



Webinar: Labor Compliance and the Service Contract Act



Presenter Profile: JAMIS Software Corporation



JAMIS[®]

JAMIS understands the unique challenges government contractors face in today's complex business environment and provides a modern Cloud ERP solution for Government Contractors

Presenter Profile: FCE Benefits Administrators



FCE Benefits is the leading provider of Health & Welfare benefit solutions to government contractors

The Service Contract Act

- The SCA applies to Federal Government and District of Columbia contracts, the principal purpose of which is to furnish services within the US through the use of service employees.
- The definition of "service employee" includes any employee engaged in performing services on a covered contract other than a bona fide executive, administrative or professional employee who meets the exemption criteria set forth in 29 C.F.R. §541.

Why Does the SCA Exist?

- The SCA serves the dual purpose of protecting employees of certain nonunionized employers by requiring compensation and benefits on par with unionized employers
- And protecting unionized employers from being undercut in the competitive marketplace by bids from nonunionized employers. The SCA is among the last in a series of federal statutes regulating labor relations in the United States.

SCA Compliance Tips

1. Review federal contracts to determine when SCA applies

Requests for Proposal (RFPs) or Contracts incorporating either of the following two clauses:

1. FAR 52.222-41 Service Contract Labor Standards
2. 29 CFR Part 4, Section 4.6 Labor Standards clauses for Federal service contracts exceeding \$2,500
The Code of Federal Regulations (CFR) is a compilation of the regulations that implement federal laws

Exempt Contract Types

- Contracts for construction, alteration, or repair, including painting, and decorating, of public buildings or public works (these are covered by the Davis-Bacon Act);
- Work required in accordance with the provisions of the Walsh-Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a federal agency by an individual or individuals;
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts subject to administrative exemptions granted by the Secretary of Labor in special circumstances because of the public interest or to avoid serious impairment of government business.

SCA Compliance Tips

2. Account for Wage Determinations (WDs):

WDs set forth the prevailing wages and fringe benefits that prime contractors and subcontractors must pay service employees working on covered contracts in specified geographic areas.

- Contracting agency is responsible for selecting appropriate WDs and incorporating them into contract. Obtained from <https://www.dol.gov/>
- Contractor should not independently select the WDs as they risk following the wrong WD and losing price adjustment.
- Enforced by the DOL – DOL audits may be triggered by complaints or DOL's selection

SCA Compliance Tips

3. Identify service employees covered by SCA

- Match SOW, actual job duties with SCA Directory of Occupations – do not rely on job descriptions alone
- Obtain confirmation from CO regarding proper classification of employees.
- Identify employees who qualify for exemption as bona fide executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- Back pay and CWHSSA penalties for misclassification of SCA workers will apply
- Note: Multiple pay rates and/or positions may apply during the year

4. Implement a Compliance Program

- Track wages and benefits in comparison to SCA wage determination requirements.
 - Utilize an ERP system like JAMIS Prime that can formalize and standardize contract parameters, employee profiles, jobs, and labor categories
 - OR track in an Excel spreadsheet
 - Work with knowledgeable firms such as FCE Benefits to assist with an efficient fringe benefit plans in accordance with SCA requirements
 - Create SCA compliance checklist and internal flow chart with responsible persons for each task
- Records must be maintained for three years

SCA Compliance Tips

5. Be able to readily show the following documentation/reports:

- Total and weekly compensation of each employee
- The number of daily and weekly hours worked by each employee
- Any deductions, rebates, or refunds from each employee's compensation
- A list of wages and fringe benefits for those classes of workers conformed to the wage determination associated with the contract

SCA Compliance Tips

6. Carefully Follow Posting and Notice Requirements

Employers performing work covered by the Service Contract Act are required to:

- Provide each employee working on the contract notice of the SCA payment and fringe benefit requirements for the different classes of service employees
- Post the “Employee Rights on Government Contracts” notice (including any applicable WD) at the site of the work in a prominent and accessible place where it may be easily seen by employees.

Prime Contractor is Responsible for Compliance

- Must “flow down” the applicable SCA contract clauses to subcontractors (includes independent subcontractor – i.e., 1099s) (29 CFR 4.155)
- “Joint and severally” liable for subcontractor’s non-compliance with SCA (29 CFR 4.114(b))

Penalties/Sanctions for Not Complying

Violations of the SCA may result in:

- the withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments
- contract termination and liability for any resulting costs to the government
- legal action to recover the underpayments
- debarment from future contracts for up to three years.

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge (ALJ).

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