



# SCA Compliance Principles



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- 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
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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
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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**

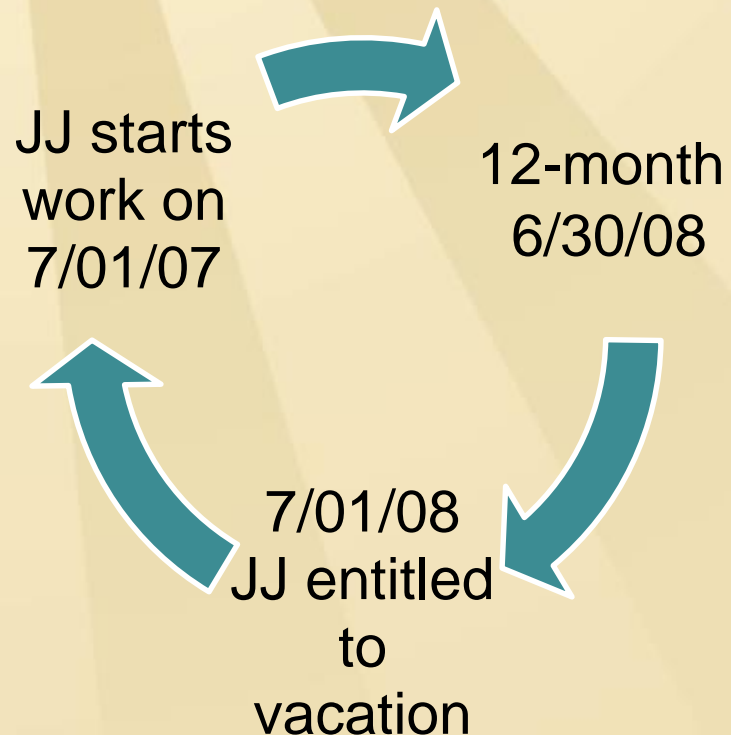
## **(29 C.F.R. § 4.173(c)(1))**

- 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**  
CONFERENCES



# 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



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