



THE INFLATION REDUCTION ACT OF 2022 **AN ANALYSIS OF NEW CONSTRUCTION LABOR MANDATES***

On August 16, 2022 President Biden signed into law the *Inflation Reduction Act of 2022* (IRA).

Of significance to the construction industry, the IRA imposes new/modified tax incentives for **clean energy projects (bonus tax credit)** and **energy efficient commercial buildings (179D tax deduction)** that satisfy new labor mandates, including both prevailing wage and registered apprenticeship requirements. The tying of construction labor mandates to private development tax incentives at the federal level is unprecedented.

Registered apprenticeship requirements for bonus credit on eligible projects:

- By 2024 at least 15% of total craft labor hours on a project must be performed by a “Qualified Apprentice” (participating in a Registered Apprenticeship Program.) The threshold is phased in with 10% of hours in 2022, 12.5% of hours in 2023 and 15% of hours in 2024 and later.
- Projects must follow trade specific apprentice-to-journeyworker ratios set by the U.S. Department of Labor or a State apprenticeship agency.
- Each contractor and subcontractor who employs four or more individuals on an eligible project must employ one or more qualified apprentices.
- Some limited exceptions to the requirement apply:
 - Pay a financial penalty – contractor pays a penalty of \$50 multiplied by the total labor hours for which the requirement was not satisfied.
 - Contractor makes a good faith effort – contractor requests qualified apprentices from a Registered Apprenticeship program and the request is denied or the Registered Apprenticeship program fails to respond to the request within 5 business days. Contractors must follow established standards and requirements of the registered apprenticeship program. Financial penalty can increase to \$500 per hour if the violation was deemed deliberate.

Prevailing wage requirements for bonus credit on eligible projects:

- To receive the bonus credit, laborers and mechanics employed by contractors and subcontractors in construction and alteration or repair of a qualified facility must be paid wages not less than prevailing rates (Davis-Bacon wage rates) for the duration of the eligible credit. To satisfy noncompliance and maintain eligibility for the full credit, employers can provide back pay, plus interest and a penalty of \$5,000 per worker or \$10,000 per worker for violations due to intentional disregard. The penalties for non-compliance appear to differ from those currently set under the Davis-Bacon Act and we will have to await regulatory guidance on how these new prevailing wage requirements and potential penalties interact with those under Davis-Bacon.

**Further clarifications, reporting and recordkeeping requirements needed in regulatory guidance*

Qualified projects requiring registered apprenticeship and prevailing wage mandates:

Type of facility construction	Prevailing wage requirement for full credit?	Apprenticeship requirement for full credit?
Production Tax Credit (Section 45) for wind, solar and other specified technologies beginning construction before January 1, 2025. *domestic content requirement	Yes, pay prevailing wages during construction phase and first 10 years of operation if larger than 1MW and construction begins 60 days after guidance is published.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.
Investment Tax Credit (Section 48) for wind, solar, geothermal and energy storage technologies that begin construction before January 1, 2025. *domestic content requirement	Yes, pay prevailing wages during construction phase and first five years of operation if larger than 1MW and construction begins 60 days after guidance is published.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.
Carbon Capture Credit (Section 45Q).	Yes, pay prevailing wages during construction phase and first 12 years of operation if larger than 1MW and construction begins 60 days after guidance is published.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.
Zero-Emission Nuclear Power Production Credit (Section 45U) for existing nuclear power plant projects through December 31, 2032.	Yes.	
Clean Hydrogen Production Credit (Section 45V) for projects that begin construction before January 1, 2033.	Yes, if construction begins 60 days after guidance is published.	Yes, if construction begins 60 days after guidance is published.
Energy Efficient Commercial Buildings Deduction (Section 179D).	Yes, if installation on a property 60 days after guidance is published.	Yes, if installation on a property 90 days after guidance is published.
Energy-Efficient New Home Credit (Section 45L) through 2032.	Yes, taxpayer ensures that the laborers and mechanics employed by contractors and subcontractors in the construction of the residence are paid prevailing wages.	
Alternative Fuel Refueling Property Credit (Section 30C) through 2032.	Yes, if construction begins 60 days after guidance is published.	Yes, if construction begins 60 days after guidance is published.
Advanced Energy Project Credit for qualifying projects (Section 48C).	Yes.	Yes.
Clean Electricity Production Credit (Section 45Y) for energy neutral projects that begin construction by January 1, 2033.	Yes, pay prevailing wages if larger than 1MW and construction begins 60 days after guidance is published.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.
Clean electricity ITC (Section 48E).	Yes, pay prevailing wages during construction phase and first five years of operation if larger than 1MW and construction begins 60 days after guidance is published.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.
Clean electricity PTC (Section 45Y).	Yes, pay prevailing wages if larger than 1MW and construction begins after 2024.	Yes, if larger than 1MW and construction begins 60 days after guidance is published.