

Acquisition Hour

Know Your Davis-Bacon: The Updates and the Essentials!

February 25 | 11:00 am - Noon

Presented by:

Corey Walton, U.S. Department of Labor/Wage and Hour Division





An APEX Accelerator

Assisting Wisconsin businesses compete in the government marketplace.

WPI is Wisconsin's APEX ACCELERATOR

The APEX Accelerators program, under management of the Department of Defense (DOD) Office of Small Business Programs (OSBP), plays a critical role in the Department's efforts to identify and engage with a wide range of businesses entering and participating in the defense supply-chain. The program provides the education and training that all businesses need to participate to become capable of participating in DOD and other government contracts.

WPI provides services and training to all of Wisconsin's 72 counties

- Individual counseling at our offices, client's facility or virtually
- Small group training – webinars and workshops including Acquisition Hours, Cyber Fridays, Evening FAR sessions, Federal Market Insights and Local Government Sales Opportunities
- Conferences the Governors Marketplace, The Contracting Academy (TCA), WEDCs Small Business Academy, Wisconsin Federal Contractor Forum [DC and in-state], Government Opportunities Business Conference GOBC) with WI military bases, End of Year Federal Contractor Update, Annual DOD Contract Management Update, and more.....

www.wispro.org

WPI OFFICE LOCATIONS

- **MILWAUKEE**

- *Technology Innovation Center*

- **MADISON**

- *FEED Kitchens*
- *Dane County Latino Chamber of Commerce*
- *Wisconsin Manufacturing Extension Partnership (WMEP)*
- *Madison Area Technical College (MATC)*

- **CAMP DOUGLAS**

- *Juneau County Economic Development Corporation (JCEDC)*

- **EAU CLAIRE**

- *Western Dairyland*

- **FOND DU LAC**

- *Envision Greater Fond du Lac*

- **GREEN BAY**

- *NWTC Startup Hub*

- **LACROSSE**

- *Veterans in Professions*

- **MANITOWOC**

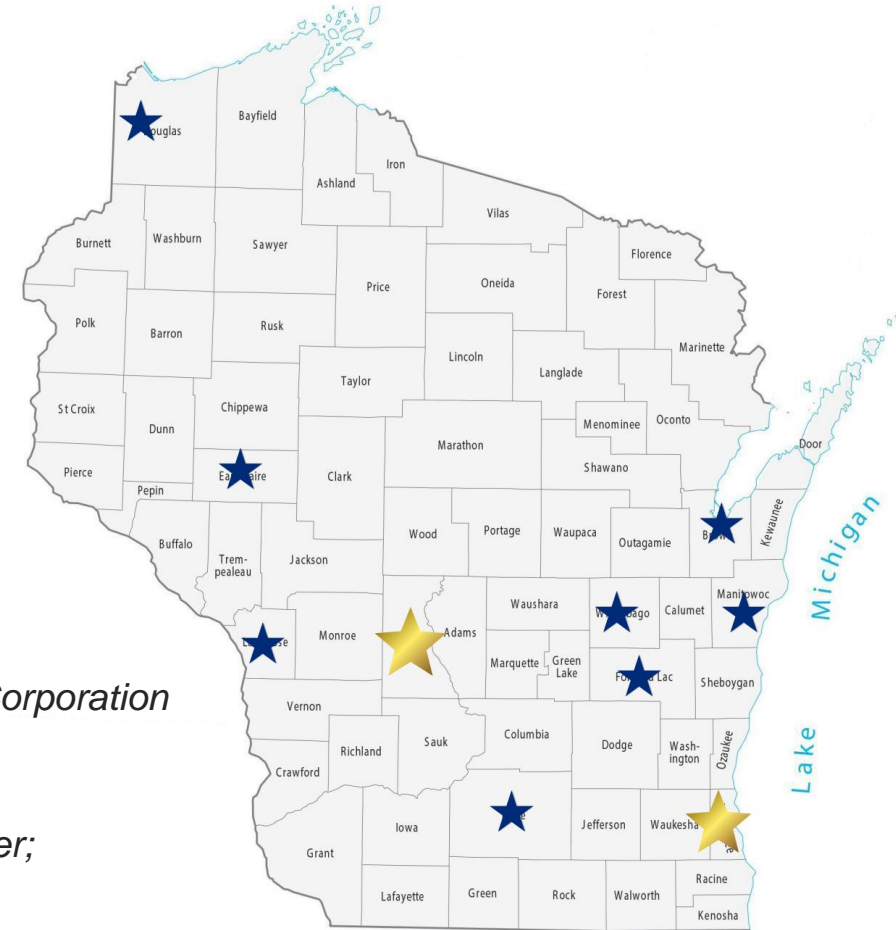
- *Progress Lakeshore*

- **OSHKOSH**

- *Greater Oshkosh Economic Development Corporation*

- **SUPERIOR**

- *Small Business Dev Center; UW Superior*





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
<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 \$5.36 per hour in 2024
- 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
<hr/> Total	<hr/> *340			<hr/> \$1120.00

* 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
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
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Total	800		\$800.00

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

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

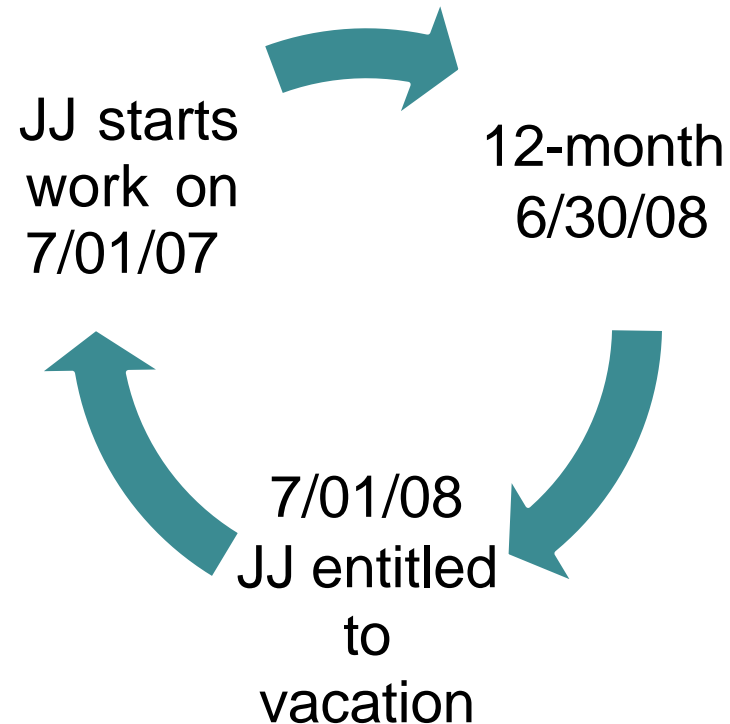
Vacation Fringe Benefits

(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(I)(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 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 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

SCA Overtime Compliance

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. 3701 *et seq.*) applies to federal DBA and SCA contracts in excess of \$150,000 that are subject to Federal Acquisition Regulation (FAR) procurement. 48 C.F.R. § 22.305 that employ “laborers” and “mechanics.” CWHSSA also applies to DBRA and SCA contracts in excess of \$100,000 that are not subject to FAR procurement, such as contracts with non-appropriated fund instrumentalities

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 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
4 hours X \$15.00 x ½	= 30.00 Overtime Pay
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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

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed for each of the three days of overtime work where the worker was not properly paid overtime. Assume for this example that the CWHSSA liquidated damages penalty amount is \$25 per employee, per day. Accordingly, the total liquidated damages amount for this example is \$75.

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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Upcoming Events

February 25 2025

Acquisition Hour

The Acquisition Hour webinar series covers a range of topics from market entry, sales growth, small business certifications, compliance, and more. Attendees receive 1 CPE credit for attending.

- **February 26** – Understanding the US SBA and DOD Mentor Protégé Programs (MPP)
- **March 5** – Marketing Materials for One-on-One Buyer Meetings
- **March 19** – Acquisition Hour: Navigating AI: Practical Tips for Federal Contractors

...More information and registrations at wispro.org/events



Cyber Friday

Cyber Friday is a series of one-hour webinars focusing on critical topics for DOD contractors and subcontractors in cyber security, data security, and CMMC. Attendees receive 1 CPE credit for attending.

- **February 28** – CMMC: Are You Ready for a C3PAO Assessment?
- **March 28** – CMMC: Federal Cybersecurity Requirements – Who Must Comply?
- **April 25** – CMMC: Maintaining Your CMMC Certification

...More information and registrations at wispro.org/events

Federal Market Insights

Federal Market Insights is an informal podcast designed to provide valuable information about the government marketplace for businesses interested in government contracting. Each episode is a concise 30-minute session, scheduled at the end of the week. We review noteworthy items published during the week, delve into key topics, and offer background information and perspectives relevant to the government contracting landscape. Stop by, settle in and take-in the conversation.

- ~~February 14 – Starting Your Federal Contracting Journey: Registering in SAM~~
- ~~February 21 – Getting Started with DoD Contracts: Essential Tips and Information~~
- February 28 – Navigating DoD Sales: From Regulations to Strategic Planning
- March 7 – Federal Certifications: Beyond Titles to Strategic Value
- March 14 – The Language of Government Contracting: Why Definitions Matter
- March 21 – Federal Information Security: Programs Every Contractor Should Know

...More information and registrations at wispro.org/events

Upcoming Events



May 14

*Winning Government Business: Navigating Compliance
Risks to Drive Strategic Advantage*
Milwaukee, WI



May 15

11th Annual DOD Contract Management Update
Milwaukee, WI

...More information and registrations at wispro.org/events

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