



June 27, 2023

ALL AGENCY MEMORANDUM NUMBER 243

TO: All Contracting Agencies of the Federal Government and the District of Columbia

FROM: Jessica Looman, Principal Deputy Administrator *Jessica Looman*

SUBJECT: 2023 Service Contract Act Health and Welfare Fringe Benefit

Per 29 C.F.R. § 4.52, the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) will increase to a rate of \$4.98 per hour. As prescribed by the regulations, this benefit rate is derived from the latest Bureau of Labor Statistics Employment Cost Index summary of Employer Cost for Employee Compensation (ECEC). On or about June 27, 2023, the Wage and Hour Division (WHD) will publish updated wage determinations reflecting the new SCA health and welfare fringe benefits rate of \$4.98 per hour at SAM.gov (www.sam.gov) and WHD (www.dol.gov/whd) websites.

History

The SCA's implementing regulations provide that SCA wage determinations (WDs) have two different health and welfare fringe benefit levels: a "low-level" (employee-by-employee) benefit and a "high-level" (average cost) benefit. WHD determines compliance with the low-level benefit on an employee-by-employee basis and determines compliance with the high-level benefit based on the contractor's average fringe benefit cost for all service employees working on the contract.

In 2004, when the ECEC indicated that the low-level rate was about to exceed the grandfathered high-level rate of \$2.56 per hour, WHD announced (in All Agency Memorandum Number 197) that it would increase the fringe benefit rate for all wage determinations and retain the two different methods for determining compliance. That policy will continue again this year. Consistent with longstanding policy, the average cost fringe benefit wage determination will be issued only for contracts in which the formerly grandfathered high-level (average cost) benefit rate would have applied. Average cost fringe benefit WDs are not available on www.sam.gov, but rather are issued by WHD, upon request by a contracting agency, solely for contracts that were awarded prior to 1997, contained a high-level (average cost) benefit WD at that time, and have continued to be performed on an uninterrupted basis since 1997.

Paid Sick Leave - Executive Order 13706

Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (EO 13706), requires certain employers that contract with the federal government to provide their employees with up to 56 hours (seven days) of paid sick leave annually, including for family care and absences resulting from domestic violence, sexual assault, and stalking. EO 13706 applies to new contracts with the federal government that result from solicitations *issued on or after January 1, 2017* (or that are awarded outside the solicitation process on or after January 1, 2017). More information is available at <https://www.dol.gov/whd/govcontracts/eo13706/>.

An employer's contributions made to satisfy its paid sick leave obligations under EO 13706 must be provided *in addition to* health and welfare fringe benefit contributions under the SCA. Therefore, an employer's paid sick leave contributions under EO 13706 may not be credited toward its obligations under the SCA. In accordance with EO 13706, WHD establishes an alternate health and welfare rate that excludes the portion of the standard health and welfare rate attributed to paid sick leave. Therefore, when an employer is required to comply with EO 13706, the SCA health and welfare fringe benefits rate for employees performing on contracts covered by EO 13706 will be \$4.57 for each hour of work on the contracts (which, based on a 40-hour workweek, is \$182.80 per week, or \$792.13 per month).

Service Contract Act Health and Welfare Fringe Benefit Rate for Contracts not Subject to Executive Order 13706

As of June 27, 2023, both the employee-by-employee benefit and average cost fringe benefit rates will be ***\$4.98 per hour***. Based on a 40-hour workweek, this equates to \$199.20 per week, or \$863.20 per month.

Solicitations/Contracts Affected

All invitations for bids opened and service contracts awarded on or after June 27, 2023, must include an updated SCA Wage Determination (WD) that comports with the regulatory health and welfare fringe benefit determination methods. Contracting agencies may make pen-and-ink changes to their current WDs received for contracts beginning on or after June 27, 2023, and for which the updated health and welfare rates were not included. Revised WDs reflecting the new benefit rates will be available at SAM.gov (www.sam.gov) and WHD (www.dol.gov/whd) websites on or about June 27, 2023.

Health and Welfare Fringe Benefit Rates for Wage Determinations for the State of Hawaii

Under section 2(a)(2) of the SCA, fringe benefit payments required by state law may not be used to satisfy an employer's fringe benefit obligations. Hawaii law, for example, requires that most employers provide health insurance coverage for their employees. Therefore, employer contributions that are made to satisfy an employer's obligations under the Hawaii Prepaid Health Care Act (HPHCA) may not be credited toward the employer's obligations under the SCA. The SCA WDs have addressed this issue in the past by excluding the health insurance portion of the nationwide health and welfare fringe benefit rate.

Consistent with past practice, and in recognition that Hawaii law requires employers to provide health care coverage for most employees, the SCA WDs for Hawaii will continue to exclude the health insurance portion of the nationwide health and welfare fringe benefit rate for all employees on whose behalf the employer provides benefits pursuant to the HPHCA. Some Hawaii employers, however, are not required to make, and in fact do not make, contributions for certain employees under the HPHCA. In such circumstances, the reduced fringe benefit level is not appropriate.

The SCA health and welfare fringe benefits level for Hawaii will be \$2.15 per hour (which, based on a 40-hour workweek, is \$86.00 per week, or \$372.67 per month) for all employees on whose behalf the contractor is required to provide health care benefits pursuant to the HPHCA. For employees on whose behalf the contractor is required to provide health care benefits pursuant to the HPHCA and who are performing on contracts covered by EO 13706, the health and welfare fringe benefits level will be \$1.74 for each hour performing work on such a contract (which, based on a 40-hour workweek, is \$69.60 per week, or \$301.60 per month). For employees not receiving mandated health care benefits under the HPHCA, the new health and welfare amount will be \$4.98 per hour (or, as noted on page 2 above, \$4.57 per hour for employees performing work on contracts covered by EO 13706).