

Planning for Compliance with the McNamara-O'Hara Service Contract Act (SCA)

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. 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 Checklist:

- 1.** Review federal contracts to determine if SCA applies. Requests for Proposal (RFPs) or Contracts incorporating either of the following two clauses:
 - a. FAR 52.222-41 Service Contract Labor Standards
 - b. 29 CFR Part 4, Section 4.6 Labor Standards clauses for Federal service contracts exceeding \$2,500
- 2.** Account for Wage Determinations (WDs) or Collective Bargaining Agreements (CBA) WDs within contracts. 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.
- 3.** If contract is subject to SCA but agency does not specify SCA in contract, make sure to contact the Contracting Officer for verification of applicability.
- 4.** Identify service employees covered by SCA. Match SOW, actual job duties with SCA Directory of Occupations – do not rely on job descriptions alone.
 - a. Identify employees who qualify for exemption as bona fide executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- 5.** Obtain confirmation from CO regarding proper classification of employees.
- 6.** Implement a Compliance Program
 - a. Utilize an ERP system like JAMIS Prime that can formalize and standardize contract parameters, employee profiles, jobs, and labor categories and configure to calculate SCA wages and fringe benefits (i.e., vacation, holidays, health & welfare)
 - b. Work with knowledgeable firms such as FCE Benefits to assist with an efficient fringe benefit plans in accordance with SCA requirements
- 7.** Be sure that workers are paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period.

8. Services employees covered by the SCA must be paid the wage rate and fringe benefits in the wage determination for the classification of work actually performed.

- a. Workers must be paid an hourly health and welfare benefit. These dollars are in addition to the base wage paid to the employee. The most current health and welfare fringe on a SCA contract is \$4.13 per fringe paid hour. Fringe benefits that meet the requirements of SCA are described in 29CFR Part 4, Section 4.171
- b. The FAR forbids contractors from satisfying the minimum wage in whole or in part by furnishing fringe benefits or cash equivalents to covered employees

9. As part of Executive Order 13658 (FAR 52.222-55), enacted in February of 2014, make sure SCA employees are all paid the minimum wage set by the Secretary of Labor (originally \$10.10) for all contracts that resulted from a solicitation issued on or after January 1, 2015.

- a. The FAR Contract Clause at 48 CFR 52.222-55 must be inserted by the contracting agency in any procurement contract covered by the FAR that is subject to the E.O.
- b. The Prime contractor must make sure to flow down these minimum wage requirements, SCA contract clause, wage determinations, and CBAs to covered subcontracts.
- c. Revised minimum wage rates must be applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. Be sure to monitor these things and incorporate where necessary.

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

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



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