SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Foreword

DISCLAIMER

Updated: November 1997

Message from the Secretary of Labor

As Secretary of Labor, I have set five goals for the Department: first, to equip every working American with the skills to find and hold good jobs, with rising incomes throughout their lives; second, to help people move from welfare to work; third, to assure that working Americans enjoy secure pensions when they retire; fourth, to guarantee every American a safe, fair and equal opportunity workplace; and, fifth, to help working people balance work and family. The 180 labor laws and related regulations that the Department of Labor (DOL) administers advance these goals.

These laws and regulations cover a wide variety of workplace activities for nearly 10 million employers and well over 100 million workers. Most business men and women want to do the right thing. Few question the basic goals federal rules are meant to advance. But even for the best intentioned small business, it may be difficult to be familiar with the full range of relevant labor laws and regulations. This single publication represents another step toward making it less burdensome for small businesses to meet their regulatory obligations, so they can spend more of their time doing what they do best -- creating good jobs for American workers.

The Handbook is designed to provide general information on the laws and regulations that the Department enforces. My hope is that by providing clear and concise descriptions of the Departmental statutes most commonly applicable to small businesses, and by explaining how to obtain assistance from the Department in complying with them, small businesses and their workers will all be helped.

Alexis M. Herman

Secretary of Labor

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U.S. Department of Labor

SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Overview

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Updated: November 1997

Major Statutes and Regulations Administered by the Department of Labor

The main body of this Handbook consists of 28 discrete chapters describing the requirements of each of the major statutes enforced by the Department of Labor (DOL). The 28 chapters are organized by type of standard (i.e., Retirement and Health Benefit Standards; Safety and Health Standards; Wage, Hour and Other Workplace Standards; and Workplace Standards for Federally Funded or Assisted Contracts). Each chapter discusses: which employers or employees are covered by the statute; the statute's basic provisions and requirements; how to obtain information and assistance from DOL; penalties for non-compliance; and relation to state, local and other federal laws. Links are provided in each chapter to more detailed information available on DOL agencies' websites, such as the text of statutes, regulations (e.g., the Code of Federal Regulations), and interpretative bulletins. Users should refer to the regulations and other applicable materials to understand fully their responsibilities under each statute.

Please note that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, statutes designed to ensure non-discrimination in employment are generally enforced by the **Equal Employment Opportunity Commission**. Also, the Taft-Hartley Act regulating employer conduct with regard to employees in a wide range of areas is administered by the **National Labor Relations Board**. Please consult these agencies for further information on their requirements.

The Overview is organized differently than the main body of the Handbook in an effort to help new businesses ascertain which of DOL's statutes are most likely to apply to them. Thus, the first statutes discussed in the Overview apply to most employers, followed by those that apply to federal contractors, and finally by the statutes that apply to specific industries (i.e., agriculture, mining, construction, and transportation). Links are made within the Overview to the related, more detailed chapters in the Handbook so that employers may readily obtain additional information on the basic requirements of the statutes. In a few instances, statutes are discussed for which there are no corresponding chapters in the Handbook. In these cases, the user is directed to the appropriate DOL agency for additional information.

I. Requirements Applicable to Most Employers

A. Employee Benefit Plans

The **Employee Retirement Income Security Act (ERISA)**, which governs certain activities of most employers who have pension or welfare benefit plans, preempts many state laws in this area. ERISA is administered by DOL's Pension and Welfare Benefits Administration (PWBA). The statute also provides an insurance mechanism to protect retirement benefits

through a requirement that employers pay annual pension benefit insurance premiums to the **Pension Benefits Guaranty Corporation (PBGC)**, which is associated with the Department of Labor. Pension insurance information can be obtained by writing PBGC, Processing and Technical Assistance Branch, 1200 K Street, NW, Washington, DC 20006, or by calling (202) 326-4000.

ERISA covered **pension plans** must meet a wide range of fiduciary and reporting and disclosure requirements. PWBA's regulations define such concepts as what constitutes plan assets, what is adequate consideration for the sale of plan assets, and the effects of participants having control over the assets in their plans, among other things.

Under ERISA, **welfare benefit plans** also must meet a wide range of fiduciary, reporting, and disclosure requirements. There are also disclosure and notification requirements for the continuation of health care provisions that were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year. COBRA gives separated participants and beneficiaries an election to maintain, at their own expense, coverage under the employer's health plan for a limited period of time.

The **Health Insurance Portability Act of 1996** added several provisions to ERISA which are designed to provide participants and beneficiaries of group health plans with improved portability and renewability of coverage, as well as improved access to insurance and protection against discrimination on the basis of health status.

B. Safety and Health Requirements

The **Occupational Safety and Health Act (OSH Act)** , which is administered by DOL's Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those regulated under other federal statutes, e.g., the transportation industry). Many private employers are regulated through states operating under OSHA-approved plans.

It is the responsibility of employers to become familiar with job safety and health standards applicable to their establishments, to comply with the standards, and to eliminate hazardous conditions to the extent possible. Compliance may include ensuring that employees have and use personal protective equipment when required for their safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and practices.

Employers covered by the OSH Act are required to maintain workplaces that are safe and healthful. In doing so, they must meet certain regulatory requirements. Through regulations, OSHA promulgates safety and health standards, and frequently makes distinctions by type of industry.

- Safety standards include regulations covering hazards such as falls, explosions, electricity, fires, and cave-ins, as well as machine and vehicle operation and maintenance, etc.
- Health standards regulate exposure to a variety of health hazards through engineering controls, the use of personal protective equipment (e.g., respirators or hearing

protection), and work practices.

Where OSHA has not promulgated a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause [Section 5(a)(1)], which states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

When OSHA develops specific safety and health standards, the more general safety and health regulations originally issued under the following laws administered by the Department of Labor are superseded: the Walsh-Healey Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, and the Arts and Humanities Act.

Another generally applicable statute, the **Fair Labor Standards Act (FLSA)** prescribes the conditions under which minors (those under age 18) can safely work. These restrictions affect most private and public employment. This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA). **Child labor** provisions of the FLSA (non-agriculture) include restrictions on the hours of work and occupations for youths under age 16, and set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform.

C. Wage, Hour and Other Workplace Standards

The **Fair Labor Standards Act (FLSA)** prescribes minimum wage and overtime pay standards as well as recordkeeping and child labor standards for most private and public employment, including work conducted in the home (homework). This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA).

The minimum wage and overtime pay provisions of the FLSA require the following from employers of covered employees who are not otherwise exempt:

- As of September 1, 1997, employers must pay covered employees a minimum wage of not less than $5.15 an hour. Employers may pay employees on a piece-rate basis and, under some circumstances, may consider the tips of employees as part of their wages.
- Youths under 20 years of age may be paid a minimum wage of not less than $4.25 an hour during the first 90 consecutive calendar days of employment. with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.
- Although the Act does not place a limit on the total hours which may be worked by an employee who is at least 16 years old, it does require that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

In addition, the FLSA generally prohibits the performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. As noted above, child labor provisions (non-agriculture) of the FLSA include restrictions on the hours of work and occupations for youths under age 16.

Other generally applicable statutes which set workplace standards include:

- Under the **Immigration and Nationality Act (INA)**, foreign workers are allowed to work in the United States. The Employment Standards Administration's Wage and Hour Division has enforcement authority pertaining to the employment of nonimmigrant workers in four visa classifications: **D-1 (crewmembers)**; **H-1A (registered nurses)**; **H- 1B (workers employed in a "specialty occupation" or as a fashion model)**; and H-2A (workers employed in temporary agricultural jobs). Additionally, under the **INA**, employers must verify the identity and employment authorization of all employees, including foreign workers.

- The **Family and Medical Leave Act** requires employers of 50 or more employees (and all public agencies) to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or a family member. This Act is administered by the Wage and Hour Division of ESA.

- Veteran's reemployment rights ensure that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including those called up from the reserves or National Guard. The **Uniformed Services Employment and Reemployment Act**, which provides these rights, is administered by DOL's Office of the Assistant Secretary for Veterans' Employment and Training.

- Plant closings and layoffs may cause employers to become subject to the **Worker Adjustment and Retraining Notification Act (WARN)** which provides for early warning to employees of proposed layoffs or plant closings. The Employment and Training Administration can provide information on WARN, but since it does not have administrative or enforcement authority under WARN, it cannot provide specific advice or guidance with respect to individual situations.

- The **Employee Polygraph Protection Act (EPPA)** prohibits most use of lie detectors by employers on their employees. This Act is administered by the Wage and Hour Division of ESA.

- Garnishment of wages by employers is subject to regulation under the **Consumer Credit Protection Act**. This Act is administered by the Wage and Hour Division of ESA.

- The **Labor-Management Reporting and Disclosure Act (LMRDA)** (also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations. This Act is administered by DOL's Employment Standards Administration, Office of Labor-Management Standards (OLMS).

II. Requirements Applicable to Employers Because of the Receipt of Government Contracts, Grants or Financial Assistance

Non-discrimination and affirmative action requirements for Federal contractors are set under **Executive Order 11246**, **Section 503 of the Rehabilitation Act**, and the **Vietnam Era**

Veteran's Readjustment Assistance Act (38 U.S.C. 4212). These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability and veterans' status. ESA's Office of Federal Contract Compliance Programs (OFCCP) administers these programs.

Wage, hour, and fringe benefit standards are determined for employees of federal contractors under: the **Davis-Bacon and Related Acts** (for construction); the **Contract Work Hours and Safety Standards Act**; the **McNamara-O'Hara Service Contract Act** (for services); and the **Walsh-Healey Public Contracts Act** (for manufacturing). The Wage and Hour Division of ESA both makes the determination of the required wage and benefit rates and enforces the requirements under the various statutes. Safety and health standards are also issued under these Acts and are applicable to covered contractors, unless they have been superseded by specific standards issued by the Occupational Safety and Health Administration. *Contact your local **OSHA Office** for more detail on safety standards.*

III. Industry-Specific Requirements

A. Agriculture

Several safety and health standards issued and enforced by OSHA and the **Environmental Protection Agency** (e.g., pesticides) apply to this industry. In addition, several agriculture-specific programs are administered by the Employment and Training Administration and the Employment and Standards Administration's Wage and Hour Division.

Under the authority of the **Occupational Safety and Health Act** , OSHA has issued a number of safety standards that relate directly to the agricultural industry, including: field sanitation, overhead protection for operators of agricultural tractors, grain handling facilities, and guarding of farm field equipment and cotton gins. *Contact your local **OSHA Office** for more detail.*

The Immigration and Nationality Act (INA) requires that employers wishing to use nonimmigrant workers for temporary agricultural employment under the H-2A visa classification apply to the Employment and Training Administration for a labor certificate showing that there are not sufficient workers in the U.S. able, willing, qualified and available to do the work, and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the U.S.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that covered farm labor contractors, agricultural employers and agricultural associations comply with worker protection provisions applicable to migrant and seasonal agricultural workers who they recruit, solicit, hire, employ, furnish or transport or, in the case of migrant agricultural workers, to whom they provide housing. The Wage and Hour Division administers the requirements of MSPA. *Contact your local ESA **Wage and Hour Division** Office for more detail.*

The **Fair Labor Standards Act (FLSA)** contains special child labor regulations applicable to agricultural employment. The regulations administered and enforced by the Wage and Hour Division apply only to those establishments with employees (e.g., they do not apply to family-run and family-operated farms that do not hire outside workers). *Contact your local ESA **Wage and Hour Division** Office for more details.*

B. Mining

The goal of the **Federal Mine Safety and Health Act of 1977** is to improve working conditions in the nation's mines. This law strengthened an earlier coal mining law and brought metal and nonmetal miners under the same general protections as those afforded coal miners. Its provisions cover all miners and other persons employed to work on mine property. The Act is administered by the Labor Department's Mine Safety and Health Administration (MSHA).

Under the Act, the operators of mines, with the assistance of their employees, have the primary responsibility for ensuring the health and safety of the miners. MSHA is responsible for fully inspecting every underground mine at least four times a year and every surface mine at least twice a year to ensure that these responsibilities are met. MSHA also conducts training and provides technical assistance to the mining industry in the continuting effort to reduce deaths, serious injuries, and illnesses.

The Act established mandatory miners' training requirements and strengthened health protection measures and gassy mine safety programs. It also included tougher civil monetary penalties for safety or health violations by mine operators. In addition, the Act provided for closure of mines in cases of imminent danger to workers or failure to correct violations within the time allowed, and it called for greater involvement of miners and their representatives in processes affecting workers' health.

Each mine must be registered with MSHA. Many mine operators are required to submit plans to MSHA for approval before beginning operations. Such plans must be followed during mining. Required plans for underground coal mines cover operational aspects such as ventilation and roof control. Training plans are required for both underground and surface mines. Mine operators are also required to report each individual mine accident or injury to MSHA.

MSHA's Coal Mine Safety and Health Division enforces the law and the relevant regulations at more than 4,600 underground and surface coal mines. MSHA's Metal and Nonmetal Mine Safety and Health Division enforces federal requirements at more than 11,000 non-coal mines (including open pit mines, stone quarries, and sand and gravel operations).

Health and safety regulations developed and enforced by MSHA cover numerous hazards, including those associated with the following:

- exposure to respirable dust, airborne contaminants and noise;
- design, operation and maintenance requirements for mechanical equipment, including mobile equipment;
- roof falls, and rib and face rolls;
- flammable, explosive and noxious gases, dust and smoke;
- electrical circuits and equipment;
- fires;
- storage, transportation, and use of explosives;
- hoisting; and
- access and egress.

The **Black Lung Benefits Act (BLBA)** , part of the Federal Mine Safety and Health Act of 1977, provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung). The Act also provides for payments to certain family members of miners who died from, or are totally disabled because of pneumoconiosis. The Act is administered by ESA's Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation.

C. Construction

Several DOL agencies are involved in administering programs related to the construction industry:

- Under the **Occupational Safety and Health Act**, OSHA sets and enforces occupational safety and health standards specific to the construction industry.
- The **Davis-Bacon Act and related Acts** require most contractors and subcontractors on federally assisted construction contracts in excess of $2,000 to pay prevailing wage rates and fringe benefits as determined by the Secretary of Labor through the Wage and Hour Division of the Employment Standards Administration (ESA).
- Under **E.O. 11246**, ESA's Office of Federal Contract Compliance Programs has issued specific regulations on non-discrimination and affirmative action requirements for federal construction contractors and subcontractors.
- The "Anti-Kickback" section of the **Copeland Act** applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction or repair of any public building or public work -- except contracts for which the only federal assistance is a loan guarantee. This provision precludes a contractor or subcontractor from inducing an employee -- in any manner-- to give up any part of his/her compensation to which he/she is entitled.

D. Transportation

Many laws with labor provisions affecting the transportation industry are administered by agencies outside of the Department. For example, the Railway Labor Act is administered primarily by the **Department of Transportation** and the Railway Retirement Board. Special DOL programs for this industry include longshoring and maritime industry standards issued and enforced by OSHA under the **Occupational Safety and Health Act**.

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Workplace Standards for Federally Assisted or Funded Contracts

Employment Discrimination

DISCLAIMER

Updated: November 1997

Executive Order 11246, As Amended (Parts II, III, and IV)
(41 CFR 60, Parts 1- 3, 20- 50) Supply and Service

Who is covered

Executive Order 11246 and its implementing regulations, which are administered and enforced by the Employment Standards Administration's **Office of Federal Contract Compliance Programs (OFCCP)** protect employees of covered Federal contractors and subcontractors from employment discrimination because of race, color, religion, sex and national origin. The Executive Order covers employers with the following types of Federal contracts or subcontracts which are in excess of $10,000 or which may (or may be expected) to accumulate to more than $10,000 in any 12-month period: (1) to provide supplies; (2) to provide services; or (3) for the purchase, sale or use of real or personal property.

The following types of contracts are exempt from the Executive Order:

- transactions of $10,000 and under;
- contracts and subcontracts for indefinite quantities, unless the purchaser has reason to believe that the amount to be ordered in any one year will be over $10,000;
- contracts for work that is performed outside the United States by employees who were not recruited in the U.S.; and
- contracts exempt for national interest or security reasons;

Specific exceptions may apply to the following:

- contracts with certain educational institutions (e.g. religiously oriented church colleges);
- contracts for work on or near Indian reservations;
- contractor facilities not related to contract performance, as determined by OFCCP; and,
- contracts with State or local governments unless the governmental entity participates in work on or under the contract.

Basic Provisions/Requirements

The Executive Order prohibits covered employers from discrimination against employees or job applicants because of race, color, religion, sex or national origin and requires them to take affirmative action to ensure that all qualified applicants and employees receive equal employment opportunity. Contractors and subcontractors with supply and service contracts who have 50 or more employees and a contract of $50,000 or more must develop a written affirmative action program covering each of their establishments. The written program is to

include remedial steps to correct underutilization of available skilled women and minorities.

In prohibiting discrimination, Department of Labor regulations cover such employment practices as recruitment, rates of pay, upgrading, layoff, promotion and selection for training, among others. Race, color, religion, sex or national origin distinctions may not be made in recruitment or advertising efforts, employment opportunities, wages, hours, job classifications, seniority, retirement ages or job fringe benefits such as employer contributions to company pension or insurance plans.

Affirmative action, or positive measures, must be taken by covered employers to recruit and advance qualified minorities and women for jobs in which they are underutilized relative to their availability. Affirmative actions include training programs, outreach efforts, and other positive steps. These procedures should be incorporated into the company's written personnel policies. Employers with written affirmative action programs must implement them, keep them on file and update them annually.

Exclusionary policies may not differ between the sexes. For example, an employer cannot deny a job to a woman because she has young children unless the same policy applies to men.

Lack of appropriate physical facilities may not be a reason for refusing to hire men or women, unless the employer can prove undue hardship such as excessive expense in providing reasonable accommodations. Employers also may not depend on State "protective" laws to deny employment to a qualified female applicant.

Covered employers are required to comply with the Pregnancy Discrimination Act of 1978. They must provide equal fringe benefits and make equal contributions for such benefits for men and women. Sexual harassment is also a violation of the nondiscrimination provisions of the Executive Order.

Covered employers are prohibited from discrimination against employees or applicants for employment because of religion or national origin, and must take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their religion or national origin. Employers must review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities and undertake appropriate outreach and positive recruitment activities in order to remedy existing deficiencies. Employers must also accommodate the religious observances and practices of employees as long as the accommodation can be achieved without undue hardship on the conduct of the employer's business.

Employers are also required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against an individual for filing a complaint or participating in a proceeding under the Executive Order.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting **OFCCP's local offices**.

Penalties

OFCCP investigates for violations of the Executive Order either through compliance reviews or in response to complaints. If a violation is found after an investigation, the Federal contractor is asked to enter into conciliation negotiations. If conciliation efforts fail, OFCCP initiates an administrative enforcement proceeding by issuing an administrative complaint to the contractor. The contractor has 20 days to request a review by an administrative law judge, who hears the case and makes a determination. The contractor may appeal the administrative law judge's decision to the Department of Labor's Administrative Review Board and, if dissatisfied with the Board's decision, to the Federal courts. Violations may result in withholding of proposed contracts, canceling or suspending or terminating contracts, withholding of progress payments, and debarment. Final determinations on violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

OFCCP generally refers individual complaints to the **Equal Employment Opportunity Commission** for investigation and resolution.

The Executive Order applies to State and local government entities which have contracts with the Federal government if the State or local government entity participates in work on or under the contract or subcontract. Unlike coverage of private sector employers, the government entity but not the government as a whole becomes subject to the Executive Order when it enters into the contract. As noted above, State "protective" laws may not be used by employers as a reason to deny employment to qualified women applicants.

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Workplace Standards for Federally Assisted or Funded Contracts

Employment Discrimination in Construction

DISCLAIMER

Updated: November 1997

Executive Order 11246, as amended (Parts II, III, and IV) Construction (41 CFR 60, Parts 1, 3, 4, 20-50)

Who is Covered

Executive Order 11246 and its implementing regulations, which are administered and enforced by the Employment Standards Administration's **Office of Federal Contract Compliance Programs (OFCCP)**, protects all on-site construction employees of covered Federal contractors and subcontractors and federally assisted contractors from employment discrimination because of race, color, religion, sex and national origin. The Executive Order covers employers with Federal contracts or subcontracts and federally assisted construction contracts in excess of $10,000.

The following types of contracts are exempt from the Executive Order:

- transactions of $10,000 and under;
- contracts for work that is performed outside the United States by employees who were not recruited in the U.S.; and
- contracts exempt for national interest or security reasons.

Specific exceptions may apply to the following:

- contracts with certain educational institutions (e.g. religiously oriented church colleges); and
- contracts for work on or near Indian reservations.

Basic Provisions/Requirements

The Executive Order prohibits covered employers from discriminating against employees or job applicants because of race, color, religion, sex or national origin and requires them to take affirmative action to ensure equal employment opportunity for these protected groups. Covered construction contractors and subcontractors must strive to meet geographic goals established by the OFCCP for the employment of women and minorities in all crafts and trades in the area. Covered contractors are required to pursue such goals on all their construction work, whether or not Federal or federally assisted.

In prohibiting discrimination, Department of Labor regulations cover such employment practices as recruitment, rates of pay, upgrading, layoff, promotion and selection for training,

among others. Race, color, religion, sex and national origin distinctions may not be made in recruitment or advertising efforts, employment opportunities, wages, hours, job classifications, seniority, retirement ages or job fringe benefits such as employer contributions to company pension or insurance plans.

Construction contractors must take specific affirmative actions to ensure equal employment opportunity. Construction contractors must document their efforts fully, and shall implement affirmative acton steps which are at least as extensive as those listed in 41 CFR 60 Part 4.3.

Exclusionary policies may not differ between the sexes. For example, an employer cannot deny a job to a woman because she has young children unless the same policy applies to men.

Lack of appropriate physical facilities may not be a reason for refusing to hire men or women, unless the employer can prove undue hardship such as excessive expense in providing reasonable accommodations. Employers also may not depend on State “protective” laws to deny employment to a qualified female applicant.

Covered employers are required to comply with the Pregnancy Discrimination Act of 1978. They must provide equal fringe benefits and make equal contributions for such benefits for men and women. Sexual harassment is also a violation of the nondiscrimination provisions of the Executive Order.

Covered employers are prohibited from discriminating against employees or applicants for employment because of religion or national origin, and must take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their religion or national origin. Employers must review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities and undertake appropriate outreach and positive recruitment activities in order to remedy existing deficiencies. Employers must also provide accommodation without undue hardship on the conduct of employer’s business.

Employers are also required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against an individual for filing a complaint or participating in a proceeding under the Executive Order.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting **OFCCP’s local offices**.

Penalties

OFCCP investigates for violations of the Executive Order either through compliance reviews or in response to complaints. If a violation is found after an investigation, the Federal contractor is asked to enter into conciliation negotiations. If conciliation efforts fail, OFCCP initiates an administrative enforcement proceeding by issuing an administrative complaint to the contractor. The contractor has 20 days to request a review by an administrative law judge, who hears the case and makes a determination. The contractor may appeal the administrative law judge’s decision to the Administrative Review Board of the Department of Labor and, if dissatisfied with it’s decision, to the Federal courts. Violations may result in withholding of

proposed contracts, canceling, suspending or terminating current contracts, withholding of progress payments, and debarment. Final determinations on violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

OFCCP generally refers individual complaints to the **Equal Employment Opportunity Commission** for investigation and resolution.

The Executive Order applies to State and local government entities which have contracts with the Federal government if the State or local government entity participates in work on or under the contract or subcontract. Unlike coverage of private sector employers, the government entity but not the government as a whole becomes subject to the Executive Order when it enters into the contract. As noted above, State “protective” laws may not be used by employers as a reason to deny employment to qualified female applicants.

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Workplace Standards for Federally Assisted or Funded Contracts

Equal Opportunity for Individuals with a Disability

DISCLAIMER

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Rehabilitation Act of 1973, as amended
(29 USC §793: P.L. 93-112, Section 503; 41 CFR 60, Part 60-741)

Who is Covered

Section 503 of the Rehabilitation Act of 1973, as amended, which is administered and enforced by the Employment Standards Administration's **Office of Federal Contract Compliance Programs (OFCCP)** , requires most employers doing business with the Federal Government to take affirmative action to employ and advance in employment qualified individuals with a disability. Its coverage extends to employers with Federal contracts or subcontracts in excess of $10,000 for the purchase, sale, or use of personal property or nonpersonal services, including construction. Regulations implementing the Act also prohibit discrimination in employment against qualified individuals with a disability.

The following types of contracts are exempt from Section 503:

- Transactions of $10,000 and under;
- Contracts and subcontracts for indefinite quantities, unless the purchaser has reason to believe that the amount to be ordered in any one year will be over $10,000 ;
- Contracts for work that is performed outside the United States by employees who were not recruited in the U.S.;
- Contracts exempt for national interest or security reasons; and
- Contracts with State or local governments unless the governmental entity participates in work on or under the contract.

A qualified individual with a disability is a person who: (1) has a physical or mental impairment which "substantially limits" one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.

Basic Provisions/Requirements

Covered employers with Federal contracts must take affirmative action, or positive measures, to employ qualified individuals with disabilities. As noted, the regulations implementing the Act also prohibit employment discrimination because of one's disability. These measures cover the full range of employment and personnel practices, such as recruitment, hiring, rates of pay, upgrading, and selection for training. Covered Federal contractors and subcontractors are required to make reasonable accommodations to the physical or mental limitations of qualified individuals with disabilities. Employers with Federal contracts or subcontracts of $50,000 or more and 50 or more employees must prepare, implement, and maintain a written affirmative action program for each establishment. The program must be reviewed and updated annually.

Employers are also required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against an individual for filing a complaint or participating in a proceeding under Section 503

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting **OFCCP's local offices**.

Penalties

OFCCP investigates for violations of Section 503 either through compliance reviews or in response to complaints. If a violation is found after an investigation, the Federal contractor is asked to enter into conciliation negotiations. If conciliation efforts fail, OFCCP initiates an administrative enforcement proceeding by issuing an administrative complaint to the contractor. The contractor has 20 days to request a review by an administrative law judge, who hears the case and makes a determination. The contractor may appeal the administrative law judge's decision to the Administrative Appeal Board and, if dissatisfied with the Assistant Secretary's decision, to the Federal courts. Violations may result in withholding of proposed contracts, canceling, suspending or terminating contracts, withholding of progress payments, and debarment. Final determinations on violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

Section 503 regulations apply to State and local government entities which have contracts with the Federal government if the State or local government entity participates in work on or under the contract or subcontract. Unlike coverage of private sector employers, the government entity but not the government as a whole becomes subject to Section 503 and its regulations when it enters into the contract.

Section 107(b) of the Americans With Disabilities Act of 1990 (ADA) required agencies with enforcement responsibilities under the Rehabilitation Act of 1973 (e.g., OFCCP) and under Title I of the ADA (i.e., the **Equal Employment Opportunity Commission**) to develop **procedural regulations** to ensure that complaints filed under these laws are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under the two laws. These regulations went into effect on July 26, 1992 (57 FR 2960).

SMALL BUSINESS HANDBOOK

Workplace Standards for Federally Assisted or Funded Contracts

Employment of Vietnam Era Veterans and Special Disabled Veterans

DISCLAIMER

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Vietnam Era Veterans' Readjustment Assistance Act of 1974
(Chapter 42, 38 USC §4212; 41 CFR 60, Part 60-250)

Who is Covered

Title 38, U.S. Code, Section 4212, as amended, and its implementing regulations are administered and enforced by the Employment Standards Administration's **Office of Federal Contract Compliance Programs (OFCCP)**. The Act requires most employers doing business with the Federal Government to take affirmative action in employment for qualified Vietnam era and special disabled veterans. Coverage extends to employers with Federal contracts or subcontracts to provide supplies or services or for the use of real or personal property (including construction) for $10,000 or more. Regulations implementing the Act also prohibit discrimination in employment against Vietnam era and special disabled veterans.

The following types of contracts are exempt from Section 4212:

- Transaction for less than $10,000;
- Contracts and subcontracts for indefinite quantities, unless the purchaser has reason to believe that the amount to be ordered in any one year will be $10,000 or more;
- Contracts for work that is performed outside the United States by employees who were not recruited in the U.S.;
- Contracts exempt for national interest or security reasons;
- Contractor facilities not related to contract performance, as determined by OFCCP; and,
- contracts with State or local governments unless the governmental entity participates in work on or under the contract.

A "Vietnam era veteran" means a veteran, any part of whose active military, naval, or air service was during the period August 5, 1964 through May 7, 1975, who (a) served on active duty for a period of more than 180 days and was discharged or released with other than a dishonorable discharge, or (b) was discharged or released from active duty because of a service-connected disability. "Vietnam era veteran" also includes any veteran who served in the Republic of Vietnam between February 28, 1961 and May 7, 1975. (See the Veterans' Benefits Improvement Act of 1996, Section 505 of P.L. 104- 275.)

A "special disabled veteran" means (a) a veteran who was discharged or released from active duty because of a service connected disability, or (b) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for certain disabilities under laws administered by the Department of Veterans'

Affairs (i.e., disabilities rated at 30 percent or more or at 10 or 20 percent if the veteran has been determined to have a serious employment handicap under Section 1506 of title 38 U.S.C.).

Basic Provisions/Requirements

Covered employers must take affirmative action in the employment of qualified Vietnam era and special disabled veterans. These measures cover the full range of employment and personnel practices, such as recruitment, hiring, rates of pay, upgrading, and selection for training. Covered Federal contractors and subcontractors are required to make reasonable accommodations to the physical or mental limitations of qualified disabled veterans. The regulations implementing the Act also prohibit employment discrimination because of veteran's status.

Employers with Federal contracts or subcontracts of $50,000 or more and 50 or more employees must prepare, implement, and keep on file a written affirmative action program for each establishment. The programs must be reviewed and updated annually. As part of their affirmative action obligation, contractors must also list most job openings with the local office of the State Employment Service. These offices must give veterans' priority when making referrals for job openings.

Employers are also required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against an individual for filing a complaint or participating in a proceeding under Section 4212.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting **OFCCP's local offices**.

Penalties

OFCCP investigates violations of the Act either through compliance reviews or in response to complaints. If a violation is found after an investigation, the Federal contractor is asked to enter into conciliation negotiations. If conciliation efforts fail, OFCCP initiates an administrative enforcement proceeding by issuing an administrative complaint to the contractor. The contractor has 20 days to request a review by an administrative law judge, who hears the case and makes a determination. The contractor may appeal the administrative law judge's decision to the Administrative Review Board and, if dissatisfied with the Board's decision, to the Federal courts. Violations may result in withholding of proposed contracts, canceling, suspending or terminating contracts, withholding of progress payments, and debarment. Final determinations of violations are enforceable through the courts.

Relation to State, Local and Other Federal Laws

The Act applies to State and local government entities which have contracts with the Federal government if the State or local government entity participates in work on or under the contract or subcontract. Unlike coverage of private sector employers, the government entity but not the government as a whole becomes subject to the Act and its regulations when it enters into the contract.

SMALL BUSINESS HANDBOOK

Workplace Standards for Federally Assisted or Funded Contracts

Wage, Hour and Fringe Benefit Standards for Construction Contracts

DISCLAIMER

Updated: November 1997

Davis-Bacon Act and Related Acts
(40 USC §276a; 29 CFR 1, 3, 5, 6 and 7)

Who is Covered

The Davis-Bacon and related Acts are applicable to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair, including painting and decorating, of public buildings or public works.

Basic Provisions/Requirements

The Act requires that all contractors and subcontractors performing on Federal contracts, (and most contractors or subcontractors performing on federally assisted contracts under the Related Acts) in excess of $2,000 pay their laborers and mechanics not less than the wage rates and fringe benefits determined by the Secretary of Labor to be prevailing in the area for corresponding classes of laborers and mechanics employed on projects of a similar nature.

Apprentices and trainees may be employed at less than the predetermined rates. Apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a State apprenticeship agency recognized by the Department. Trainees must be employed pursuant to a training program certified by the Department.

Contractors and subcontractors are also required, pursuant to the **Contract Work Hours and Safety Standards Act**, to pay employees one and one-half times their basic rate of pay for all hours worked on covered contract work over 40 in a workweek.

Covered contractors and subcontractors are also required to pay employees weekly and submit weekly certified payroll records to the contracting agency.

Assistance Available

The Davis-Bacon Act is administered and enforced by the Employment Standards Administration's **Wage and Hour Division**. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the **Wage and Hour Division's local offices**.

Penalties

Contractors or subcontractors who have been found to have disregarded their obligations to employees or have committed aggravated or willful violations while performing work on

Davis-Bacon covered projects may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages (resulting from overtime violations of the Contract Work Hours and Safety Standards Act). Contractors and subcontractors may appeal determinations of violations and debarment to an administrative law judge. Appeals of administrative law judge decisions may be filed with the Administrative Review Board. Final determinations on violations may be appealed to and are enforceable through the courts.

Falsification of certified payroll records may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

Relation to State, Local and Other Federal Laws

Since 1931, Congress has extended the Davis-Bacon prevailing wage requirements to some 60 related Acts which provide Federal assistance for construction through loans, grants, loan guarantees and insurance. These Acts include by reference the requirements for payment of prevailing wages in accordance with the Davis-Bacon Act. Examples of the related Acts are the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

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Workplace Standards for Federally Assisted or Funded Contracts

Wage, Hour and Fringe Benefit Standard for Miscellaneous Federal Contracts

DISCLAIMER

Updated: November 1997

Contract Work Hours and Safety Standards Act
(40 USC §327, et seq.; 29 CFR 5)

Who is Covered

The Contract Work Hours and Safety Standards Act (CWHSSA) is applicable to contractors and subcontractors with Federal service contracts, federally funded construction contracts, and Federal supply contracts over $100,000. Covered contracts include those entered into by the United States, by any agency or instrumentality of the United States, by any territory, or by the District of Columbia. The Act also extends to federally assisted construction contracts subject to Davis-Bacon related Act wage standards to which the Federal government is not a direct party, except those contracts where the Federal assistance is only in the nature of a loan guarantee or insurance.

Certain contracts are exempt from this Act. These include contracts for the following:

- Transportation by land, air, or water;
- Transmission of intelligence;
- Purchase of supplies, materials, or articles ordinarily available in the “open market;” and
- Work required to be done in accordance with provisions of the **Walsh-Healey Public Contracts Act**.

Basic Provisions/Requirements

The Act requires contractors and subcontractors with covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions in the construction industry on Federal and federally financed and assisted projects.

Assistance Available

The **Wage and Hour Division** of the Employment Standards Administration administers and enforces the compensation requirements of this Act. The **Occupational Safety and Health Administration** administers the safety and health requirements. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the **Wage and Hour Division’s local offices**.

Penalties

Contractors or subcontractors who violate this Act may be subject to fines, imprisonment, or both. Intentional violations of this Act are a misdemeanor and may be punished by a fine not to exceed $1000 or by imprisonment for not more than six months, or both. Overtime wage violations may result in the assessment of liquidated damages in the sum of $10 for each calendar day an employee is allowed to work in excess of a forty hour workweek without the required overtime compensation being paid. Accrued contract amounts may also be withheld in sums necessary to satisfy the liability for unpaid wages and liquidated damages. Employees have the rights of action and/or of intervention against the contractor and its sureties if the amounts withheld are insufficient to reimburse the unpaid wages. Under such an action, it is no defense that employees accepted less than the required rate of wages or voluntarily made refunds.

Contractors or subcontractors who have been found to have committed willful or aggravated violations of the overtime requirements may have their contract terminated and may be declared ineligible to receive future contracts for a period not to exceed 3 years.

Contractors or subcontractors may appeal determinations of violations to an administrative law judge. Administrative law judge decisions and orders resulting in payment of wages or debarment can be further appealed to the Administrative Review Board. Final determinations on violations may be appealed to and are enforceable through the courts.

Any contractor or subcontractor aggrieved by withholdings for liquidated damages may appeal to the head of the contracting agency. The agency head shall review the administrative determination and issue a final order. If the damages sum is determined to be incorrect, or the contractor or subcontractor inadvertently violated the provisions of the Act while exercising due care, recommendations may be made to the Secretary of Labor for appropriate adjustments. Adjustments may be made in the liquidated damages. The contractor or subcontractor may file a claim in the United States Claims Court for all final orders mandating a liability for withholding of liquidated damages.

Relation to State, Local and Other Federal Laws

The provisions of this Act also apply to Davis-Bacon related Act contracts where the contract is financed in whole or in part by grants or loans from, or loans insured or guaranteed by the United States government, except where the Federal assistance is only in the nature of a loan guarantee or insurance.

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Workplace Standards for Federally Assisted or Funded Contracts

Wage, Hour and Fringe Benefit Standards for Service Contracts

DISCLAIMER

Updated: November 1997

McNamara-O'Hara Service Contract Act

(41 USC §351 et seq.; 29 CFR 4, 6, and 8)

Who is Covered

The McNamara-O'Hara Service Contract Act (SCA) covers contracts entered into by Federal and District of Columbia agencies where the principal purpose of the contract is to furnish services in the United States through the use of "service employees." The definition of "service employee" includes any employee engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee who meets the exemption criteria set forth in Regulations, **29 CFR Part 541**.

The Act does not apply to certain types of contractual services. These statutory exemptions include:

- Contracts for construction, alteration, and/or repair of public buildings or public works, including painting and decorating (those covered by the Davis-Bacon Act);
- Work required to be done in accordance with the provisions of the Walsh- Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a Federal agency by an individual(s);
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts administratively exempted by the Secretary of Labor in special circumstances because of the public interest or to avoid impairment of governmental business.

Basic Provisions/Requirements

The Act requires contractors and subcontractors performing services on prime contracts in excess of $2500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Wage determinations are issued by the Department of Labor on a contract-by-contract basis in

response to specific requests from contracting agencies. These determinations are incorporated into the contract.

For contracts equal to or less than $2500, contractors are required to pay the Federal minimum wage ($5.15 an hour--as of 9/1/97) as provided in Section 6(a)(1) of the **Fair Labor Standards Act**. Contractors are also required, under the provisions of the **Contract Work Hours and Safety Standards Act** and the **Fair Labor Standards Act**, to pay employees at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. In addition, no part of the contract work may be performed in buildings, surroundings, or under working conditions which are unsanitary, hazardous, or dangerous to the safety and health of employees. Finally, notification must be given to employees working in connection with the contract of the compensation due them under the wage and fringe benefits provisions of the contract.

Assistance Available

The **Wage and Hour Division** of the Employment Standards Administration administers and enforces the wage and hour requirements of this Act. The **Occupational Safety and Health Administration (OSHA)** administers and enforces the safety and health requirements. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the local offices of **Wage and Hour** and **OSHA**.

Penalties

Violations of the SCA may result in contract terminations and liability for any resulting costs to the government, withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments, legal action to recover the underpayments, and debarment from future contracts for up to three years. Contractors and subcontractors may appeal determinations of violations and debarment to an administrative law judge. Appeals of administrative law judge decisions may be filed with the Administrative Review Board. Final determinations on violations may be appealed to and are enforceable through the courts.

Relation to State, Local and Other Federal Laws

This Act only applies to contracts awarded by the Federal or District of Columbia governments. As noted above, contractors are required to compensate employees working in connection with covered contracts for overtime work in accordance with the overtime pay standards of the Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act.

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Workplace Standards for Federally Assisted or Funded Contracts

Wage, Hour and Fringe Benefit Standards for Supply and Equipment Contracts

DISCLAIMER

Updated: November 1997

Walsh-Healey Public Contracts Act
(41 USC §35 et seq.; 41 CFR 50-201, 202, and 206)

Who is Covered

The Walsh-Healey Public Contracts Act (PCA) is applicable to contractors with contracts in excess of $10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment to the United States government or the District of Columbia. The Act covers employees who produce, assemble, handle, or ship goods under these contracts.

The Act does not apply to **executive, administrative, and professional employees, or outside salespersons** exempt from the minimum wage and overtime provisions of the **Fair Labor Standards Act**. Nor does it apply to certain office and custodial workers.

Certain contracts are not covered by this Act. They include:

- Purchases of materials, supplies, articles, or equipment as may usually be bought in the "open market";
- Purchases of perishables;
- Purchases of agricultural products from the original producers;
- Contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or products;
- Contracts for public utility services and certain transportation and communication services; and
- Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.

Basic Provisions/Requirements

Covered contractors must pay employees on the contracts the Federal minimum wage of $5.15 an hour. Special lower rates may be paid to apprentices, students in vocational education programs, and disabled workers if employers obtain special certificates from the Department of Labor. Employees must also be paid one and one- half times their regular rate of pay for all hours worked over 40 in a workweek.

The Act prohibits the employment of youth under 16 years of age and convicts, except under certain conditions. Not included in convict labor are persons paroled, pardoned, or discharged from prison, or prisoners participating in a work-release program. It is also unlawful to carry out the contract work under working conditions which are unsanitary, hazardous, or dangerous to the health and safety of employees.

Assistance Available

The Employment Standards Administration's **Wage and Hour Division** enforces the wage and hour requirements of the Act. The **Occupational Safety and Health Administration** and the **Mine Safety and Health Administration** enforce the safety and health requirements depending on the type of contract. Additional information is available from local **Wage and Hour offices**.

Penalties

Contractors and subcontractors who violate the Act may be subject to a variety of penalties. The underpayment of wages and overtime pay may result in the withholding of contract payments in a sufficient amount to reimburse the underpayment. The penalty for employing underage minors or convicts is $10 per day per person, for which contract payments may also be withheld. The Department may also bring legal action to collect wage underpayment and fines for illegally employing minors and convicts. Willful violations may subject the employer to cancellation of the current contract and debarment from future Federal contracts for a three year period.

The adjudicatory process begins with a formal complaint being served to the contractor resulting in a hearing before an Administrative Law Judge. If the respondent has violated the Act, the determination can be appealed by filing a petition for review of the decision with the Administrative Review Board. Final determinations on violations may be appealed to and are enforceable through the courts.

Relation to State, Local and Other Federal Laws

State and local laws regulating wages and hours of work may also apply to employment subject to this Act. The law setting the stricter standard would have to be observed in such a case. Compliance with the regulation's safety and health standards will not relieve anyone from any obligations to comply with stricter standards from any other source.

The Walsh-Healey Public Contracts Act and the Fair Labor Standards Act may apply simultaneously to the same employer.

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Workplace Standards for Federally Assisted or Funded Contracts

"Kickbacks" in Federally Funded Construction

DISCLAIMER

Updated: November 1997

Copeland "Anti-Kickback" Act
(18 USC §874 and 40 USC §276c; 29 CFR 3)

Who is Covered

The "Anti-Kickback" section of the Copeland Act applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction, prosecution, completion or repair of any public building or public work -- except contracts for which the only Federal assistance is a loan guarantee. This provision applies even where the contract is not covered by a labor standards statute. The regulations pertaining to Copeland Act payroll deductions and submission of the weekly statement of compliance apply only to contractors and subcontractors performing on federally funded contracts in excess of $2,000 and federally assisted contracts in excess of $2,000 that are subject to Federal wage standards.

Basic Provisions/Requirements

The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment. The Act and implementing regulations require a contractor and subcontractor to submit a weekly statement of the wages paid each employee performing on covered work during the preceding payroll period. The regulations also list payroll deductions that are permissible without the approval of the Secretary of Labor and those deductions that require consent of the Secretary of Labor.

Assistance Available

The **Wage and Hour Division** of the Employment Standards Administration enforces the provisions of the Act and implementing regulations. More detailed information, including copies of the regulatory materials may be obtained by contacting the local **Wage and Hour offices**.

Penalties

Any contractor or subcontractor who induces an employee working on a covered contract to give up any part of the compensation to which he/she is entitled is subject to a $5,000 fine, or imprisonment for up to 5 years, or both. The willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment. Contractors may appeal determinations on debarment to an administrative law judge. Administrative law judge decisions may be appealed to the Administrative Review Board. Final determinations on debarment may be appealed to and are enforceable through the courts. Civil and criminal sanctions are pursued through the courts.

Relation to State, Local and Other Federal Laws

The “Anti-Kickback” provisions apply to any contract assisted in whole or in part by loans or grants from the Federal government except those contracts where the only Federal assistance is a loan guarantee. The provisions of the Act and the regulations pertaining to the weekly statement of wages and payroll deductions apply to federally assisted contracts that are subject to Federal wage standards.

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