



Prevailing Wage Seminars: Service Contract Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-4-US-WAGE

Disclaimer

This presentation is intended as general information only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The Federal Register and the Code of Federal Regulations remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.



Coverage

Requirements of SCA (29 C.F.R. § 4.6)

Contracts in excess of \$2,500 must contain labor standards clauses with:

- Minimum monetary wages and fringe benefits determined by Department of Labor (DOL)
- Recordkeeping and posting requirements
- Safety and health provisions
- Statement of rates paid to federal employees

Elements of SCA Coverage (29 C.F.R. §§ 4.107-4.110)

- 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

Contracts to Furnish Services (29 C.F.R. §§ 4.111 & 4.130)

- Examples of service contracts:
- Security and guard services
- Janitorial services
- Cafeteria and food services
- Support services at Federal 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

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

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
- Contracts excluded by statutory exemptions
- Contracts excluded by regulatory exemptions

A woman with dark hair in a ponytail, wearing a white short-sleeved shirt, is seen from the side, reaching into a storage unit. She is organizing or inspecting several items of clothing, which are mostly white and patterned, and are protected by clear plastic garment bags. The storage unit is white and has a black handle visible on the right. The background is slightly blurred, showing more of the storage unit's interior.

Wage Determinations

Basic Statutory Requirements

- When a contract is let by the Federal Government or DC Government, there are 3 basic statutory requirements that determine whether a contract is subject to the SCA:
- Is the principal purpose to furnish service through the use of service employees? Will the work be performed in the US or its territories? Is the contract valued at \$2,500 or more?
- If the answer is yes to all the above, the contract may be subject to the SCA and therefore must contain a WD that specifies the minimum wage rate and fringe benefits that must be paid to the employees.

Two Categories of Wage Determinations

- Prevailing
 - Area Wide (Standard WDs)
 - Non-Standard WDs
 - Union Dominance WDs
- 4(c) Collective Bargaining Agreements

SCA Wage Determinations

- Prevailing WDs are based on wage rates & fringe benefits that prevail in the locality for the various occupational classifications such as Consolidated, Non-Standard and Union Dominance WDs.
- Union Dominance – exist where a single wage rate is paid to the majority (50% or more) of the workers engaged in similar work in a specific locality such as the Janitor classifications in New York.
- 4(c) WDs based on a CBA-a written agreement between an employer and a union representing the employees.

SCA Prevailing Principles

WDs must be based on survey data.

Occupational Employment Survey data from the Bureau of Labor Statistics is our primary data source consisting of all metropolitan and non-metropolitan areas. WDs may also be based on:

- Non-Appropriated Fund surveys-NAF Schedules
- Appropriate Fund surveys-AF Schedules
- Federal Wage Grade Surveys
- General Schedules

WDs must reflect a consistent wage and salary structure.

- Any wage increases are capped 10%.
- SCA wage rates are retained when survey data is below the existing rate on the WD.
- SCA regulations allows slotting based on similarity of duties/skills of occupations with sufficient data where insufficient or anomalies exist in the data

Locality basis of WDs

- Locality has a wide interpretation. It can refer to various types and sizes of geographical areas:
- Metropolitan, non-metropolitan, a single county or a cluster of counties.
- Region-wide or Nationwide- yes the entire nation may constitute a locality.

When is the WD required?

- Contracts that are subject to fiscal annual appropriations from Congress, the agency must obtain a new WD once a year.
- Contracts that are not subject to fiscal annual appropriations from Congress, the agency must obtain a new WD once every 2 years.
- For 5 year contracts, you must obtain a new WD every year or every other year. Most contract extensions, even if shorter than one year require a new WD.

Obtaining a WD

The agency has the responsibility to determine whether a contract is subject to the SCA and responsible for obtaining the appropriate WD.

The agency has total discretion on what method to use to obtain a WD:

- By downloading the WD directly from the beta.sam.gov website *
- Submitting an E-98 online request.
- * Please note that the former wage determinations online (dol.gov) website has been merged into sam.gov website

Sam.gov Website Highlights

Provide public access to a wealth of resources:

- SCA WDs
- 5th Edition Directory of Occupations
- E-98 online requests for WDs
- Agency Labor Advisors
- User guides
- All Agency Memorandums
- Department of Labor and Federal Acquisitions Regulations

Different examples of Wage Determinations

1. Consolidated (Standard)-wage rates for approximately 400 occupations grouped by several broad occupational categories-WDs 2015-4000-5000

2. Non-Standards

- Nursing Home
- Food and Lodging
- Fast Food
- Forestry
- Elevator Maintenance
- Mail Hauling
- Drivers

A man with dark curly hair, a beard, and glasses is looking down at a tablet he is holding. He is wearing a tan apron over a dark striped shirt. The background shows shelves in a grocery store filled with various items, including bags of produce and boxes. A dark blue banner with yellow text is overlaid across the middle of the image.

SCA Compliance Principles

SCA Compliance Principles (cont.)

- Payment of wages and fringe benefits
- Bona fide Fringe Benefit Plans
- Health & Welfare Fringe Benefits
- Paid Vacation Fringe Benefits
- Paid Holiday Fringe Benefits
- Equivalent Fringe Benefits
- Temporary & Part-time employment

Payment of Wages (29 C.F.R. § 4.165)

- Wages established by the SCA wage determination, otherwise the FLSA minimum wage.
- Calculated on a fixed and regularly recurring workweek of 7 consecutive 24-hour workday periods:
- Payroll records kept on this basis;
- Bi-weekly or semi-monthly pay periods if advance notice provided to employees.

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).

Vacation Fringe Benefits(29 C.F.R. §.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

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 not named in the WD (i.e., government closed by proclamation).
- Paid holidays can be traded for another day off if communicated to employees.

Contract Work Hours and Safety Standards Act

- Contract Work Hours and Safety Standards Act
- CWHSSA

Requirements of CWHSSA

- Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts
- Liquidated damages can be assessed at a rate of \$27 per day for each laborer or mechanic not paid proper overtime

Coverage of CWHSSA

- Covers contracts over \$150,000 that require or involve the employment of “laborers” and “mechanics” on:
- DBA covered construction contracts
- DBRA covered construction contracts
- SCA covered service contracts
- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation

A woman with short dark hair and bangs, wearing a maroon polo shirt, is smiling at the camera. She is holding several white spray bottles and a mop with a white head. The background is a blurred hallway with a yellow caution sign on the right.

Executive Order 14026

What is E.O. 14026?

- On April 27, 2021, President Joseph R. Biden Jr. issued Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors.”
- This Executive order increased the hourly minimum wage paid to workers performing on or in connection with covered Federal contracts to \$15.00 beginning January 30, 2022. The EO minimum wage rate will be adjusted annually.
- The order builds on the foundation established by Executive Order 13658, “Establishing a Minimum Wage for Contractors,” which was signed by President Barack Obama on February 12, 2014.

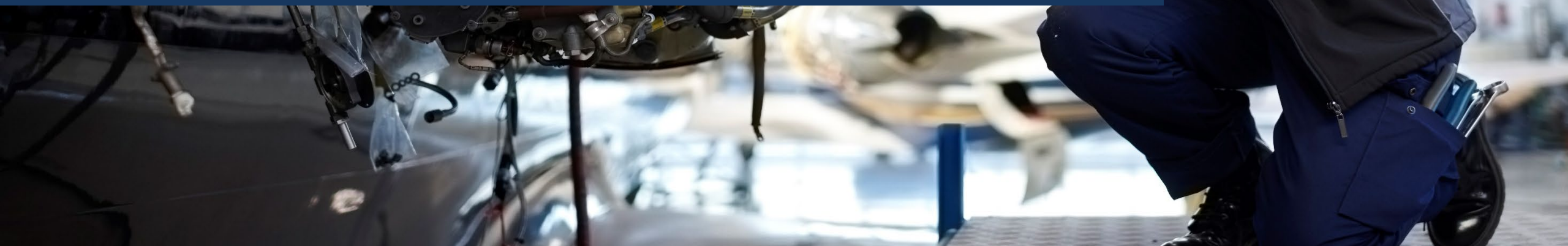
“New” Contracts

A “new contract” means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of the Executive Order, a contract that is entered into prior to January 30, 2022 will constitute a new contract if, on or after January 30, 2022:

- 1) The contract is renewed;
- 2) The contract is extended, or
- 3) An option on the contract is exercised.



Executive Order 13706



Executive Order 13706

- Applies to new federal contracts solicited or awarded on or after January 1, 2017.
- Non-excluded workers performing work on or in connection with covered contracts are generally entitled to accrue 1 hour of paid sick leave for every 30 hours they work on or in connection with a covered contract, up to 56 hours a year.

Coverage: Which contracts does EO 13706 apply to?

EO 13706 applies to four types of contracts entered into by the federal government that are “new contracts” on or after January 1, 2017. 29 CFR 13.3(a)(1).

The four types of contracts are (29 CFR 13.3):

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA).
- Service contracts covered by the Service Contract Act (SCA).

Coverage: Which contracts does EO 13706 apply to?

- Concessions contracts, including concessions contracts excluded from the SCA by 29 CFR 4.133(b). (These include contracts principally for furnishing food, lodging, auto fuel, souvenirs, newspaper stands and recreational equipment to the general public.) 23 CFR 13.2.
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. (These include leases of space in a federal building to operate a child care center, credit union, gift shop, barber shop, coffee shop or fitness center to serve federal employees and/or the general public. Note that contracts in this category may also fit into the second and/or third covered categories.)

How does an employee accrue paid sick leave?

- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. 29 CFR 13.5(a)(1).
- Hours worked are determined using the FLSA standard. 29 CFR 13.5(a)(1)(i).
- Instead of tracking time on covered contracts week by week, contractors can “frontload” leave at the beginning of the accrual year by giving employees 56 hours of paid sick leave in a lump sum. 29 CFR 13.5(a)(3).

Resources

- <https://www.dol.gov/agencies/whd/government-contracts/service-contracts/laws>
- <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/resources>
- <https://www.dol.gov/agencies/whd/government-contracts>

Connect with Us

- Visit dol.gov/newsroom/digital
- WHD Twitter: twitter.com/whd_dol
- DOL Facebook: facebook.com/departmentoflabor
- DOL YouTube: youtube.com/user/USDepartmentofLabor
- DOL Blog: blog.dol.gov