



PREVAILING WAGE SEMINARS



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



SCA Compliance Principles

SCA Compliance Principles

- Payment of wages
- Payment of fringe benefits
- Vacation Fringe Benefits
- Holiday Fringe Benefits
- Deductions
- Recordkeeping
- Notice to employees

Payment of Wages

- The SCA requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 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.
- For contracts equal to or less than \$2,500, contractors are required to pay the federal minimum wage as provided in Section 6(a)(1) of the Fair Labor Standards Act.

Payment of Wages (29 C.F.R. § 4.165)

- Wages established by wage determination, otherwise FLSA minimum wage (29 C.F.R. § 4.165(c))
- Monetary wages to be paid when promptly due (29 C.F.R. § 4.165(a)(1))
- No distinction between Full and Part Time Employees(29 C.F.R. § 4.165(a)(2))
- Calculated on fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods (29 C.F.R. § 4.165(b))
 - Payroll records kept on this basis
 - Bi-weekly or semi-monthly pay periods if advance notice

Finding the Correct Wage Rate

- Workers must be paid the wage rate set forth in the wage determination for the classification of work they perform.
- To prevent misclassification, it is very important that a contractor fully utilize the applicable wage determination and the Directory of Occupations to find the classification that most closely matches the workers' duties.

Finding the Correct Wage Rate - Example

- Contractor X has been awarded a contract to provide refrigerated warehouse services. Contractor X is trying to determine the correct classification for the employees who receive goods to be stored, verify the goods against the incoming bills of lading, and record and route them for appropriate storage. When goods need to be shipped, the employee also verifies the goods against the incoming order and prepares the outgoing bills of lading.
- Contractor X begins to read through the applicable wage determination and decides that [Order Clerk](#) is the best [classification](#).
- However, a further reading of the [wage determination](#) and [Directory of Occupations](#) indicates otherwise.

Directory of Occupations – Order Clerk

- 01190 ORDER CLERK (Occupational Base)
- The Order Clerk receives written or verbal purchase orders. Work typically involves some combination of the following duties: quoting prices, determining availability of ordered items and suggesting substitutes when necessary, advising expected delivery date and method of delivery, recording order and customer information on order sheets. The Order Clerk is responsible for checking order sheets for accuracy and adequacy of information; ascertaining credit rating of customer; furnishing customer with confirmation of receipt of order; order follow up, or informing customer of a delay in delivery. The Order Clerk maintains order files and verifies shipping invoices against original orders.
- [01191 ORDER CLERK I](#)
- This position handles orders involving items that have readily identified uses and applications. The Order Clerk I may refer to a catalog, manufacturer's manual or similar document to insure that the proper item is supplied or to verify the price of order.

WD Sample – Shipping/Receiving Clerk

- 21000 - Materials Handling And Packing Occupations

- 21020 - Forklift Operator 13.53
- 21030 - Material Coordinator 19.21
- 21040 - Material Expediter 19.21
- 21050 - Material Handling Laborer 11.22
- 21071 - Order Filler 11.98
- 21080 - Production Line Worker (Food Processing) 13.53
- 21110 - Shipping Packer 12.87
- 21130 - Shipping/Receiving Clerk [12.87](#)

Directory – Shipping/Receiving Clerk

- [21130 SHIPPING/RECEIVING CLERK](#)
- The Shipping/Receiving Clerk performs clerical and physical tasks in connection with shipping goods of the establishment in which employed and receiving incoming shipments. In performing day-to-day, routine tasks, this worker follows established guidelines. In handling unusual non-routine problems, this worker receives specific guidance from supervisor or other officials. This incumbent may direct and coordinate the activities of other workers engaged in handling goods to be shipped or being received. Shipping duties typically involve the following: verifying that orders are accurately filled by comparing items and quantities of goods gathered for shipment against documents; insuring that shipments are properly packaged, identified with shipping information, and loaded into transporting vehicles, and preparing and keeping records of goods shipped, e.g., manifests, bills of lading. Receiving duties typically involve the following: verifying the correctness of incoming shipments by comparing items and quantities unloaded against bills of lading, invoices, manifests, storage receipts, or other records, checking for damaged goods, insuring that goods are appropriately identified for routing to departments within the establishment, and preparing and keeping records of goods received.

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.

Tipped Employees – 29 CFR 4.6(q) and 4.167

- Employers may use a “tip credit” to meet their SCA prevailing wage obligation if:
 - The employees work in an occupation in which they customarily and regularly receive over \$30 a month in tips
 - The employer informs the employees of the tip credit before using it
 - The employees are allowed to keep all tips individually or through a valid tip pooling arrangement
 - The employer can show that the employees actually received the required SCA wage through a combination of direct wages and tips

Tipped Employees – 29 CFR 4.6(q) and 4.167

- If all the necessary requirements are met, employers may claim a tip credit to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531.
- Currently, Section 3(m) of the FLSA and 29 CFR 531 permit a maximum tip credit of \$5.12 per hour (the difference between the minimum required cash wage of \$2.13 hour and the current federal minimum wage of \$7.25).
- In no event shall the tip credit claimed exceed the amount of tips actually received by the employee.

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 worked that are subject to the SCA are those performed on covered (SCA) contracts.
- Contractor must keep affirmative proof of the time spent on covered and non-covered work in a workweek.

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 the SCA, the contractor may not credit excess wage payments against the FB obligation:

Wage Determination:		Employee Paid:	
Wage	\$10.25	Wage	\$12.61
FB	\$ 4.54	FB	\$ 2.12
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Total	\$14.79	Total	\$14.73

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 the amount of contribution and benefits provided;
 - Is paid *irrevocably* to an independent trustee or third person pursuant to a fund, trust, or plan; and
 - Meets criteria established 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; and/or
 - Supplemental unemployment benefits.

Health and Welfare (H&W)

Fringe Benefits

- Three types of FB requirements:
 - “Fixed cost” per employee benefits;
 - “Average cost” benefits; or
 - Collectively bargained (CBA) benefits.
- Types and amounts of benefits and eligibility requirements are contractor’s prerogative.

H&W Footnotes (Determine Compliance)

- Prevailing WDs provide a H&W footnote.
- All occupations listed on the WD receive benefits as specified.
- “Fixed cost” H&W footnote:
 - Single line specifying hourly, weekly, and monthly contribution amounts.
 - Specified on odd numbered WDs.

“\$4.54 an hour or \$181.60 a week or \$786.93 a month”

\$4.22 an hour if subject to EO 13706

H&W Footnotes (Cont'd)

- “Average Cost” H&W footnote – a brief paragraph listing types of benefits and the 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 \$4.54 per hour computed on the basis of all hours worked by service employees employed on the contract.”

Collectively Bargained Fringe Benefits

- Based on a CBA.
- Required to be paid by a successor contractor under section 4(c) of the SCA.
- A contractor not signatory to the CBA does not need to provide the specific FBs stipulated in the CBA. Equivalent benefits may be provided.
- Cash equivalent payments can be used to offset the FBs.

“Fixed Cost” Benefits (29 C.F.R. § 4.175(a))

- Increased to \$4.54 per hour July 5th, 2019.
 - Included in all “invitations for bids” opened; or
 - Other service contracts awarded on or after July 5th, 2019.
- Required to be paid on a “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	\$200.00	163.20	363.20
Jean	*100	\$163.20	200.00	363.20
Ann	20	0.00	90.80	90.80
Tim	80	\$363.20	0.00	363.20
Tom	60	\$200.00	72.40	272.40
<u>Total</u>	<u>*340</u>			<u>\$1543.60</u>

* FBs and cash payments may vary so long as total equals \$4.54 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 \$4.54 per hour per employee:
 - Excludes paid leave time and holidays.
 - For all “HOURS WORKED.”
- Compliance is 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

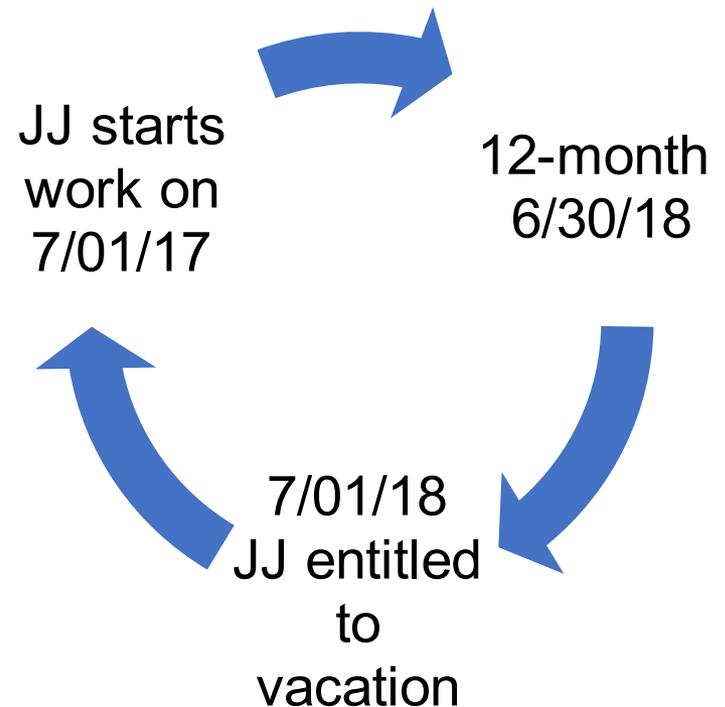
Vacation Fringe Benefits

(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.
- Determined by total length of time employed by:
 - 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 employed “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.

Notification of Length of Service – 29 CFR 4(l)(2)

- Not less than 10 days prior to completion of the contract, the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance.
- Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee.
- The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

Holiday Fringe Benefits

(29 C.F.R. § 4.174)

- An employee is entitled to holiday pay if he/she works in the holiday workweek.
- An employee is not entitled to holiday pay if the holiday is not named in the WD (*i.e.*, government closed by proclamation).
- Paid holidays can be traded for another day off if communicated to employees.

Part-time Employees

(29C.F.R. § 4.176)

- Entitled to proportionate amount of FBs.
- Maximum: Vacation/Holidays = $40 \div 8$ 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; and
 - Must receive full amount of H&W FBs.

Equivalent Fringe Benefits (29 C.F.R. § 4.177)

A contractor may dispose of FBs:

- By furnishing the benefits listed in WD;
- By furnishing equivalent combinations of *bona fide* FBs; or
- By making equivalent cash payments:
 - Equal in cost;
 - Separately stated in employer's record; and
 - Not used to offset wage requirements.

Deductions from Wages – 29 CFR 4.168

- “The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he “kicks back” directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him.”

Deductions from Wages – 29 CFR 4.168

- Authorized deductions are limited to:
 - deductions required by law, such as taxes or court-ordered garnishments
 - deductions for the reasonable cost of board, lodging, or other facilities as set forth in 29 CFR 4.167
 - deductions authorized to be paid to third persons for the worker's benefit pursuant to his voluntary assignment or order or a bona fide collective bargaining agreement
- Deductions which cut into the wages required under the SCA may not be made if they are contrary to law, the contractor, sub-contractor or any affiliated person profits by them directly or indirectly, or the deductions are being made to a third party and the worker did not authorize them

Recordkeeping – 29 CFR 4.6(g)

- Contractors shall make and maintain for 3 years from the completion of the work records containing the following information:
 - Name and address and social security number of each employee
 - The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee
 - The number of daily and weekly hours so worked by each employee

Recordkeeping – 29 CFR 4.6(g)

- Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee
- A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been conformed
- Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to §4.6(l)(2).

Notice to Employees – 29 CFR 4.183 and 29 CFR 4.184

- Contractors must notify each employee commencing work on a SCA contract of the wage rates and fringe benefits required to be paid for work performed on the contract. A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in §4.184.
- Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite.

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