.

PW Errors: Make Correction Payments to Underpaid Workers

Once you identify that workers have been underpaid, you must promptly make correction payments to underpaid workers in the total amount of back wages owed plus interest from the date of underpayment. If you cannot find workers to whom you owe back wages, you should follow state-specific rules for payments to laborers and mechanics that cannot be located. Keep records demonstrating compliance with applicable state unclaimed property law and all federal and state withholding and information reporting requirements with respect to the payments.

PW Errors: Standard Penalties for Underpayment; Significantly Increased for Intentional Disregard

For each underpaid worker, the owner must pay IRS a $5000 penalty. However, if IRS determines that a worker was underpaid as the result of intentional disregard for the PWA requirements, the owner must pay the IRS an amount equal to three times the correction payment plus a $10,000 penalty per underpaid worker. To determine whether the underpayment was the result of intentional disregard or inadvertent error by an otherwise compliance-minded employer, IRS will review "all the facts and circumstances."

To guard against the risk of an intentional disregard finding, contractors should build a continuous record of compliance efforts. IRS recommends reviewing job classifications, wage rates and actual worker payments at least quarterly to ensure laborers and mechanics are appropriately classified and paid; ensuring lower-tier subcontractors conduct a similar review; creating a way for workers to report concerns; and notifying workers of their rights.

If correction payments to workers and penalty payments to IRS are made before the IRS sends a notice of examination, the IRS will presume the error was not caused by intentional disregard.

PW Errors: Getting Penalties Waived; Cure Period for Correcting Underpayment

IRS defined a cure period that allows owners to avoid penalty payments if back wages and interest are paid by the end of the first month of the following federal tax quarter. This gives contractors a correction time ranging from one to three months from when underpayment occurs (not when the underpayment is discovered). Even if back wages are paid during the cure period, IRS will waive the penalty only if the underpayment is less than 5% of the worker's total earning that calendar year and the worker was underpaid for less than 10% of the pay periods worked that year.

 ©2025 Fredrikson & Byron, P.A.

Penalties are also waived if the project is subject to a qualified PLA and the corrections are paid before the tax credit is filed. In addition, there is a limited waiver of penalties for PW violations that occurred between January 29, 2023, and June 25, 2024, as a result of relying on prior IRS guidance and if correction payments were made by December 22, 2024.

APR Errors: Standard Penalties for Noncompliance; Significantly Increased for Intentional Disregard

For violations of the APR requirements, the PWA Rule imposes separate penalties for noncompliance with each of the three requirements.

- If the **ratio requirement** is not met, then hours worked by apprentices in excess of the ratios are deemed non apprentice hours and must be paid at the JW rate.
- If the **labor hours requirement** is not met, then owners must pay the IRS $50 for each hour that fell short of the 15% APR total project hours goal.
- If the **participation requirement** is not met, the owner owes the IRS $50 per labor hour as measured by the total labor hours worked by the nonparticipating contractor divided by the number of workers—this amount can add up fast.

If the APR noncompliance was the result of intentional disregard, then the penalties increase tenfold from $50 per hour to $500 per hour.

IRS cites the following as evidence of intentional disregard: a pattern of past noncompliance, not taking steps to review labor hours, prior penalties, not performing regular monitoring, and not regularly following up with RAPs.

APR Errors: No Cure Period; How to Demonstrate Error Was Not Intentional

There is no cure period for correcting APR errors, however, if the errors are corrected before the owner receives a notice of examination from the IRS, then the IRS will presume that the mistakes were not intentional, and only standard penalties will apply. Owners are required to maintain records of any correction payments made to any laborer or mechanic.

IRS recommends that owners take the following actions to demonstrate that APR errors are not due to intentional disregard: have an apprentice utilization plan in place, collect RAP requests from contractors within five days of submission, and conduct regular review of contractor use of apprentices. Contractors should expect to see requirements like this included in their contracts.

Keep Good Records and Make Corrections Promptly

Contractors should expect owners to require indemnification from any increased costs and penalties due to PWA noncompliance by contractors or their subcontractors. Remember, agency oversight does not begin until the owner claims the credit in a tax filing after the project is placed in operation. For some projects, this could be years after work is performed. If IRS discovers any issues during an audit, liabilities could be years old with significant interest accrued. Savvy owners will monitor closely and demand corrections promptly; contractors should do the same.

Contact

Nena Lenz
612.4927424
nlenz@fredlaw.com

Nena Lenz is an attorney at Fredrikson & Byron, P.A. with a national government contracts and grants practice.

Nena leads Fredrikson & Byron's Government Contracts and Grants Group. She advises clients with federal, state, local and tribal government contracts and grants. She helps clients pursue and negotiate contracts, understand and comply with regulatory requirements, manage contract changes and terminations, and investigate and resolve allegations of noncompliance. Nena advises clients across industries, with particular experience in the construction industry, prevailing wage, and small business programs.

The information contained in this guidebook is provided for informational purposes only. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem, and it should not be substituted for legal advice, which relies on a specific factual analysis. Federal and state laws and regulations are constantly changing. Recipients should consult with counsel before taking any actions based on the information contained within this material. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. If you have specific questions regarding a particular fact situation, we urge you to consult Nena Lenz or other competent legal counsel.

Fredrikson

60 South Sixth Street / Suite 1500 / Minneapolis, Minnesota 55402-4400
Tel. 612.492.7000 / Fax 612.492.7077
USA / China / Mexico / fredlaw.com

Where Law and Business Meet®

 ©2025 Fredrikson & Byron, P.A.