



# ACQUISITION HOUR: UPDATE IN THE HOUR WAGE LABOR LAW

March 30, 2016

*Presented by the Wisconsin Procurement  
Institute*



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

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Wisconsin Procurement Institute

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## UPCOMING EVENTS [→](#)

02/26/2015  
FEDERAL PRIME CONTRACTOR GROUP MEETING  
ST. FRANCIS (MILWAUKEE) »

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  
RACINE »

03/11/2015  
ACQUISITION HOUR: PREPARING FOR CSPR AUDIT  
WEBINAR »

## CURRENT OPPORTUNITIES (7) [→](#)

### GET STARTED WITH THE BASICS

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## SERVICES OFFERED BY WPI

- FREE Bid Matching Services
- Individual Counseling and Assistance
- Locating Local, State and Federal Opportunities
- Government Market Strategy Development
- Training in use of Government websites and tools
- Assistance with System for Award Management (SAM) Registration
- Assisting in Market Research Process
- Development of Market Profile
- Small Business Subcontracting Plans-Development, Outreach and Reporting
- Small Group Training
- Outreach and training with Local, State and Federal agencies
- Assist with Pre and Post Award Functions
- Assistance with Agency Specific Contracting Requirements
- Assistance with Contracting Regulations and Requirements, including FAR, DFAR, CFR
- Assistance with GSA Schedule Preparation and Administration
- Assistance with Local, State and Federal Certifications, including:
  - Service Disabled & Veteran Owned Small Business, HUBZone, Woman Owned Small Business, 8(a) Business Development Program
  - State
  - Local
  - DBE
- Bid Review and Submission Assistance
- Proposal and Assistance, Review and Submission Assistance
- 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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**PREVAILING WAGE**  
CONFERENCES



# **Davis-Bacon Compliance Principles**



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



# **DBA/DBRA Compliance Principles**

- Laborers and mechanics
- Site of the work
- Apprentices Trainees  
& Helpers
- 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”



# Site of the Work Definition

- “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.



# 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



# 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

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

■ 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



# **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 hours FB's	X	\$ 2.50	=	\$110.00
44 hours BHR	X	\$12.00	=	\$528.00
<u>4 hours</u> <u>OT</u>	X	\$12.00/2	=	<u>\$ 24.00</u>
				\$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 of Labor Standards Statutes on Federal Government Contracts**

## **SCA interaction with DBA & PCA**





# **SCA or DBA ?**

## **General Principles**



# Contracts Requiring SCA or DBA

- SCA does not apply to any contract principally for construction subject to the DBA
- “Construction” under the DBA includes “construction, alteration, and repair, including painting and decorating”



# SCA Maintenance vs. DBA Repair

- SCA Maintenance – Work is typically
  - Scheduled, regular and recurring maintenance activities
  - Routine to keep something in state of continuous utilization
  - Examples: custodial service, routine HVAC filter changes, snow removal



# DBA Repair Work

- Typically covers activities such as restoration of facility
  - One time fix to something not functioning
  - Restoration, alteration or replacement of fixed components
  - Examples: building structural repair, renovation, roof shingling, paving repairs



# Important Considerations for DBA vs. SCA Coverage

- DBA-covered when activity part of construction contract
  - Performed prior to acceptance by owner
  - Examples of activities:
    - Cleanup
    - Landscaping
    - Carpet laying
    - Drapery installation



# Important Considerations for SCA Coverage

- SCA-covered when activity is scheduled routine maintenance and upkeep
  - Examples:
    - Replace worn-out carpeting
    - Janitorial work
    - Mowing grass
    - Replace draperies



# **DBA or SCA - Demolition Work (29 C.F.R. § 4.116(b))**

- DBA-covered if subsequent construction of public building or public work is planned at the site as part of same contract or contemplated as part of future construction project
- SCA-covered if subsequent construction is not contemplated
- AAM # 90 provides further discussion



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# SCA Contracts with DBA Segments



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



## **Contracts Requiring SCA and DBA (29 C.F.R. § 4.116(c)(2))**

- SCA and DBA both apply to contracts “principally” for services that:
  - Contain specific requirements for substantial amounts of construction, alteration, or repair work
  - Physically or functionally separate from other work called for by the contract



## Contracts Requiring SCA and DBA (29 C.F.R. § 4.116(c)(2))

- SCA contracts that require **substantial** and **segregable** amounts of construction activity must include the DBA
  - **Substantial**: the type and quantity of construction work, not merely dollar value
  - **Segregable**: construction work is physically and functionally separate



## **Example: Contract for Food Services includes painting requirements**

- Federal contract for furnishing food services includes requirements to paint cafeteria and kitchen:
  - SCA-covered, as principally to provide food services through the use of service employees
  - Construction activity (*i.e.*, painting) is DBA-covered



# **Example: DOD Base Maintenance & Operation Contracts**

- Are principally for services, but often require substantial and segregable construction work:
  - Painting or repainting of base housing
  - Refinishing floors
  - Reroofing buildings
- If unclear whether SCA/DBA coverage applies to work element, contact contracting officer



# SCA & DBA – Contract Work Orders

- Questions can arise on whether work required by work order, task order, or service call is:
  - SCA maintenance, or
  - DBA painting/repairs
- Individual task or work orders are not to be split to avoid DBA coverage



# **SCA & DBA – Contract Work Orders DOD guidance (DFARS – 48 C.F.R. 222.402-70(d)(1)&(2)**

- If distinction between SCA maintenance & DBA repair (other than painting) is unclear:
  - SCA if service call or order will require less than 32 work hours
  - DBA if 32 or more work hours



# **SCA & DBA – Contract Work Orders**

## **DOD guidance (DFARS – 48 C.F.R. 222.402-70(d)(3))**

- If distinction between SCA maintenance & DBA painting unclear:
  - DBA if 200 square feet or more of painting work is to be performed under a service call or task order
  - Regardless of total work hours



# **Coverage Determination**

## **SCA/DBA/PCA**

- Contracting agency has initial responsibility for determining coverage
- DOL has authority for final determination on coverage
- Final rulings may be appealed to the Administrative Review Board (ARB)





# **(Non)Compliance Monitoring**

What to look for and how to find it ... (Davis-Bacon payrolls)



# Payroll reviews...

- Ensure all laborers and mechanics paid no less than required based on:
  - Type of work performed
  - Hours worked, including any overtime
- Monitoring for violations, not compliance



# Types of violations...

- Face of the record
  - Inadvertent
  - Easily resolved
  - If early, not too costly
- Concealed (falsification)
  - Willful
  - Independent validation / investigation
  - Bigger bucks / bigger impact



## Why DOL?

- Resources
- Trained investigators
- Broader scope of authority
- Potential for debarment

Besides....

- We've got something they don't have



# Compliance Factors

- Type of work performed (classification)
- Number of hours worked (straight time and overtime)
- Wage rate for the classification
- Actual payment to the worker



# Spot-Check Payrolls

- Review for major trades
- Detect patterns
- Compare on-site interviews
- Focus on falsification
- Ensure corrections, as needed



## 1<sup>st</sup> things 1<sup>st</sup>...

- Sort by employer / arrange by date
- Check the signature
- Check the data
- If not, require resubmission – never return payrolls for correction



## Next steps...

- Face of the record
  - Work classifications / pay rates
  - Hours
  - Apprentices / trainees
  - Require corrections if needed
  - Restitution on correction certified payroll



## **A closer look...**

- Concealed violations
  - Misclassification
  - Reduced hours
  - Deficient rates of pay
  - Unauthorized deductions
  - Kickbacks



# Payroll Falsification Indicators

- Payroll data are simple
- Patterns over time
- Anomalies / mistakes
- What's false / what's true?



## **Ratio >1:1...**

### ■ Example:

- 10 Laborers : 2 Electricians



## **Ratio >1:1?**

- Misclassification
  - Possible exceptions: Landscaping; cement; paving
- What is false / what may be true



# Too few / irregular hours...

## ■ Examples:

- No 40 hour workweeks
- Crew doesn't work together
- Hours reported in 10<sup>th</sup> or 100<sup>th</sup> fractions



## **Too few / irregular hours?**

- Reduction of hours / backing into hours
- Hours reduced to fit fabricated calculation
  - Earnings ÷ WD rate = false hours
- What is false / what may be true



# No 40-hour workweeks...

- W/D: \$20/hour
- Er pays: \$10/hour
- Actual: 40 hours x \$10 = \$400  
\$400 ÷ \$20 = 20 hours
  
- P/R shows: 20 Hours x \$20 = \$400



## Hours in 10ths / 100ths...

- W/D: \$33.68/hour
- Er pays: \$17.50/hour
- Actual: 40 hours x \$17.50 = \$700

$$\$700 \div \$33.68 = 20.78(384\dots) \text{ hours}$$

- P/R shows: 20.78 hours x \$33.68 = \$700



# Computation discrepancies...

## ■ Examples:

- Hours x rate of pay  $\neq$  gross earned
- Round gross earned from uneven DB wage rates



# Computation discrepancies?

- Insufficient hourly rate / piece work
- Er disregards math to match gross earnings / net pay
- What is false / what may be true



# Math doesn't work...

- W/D: \$33.68/hour
- Er pays: \$17.50/hour
- Actual: 40 hours x \$17.50 = \$700
- P/R shows: 20 hours x \$33.68 = \$700
- BUT: 20 x \$33.68 ≠ \$700

$$20 \text{ hours} \times \$33.68 = \$673.68$$



# Extraordinary deductions...

- Examples:
  - Unidentified / disproportionate deductions
  - Savings / other deduction  $\geq$  take home pay



# Extraordinary deductions?

- Kickback
- Er takes “cut” from the back end
- What is false / what may be true



## **Compliance excess...**

- Employer submits unrequired / unrequested documents
- Employer submits employee “labor releases”



# Worker complaint...

- All manner of underpayment / falsification schemes
  - Employer pays in cash
  - Employer “cashes” pay checks
  - “Ghost” employees



## On-Site Interviews

- Validate / test payroll data (inspector's observations / employee perspective)
- Develop complaints / substantiate suspected violations
- Target interviews
- Get a "good" story – focus on suspect activity



## Next steps...

- Validate suspected violations
  - What happened / what do you need
  - How much restitution / LDs
- Contact Federal funding agency / DOL?
- Request employee addresses / SSNs
  - Send questionnaires (customize – what’s false/what’s true)
- Target on-site interviews



## More steps...

- Assess the data
- Estimate restitution / CWHSSA L/Ds
- Consider withholding



# Then what?

- Informal consultation
  - Nature of the violations
  - Scope of violations
- Send summary / documents
- Cooperate / ensure withholding
- Monitor for non-compliance



## At any point...

- Contact the Federal funding agency / DOL if:
  - You have any questions
  - Need assistance
  - There is any suggestion that kickbacks are involved



# Resources...

- DOL Wage and Hour Division
  - <http://www.dol.gov/whd>
  - <http://www.dol.gov/whd/recovery>
- HUD Office of Labor Relations
  - <http://www.hud.gov/offices/olr>
- Wage Determinations On-Line
  - <http://www.wdol.gov>





# **CERTIFIED PAYROLLS**

**(Weekly Payrolls and Statements of  
Compliance)**

**29 CFR 5.5(a)(3) and FAR 22.406-6**



# Certified Payrolls

- Certified payrolls include the following information:
  - Name and worker's classification
  - Hourly rates of pay (including the rates of contributions or costs anticipated for bona fide fringe benefits, or cash equivalents paid for the benefits)
  - Daily and weekly number of hours worked
  - Deductions made
  - Actual wages paid



# Certified Payrolls

- Full social security numbers and home addresses of each worker shall not be included on the payroll records submitted to the agency
- Instead, an individually identifying number for each employee should be used. The last four digits of the employee's social security number are recommended
- The prime contractor must maintain addresses and social security numbers for all workers and provide them, on request, to the contracting agency or WHD



# Certified Payrolls

- Contractors must submit payroll records weekly for each week in which any contract work is performed within 7 calendar days of the payment date
- The prime contractor is responsible for submission of payrolls by all subcontractors



# Certified Payrolls

- Payroll Form 347 (For Contractors Optional Use) may be used for certified payroll records, but the required information can be submitted in any form desired
- Each payroll report must contain a Statement of Compliance signed by the contractor or subcontractor, or its authorized agent, who pays or supervises the payment of the covered workers



# Certified Payrolls

- Federal agencies receiving the payroll reports and Statements of Compliance must retain them for three years from the date of the completion of the contract and produce them at the request of WHD at any time during the three year period
- Contract funds may be withheld for nonsubmission of certified payrolls (FAR 22.406-6(b))
- Certified payroll reports are agency records as defined by the Freedom of Information Act (FOIA) (FAR 22.406-6(e))



# Certified Payrolls

- A response to a FOIA request for certified payroll information is a matter within the administrative jurisdiction of the federal agency holding the requested records, and should be made in compliance with the applicable terms and conditions of the FOIA
- The requirements of the FOIA include the obligation on the part of the agency to respond to requests for records within 20 days of receipt and advise the requesting party whether it will comply with the request and the reasons supporting the agency determination



# Certified Payrolls

- Certified payrolls may be submitted electronically with proper use of electronic signatures
- Electronic certified payrolls reduce processing and storage costs, assist in compliance monitoring, and expedite responses to FOIA requests
- Submitting certified payrolls by use of a fax machine does not satisfy the electronic signature requirement



# PREVAILING WAGE CONFERENCES



## Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

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Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none"><li>▪ <a href="#">Selecting SCA WDs</a></li><li>▪ <a href="#">e98</a></li><li>▪ <a href="#">Archived WDs</a></li><li>▪ <a href="#">WDs due to be revised</a></li><li>▪ <a href="#">PACT (Price Adjustment Calculation Tool) <b>NEW!</b></a></li></ul>	<ul style="list-style-type: none"><li>▪ <a href="#">Selecting DBA WDs</a></li><li>▪ <a href="#">Archived WDs</a></li><li>▪ <a href="#">WDs due to be revised</a></li></ul>	<ul style="list-style-type: none"><li>▪ <a href="#">Agency Labor Advisors</a></li><li>▪ <a href="#">Library</a></li><li>▪ <a href="#">DOL Wage and Hour Website</a></li></ul>

### Welcome to the Wage Determinations OnLine Program!

This website provides a single location for federal contracting officers to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action. The website is available to the general public as well. Guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

Alternatively, the WDOL.gov Program also provides contracting officers direct access to the Department of Labor's (DOL's) "e98" website to submit a request for SCA WDs for use on official contract actions. In some instances, the WDOL.gov Program will not contain the appropriate SCA WD, and contracting officers will be directed to use DOL's e98 website in order to obtain the required SCA WD. DOL will provide the contracting officer with an SCA WD through the e98 system.

### News and Updates...

» **NEW!** The Department of Labor Wage and Hour Division is happy to announce the 2011 Prevailing Wage Conference Schedule:  
[Melbourne, FL: May 10-12](#)  
[New York City, NY: May 24-26](#)  
[Phoenix, AZ: July 12-14](#)  
[Denver, CO: August 2-4](#)  
[Las Vegas, NV: August 16-18](#)  
Please [CLICK HERE](#) for additional Prevailing Wage Conference general and registration information. You may also click on each individual conference location listed above for additional information.



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



# PREVAILING WAGE CONFERENCES



## FAR Supplements and Other Acquisition Regulations

- Department of Agriculture
- Department of Defense
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Department of Energy
- Department of Housing and Urban Development
- Department of the Interior
- Department of Labor
- Department of State
- Department of Transportation
- Department of Treasury (PDF)
- Environmental Protection Agency
- General Services Administration
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission
- U.S. Postal Service (PDF)

## Sites Relating to Labor Standards and Compliance Requirements

- Significant All Agency Memoranda Issued by DOL **Updated**
- Davis-Bacon Act
- Service Contract Act
- Employment Laws Assistance for Workers and Small Businesses
- Office of the DOL/Administrative Law Judge (Wage Appeal Board Decisions) and (Administrative Review Board Decisions and Library)
- DBA - Information on Apprentices and Trainees
- DOL Approved State Apprenticeship Agencies
- DOL Prevailing Wage Resource Book (Updated)

- General Schedule (GS) Rates
- Acquisition Network
- Chief Acquisition Officers Council
- USA.gov
- FedBizOpps
- National Technical Information Service
- Office of Labor Relations, U. S. Department of Housing and Urban Development
- Questions pertaining to contract or labor relations or disputes, contact your agency labor advisor.
- Federal Procurement Dollars: A Federal Procurement Data System Snapshot of Actions Subject to the Service Contract Act and the Davis-Bacon Act (Microsoft Powerpoint) **Updated**

- SF308 (217 KB, PDF) - Request for DBA Project Wage Determination: For contracting officers to use in requesting Project WD under DBA per FAR 22.404-3 and Title 29 CFR Part 1.5
- Cross Index for Labor Standards: Cross-walk from Title 29 CFR to FAR (Title 41 CFR)

## Conformances

- SF1444 - Request for Authorization of Additional Classification and Rate (87 KB, PDF)

### Procedures:

- Conformances under the Service Contract Act
- Conformances under the Davis-Bacon Act



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





## Useful Web Links:

- Wage Determinations Online - <http://www.wdol.gov/>
- Instructions Completing WH-347 - <http://www.dol.gov/whd/forms/wh347instr.htm>
- WH-347 Blank Form - <http://www.dol.gov/whd/forms/wh347.pdf>
- Wage and Hour Division's Davis-Bacon Act Page - <http://www.dol.gov/whd/contracts/dbra.htm>



# Disclaimer

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



# 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
<b>Total</b>	<b>\$13.75</b>	<b>Total</b>	<b>\$13.75</b>



# **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**

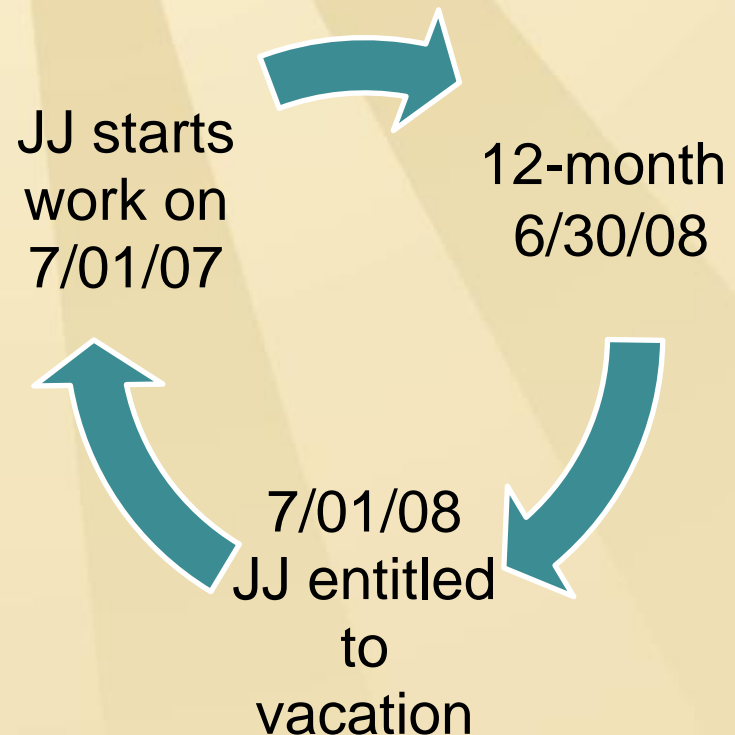
## **(29 C.F.R. § 4.173(c)(1))**

- 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**  
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

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

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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# PREVAILING WAGE CONFERENCES



# Q & A



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



# Upcoming WPI Events

- ***Acquisition Hour Live Webinar Series - Tuesdays and Wednesdays including:***

*Technology Funding for small business: April 12, 2016*

*How to quickly analyze Solicitations: April 26, 2016*

*Pieces of the proposal puzzle: April 27, 2016*

- ***Virtual FAR Training Webinar Series – Wednesday evenings – 6pm-7pm until May 25, 2016***

# Upcoming WPI Events

- *Ft McCoy Acquisition Open House Forum #1 – April 5, 2016 – Fort McCoy, WI*
- *4<sup>th</sup> Annual US Department of Veterans Affairs Business Conference – May 12, 2016 – Brown Deer, WI*
- *10<sup>th</sup> Annual Volk Field Small Business Conference – June 15-16, 2016 – Camp Douglas, WI*



# QUESTIONS???

# Continuing Professional Education

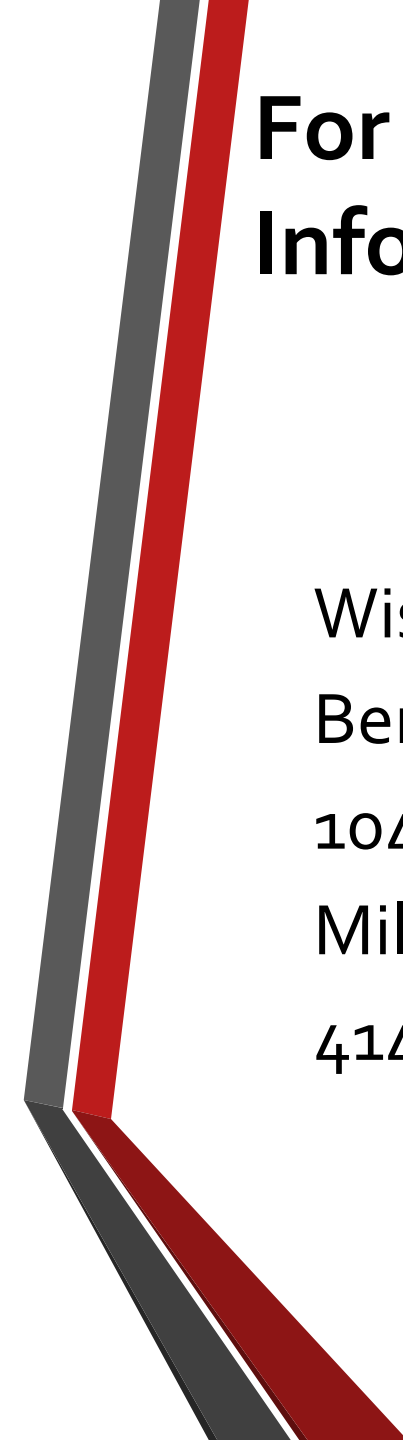


CPE Certificate available, please contact:

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