

# ACQUISITION HOUR WEBINAR

## Update on Federal wage hour laws

April 22, 2015



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Providing expert technical  
assistance to  
**FEDERAL, STATE and LOCAL  
GOVERNMENT  
Contractors  
And Subcontractors**

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03/03/2015  
SMALL BUSINESS GOVERNMENT CONTRACTING  
SERIES: SELLING TO THE DEPARTMENT OF VETERANS  
AFFAIRS  
WAUWATOSA »

03/04/2015  
ACQUISITION HOUR: LEARNING ABOUT WAWF - IRAPT  
WEBINAR »

03/09/2015  
ENTERING THE GOVERNMENT MARKET - A PRIMER  
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03/11/2015  
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- Capabilities Statement and Related Government Marketing Material Development
- Assistance in Locating and Developing Teaming Partners and Subcontractors
- Updated Government Market Information

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# **Davis-Bacon Compliance Principles**



**U.S. Department of Labor**  
Wage and Hour Division



# **DBA/DBRA**

## **Compliance Principles**

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees & Helpers
- Area Practice
- Fringe Benefits
- Federal contracts: PCA interaction with DBA
- Computing overtime pay



# Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards



# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers
  - Bona fide executive, administrative, and professional employees as defined under FLSA
- Working foremen are generally non-exempt
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt



# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work”
- A three-part definition applies to determine the scope of the term “site of the work”



# Site of the Work Definition ¶1

- DBA applies only to workers on the “site of the work”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and,
  - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract



# Site of the Work Definition ¶2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., provided they are:
  - Located adjacent or virtually adjacent to the
  - “site of the work” described in paragraph 1 and
  - Dedicated exclusively or nearly so to the performance of the contract or project
  - Except if they are excluded – see next slide



# Site of the Work Definition ¶3

- “Site of the work” does not include a contractor’s or subcontractor’s
  - permanent home office, branch locations, fabrication plants, tool yards, etc.,
  - whose location and continuance in operation are determined without regard to a particular covered project.



## **Definition ¶3 (Cont'd.)**

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
    - - Before the opening of bids for a project, and
    - - Not located on the actual site of the work
  - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract



# Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent driving on the “site of the work,” and
  - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*



# Truck Drivers

- Truck drivers are also covered when:
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain



# Truck Drivers

- Truck drivers are not covered in the following instances:
  - Material delivery truck drivers while off the “site of the work”
  - Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the “site of the work”
  - Truck drivers whose time spent on the “site of the work” is de minimis for pick-up or drop off



# Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to bona fide owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”
- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.



# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)



# Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL's Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)



# Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program



# Apprentices and Trainees

- Paid the FB's specified in the approved program, or the full amount of FB's listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen



# Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the WD
  - An established prevailing practice in the area,
  - Not employed in an informal training program
- May be added to WD if all above conditions are met; no WD class performs the work



# Area Practice Surveys

- Used to determine proper classification of workers on Davis-Bacon projects
- Limited Area Practice survey is acceptable when the prevailing practice is clear based upon preliminary data
- Full Area Practice Survey is necessary when preliminary data indicate varied classification practices



# Conducting a “Limited” Area Practice Survey Involving Union Rates

- Contact unions whose members may perform the work in question to determine if they performed the work in question on similar projects in same county during the year prior to lock-in date of WD applied to contract
- Survey each union on how workers who performed that work were classified
- If the unions agree, obtain confirmation from the collective bargaining representatives of contractors



# Conducting a “Limited” Area Practice Survey Involving Open-Shop Rates

- Contact open-shop contractors to determine if they worked on similar projects in the same county during the year prior to the lock-in date of the WD applied to the contract
- If so, ask how workers were classified
- If all or a clear majority of contractors agree, the prevailing area practice is established



# Conducting a “Limited” Area Practice Survey Involving Mixed Rates

- Union and open-shop rates in the WD are involved in the area practice question
- For WD classification that has union rate, contact appropriate union and union contractors to seek information as discussed on slide regarding limited area practice survey for union rates
- For WD classification that has open-shop rate, contact open-shop contractors to determine if open-shop workers performed the work in question on similar projects in the same county during the year prior to the WD lock-in date
- If all parties, or a clear majority agree, the area practice is established



# Conducting a “Full” Area Practice Survey

- Identify the similar projects (same type of construction) in progress during year prior to WD lock-in-date in local area of project in question
- Identify firms that performed the work in question and contact those that are either open-shop or union based on the wage rates in the WD
- From each relevant firm contacted (open shop or union), determine the week in which greatest number of workers performed the work in question and how they were classified



# Conducting a “Full” Area Practice Survey

- Compile the relevant information received, tally the relevant employment data, and total the number of workers in each classification that performed the work in question
- Only union sector data can be used to support a union classification and rate on the WD
- Only open shop sector can support use of non-union classification and rate on WD
- The classification with clear majority (60%) is proper (local prevailing) classification for the work



# Wages & Fringe Benefits

- DBA: the term “wages” or “prevailing wages” includes:
  - The basic hourly rate (BHR)
  - Contractor contributions irrevocably made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met



# Fringe Benefits

- Under DBA, FB's are a component "prevailing wage"
- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two



# Fringe Benefits

- Must be paid weekly for all hours worked
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)



# Fringe Benefit Example

<b>BHR</b>	<b>\$10.00</b>
<b>FB</b>	<b>\$ 1.00</b>
<hr/>	
<b>Total prevailing wage</b>	<b>\$11.00</b>

■ **The contractor may comply by paying:**

- **\$11.00 in cash wages**
- **\$10.00 in cash wages plus \$1.00 for FB**
- **\$ 9.00 in cash wages plus \$2.00 for FB**



# Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holiday
- Sick Leave



# Funded Fringe Benefit Plans

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
  - Are *irrevocably* paid; and,
  - Are made regularly, not less often than *quarterly*
- Credit is for payments made for individual workers eligible to participate in the plan, program, or fund



# Unfunded Fringe Benefit Plans

- Costs for an “unfunded” FB plan count towards WD obligation if specific following are met:
  - Costs reasonably anticipated to provide bona fide FB
  - Pursuant to an enforceable commitment
  - Carried out under a financially responsible plan
  - Has been communicated in writing to affected workers



# Annualization Principle

- Applies to benefits of a continuous nature (e.g., health insurance, pension plans)
- Determine hourly rate of contribution that is creditable towards contractor's Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work); and
  - Allocating fringe benefit credits so that Davis-Bacon work is not be used to fund benefits on private (non-Davis-Bacon) work



# Annualization

## Defined Contribution Pension Plans

- Davis-Bacon credit is based on the effective annual rate of contributions for all hours worked in a year (both Davis-Bacon and non-Davis-Bacon work)
- An exception to the annualization principle applies to plans that provide immediate participation and essentially immediate vesting (100% vesting after an employee works 500 or fewer hours).
  - This exception allows full credit for the amount of contributions made on Davis-Bacon work



# Annualization Example

## Defined Contribution Pension Plan

A firm's contribution for an employee's pension plan that does not provide for immediate vesting was computed at \$2,000 a year. The employee worked 1,500 hours on a Davis-Bacon project and 500 hours on other jobs not Davis-Bacon covered.

$$\text{Credit per hour: } \$2,000 / 2000 \text{ (hours)} = \$1.00$$



# Annualization Example

## Medical Insurance

- Employer provides medical insurance at \$200 per month to electrician on Davis-Bacon project. WD requires \$12.00 plus \$2.50 in FB's, or \$14.50 an hour. Employee works 160 hours a month
  - $\$200/160 \text{ hours} = \$1.25$  (credit per hour)
  - No other benefit provided
  - Electrician is due: \$13.25 an hour  
( $\$14.50 - \$1.25 = 13.25$ , is remaining balance of applicable prevailing wage)



# Discharging DB Prevailing Wage Obligation

- If WD requires a prevailing wage of \$14.50 (\$12.00 BHR plus \$2.50 in FB's), the contractor can comply by paying:
  - \$14.50 in cash wages; or
  - \$12.00 plus \$2.50 in bona fide FB; or
  - \$11.00 plus \$3.50 in bona fide FBs



# Computing Overtime Pay (CWHSSA Earnings)

An employee worked 44 hours as electrician, where WD BHR is \$12.00 plus \$2.50 in FB's:

$$44 \text{ hours} \quad \times \quad \$2.50 \quad = \quad \$110.00 \quad \text{FB's}$$

$$44 \text{ hours} \quad \times \quad \$12.00 \quad = \quad \$528.00 \quad \text{BHR}$$

$$4 \text{ hours} \quad \times \quad \$12.00/2 \quad = \quad \underline{\$ 24.00 \quad \text{OT}}$$

\$662.00



# Overtime Computation where Employee Employed at Two Rates

During a workweek an employee works 20 hours as an Electrician at \$12.00 BHR plus \$2.50 in FB's and as a Painter for 24 hours at \$10.00 BHR plus \$3.00 in FB's. The regular rate for determining the Overtime rate is:

$$20 \times \$12.00 = \$240.00 \text{ (as Electrician)}$$

$$24 \times \$10.00 = \underline{\$240.00} \text{ (as Painter)}$$

$$\$480.00/44 = \$10.91$$

$$\text{Overtime due: } \$10.91 \times 1/2 \times 4 \text{ hours} = \$21.82$$



# **INTERACTION AMONG GOVERNMENT CONTRACTS LAWS**

## ■ **Federal contracts requiring PCA & DBA**

- PCA covered contract has **more than incidental** amount of construction work
- DBA applies to construction work
- Construction includes  
“construction, alteration and repair,  
including painting and decorating”
- See FAR 48 C.F.R. § 22.402(b).



# **INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

## **PCA & DBA – Example 1**

Contract for supply of security system:

Davis-Bacon applies to:

- Replacement of existing conduit,
- Laying cable, and
- Tearing out and replacing walls.



# **INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

## **PCA & DBA – Example 2**

Contract for supply and installation of modular furniture

DBA applies to:

- Bolting furniture or fixtures to floors, walls and/or ceilings,
- Modifying walls, floors and/or ceilings to accommodate shelving,
- Installing electrical connections for desk area outlets.



# **INTERACTION AMONG GOVERNMENT CONTRACTS LAWS Cont.**

## **PCA & DBA – Example 3**

Lighting retrofit contract for supply and installation of energy-efficient lighting fixtures:

- DBA applies to installing new ballasts and/or lighting fixtures.



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# **American Recovery & Reinvestment Act of 2009 (ARRA)**



**U.S. Department of Labor**  
Wage and Hour Division



# Overview of ARRA

- Signed into law by President Obama on February 17, 2009
- ARRA is structured in two separate parts:
  - ARRA Division A — Appropriations Provisions
  - ARRA Division B — Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions
- Each “Division” stands alone.



# ARRA Division A – Appropriations

- ARRA Division A appropriates substantial funding for
  - Construction, alteration and repair of federal buildings (federal contracts - DBA)
  - Infrastructure projects such as roads, bridges, public transit, water systems, and housing (DBRA)
  - Various activities that federal agencies may contract out for service employees to perform (SCA)



# ARRA & Davis-Bacon Labor Standards

- ARRA includes Davis-Bacon labor standards provisions:
  - Division A and Division B have separate Davis-Bacon provisions.
- Under ARRA Division A, section 1606:
  - Davis-Bacon labor standards apply to construction projects funded by ARRA Division A appropriations
- The ARRA Division B Davis-Bacon provision applies to projects financed by certain types of bonds



## **DOL ARRA Guidance**

### **All Agency Memoranda (AAMs)**

- **AAM No. 207** - May 29, 2009:
  - DOL guidance on applying Davis-Bacon labor standards to federal and federally assisted construction projects funded in whole or in part by ARRA Division A appropriations.
- **AAM No. 208** - May 5, 2010:
  - DOL guidance on applying Davis-Bacon labor standards to construction projects funded in whole or in part with tax-favored bonds specified in ARRA Division B, section 1601.



## **Advisory Letters & HUD Clarification**

- Advisory letters, such as those issued to the Department of Energy and Department of Interior, provide further guidance
- The Supplemental Appropriations Act of 2009, enacted on June 24, 2009 (Pub. L. 111-32) includes a provision that affects the scope of Davis-Bacon applicability to certain specific HUD programs



# Clarification on DB applicability to HUD programs

- Section 1205 of the Supplemental Appropriations Act of 2009 applies to the same statutory provisions applicable to non-ARRA funded assistance under specific programs to ARRA funded assistance under those programs
- Thus, previously applicable thresholds on coverage now apply to ARRA projects funded under:
  - CDBG, Public Housing, and Native American Housing programs
- ARRA funding not affected by section 1205 of the supplemental appropriations act:
  - Assisted Housing Green Retrofit
  - Lead Hazard Reduction / Healthy Homes Program
  - HUD's tax credit assistance program



# ARRA Division B §1601

- ARRA Division B, section 1601 requires application of Davis-Bacon prevailing wage requirements to projects financed with certain tax-favored bonds
  - New clean renewable energy bonds (New CREBs)
  - Qualified energy conservation bonds (QECBs)
  - Qualified zone academy bonds (QZABs)
  - Qualified school construction bonds (QSCBs)
  - Recovery zone economic development bonds (RZEDBs)
- as defined in relevant Internal Revenue Code provisions
- if issued after ARRA enactment (Feb. 17, 2009)



# **Labor Standards Coverage on ARRA funded projects**

- Reorganization Plan No. 14 of 1950 gives:
  - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the applicable Davis-Bacon prevailing wages
  - DOL has regulatory authority and oversight responsibility and can investigate compliance.



# ARRA Labor Standards Implementation

- Federal agencies must:
  - Ensure that their bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with Federal Acquisition Regulations
  - Generally, ensure that recipients of assistance funded by ARRA appropriations require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the Davis-Bacon prevailing wages



# WHD ARRA Website

- The Wage and Hour Division has established a special ARRA website where AAM Nos. 207 and 208, advisory letters, important links, and other relevant information is posted:
  - <http://www.dol.gov/whd/recovery>



# WHD Internet Sites

- WHD Recovery Act (ARRA) website

<http://www.dol.gov/whd/recovery/>

- WHD ARRA inquiries e-mail address –

[whdarra@dol.gov](mailto:whdarra@dol.gov)

- DOL Prevailing Wage Resource Book –

<http://www.dol.gov/whd/recovery/pwrb/tod.htm>



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# SCA Compliance Principles



**U.S. Department of Labor**  
Wage and Hour Division



# SCA Compliance Principles

- Payment of wages and fringe benefits
- *Bona fide* Fringe Benefit Plans
- Health & Welfare Fringe Benefits
- Paid Vacation Fringe Benefits
- Paid Holiday Fringe Benefits
- Equivalent Fringe Benefits
- Temporary & Part-time employment



## **Payment of Wages (29 C.F.R. § 4.165)**

- Wages established by wage determination, otherwise FLSA minimum wage
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods
  - Payroll records kept on this basis
  - Bi-weekly or semi-monthly pay periods if advance notice



# Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a))
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d))
- FB costs may not be credited toward wage requirements (29 C.F.R. § 4.167)



# Discharging Minimum Wage & Fringe Benefit Obligations

Under SCA, the contractor may not credit excess wage payment against the FB obligation:

Wage Determination:		Employee Paid:	
Wage	\$10.25	Wage	\$12.00
FB	\$ 3.50	FB	\$ 1.75
<hr/>		<hr/>	
Total	\$13.75	Total	\$13.75



# **Computation of Hours Worked (29 C.F.R. §§ 4.178-4.179 & Part 785)**

- Determined under the FLSA pursuant to 29 C.F.R. Part 785
- Includes all periods in which employee is “suffered or permitted” to work
- Hours work subject to SCA are those performed on covered contracts
- Must keep affirmative proof of time spent on covered and non-covered work in a workweek



# **Wage Payments for Work Subject to Different Rates**

- Employee must be paid -
  - Highest rate for all hours worked, unless
  - Employer's payroll records or other affirmative proof show periods spent in each class of work
- Applies when employee works part of workweek on SCA-covered and non-SCA-covered work



# **Bona Fide Fringe Benefits**

## **(29 C.F.R. § 4.171(a))**

- Constitute a legally enforceable obligation that
  - Is communicated in writing to employees
  - Provides payment of benefits to employees
  - Contains a definite formula for determining amount of contribution and benefits provided
  - Is paid *irrevocably* to an independent trustee or third person pursuant to a fund, trust, or plan
  - Meets criteria set forth by IRS and ERISA



# **Fringe Benefits Plans (29 C.F.R. § 4.171(a)(2))**

- Provide benefits to employees on account of:
  - Death
  - Disability
  - Advanced age
  - Retirement
  - Illness
  - Medical expenses
  - Hospitalization
  - Supplemental unemployment benefits



# **Health and Welfare (H&W) Fringe Benefits**

- Three types of FB requirements:
  - “Fixed cost” per employee benefits
  - “Average cost” benefits
  - Collectively bargained (CBA) benefits
- Types and amounts of benefits and eligibility requirements are contractor’s prerogative



# “Fixed Cost” Benefits (29 C.F.R. § 4.175(a))

- Increased to \$3.50 per hour June 22, 2010
  - Included in all “invitations for bids” opened, or
  - Other service contracts awarded on or after June 22, 2010
- Required to be paid “per employee” basis
  - **For ALL HOURS PAID FOR** up to 40 hours in a workweek, and 2,080 hours a year
  - Includes paid leave and holidays



# “Fixed cost” H&W Contributions Bi-Weekly Payroll

<u>Employee</u>	<u>Hrs. paid</u>	<u>FB's</u>	<u>Cash</u>	<u>Total</u>
Libby	80	\$180.00	100.00	280.00
Jean	*100	\$180.00	100.00	280.00
Ann	20	0.00	70.00	70.00
Tim	80	\$280.00	0.00	280.00
Tom	60	\$151.00	59.00	210.00
<b>Total</b>	<b>*340</b>			<b>\$1120.00</b>

\* FBs and cash payments may vary so long as total equals \$3.50 per hour. 20 hours of overtime excluded.



# “Average Cost” Benefits (29 C.F.R. § 4.175(b))

- Contributions may vary depending upon employee’s marital or employment status
- Total contributions must average at least \$3.50 per hour per employee:
  - Excludes paid leave time and holidays
  - For all “**HOURS WORKED**”
- Compliance determined on a group basis, not an individual basis



# “Average Cost” Benefit Contributions

<u>Employee</u>	<u>Hours Worked</u>	<u>Contributions</u>
Libby	250	\$650
Jean	150	\$450
Ann	250	\$650
Tim	50	0
Tom	100	\$250
<hr/>		
Total	800	\$2000

$\$2000/800 = \$2.50$  average FB contributions



# “Average Cost” Benefits Contributions

<u>Employee</u>	<u>Hours</u>	<u>Shortfall</u>	<u>Total</u>
Libby	250	\$1.00	\$250.00
Jean	150	\$1.00	\$150.00
Ann	250	\$1.00	\$250.00
Tim	50	\$1.00	\$ 50.00
Tom	100	\$1.00	\$100.00
<b>Total</b>	<b>800</b>		<b>\$800.00</b>

$$\$2000 + \$800 = \$2800/800 \text{ hours} = \$3.50$$



# **H&W Footnotes (Determine Compliance)**

- Prevailing WDs provide H&W footnote
- All occupations listed on WD receive benefits as specified
- “Fixed cost” H&W footnote
  - Single line specifying hourly, weekly, and monthly contribution amounts
  - Specified on odd numbered WDs

*“\$3.50 an hour or \$140.00 a week or \$606.67 a month”*



# H&W Footnotes (Cont'd)

- “Average Cost” H&W footnote - brief paragraph listing types of benefits and hourly contribution and specified on even numbered WDs

*“HEALTH & WELFARE: Life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans. Minimum employer contributions must cost an average of \$3.50 per hour computed on the basis of all hours worked by service employees employed on the contract.”*



# **Collectively Bargained Fringe Benefits**

- Based on CBA
- Required to be paid by successor contractor under section 4(c) of SCA
- Need not provide specifically the FBs stipulated in CBA. Equivalent benefits may be provided
- Cash equivalent payments can be used to offset the FBs due



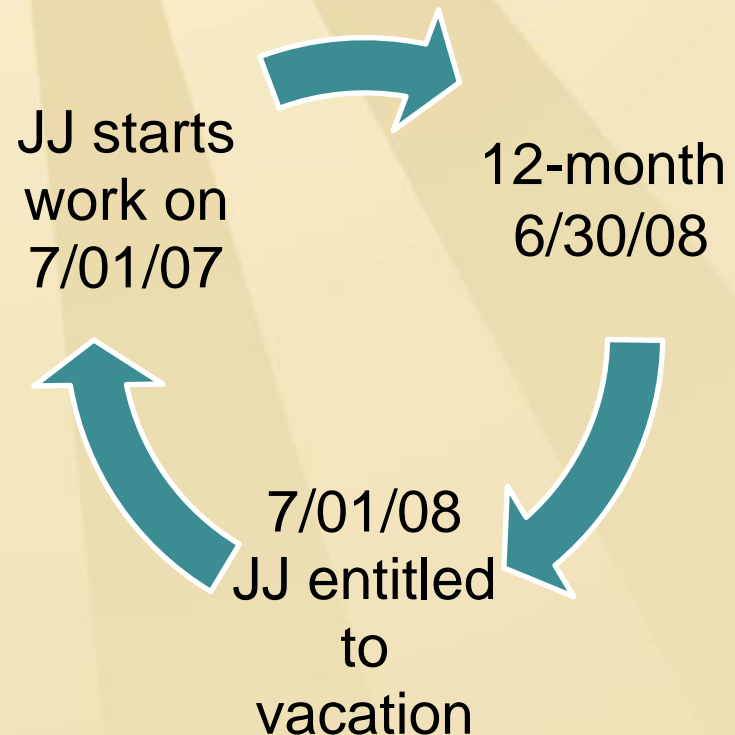
# **Vacation Fringe Benefits (29 C.F.R. § 4.173(c)(1))**

- Are vested and become due after the employee's **anniversary date**
- Need not be paid immediately after the anniversary date, but must be discharged before, whichever occurs first:
  - The next anniversary date;
  - The completion of the contract; or
  - The employee terminates employment



# Anniversary Date (12-months of Service)

- Employee eligible for vacation benefits
- Contractor who employs employee on anniversary date owes vacation
- Paid at hourly rate in effect in workweek vacation is taken
- H&W benefits due under “fixed cost” requirements



# **“Continuous Service”**

## **(29 C.F.R. § 4.173(a)-(b))**

- Determines employee’s eligibility for vacation benefits
- Is determined by total length of time:
  - Present contractor in any capacity, and/or
  - Predecessor contractors in performance of similar contract functions at same facility
- Contractor’s liability determined by WD



# **Continuous Service Examples (WD – 1-week vacation after 1-year)**

- Present contractor –employee “in any capacity”
  - 6-months on SCA-contract
  - 6-months on “commercial” work
- Present and predecessor contractors
  - 16-months for predecessor at same facility
  - 8-months for present contractor
- Employee eligible for vacation benefits



# **Incumbent Contractor's List**

## **(29 C.F.R. §§ 4.6(l)(2) & 4.173(d)(2))**

- Must be furnished to contracting officer 10 days prior to contract completion
- Identifies service employees on last month's payroll
- Provides anniversary date of employment
- Difficulty in obtaining list does not relieve contractor to provide vacation benefits



# **Holiday Fringe Benefits**

## **(29 C.F.R. § 4.174)**

- Employee entitled to holiday pay if works in the holiday workweek
- Employee not entitled to holiday pay if holiday not named in WD (*i.e.*, government closed by proclamation)
- Paid holidays can be traded for another day off if communicated to employees



# **Equivalent Fringe Benefits**

## **(29 C.F.R. § 4.177)**

Contractor may dispose of FBs:

- By furnishing the benefits listed in WD, or
- Furnish equivalent combinations of *bona fide* FBs, or
- Make equivalent cash payments
  - Equal in cost
  - Separately stated in employer's record
  - Not used to offset wage requirements



# **Furnishing Cash Equivalents**

## **(29 C.F.R. § 4.177(c))**

- For FBs listed in weekly amounts (\$60), divide amount by hours worked (40):
  - $\$60/40 \text{ hours} = \$1.50 \text{ per hour}$
  
- For FBs listed in non-cash amounts (one week paid vacation), multiply wage (\$10) by vacation (40 hours) and divide by annual non-overtime hours (2080 hours):
  - $\$10 \times 40 \text{ hours} = \$400/2080 \text{ hours} = \$0.19 \text{ per hour}$



# **Part-time Employees**

## **(29C.F.R. § 4.176)**

- Entitled to proportionate amount
- Maximum: Vacation/Holidays = 40/8 hours
- Part-time employee works 20 hours per week:
  - Entitled to  $\frac{1}{2}$  week of vacation, or 20 hours
  - Entitled to  $\frac{1}{2}$  holiday pay, or 4 hours
  - Must receive full amount of H&W FBs



**PREVAILING WAGE**  
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# SCA Overtime Compliance



**U.S. Department of Labor**  
Wage and Hour Division



# Overtime Pay

- SCA does not provide premium rates for overtime hours of work, but recognizes other Federal laws that do
  - Fair Labor Standards Act (FLSA) (29 U.S.C. § 201, *et seq.*) has broadest application
  - Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. §§ 327-332) applies to contracts in excess of \$100,000 that employ “laborers” and “mechanics”



# Overtime Pay

- Determined in same manner under both laws:
  - Calculated at 1-1/2 times employee's basic hourly rate of pay for all hours worked over 40 in a workweek
  - Liquidated damages can be assessed under CWHSSA at \$10 per day when overtime not properly paid



# Overtime Compliance with “Fixed cost” H&W Benefits

An employee worked 44 hours on a covered contract as a janitor at a WD rate of \$15 plus \$3.50 in “fixed cost” H&W FBs per hour.

40 hours X \$3.50	= \$140.00 H&W FBs
44 hours X \$15.00	= \$660.00 S/T Wages
<u>4 hours X \$15.00 x 1/2</u>	<u>= \$ 30.00 O/T Pay</u>
Total	\$830.00



# Overtime Compliance with the “Average Cost” H&W Benefits

An employee worked 44 hours on a covered contract as a janitor at a WD rate of \$15 plus \$3.50 in “average cost” H&W FBs per hour.

44 hours X \$ 3.50	= \$154.00 H&W FBs
44 hours X \$15.00	= 660.00 Wages
<u>4 hours X \$15.00 x ½</u>	<u>= 30.00 Overtime Pay</u>
Total	= \$844.00



# Overtime Computation where Employee Employed at 2 Rates

During a workweek, an employee works 20 hours as an Electrician at \$22.00 an hour and 24 hours as a Painter at \$20.00 an hour.

Electrician \$22.00 X 20 hours = \$440.00

Painter \$20.00 X 24 hours = 480.00

Total Straight time wages \$920.00

$\$920/44 \text{ hours} = \$20.91$  (regular rate)

Overtime due:  $\$20.91 \times 1/2 \times 4 \text{ hours} = \$41.82$



# Computing Liquidated Damages under CWHSSA

Are computed at \$10 per day per violation:

	S	M	T	W	T	F	S	Total
<b>Regular Time</b>	0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at \$30.



# **Recordkeeping Requirements**

## **(29 C.F.R. §§ 4.6(g), 4.185)**

- Contractor and each subcontractor must maintain for each employee for 3 years:
  - Name, address and social security number
  - Work classification, wages and benefits
  - Daily/weekly compensation and hours worked, and any payroll deductions
  - Length of service list of the predecessor contractor



# Disclaimer

- ❖ This presentation is intended as general information only and does not carry the force of legal opinion.
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# QUESTIONS???????

# Upcoming WPI Events

- ***Small Business Government Contracting Series continues the first and third Tuesday of each month through June, 2015 – Milwaukee, WI***
- ***Acquisition Hour (Weekly Webinar) through June, 2015***
- ***Cost and Pricing for Department of Defense Contractors and Subcontractors – April 29, 2015 - Pewaukee, WI***
- ***12<sup>th</sup> Annual Women’s Business Conference – April 30, 2015 – Eau Claire, WI***
- ***3<sup>rd</sup> Annual Department of Veterans Affairs Business Conference – May 12, 2015 – Milwaukee, WI***
- ***Doing Business with the National Park Service – June 23, 2015 – Ashland, WI***
- ***9<sup>th</sup> Annual Volk Field Small Business Conference – July 29 – 30, 2015 – Camp Douglas, WI***
- ***Marketplace 2015 – October 29-30, 2015 – Milwaukee, WI***