



# PREVAILING WAGE SEMINARS



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# SCA Coverage

- The Service Contract Act applies “any contract” that (1) “is made by the Federal Government or District of Columbia,” (2) “involves an amount exceeding \$2,500,” and (3) “has as its principal purpose the furnishing of services in the United States” (4) “through the use of service employees.” 41 U.S.C. 6702(a).

# “Any Contract” –

## 29 CFR 4.110 and 29 CFR 4.111

- The SCA was intended to apply to “a wide variety of contracts,” and “the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage.” 29 CFR 4.111(a)
- “It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids.” 29 CFR 4.110
- The contract does not have to be of direct benefit to the federal public, but can benefit the general public (such as a concessionaire contract) – 29 CFR 4.133(a)

# Requirements of SCA (29 C.F.R. § 4.6)

- Contracts in excess of **\$2,500** must contain labor standards clauses and:
  - Minimum monetary wages and fringe benefits determined by Department of Labor (DOL)
  - Recordkeeping - Posting requirements
  - Safety and health provisions
  - Statement of rates paid to federal employees

# Requirements of SCA (Cont'd.)

- Payment of FLSA minimum wage for contracts of \$2,500 or less, or contracts exceeding without wage determination:
- FLSA Minimum Wage:
  - Effective July 24, 2009 = **\$7.25**

# Elements of SCA Coverage

(29 C.F.R. §§ 4.107, 4.108 & 4.110)

- Contracts entered into by Federal Government and District of Columbia
- Contracts principally for services
- Contracts performed in the U.S.
- Contracts performed through the use of service employees

# Federal Contracting Agencies (29 C.F.R. §§ 4.107 & 4.108)

- Agencies or instrumentality
  - **Department of Defense (DOD)**
- Wholly owned corporations of the Government
  - **U.S. Postal Service**
- Non-appropriated fund activities
  - **Military post exchanges (PX's)**
- Contracts entered into by
  - **District of Columbia**

# Contracts to Furnish Services

(29 C.F.R. § 4.111 & 4.130)

- The SCA does not define or limit the types of services that may be contracted for.
- Examples of service contracts:
  - Security and guard services
  - Janitorial services
  - Cafeteria and food services
  - Support services at Government installations



# Contracts “in the US”

(29 C.F.R. § 4.112)

- 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf, American Samoa, Guam, Wake Island, Johnston Island, and the Northern Marianas (Canton Island, Eniwetok Atoll, and Kwajalein Atoll are no longer a part of the United States)
- Any portion of a contract principally for services performed in the United States is covered

# Use of “service employees” (29 C.F.R. § 4.113)

- Section 8(b) of SCA defines service employee as:
  - Any person engaged in performance of contract, except
  - Employees who qualify for exemption as **bona fide** executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- Employee coverage does not depend on contractual relationship (29 C.F.R. § 4.155)

# Contracts Not SCA Covered

(29 C.F.R. § 4.134)

- Contracts primarily for something other than services, *e.g.*, construction
- Contracts for leasing of space
- Contracts for professional services
- Federally-assisted contracts for services entered into by state governments, *e.g.*, Medicaid and Medicare programs



# **Statutory Exemptions**

# SCA Statutory Exemptions

- SCA does not apply to the following:
  - Contracts for construction of public buildings or public works covered by DBA
  - PCA work required by contract – e.g. manufacturing or supplies
  - Contracts for carriage of freight or personnel where published tariff rates are in effect (excluding mail haul contracts)

# SCA Statutory Exemptions (cont'd.)

- Contracts for services by communications companies (*e.g.*, radio, telephone) subject to the Communications Act of 1934
- Contracts for public utility services, including electric light and power, water, steam, and gas
- Employment contracts providing for direct services to a Federal agency by individuals
- Contracts with the U.S. Postal Service principally for operation of postal contract stations



# Regulatory Exemptions

# Authority to Grant Exemptions

- Standard
  - Necessary and proper in the public interest or to avoid serious impairment of government business; and
  - In accord with remedial purpose to protect prevailing labor standards



# “Workers with Disabilities”

(29 C.F.R. § 4.6(o))

- Contractors, who obtain FLSA “section 14” certificates for workers on SCA-covered contracts are:
  - Allowed to pay less than prevailing wage, but
  - Must pay prevailing fringe benefits
    - Health and welfare benefits in full
    - Vacation and holiday benefits based on “commensurate rate” and hours worked

# Regulatory Exemptions (29 C.F.R. §§ 4.123(d)-(e))

- SCA does not apply to the following:
  - Postal Service contracts with common carriers
  - Postal Service mail contracts with owner-operators (*i.e.*, individuals, not partnerships)
  - Certain items for “commercial services”

# “Commercial Services” (29 C.F.R. § 4.123(e)(1))

- Contracts and subcontracts for maintenance, calibration, and repair of:
  - ADP & office information/word processing systems
  - Scientific & medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element
  - Office/business machines where services performed by supplier or manufacturer

# “Commercial Services” (29 CFR 4.123(e)(2))

- For the following seven services:
  - Maintenance and servicing of motorized vehicles owned by Federal agencies
  - Issuance and servicing of credit, debit, or similar cards by Federal employees
  - Lodging, meals, and space in hotels/motels for conferences

# “Commercial Services” (cont’d)

- Real estate services
- Transportation on regularly scheduled routes
- Relocation services
- Maintenance services for all types of equipment obtained from manufacturer or supplier under a “sole source” contract

# “Commercial Services” Criteria to Apply Exemption

- Services offered and sold regularly
- Contract awarded on “sole source basis” or on basis of factors in addition to price
- Services furnished at “market” or “catalog” prices

# “Commercial Services” Criteria (cont’d.)

- Employee spends small portion of available hours on government contract
- Employee receives same compensation plan
- Contracting officer and prime contractor certify that criteria can be met and complied with

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