

Service Contract Labor Standards



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AGENDA

- Coverage
- Employee Exemptions
- Wage Determinations
- Fringe Benefits
- Specific Issues
- Questions and Answers

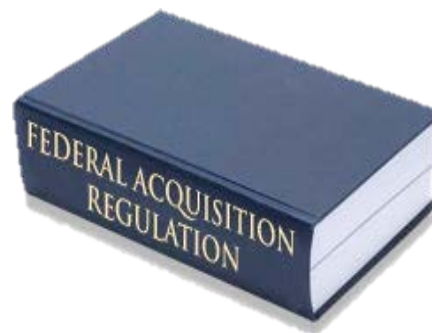
COVERAGE

- Applies to any contract or bid specification for a contract that:
 - (1) Is made by the Federal Government or the District of Columbia;
 - (2) Involves an amount exceeding \$2,500; and
 - (3) Has as its principle purpose the furnishing of services in the United States through the use of service employees

41 U.S.C. § 6702(a)

COVERAGE

- Look to FAR Definitions
- FAR 37.101 defines “service” contract as a contract that directly engages the time and effort of a contractor whose ***primary purpose*** is to perform an identifiable task rather than to furnish an end item of supply



COVERAGE

- Who is a “Service Employee”?
 - Directly engaged in contract work and non-exempt under the FLSA
 - Look to Wage Determination or SOW for job classifications
- Do not rely on job titles or employee’s classification



COVERAGE

What are SCA Covered Employees Entitled To?

COVERAGE

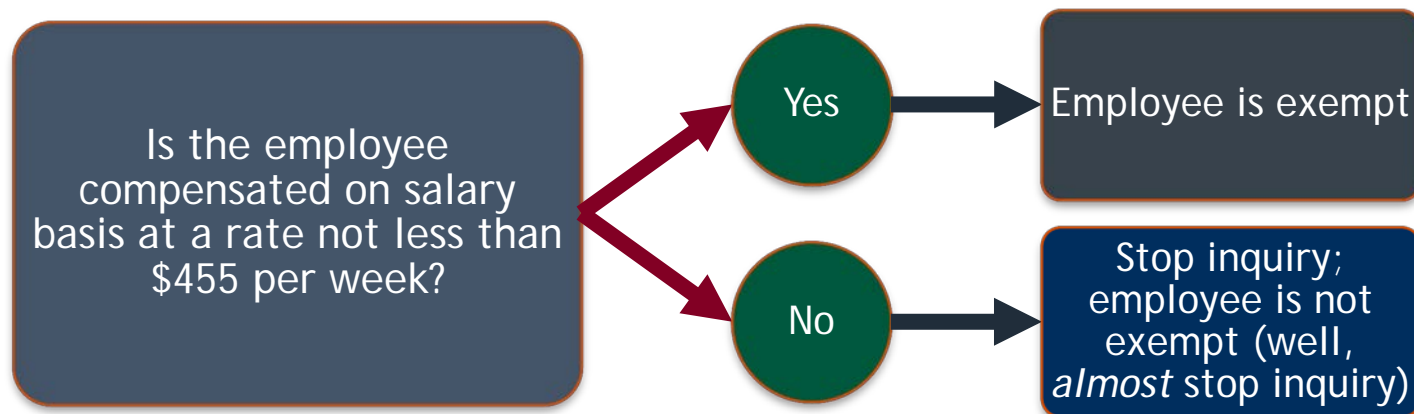
- Wages
- Fringe Benefits
- Health and Safety Protections
- Required Notifications to Employees

Exemptions

- Overview
- Salary Basis Test
- Exempt Duties:
 - Professional
 - Administrative
 - Executives
- Computer-Related Jobs
- Highly Compensated Employees

Employee Exemptions

Salary Basis Test



Change maybe on the way!!

- New regulations enjoined in late 2016
- Key provisions of rule:
 - Minimum salary \$913 per week (\$47,476 annually)
 - Highly compensated = \$134,004 annually
 - Automatic, annual adjustment to salary and HCE standards
- DOL has issued new RFI to OPM; new rule-making anticipated

Wage Determinations

Wage Determinations (WDs)

- WD represents the minimum wage for classification of various jobs performed
- WD also contains the minimum fringe benefit
- New WDs should be incorporated at certain times by the contracting officer

Types of Wage Determinations

- Standard
- Non-Standard
- Collective Bargaining Agreement Specific (CBA-WD)
- Contract Specific – Sole Source



Determining the Health and Welfare Benefits

Odd-numbered WDs

- Per person rate

Even-numbered WDs

- Averaging H&W Rate

Determining the Health and Welfare Benefits

- Listed on the Wage Determination Document
- Must be **paid in full**, without Productivity Requirements
- The H&W rate is updated on an annual basis
- If CBA exists, check required benefits



Health and Welfare Benefits Issues

- Part-Time Workers
- Changing Job Classifications
- “Break in Services”

Vacation Under the SCLS

- Cliff vesting – i.e., employees "earn" **all** vacation in a lump sum as of their anniversary date
 - Typical “accrual” policy does not comply
- **Must** be paid out upon employee termination, contract conclusion or at the next anniversary date
- Part-time or temporary employees entitled to proportional benefits

Specific Issues

- The Fair Labor Standards Act (FLSA) and the Service Contract Labor Standards
- Hours Worked – What is Compensable Work
 - Meals and Breaks
 - Waiting Time
 - On-Call Time
 - Lectures, Meetings and Training Programs
- Overtime
 - Requirements
 - Night Work & Shift Work
- Non-Displacement of Qualified Workers
- Sub/Prime Issues

Fair Labor
Standards
Act

SCLS, CBAs and Price Adjustments

What about increased costs in the base year after the contract has already been executed?



SCLS, CBAs and Price Adjustments

- Akin to modifications to WDs
 - Effective on anniversary date (multi-year contracts) and option exercise
- Price adjustment clause
 - Revisions limited to wages, fringe benefits, social security and employment taxes, and workers' compensation insurance
- “Changes” clause
 - May be entitled to recovery beyond price adjustment clause

Rest and Meal Periods

- Rest periods of short duration (i.e., 20 minutes or less) are customarily paid for as working time
- Unauthorized extensions of authorized work breaks need not be counted as hours worked if contrary to express policy
- Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time
 - Employee must be **completely relieved** from duty for the purpose of eating regular meals

Waiting Time

- **Very** fact dependent
- Engaged to wait = working time
- Waiting to be engaged = not working time
- Secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity

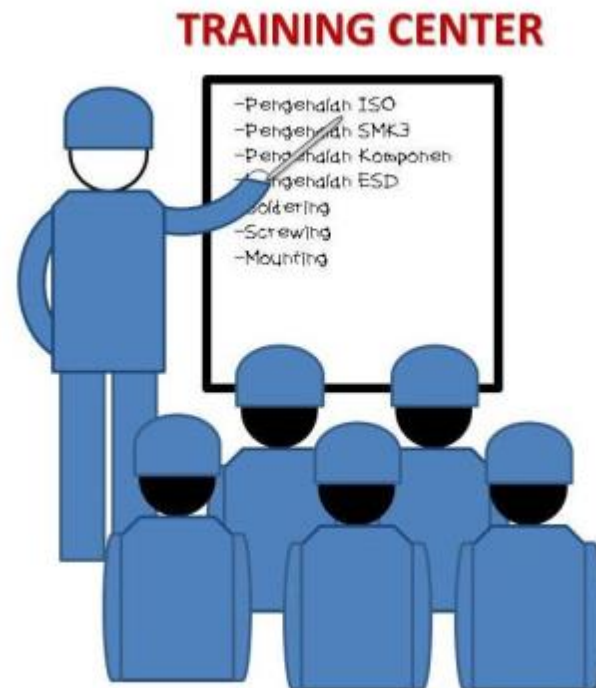
On-Call Time

- If required to remain on premises while “on call”, clearly working time
- An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases)



Lectures, Meetings, and Training

Compensable Time or Not?



Travel Time

Standard commuting = not working time



Non-displacement of Qualified Workers

- Right of first refusal where follow-on contract is awarded for same or similar services
- Anniversary list of all incumbents to be provided to CO and to success contractor
- May choose to employ fewer employees than predecessor and determine which employees will first be offered right of refusal
 - Obligation continues to apply for 90 days after commencement of contract
- Must make “bona fide offer of employment”
 - Lower pay may be bona fide if business reasons for offer are valid

Subcontractor Compliance

- SCLS provides that prime contractor cannot avoid requirements of the SCLS by passing work to subcontractor or third party vendor
- Prime is **always** potentially at risk for compliance issues
- 29 C.F.R. § 4.114 “[t]he appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of a failure to comply with any of the Act’s requirements.”

Managing the Prime/Sub Relationship

- **Flow down required SCLS provisions**
- Ensure the subcontractor understands implication of SCLS coverage and its obligations under same
- Include rep/warrant regarding SCLS coverage and obligation to report if compliance issue or audit/investigation is identified
- Consider rep/warrant regarding timekeeping systems and practices
- Indemnification provision

Managing the Prime/Sub Relationship

To audit or not to audit?

Who audits the



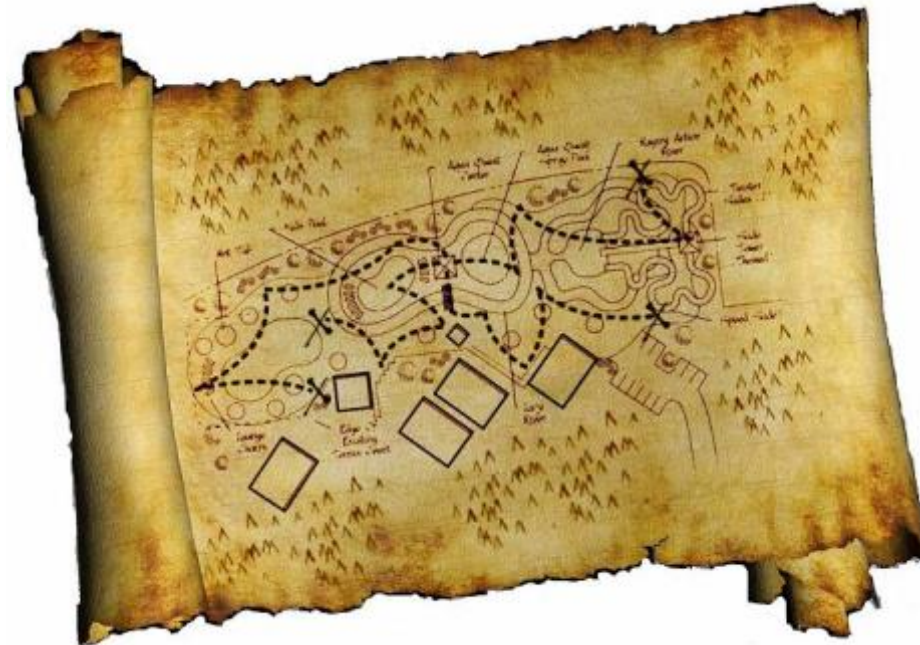
MAS Schedules

- SCLS Incorporated in all Schedules
- Schedule IT 70
- The Professional Services Schedule
- TAPS and The Professional & Allied Healthcare (VA)



Mapping Labor Categories

- Schedule Contractor maps the Labor Category to the DOL Directory of Occupations
- GSA does not review or approve the mapping
 - The contractor is liable for understanding and properly classifying the categories



GSA Task or Delivery Orders

Who picks the Wage Determination?



Executive Order 13706

- DOL Annual Memorandum – July 25, 2017
- H&W from \$4.27 to \$4.41
- 56 Hours of Paid Sick Leave on Contracts Awarded after January 1, 2017

Executive Order 13706

What contracts are covered by EO 13706 and the proposed regulations?

Under the Executive Order and proposed regulations, the paid sick leave requirements apply to a new contract that is:

- (1) a procurement contract for construction covered by the Davis-Bacon Act (DBA);
- (2) a contract for services covered by the Service Contract Act (SCA);
- (3) a contract for concessions, including any concessions contract excluded from coverage under the SCA by Department of Labor regulations at 29 CFR 4.133(b); or
- (4) a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Executive Order 13706

What is the amount of paid sick leave required under EO 13706?

Under the Executive Order, a contractor must permit an employee to accrue (earn) not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract.

Executive Order 13706

When does the year in which an employee can be limited to 56 hours of paid sick leave begin and end?

- DOL refers to this period as an “accrual year.” A contractor may choose its accrual year but must use a consistent option for all employees and may not select or change its accrual year in order to avoid the paid sick leave requirements of Executive Order 13706.
- An accrual year is a 12-month period beginning on the date an employee’s work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor’s fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees’ leave entitlements under the FMLA.

Executive Order 13706

How often does paid sick leave accrue?

The proposed rule provides that a contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each workweek.

Executive Order 13706

Does paid sick leave carry over from year to year?

Yes. The proposal requires a contractor to allow carryover of paid sick leave an employee has accrued but not used from one accrual year to the next. However, employers would not be required to allow total accrual of more than 56 hours of leave at any given time.

Executive Order 13706

How do the EO's requirements interact with the SCA and DBA?

Paid sick leave required by Executive Order 13706 and the proposed rule is in addition to a contractor's obligations under the SCA and DBA. A contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of the EO.

Common Pitfalls

Centre Real World Example:

Cleaning services company for military base prohibited employees from picking up supplies (when they picked up their paychecks), but were aware some employees were doing this.

--What did DOL do? You are the judge.

Common Pitfalls

Centre Real World Example:

Military base security guards needed to “maintain vigilance” during an unpaid meal break, though they could eat, read, and listen to music.

--Were they on break? You are the judge.

Common Pitfalls

Centre Real World Example:

Employer contended employees did not work certain days. DOL interviewed employees who said they did. DOL believed the employees and employer did not have records to rebut employee allegations.

--Who did DOL believe? You are the judge.

Common Pitfalls

Centre Real World Example:

Contractor properly compensated all employees working on a government contract, but failed to do so for support employees (such as accounting clerks) under the Fair Labor Standards Act.

--Who did DOL do?

Inside the Department of Labor

DOL Administers and Enforces:

- ✓ Fair Labor Standards Act
- ✓ Davis Bacon Act
- ✓ Service Contract Labor Standards
- ✓ Contract Wage Hours and Safety Standards Act
- ✓ Other Labor Laws

DOL has an investigation arm and an enforcement arm that steps in after an investigation concludes.

Investigations

The form to the right is the Summary of Unpaid Wages.

Be careful what you sign.
Can you see why?

Summary of Unpaid Wages U.S. Department of Labor
 Employee Benefits Administration Wage and Hour Division

Office Address: Longwood 87 State Office Building, 1st Floor, 1000 State Street, Hartford, CT 06183
 Telephone: (860) 486-3300

Employer: [Redacted] Case No: 10000000
 Employer's Tax ID Number: 01-0000000

1. Name	2. Address	3. Period Covered by Your Work-Order Cases	4. Acted	5. Total Amount Due
[Redacted]	[Redacted]	01/01/2004 to 03/31/2004		\$3,481.00
[Redacted]	[Redacted]	03/01/04 to 03/31/04		\$2,643.75
[Redacted]	[Redacted]	04/01/04 to 07/31/04		\$3,714.00
[Redacted]	[Redacted]	07/01/04 to 07/31/04		\$4,314.00
[Redacted]	[Redacted]	08/01/04 to 08/31/04		\$2,950.00
[Redacted]	[Redacted]	09/01/04 to 09/30/04		\$4,411.00
[Redacted]	[Redacted]	10/01/04 to 04/30/05		\$2,005.75
[Redacted]	[Redacted]	05/01/05 to 06/30/05		\$750.00
[Redacted]	[Redacted]	07/01/05 to 07/31/05		\$487.00
[Redacted]	[Redacted]	08/01/05 to 07/31/06		\$1,470.00
[Redacted]	[Redacted]	08/01/06 to 08/31/06		\$700.00
[Redacted]	[Redacted]	09/01/06 to 09/30/06		\$2,624.00
[Redacted]	[Redacted]	10/01/06 to 03/31/07		\$971.00
[Redacted]	[Redacted]	04/01/07 to 07/31/07		\$2,134.00
[Redacted]	[Redacted]	08/01/07 to 08/31/07		\$1,200.00
[Redacted]	[Redacted]	09/01/07 to 03/31/08		\$2,370.00
[Redacted]	[Redacted]	04/01/08 to 04/30/08		\$1,200.00
[Redacted]	[Redacted]	05/01/08 to 05/31/08		\$2,370.00
TOTAL:				\$45,000.00

I agree to pay the listed employees the back wages shown and to wait until payment in full is made and then forward copies to the Wage and Hour Division Office stated above by: [Redacted]

Signature: [Redacted]

Supervisor and address: Leadership Training Institute, Leadership Training, Inc., 44 Clinton Avenue, Hartford, CT 06183

Date: 10/06/08 10:21:11 PM Case ID: 142798 Form WH-909 Page 1



Questions?

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