

Service Contract Act

Presented By:



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Overview for Today

▼ Service Contract Act (SCA) overview:

- ▼ Authorities
- ▼ Contract Coverage
- ▼ Classes of Personnel Covered
- ▼ Wage Determinations and Benefits
- ▼ Record-keeping Requirements
- ▼ Enforcement
- ▼ A brief discussion of other rules

▼ Affordable Care Act (ACA) Overview:

- ▼ ACA Overview, Good Intentions, and Results
- ▼ ACA & SCA
- ▼ ACA & SCA Best Practices

Authorities

- ▼ **The McNamara-O'Hara Service Contract Act of 1965, as amended: 41 U.S.C. § 6701 *et seq.***
- ▼ **Department of Labor Implementing Regulations: 29 C.F.R. § 4**
- ▼ **Fair Labor Standards Act Exemptions: 29 C.F.R. § 541**
- ▼ **FAR Clauses: Part 22.10—Service Contract Labor Standards, 52.222-41 Service Contract Labor Standards, and 52.222-17 Nondisplacement of Qualified Workers**
- ▼ **Affordable Care Act & SCA: IRS Notice 2015-87, December 16, 2015**

Stated Purpose of SCA

- ▼ Provides minimum labor standards protection to service employees
- ▼ Removes wages as a bid factor in competition for federal service contracts
- ▼ Wage Determinations set wage rates and benefits for classes of employees used in service contracts

SCA: Important Note!

- ▼ **The Department of Labor (DoL) has authority over the SCA and its implementing regulations. 41 U.S.C. § 6703; 29 C.F.R. § 4.102; 48 C.F.R. § 22.1004**
 - ▼ FAR: “Under the Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action.”
 - ▼ Cf. Shawview Cleaners, LLC, ASBCA No. 56938, 10-2 BCA ¶ 34550 (2010) (No contracting officer has authority to waive, modify or exempt a service contract from the mandatory operation of SCA.)

- ▼ **DOL’s Wage and Hour Division enforces and investigates**

SCA Contract Coverage Generally

- ▼ **The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500 must contain as set forth in §4.6 of this part....**

SCA: 5 Elements of Contract Coverage

- ▼ 1. Contracts entered into by Federal Government and District of Columbia
- ▼ 2. Above \$2,500
- ▼ 3. Where principal purpose is to furnish services
- ▼ 4. Through the use of “service employees”
- ▼ 5. Performed in the “United States”

Contract Coverage I

Entered into by Federal Contracting Agencies

▼ Federal Agencies

- ▼ Defined broadly to include executive, legislative, judicial branch as well as many IC agencies that enjoy broad relief from procurement laws

▼ Wholly-owned corporations of the Government

- ▼ USPS

▼ Non-appropriated fund activities

- ▼ Post Exchanges

▼ District of Columbia

Contract Coverage II

Above \$2,500

- ▼ Applies to solicitations AND TO options and modifications that change the contract scope whereby labor requirements are significantly affected. 48 C.F.R. § 22.1007.
- ▼ On IDIQs, requirements contracts, BPAs, and BOAs, KO required to make up-front determination
 - ▼ Task order contracts must aggregate amounts of orders on annual basis
- ▼ Below \$2,500, Fair Labor Standards Act (FLSA) and Executive Order (EO) 13568 (setting minimum wage for Service Contract Act/Davis-Bacon Act/Walsh-Healey Public Contracts Act-contractor employees) control

Contract Coverage III

To Furnish “Services”

- ▼ **“Services” are varied**
 - ▼ 29 C.F.R. § 4.130 provides 55 specific examples, but the list is not intended to be complete
 - ▼ The WD for a particular area provides several more
- ▼ **“Principal Purpose” must be to provide services**
 - ▼ There is no hard and fast rule. Use >50% of the cost as a rule-of-thumb, but keep in mind that it is just an easy estimate
- ▼ **Remember, DoL makes the final determination if there is an issue**

Contract Coverage IV

Within the “United States”

- ▼ **50 States, DC, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, Johnston Island, the Northern Marianas, and Outer Continental Shelf Islands (as defined in the Outer Continental Shelf Lands Act)**
- ▼ **Any portion of a contract principally for services performed in the United States is covered**
- ▼ **Permanent OCONUS work is not subject to SCA**
- ▼ **BUT SCA applies if the services are performed partially in United States**

Contract Coverage V

Through the Use of “Service Employees”

- ▼ For SCA to apply, the services must be performed through the use of “Service Employees.”

- ▼ What is a “service employee?” SCA defines service employee as:
 - ▼ Any person engaged in performance of contract
 - ▼ Entered into by the United States
 - ▼ The principle purpose of which is to furnish services
 - ▼ Except employees who qualify as *bona fide* executive, administrative or professional employees under the FLSA

- ▼ Contracts performed “essentially” by personnel meeting the exemption are not SCA-covered. Rather, the SCA applies to contracts using service employees “to a significant or substantial extent.”

Contract Coverage V

“Service Employee” Exception: *Bona Fide* Executive, Administrative, or Professional Employee I

- ▼ **Qualifications are addressed in the FLSA implementing regulations. 29 C.F.R. § 541.**
- ▼ **Three tests for exemption: salary level, salary basis, job duties**
- ▼ **Salary Level: Minimum \$455 per week (or equivalent for longer pay periods)**
- ▼ **Salary Basis (Paid on the Basis of Salary):**
 - ▼ Regularly receives predetermined amount
 - ▼ Compensation not reduced because of variations in quantity or quality of work performed
 - ▼ Paid full amount in any week employee performs any work
 - ▼ No deductions for absences created by employer (in other words, “don’t call us, we’ll call you.”)

Contract Coverage V

“Service Employee” Exception: *Bona Fide* Executive, Administrative, or Professional Employee II

▼ Job Duties:

- ▼ Multi-factor test for each class of employees

▼ Executive Job Duty Factors

- ▼ Primary duty is management of the enterprise or a recognized department or subdivision
- ▼ Regularly directs the work of 2+ employees
- ▼ Has hire/fire authority or significant power associated with hire/fire, promotion, status change recommendations

Contract Coverage V

“Service Employee” Exception: *Bona Fide* Executive, Administrative, or Professional Employee III

▼ Administrative Job Duty Factors

- ▼ Performs office work directly related to the management or general business operations of the employer or its customers
 - ▼ Management or general business operations includes finance, accounting, HR, procurement, advertising, regulatory compliance
- ▼ Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance
- ▼ Can be paid a fee for a single effort in lieu of salary

Contract Coverage V

“Service Employee” Exception: *Bona Fide* Executive, Administrative, or Professional Employee IV

▼ Professional Employees: Two Types

▼ Type 1 – Learned Professionals. Job Duty Factors:

- ▼ Performs work that requires (“intellectual”) knowledge of an advanced type
- ▼ In a field of science or learning, e.g., law, accounting, engineering
- ▼ That is customarily acquired by a prolonged course of specialized intellectual instruction, i.e., advanced degree

▼ Type 2 – Creative Professionals, e.g., musicians, creative writers, photographers.

Contract Coverage V

“Service Employee” Exception: *Bona Fide* Executive, Administrative, or Professional Employee V

▼ Computer Related Occupations Factors:

▼ Skills include

- ▼ Systems analysis techniques and procedures to determine hardware, software, or system functional specifications;
 - ▼ Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, based on and related to user or system design specifications; or
 - ▼ Design, documentation, testing, creation, or modification of computer programs related to machine operating systems
- ▼ Salary of \$455 per week or more, or an hourly rate of not less than \$27.63 per hour

Contract Coverage V

“Service Employee” Exception - Other Exempted Employees

- ▼ **Contractor employs workers with disabilities and obtains FLSA “Section 14” certificates**
- ▼ **Apprentices and Trainees, BUT ONLY IF bona fide apprenticeship program registered with a state apprenticeship agency that is recognized by the DOL or under a program registered with the DOL’s Employment Training Administration Office of Apprenticeship**

A Special Note About Subcontractors

- ▼ Prime must flow down SCA clauses in the contract
- ▼ Prime and sub are jointly and severally liable for subcontractor noncompliance

SCA Statutory Exemptions Limited

- ▼ **Contracts for construction of public buildings or public works covered by Davis-Bacon Act**
- ▼ **Contracts for manufacturing or supplies covered by Walsh-Healey**
- ▼ **Contracts for carriage of freight or personnel where published tariff rates are in effect**
- ▼ **Contracts for services of communications companies (e.g., radio, telephone) subject to the Communications Act of 1934**
- ▼ **Contracts for public utility services, including electric light and power, water, steam, and gas**
- ▼ **Employment contracts providing for direct services to a Federal agency by individuals**
- ▼ **Contracts with the U.S. Postal Service for operation of postal contract stations**

Regulatory Exemptions I Limited

- ▼ **Postal Service contracts with common carriers**
- ▼ **Postal Service mail contracts with individual owner-operators**
- ▼ **Contracts for calibration, maintenance, and repair of information/word processing systems; scientific and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication; office/business machines where services performed by supplier or manufacturer**

Regulatory Exemptions II

Limited

- ▼ **“Commercial Services” for**
 - ▼ **Maintenance and servicing of motorized vehicles owned by Federal agencies**
 - ▼ **Issuance and servicing of credit, debit, or similar cards by Federal employees**
 - ▼ **Lodging, meals, and space in hotels/motels for conferences**
 - ▼ **Real estate services**
 - ▼ **Transportation on regularly scheduled routes**
 - ▼ **Relocation services**
 - ▼ **Maintenance services for all types of equipment obtained from manufacturer or supplier under a “sole source” contract**

Third Party Review of SCA Application and Compliance I

- ▼ Can request review by W&H Division and can appeal to Administrative Review Board. 29 C.F.R. § 4.56. ARB review is discretionary. 29 C.F.R. § 8.6(a); Palmetto GBA, ARB No. 10-056 (Feb. 28, 2012).
- ▼ No GAO/COFC review of ability of awardee to comply with SCA. Ameriko Maintenance Co., B-216247, Sept. 12, 1984, 84-2 CPD ¶ 287.

Third Party Review of SCA Application and Compliance II

- ▼ **BUT**, the Agency is not quite out of the woods on bid protests. GAO and COFC will review several arguments related to, but not exactly the same as, application of SCA. Examples include:
 - ▼ Whether awardee has ability to perform a below-cost contract. This is a question of FAR 9.1 responsibility or cost realism/price realism. JWK International Corp., B-237527, 90-1 CPD ¶ 198; K-Mar Industries, Inc. v. United States, 91 Fed. Cl. 20 (2010).
 - ▼ Whether awardee took exception to SCA application. Bering Straits Logistics Services, LLC, B-403799, B-403799.3, 2011 CPD ¶9.
 - ▼ Whether KO was reasonable in not soliciting DOL's views. Phoenix Mgmt., Inc., B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 9 n.10; Northeast Military Sales, Inc., et al., B-291384, Nov. 20, 2002, 2002 CPD ¶195 at 3; see also Savantage Fin. Servs., Inc. v. United States, 86 Fed. Cl. 700, 706 (2009) aff'd, 595 F.3d 1282 (Fed. Cir. 2010).

SCA Wage Determinations

Two Types

- ▼ **Prevailing Wage Determinations (can find them on wdol.gov)**
 - ▼ **Wage Determinations specify, by location:**
 - ▼ **Base hourly labor rate for each labor category**
 - ▼ **Minimum vacation benefit**
 - ▼ **Minimum holiday benefit**
 - ▼ **Minimum hourly Health and Welfare benefit**

- ▼ **Those based on the collective bargaining agreement**
 - ▼ **NB: successor contractor is obligated to pay its employees the wages and fringe benefits in the predecessor's CBA that they would have been entitled to if they were employed by the predecessor contractor.**

Matching WDs to the SOW

- ▼ **DOL maintains a Directory of Occupations, which describes job classifications and duties**
 - ▼ **Very important to match job duties in SOW to the proper descriptions!**
 - ▼ Try to get confirmation from KO if you have questions
 - ▼ This is often at issue in DOL investigations
 - ▼ **Available at Wage Determinations Online.gov (wdol.gov)**

Conformance

When a Piece of Work Doesn't Match an Existing Occupation

▼ Used where job description is not on the WD

- ▼ Propose rate based on “reasonable relationship” to WD rates
- ▼ Provide job description, federal wage grade equivalent, and proposed rate rationale on SF 1444
- ▼ File with KO NLT 30 days after affected employees start work
- ▼ KO reviews and submits to DOL with recommendation
- ▼ Employer pays at proposed rate until DOL decision
- ▼ If DOL says no, employer must provide back pay

▼ May not be used to:

- Subdivide an existing job class;
- Combine two or more classes to create a new class;
- Establish a job level lower than that for a particular job class grouping; or
- Create a helper or trainee class.

Wages and Fringe Benefits

▼ Wages

▼ Fringe Benefits consist of:

- ▼ Health and Welfare
- ▼ Vacation
- ▼ Holidays
- ▼ Sick Leave

▼ Critical that companies are cognizant of the ACA!

Wages I

- ▼ **The prevailing rate established by the contract WD is the minimum pay**

- ▼ **Applies to all SCA-covered workers – full-time, part-time, or temporary**

- ▼ **Wages and hours worked are calculated on a fixed and regularly recurring “work week” of seven consecutive 24-hour workday periods.**
 - ▼ **Payroll Records must be kept on this basis**
 - ▼ **A bi-weekly or semi-monthly pay period may be used if advance notice is given to affected employees.**

Wages II

- ▼ **Employees working in different capacities:**
 - ▼ **The time the employee spends in work in each classification should be segregated and paid according to the wage rate specified for each class of work.**
 - ▼ **If you cannot provide affirmative proof of the hours spent in each class of work, DOL will make you pay the highest rate in the applicable wage determination for all hours worked in the workweek**

EO 13568—Minimum Wage for Contractors

- ▼ **\$10.10 per hour for employees working on federal contracts in 2015**
 - ▼ Includes workers performing on or in connection with contracts covered by SCA
 - ▼ Includes employees not covered by SCA as long as they spend more than 20% of work hours in a given workweek in connection with covered contract
 - ▼ Check your WDs
 - ▼ Flows down to all tiers of subs
 - ▼ DOL will change rate annually

- ▼ **Look to Changes Clause if not SCA price adjustment**

Fringe Benefits

- ▼ **Identified in WD: vacation, holidays, Health & Welfare**
 - ▼ Vacation set forth as # days per year
 - ▼ Holidays identified
 - ▼ H&W set forth as hourly rate

- ▼ **Sick leave not provided for under SCA**
 - ▼ Executive Order for Sick Leave takes effect on 1/1/2017
 - ▼ More on that later....

SCA: The Rule on Part-Time and Temporary Employees

- ▼ **General Rule: They are covered too!**
- ▼ **H&W: Must be paid a proportionate amount at same hourly rate**
- ▼ **Entitled to proportionate amount of vacation time/pay**
- ▼ **Entitled to holiday pay proportionate to the number of hours worked in the week prior to the holiday**

Health & Welfare I

- ▼ **Set forth in WD as hourly amount**
 - ▼ Issued nationwide
 - ▼ Revised annually by DOL on or about June 1
 - ▼ Currently \$4.27 per hour
 - ▼ NOT self-executing – must be included in modification or option exercise

- ▼ **Based on FTE: up to a maximum of 40 hours per week and 2,080 hours per year on each contract**

Health & Welfare II

- ▼ SCA allows employers discharge the H&W requirement by:
 - ▼ Providing bona fide benefits to the workers
 - ▼ Or cash payment for the H&W rate
 - ▼ Or paying a combination of cash and bona fide benefits
- ▼ BUT... We need to look to the ACA. More on that shortly!

Health & Welfare III

- ▼ **Payments into bona fide FB plans must be irrevocably paid to third party and made no less often than quarterly**

- ▼ **Cash payments in lieu of fringe benefits must be paid on regular pay date**

- ▼ **No kick-backs:**
 - ▼ **Excess wages over WD minimum can't be credited toward H&W**
 - ▼ **Excess fringe benefit costs can't be credited toward wage requirements**
 - ▼ **Safest course is to segregate them**

Health & Welfare IV

▼ Covered Benefits:

- ▼ Life Insurance
- ▼ Health/Dental/Vision
- ▼ Disability Insurance
- ▼ Employer contribution to 401(k)
- ▼ Sick leave
- ▼ Paid time off provided in excess of WD requirements

▼ Benefits provided for the convenience of the company are not H&W benefits

- ▼ Relocation, incentive awards, uniforms, administrative handling costs, paid leave holiday and vacation pay within WD requirements

A Special Note About Sick Leave

- ▼ **Executive Order—Establishing Paid Sick Leave for Federal Contractors sets new rules for sick leave**
- ▼ **Effective January 1, 2017**
- ▼ **Employees earn one hour of paid sick leave for every 30 hours worked**
 - ▼ **Contractors cannot set an upper limit of less than 56 hours per year**
 - ▼ **Circumstances allowing for sick leave definition are broad**
 - ▼ **Carries over year-to-year**
- ▼ **Not credited toward SCA fringe benefits or prevailing wage rates**

ACA

- ▼ **ACA was written in a vacuum, thoughtless of SCA**
- ▼ **Applicable large employers (50 full time equivalents or more) must offer full time employees (working 30 hours per week or more on average) minimum essential coverage that meets affordability requirements (employee's share of lowest cost tier of individual-only coverage costs him less than 9.66% of his box 1 W-2 wages for 2016) or else pay a penalty:**
 - ▼ **\$2,160 per year per full time employee for failing to offer coverage at all; or**
 - ▼ **\$3,240 per year for each employee who was not offered affordable coverage and went on to purchase a subsidized policy through the Marketplace (exchange)**

ACA's Good Intentions

- ▼ **Get all Americans insured**
- ▼ **Provide low income Americans with free health insurance through a Medicaid expansion to 138% of the federal poverty level**
- ▼ **Lift pre-existing condition exclusions so sick individuals can buy health insurance**
- ▼ **Provide individuals with multiple options for buying compliant health insurance at competitive prices through the Marketplace**
- ▼ **Provide small business with access to competitively priced small group policies through the Marketplace**
- ▼ **Force employers to offer compliant coverage to full time employees**
- ▼ **Require individuals to buy compliant coverage or else suffer a tax penalty**

ACA's Mouse Trap

▼ Carrots:

- ▼ No pre-existing condition exclusions
- ▼ Free Medicaid
- ▼ State run Marketplaces
- ▼ Subsidies
- ▼ Expand employer sponsored coverage

▼ Sticks:

- ▼ Individual mandate penalty (up to 2.5% of household income or \$695 per adult and \$347.50 per child, whichever is greater)
- ▼ Employer mandate penalties (\$2,160/\$3,240)

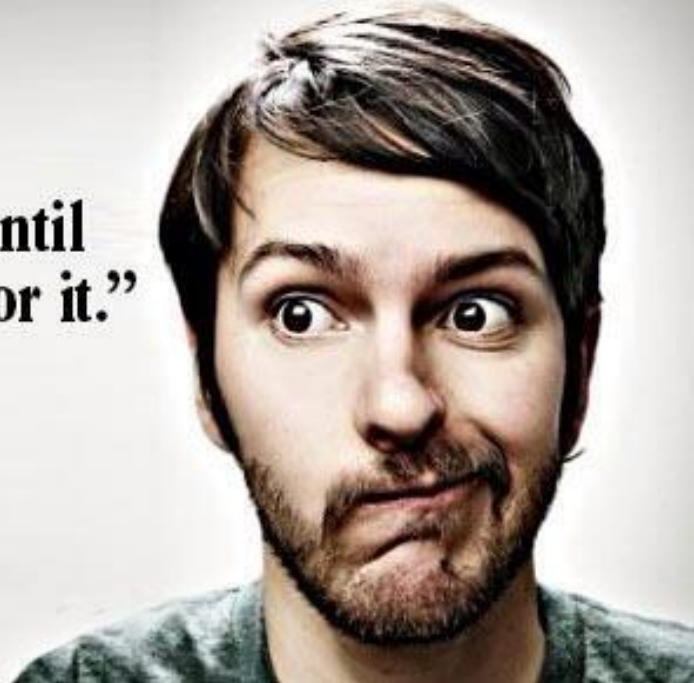
ACA's Results

- ▼ Only about 10% of previously uninsured adults are new buyers of health insurance
 - ▼ Who are they?
- ▼ Majority of states have defaulted to federally facilitate Marketplace
 - ▼ Limited options
 - ▼ Coverage is expensive or provides little immediate benefit
 - ▼ Dealing with government is burdensome
- ▼ Majority of states have not expanded Medicaid as ACA intended
- ▼ The small group health insurance market (under 100 employees) is now combined with the individual policy market for premium pricing purposes
- ▼ Premiums have skyrocketed with nothing in ACA to control them

ACA's Results

**“I was all for Obamacare until
I found out I was paying for it.”**

ThePeoplesCube.com



ACA & SCA

- ▼ **An employer subject to the SCA must also comply with ACA if it is an applicable large employer**
 - ▼ **Offers of minimum essential coverage (at least annually)**
 - ▼ **Affordability**
- ▼ **Some SCA compliance procedures are inconsistent with ACA implementing guidance**
 - ▼ **ACA regulators can't stand the idea of employers paying an employee cash in lieu of providing them with coverage, yet this is exactly what SCA authorizes**

ACA & SCA

- ▼ **IRS Notice 2015-87 (issued on December 16, 2015) is the first (and only) IRS guidance to address the conflict between the SCA and ACA**
 - ▼ **SCA employers subject to ACA still must make offers of minimum essential coverage to all full time employees including those working pursuant to an SCA contract**
 - ▼ **SCA employers subject to ACA still must make coverage available on an affordable basis in order to avoid a potential \$3,240 penalty for employees who receive a subsidy from the Marketplace**
 - ▼ **SCA employers may, however, continue to offer SCA employees the choice between H&W fringe paid as cash in lieu of the employee's participation in a group health insurance plan**
 - ▼ **This rule applies only to SCA employers in their arrangements with SCA employees and does not authorize such arrangements with non-SCA employees**

ACA & SCA

- ▼ Offering cash in lieu of benefits to an SCA employee does not risk a penalty against the employer by affecting the affordability of the employer's offer of coverage
- ▼ If, however, an employer offers cash in lieu of benefits to a non-SCA employee, this offer affects the affordability of the coverage offered to that employee in a way that could expose the employer to a penalty:
 - ▼ The total cash offered in lieu of benefits for the year is added to the total premium contribution required for the employee's participation in the lowest cost tier of individual only coverage. The sum is then used to determine if the employer offered "affordable" coverage within the meaning of ACA (i.e. coverage that costs less than 9.66% of the employee's box 1, W-2 wages)
 - ▼ Interestingly, under Notice 2015-87, although the cash offered to an SCA employee in lieu of benefits does not affect affordability as it relates to an employer's exposure to a penalty, the employee may still use the combined cost of coverage in order to obtain a subsidized policy through the exchange

ACA & SCA Best Practices

- ▼ **Make a compliant offer of ACA qualified coverage to SCA employees each year at open enrollment**
- ▼ **Only provide SCA employees with H&W cash in lieu of benefits if you obtain a written waiver of their enrollment in the ACA-qualified coverage you offered**
- ▼ **Anticipate potential agency inquiries regarding affordability and be prepared to defend your practice by establishing the SCA status of the employee who received cash in lieu of benefits**
- ▼ **If you use a similar practice for non-SCA employees, you will need to re-assess how your organization complies with the affordability safe harbors and include the offer of cash in the employee's share of individual-only premiums for the purpose of making the affordability determination**

SCA Vacation Time and Pay I

- ▼ **Generally vests after the SCA employee's anniversary date.**
“Continuous service” determines eligibility and is determined by:
 - ▼ **Time with current employer in any capacity OR**
 - ▼ **Working for predecessor contractors on similar services at same facility**
 - ▼ **If you win the contract and hire the employee, you inherit his or her time in service**

- ▼ **Need not be used or paid until earlier of**
 - ▼ **Employee's next anniversary date**
 - ▼ **Date of contract completion**
 - ▼ **Termination by employee of employment**

SCA Vacation Time and Pay II

- ▼ The SCA doesn't provide for carryover of vacation
- ▼ Vacation is determined based on anniversary date of employee, not calendar year of employer's fiscal year
- ▼ Part-time employees are entitled to pro-rata vacation; temps and independent contractors must also receive vacation or cash equivalent

SCA Holiday Benefits

- ▼ Listed on WD
- ▼ Employee entitled to holiday pay if works any time during the holiday workweek
- ▼ Employee entitled to holiday pay if he/she is on paid vacation or sick leave during holiday workweek
- ▼ Must be provided regardless of:
 - ▼ The length of time the employee has worked for the employer at the time a holiday occurs and
 - ▼ Whether he or she works the day before or after the holiday
- ▼ Can pay holiday pay if employee must work on holiday and is not provided alternative holiday
- ▼ Part-time employees are entitled to pro-rata vacation; temps and independent contractors must also receive holidays or cash equivalent.

Overtime

- ▼ **Not addressed in SCA, but recognizes other federal laws that do.**
 - ▼ **FLSA and Contract Work Hours and Safety Standards Act (applies to contracts in excess of \$100,000 that employ “laborers” and “mechanics”) both require 1.5 times rate of base rate for all hours worked over 40 in a workweek**

Price Adjustments

- ▼ **Authority is 52.222-43 or -44... not the Changes Clause**
 - ▼ **Actual increase in wages ONLY**
 - ▼ **No G&A, OH, or profit**
 - ▼ **Adjustments to H&W ONLY IF WD increases the rate**

Record-Keeping

- ▼ **Contractor and each subcontractor must maintain for each employee for 3 years:**
 - ▼ **Name, address and social security number**
 - ▼ **Work classification, wages and benefits**
 - ▼ **Daily/weekly compensation and hours worked, and any payroll deductions**
 - ▼ **List of monetary wages and fringe benefits for which wages rates and fringe benefits have been determined**
 - ▼ **Length of service list of the predecessor contractor**
 - ▼ **Good idea, but not required – spreadsheet that tracks worker wages and benefits in comparison to SCA requirements**
- ▼ **Must notify each service employee commencing work on the contract of the minimum monetary wage and any fringe benefits required to be paid under the contract or post the wage determination**
- ▼ **Must also to post the “Notice to Employees Working on Government Contracts” (WH Publication 1313) in a prominent and accessible place at the worksite. See <http://www.dol.gov/whd/regs/compliance/posters/sca.htm>**

Investigations and Enforcement I

- ▼ **Four enforcement mechanisms. 41 U.S.C. § 6705; 29 C.F.R. §§ 4.178, 188, 190**
 - ▼ **Withholding or offset. 41 U.S.C. § 6705; 29 C.F.R. § 4.187**
 - ▼ **Court action or administrative proceeding by Government. 41 U.S.C. § 6705; 29 C.F.R. § 4.189**
 - ▼ **Cancellation of contract and liability for re-procurement costs. 41 U.S.C. § 6705; 29 C.F.R. §§ 4.190**
 - ▼ **Debarment. 41 U.S.C. § 6705; 29 C.F.R. § 4.188**

- ▼ **Generally commences with DoL Wage & Hour Division investigation**
 - ▼ **Wage and Hour Division routinely expands its investigation to other issues, such as FLSA, and occasionally to other contracts and other contractors at the same site**
 - ▼ **Biggest issues for DoL: labor category classifications, scope change, conformance, and OT and fringe**

Investigations and Enforcement II

- ▼ **Withholding or offset. 41 U.S.C. § 6705; 29 C.F.R. § 4.187.**
 - ▼ Can be withheld before commencement of proceeding. Jerry C. Rankins, 83-SCA-55 (Feb. 14, 1986)
 - ▼ Employees entitled to interest “at the adjusted prime rate established by the Secretary of the Treasury pursuant to 26 U.S.C. 6621 (1982).” Pryor’s Court, Inc., 81-SCA-1355 (Dec. 4, 1985)

- ▼ **Court action or administrative proceeding by Government. 41 U.S.C. § 6705; 29 C.F.R. § 4.189**
 - ▼ Court or Proceedings before Administrative Review Board. See 29 C.F.R. §§ 6, 7, 8
 - ▼ Suit brought by United States on behalf of employees. 29 C.F.R. § 4.187.
 - ▼ NO PRIVATE RIGHT OF ACTION!
 - ▼ SOL is six years. 29 C.F.R. § 4.187(c)

Investigations and Enforcement III

- ▼ **Cancellation of contract and liability for re-procurement costs. 41 U.S.C. § 6705; 29 C.F.R. §§ 4.190**
 - ▼ Violation of “any contract stipulation.” 29 C.F.R. § 4.188(a)
 - ▼ False certification that contractor is not debarred pursuant to SCA. 29 C.F.R. § 4.188(b).
- ▼ **Debarment. 41 U.S.C. § 6705; 29 C.F.R. § 4.188**
 - ▼ SCA debarment is not the same as the FAR debarment.
 - ▼ Violation of “any” provision of an employment contract required to be included by SCA.
 - ▼ Three years for all contracts (including non-SCA contracts) unless “unusual circumstances.” 41 U.S.C.A. § 6706; 29 C.F.R. § 4.188(b); E&S Diversified Servs., Inc., 2011-SCA-008 (Mar. 20, 2015).
 - ▼ Any person with a “substantial interest” in a firm

Successor Contractor Rule

- ▼ **52.222-17 (JAN 2013) incorporates DOL final rule from 2011 and EO 13495**
- ▼ **Must extend “bona fide” job offers to SCA-covered employees on predecessor contracts**
 - ▼ **NOT required to offer employment to predecessor service employees who work on both a Federal contract and a nonfederal contract as part of a single job**
- ▼ **Offers must promise to pay the required wages and fringe benefits in WD**
- ▼ **Offers must remain open for at least 10 days**
- ▼ **Failure to comply can result in investigation and violations can result in stiff penalties and debarment**

That's a Wrap

Questions?