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Ever-Evolving SCA Compliance Challenges In A Post-Pandemic World

*By Eric W. Leonard**

For nearly 60 years, the McNamara-O'Hara Service Contract Act (the SCA, also referred to as the Service Contract Labor Standards statute)[1] has imposed certain wage and fringe benefit payment requirements on federal service contractors. Although meeting these obligations may seem straightforward, seasoned contractors know that complying with the SCA—and proving it during an audit by the U.S Department of Labor (DOL) Wage and Hour Division—can be onerous and costly. Couple that with potential draconian penalties for SCA noncompliance (such as debarment from federal contracting)[2] and the stakes quickly get that much higher.

Compliance with the SCA has only grown tougher and more complicated following the COVID-19 pandemic. Even as companies continue returning their personnel to the office, many service contractors have had to rely on a workforce performing from remote locations, some of which may differ from locations initially contemplated for contract performance. In addition, SCA contractors face the challenge of managing employee relations issues caused by upward pressures on wages from inflation and increasing state/local wage rates as well as wage compression issues caused by the implementation of an annually increasing federal contractor minimum wage.

The purpose of this BRIEFING PAPER is to explore four challenging and evolving areas of SCA compliance. These areas, where applicable, are ones that a federal service contractor should be prepared to address as part of any DOL SCA investigation or internal audit review. They include (1) assessing whether a contract is SCA covered and, if so, which personnel performing the contract are subject to the SCA; (2) segregating SCA-covered from noncovered work; (3) addressing the impacts of non-SCA factors on service employee wage rates; and (4) ensuring that wage

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determinations are current and incorporated for the correct places of performance.

Assessing Contract Coverage By The SCA

One seemingly straightforward initial question federal service contractors must consider is whether a contract to be awarded is SCA covered. While in a perfect world the solicitation documents should make the answer to this question obvious, we do not live in a perfect world. Over the years, we have seen solicitations that include SCA wage determinations but not the Federal Acquisition Regulation (FAR) SCA clause[3] or vice versa, as well as solicitations that omit all SCA-related clauses[4] even though the work called for under the contract appears to be SCA covered. Couple this with the fact that SCA coverage has expanded over the years to include complex contracts related to subject matter areas that did not exist when the SCA was enacted, and this coverage question is far from simple to solve. But what responsibility does the contactor have to independently determine SCA coverage since the DOL regulations[5] place that burden squarely on the agency contracting officer?

Well, even though the agency contracting officer is tasked with determining SCA coverage, we always recommend that contractors make their own pre-award, independent assessment of SCA coverage. The first step is to check whether the solicitation (or an amendment thereto) provides indications that the contract will be subject to the SCA. That is, does it (a) incorporate the applicable FAR clause, FAR 52.222-41, "Service Contract Labor Standards," (b) an SCA prevailing wage determination, and/or (c) otherwise state that it is subject to the SCA? If one or more of these items are present, contractors should expect the contract will be covered by the SCA and strongly consider pricing their proposals to include SCA prevailing wages.

However, even if the solicitation does not address the SCA directly in one of the foregoing ways, the resulting contract could still be considered SCA covered by the DOL if all of the following factors are met: (1) the contract is an award by the U.S. Government or the District of Columbia; (2) the contract is principally one for services (as opposed to construction, manufacturing or product work) that will be performed by "service employees" (a broadly defined term we will discuss in more detail below); (3) the contract is expected to exceed $2,500; and (4) at least some portion of the services will be performed in the United States or its territories.[6] If the answer to these four questions is yes, you may still need to consider the applicability of the SCA and should seek legal counsel for advice—even if the FAR SCA clause and/or an SCA wage determination are not included with the solicitation.

These days it is even more imperative that contractors carefully consider whether the SCA should apply. As noted above, it is still the agency contracting officer's responsibility to incorporate the SCA FAR clause, related SCA clauses, and prevailing wage determination into a contract to establish SCA coverage. But a recent change to regulations implementing a companion federal labor standards statute, the Davis-Bacon Act,[7] which requires contractors to pay prevailing wages to all laborers or mechanics working at the

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site of the work on federal construction contracts over $2,000, bears careful attention for the years ahead. In August 2023, the DOL published a final rule revising the Davis-Bacon Act regulations.[8] One of many notable changes was to make the Davis-Bacon Act applicable "by operation of law" to contracts deemed to be within the scope of coverage even where the agency contracting officer has not incorporated the required FAR Davis-Bacon Act clause.[9] While this *Christian*[10] doctrine-like change does not apply to SCA-covered contracts (although some might dispute that premise), it is not a stretch to surmise that a similar change could be on the horizon for SCA-covered contracts.

Furthermore, a 2023 decision from the Armed Services Board of Contract Appeals (ASBCA) suggests an even more heightened standard for contractors when it comes to proactively addressing SCA coverage issues. In *Innovative Technologies, Inc.*,[11] SCA coverage issues arose in the context of a contractor request for reimbursement of back wages and other related costs paid to employees after a DOL SCA audit, but also where there were questions as to whether the contract, as awarded, was covered by SCA. In this matter, the agency contracting officer failed to include the FAR SCA clause (FAR 52.222-41) in the contract (even though the predecessor contract was SCA covered) but did include common FAR SCA companion clauses (such as FAR 52.222-42, "Statement of Equivalent Rates for Federal Hires"), other references to the SCA, and an SCA wage determination—items one would expect to find in an SCA-covered procurement. Ultimately, the DOL directed the agency to include the FAR SCA clause and the DOL conducted an SCA audit resulting in back wage and other findings. The contractor sought recovery of the back wage and other related costs associated with the audit under relevant provisions including FAR 22.1015. The board, deeming the failure to incorporate FAR 52.222-41 as an "administrative oversight" and considering all of the other evidence that this contract should have been subject to the SCA, determined that, as a matter of law, the SCA's requirements and the wage determination process applied to both parties from the contract's inception citing the *Christian* doctrine. The board went on to deny the majority of the contractor's costs related to the DOL SCA audit asserting that recovery was not available under FAR 22.1015 for costs unrelated to compliance with SCA wage determination rates.

So, where does this leave us when it comes to best practices for assessing SCA coverage issues? First, this decision stands as a cautionary tale on SCA coverage for contractors facing a situation where there are indications of SCA coverage even when the FAR SCA clause is omitted from a contract. Second, if a solicitation is silent on SCA applicability even though it appears the SCA should apply, contractors should consider whether to inquire about SCA coverage through the solicitation Q&A process or otherwise. This issue is best raised by direct communication with the contracting officer in writing. If the agency makes an affirmative determination that the SCA does not apply, a contactor can point to this fact if the DOL later determines the SCA should have applied to a specific procurement. This upfront communication also can save contactors money and a headache down the road if the SCA is later determined to apply, hopefully avoiding a situation where SCA rates and fringe benefits are not taken into account in pricing but later determined to be due to your employees.[12]

Finally, even where a contract is SCA covered, it is important to remember that SCA coverage may not extend to all contractor personnel performing under, or in connection with, the contract. It is true that the definition of the term "service employees" under the SCA is broad.[13] The definition includes a wide range of personnel performing under the contract including subcontractors and independent contractors. And there is no defensible method to "contract around" SCA coverage for these types of personnel at any tier of contract performance. However, the SCA does not cover two important groups of personnel: (1) personnel who are exempt from the Fair Labor Standards Act (FLSA) minimum wage and overtime requirements;[14] and (2) certain personnel who are necessary for performance of the contract but not performing tasks required by the contract.[15]

Employees who are performing under the contract but meet the test for bona fide executive, administrative, or professional workers under the FLSA, based

on their salary and the nature of their job duties, are not covered by the SCA.[16] The DOL regulations outline pay and duty tests that must be met for each of these exemptions, and, importantly, anyone who qualifies is exempt from SCA coverage.[17] A final rule published on April 26, 2024, however, increased the FLSA salary threshold and likely will have the effect of reducing the number of service employees who qualify as FLSA-exempt.[18] This new rule provides for a stepped increase to the FLSA salary threshold by thousands of dollars that must be met for employees to qualify as FLSA exempt. Now that this rule is final and set to go into effect on July 1, 2024, employers (including federal service contractors) will need address how this new rule will impact personnel who previously qualified as FLSA-exempt. For example, for those employees affected by this change, the contractor will either need to increase an affected employee's salary to the new level or treat the employee as nonexempt on a going forward basis. Reclassifying a previously exempt employee as nonexempt would not only mean those employees are entitled to overtime pay for hours worked in excess of 40 hours a week, but also that they would now be covered by the SCA. The potential cost impacts for a contractor could be significant and avenues for recovery of these increases may be limited. This is a development that requires immediate attention from SCA contractors.

Another category of employees who may not be covered by the SCA are personnel who perform services that are "necessary to the performance" of a contract but those are services distinct from those required to be performed under the contract. For instance, there are many categories of employees who perform overhead-type tasks in support of contract performance (security, client billing, etc.) even though these specific tasks are not set forth in the Statement of Work (SOW) of the SCA-covered contract. In many cases, these employees will not be subject to the SCA's wage and fringe benefit requirements although any such determinations must be done on a case-by-case basis through careful analysis of the employee's job duties.[19] And also keep in mind that even if these employees do qualify as exempt from the SCA, contractors still must be sure to assess whether some other federal labor pay or fringe benefit requirement (such as federal contractor minimum wage[20] or federal paid sick leave[21]) or similar state/local law requirements apply to these personnel.

Segregating SCA-Covered And Noncovered Work

Many federal service contractors have employees who perform both SCA-covered and noncovered services in the same workday or workweek at times in the same facility. Sometimes keeping the SCA work and non-SCA work separated is straightforward: A laborer cannot be cutting the lawn at a federal courthouse and a commercial building at the same time. But other times, a contractor cannot readily separate the hours an employee works under SCA contracts versus non-SCA contracts. Cross-training and cross-utilization of employees across different labor categories and/or business units at different times has made this even more of a challenge.

Let us take, for example, a facility that processes orders using a commercial process but one that does not readily distinguish (perhaps for privacy or other reasons) between orders that relate to a federal contract versus those for a commercial customer. In this case, the contractor has no way to accurately record employee time spent "touching" a federal order subject to the SCA versus one not covered by the SCA. This creates a significant SCA compliance challenge. And we have seen this issue arise more and more particularly where a contractor tries to leverage an existing commercial process to also perform SCA-covered services for a federal agency.

Of course, one solution would be to pay the SCA-required wages and fringe benefits for all hours worked during the week where a contractor cannot segregate SCA work from non-SCA work. Indeed, this is the default solution set forth in the DOL SCA regulations where a company cannot separate SCA from non-SCA work.[22] But this is far from an ideal solution and often results in a contractor paying employees more than required and paying employees at rates that diverge significantly from commercial pay rates based on the market. This pay practice also might depart signifi-

cantly from how the contractor priced its proposal for the SCA-covered contract.

Implementing an alternative method for compliance is itself a challenge: How can a contractor develop a defensible way to segregate the SCA from non-SCA hours where an employee does not record hours that would distinguish between SCA and non-SCA work? Even though this issue is common for many contractors, unfortunately the DOL provides little guidance in its regulations on acceptable ways to segregate work when the nature of the performance does not lend itself to straightforward hours-based timekeeping. This uncertainty leaves contractors facing the risk of the DOL directing them to pay their personnel the SCA wage rate for all hours worked even where an employee's federal work portion is minimal.

Experience has dictated that the best way to mitigate this risk is to develop a fair, defensible model, methodology, and process that shows how a contractor ensures SCA-covered personnel receive SCA wages for the portion of work they perform that is SCA covered. This is essential to successfully navigate a DOL SCA audit. And while this model will not eliminate the risk—only treating all hours as SCA covered can—just having documented the care and effort that the company put into developing a fair and equitable model can go a long way toward reaching a manageable resolution in any future SCA audit.

Addressing The Impacts Of Non-SCA Factors On Service Employee Wage Rates

For many years, it was always the presumption that wage rates listed in DOL SCA wage determinations would be more generous than other "default" wage rates such as the federal contractor minimum wage or state/local minimum wage rates. Thanks, perhaps in part, to the impact of inflation and recent Executive actions to significantly raise the federal contractor minimum wage rate (now $17.20 per hour)[23] that presumption may no longer be valid. Even just a cursory review of an SCA wage determination (particularly ones in rural areas and, by way of example, Puerto Rico) will reveal wage rates that are below the $17.20 federal contractor minimum wage rate. However, the law is clear that where this happens a contractor must comply with the higher wage rate (assuming the federal contractor minimum wage requirement is incorporated into the contract) to be in compliance with federal and related obligations. And to make matters more complicated, each January the federal contractor minimum wage raise increases (typically by around $1 per hour) requiring contractors to again reevaluate wage compliance strategies on SCA-covered contracts.[24]

Although there is a methodology set forth in the FAR for recovery of costs associated with raising an employee's rate up to the federal contractor minimum wage rate, there are some potential limitations contractors should consider. First, it is important to carefully review the timing and process in FAR Subpart 22.19 for seeking an adjustment related to the incorporation of changes in the federal contractor minimum wage rate[25] as this process is distinct from the FAR SCA price adjustment process.[26] Second, contractors need to consider the wage compression effects on other employees when raising an employee's rate up to the federal contractor minimum wage rate. A typical wage compression scenario a contractor may face would be where a contractor raises an entry-level employee's wage rate by $2.20/hour from $15.00/hour to $17.20/hour to comply with the new federal contractor minimum wage. What if this employer also has employees at a higher-level position currently being paid at $17.50/hour? There are many reasons a contractor would want to increase these employees by the same $2.20/hour to $19.70/hour (or more) to at least maintain the prior pay gap between these positions. And if the contractor does increase this higher-level position wage rate, can the contractor recover these amounts as a price adjustment? Well, the answer is a not so satisfying maybe. Although the federal contractor minimum wage final rule does permit agencies to consider compensating contractors for wage compression impacts associated with the rising federal contractor minimum wage rates,[27] such recovery appears to be discretionary and, based on early experience in this area, rarely granted. Similarly, guidance from the General Services Administration (GSA) on factors for GSA agency contracting officers to consider for wage

compression requests is not contractor friendly.[28] Unfortunately, our experience to date suggest that contractors may be forced to absorb the wage rate impacts for these non-minimum wage employees without recovery unless they can convince an agency contracting officer to provide additional compensation for these impacts.

Contractors face similar, yet even more daunting challenges, managing ever-increasing state or local wage rates when performing under SCA-covered contracts. And a recent decision from Civilian Contractor Board of Appeals (CBCA) puts contractors "in a box" when it comes to seeking recovery of the impacts of state or local rates that exceed SCA minimum wage rates. Over the past few years, we have seen dramatic increases in some state or local minimum wage rates. For example, the current minimum wage rates for the city of Denver is $18.29/hour.[29] In many of these cases, the rate increases are the result of tying wage rate increases to inflation. Most DOL SCA wage rates have not increased at the same pace and placed contractors in the unenviable position of having to pay service employees performing in certain states, counties, or cities at wage rates above the DOL SCA wage rates to comply with the higher state or local wage rates. This raises the question of whether and how a contractor can receive compensation for paying its service employees at state or local wage rates that exceed the DOL SCA determination rate. Thanks to a recent Civilian Board of Contract Appeals (CBCA) decision, we are reminded that the FAR SCA price adjustment clause (FAR 52.222-43) is not a viable option for recovery.

The CBCA's decision in *Didlake, Inc. v. General Services Administration*[30] denied a contractor's request for recovery under the FAR SCA price adjustment clause for wage amounts the contractor paid in excess of the SCA wage rate to be compliant with a higher county wage rate in Maryland. In this case, the local Montgomery County Maryland wage rate for janitors became effective after award and was higher than the DOL SCA wage determination rate for that labor category. The contractor sought additional compensation for the wage rate difference between the two rates under the SCA price adjustment clause, but that request was denied by the CBCA. The CBCA did not consider this type of wage rate increase to be within the bounds of the FAR SCA price adjustment clause. Unfortunately, decisions like this put service contractors facing this issue in a difficult position: A contractor must pay the higher state or local wage rate (or increase) to be compliant with state or local law but also lacks a contractual mechanism to recover that difference at least using the FAR SCA price adjustment clause. As a result, contractors need to assess early on in the procurement process whether state or local wage rates exceed SCA wage determination rates for any relevant labor categories and assess how to account for this additional cost in the contractor's pricing to the extent feasible. Recovery from a federal agency after-the-fact simply is not a viable option absent a specific contractual provision addressing recovery for these types of increases.

Ensuring Wage Determinations Are Current And Incorporated For The Correct Places Of Performance

The SCA regulations include detailed requirements for when contracting agencies must include and update a covered contract's wage determination during performance or add wage determinations for new places of performance.[31] The most familiar time to contractors is probably at option exercise, though there are other points during performance that may require wage rate incorporations or updates as well.

When dealing with SCA wage determination incorporation questions, it is important to keep in mind that it is agency contracting officer incorporation of a revised SCA wage determination into a contract, not the date that the DOL publishes a revised wage determination, that controls as far as when a revised SCA wage determination is effective.[32] But what happens if an agency contracting officer does not abide by the FAR SCA wage revision incorporation procedures?

If a situation arises where an agency contracting officer does not incorporate a revised SCA wage determination, even though the FAR requires such incorporation, contractors are faced with some difficult questions. Should the contractor voluntarily pay at the

higher SCA wage rates even though these rates are not incorporated into the contract? What are the potential consequences of voluntarily paying at these higher wage rates on other processes such as the price adjustment request process? If the contractor decides not to pay at the new rates, then will savvy SCA-covered employees complain to the DOL that they are not being paid at the appropriate wage rate in the revised SCA wage determination? If the revision is incorporated at a later date, should the contractor proactively provide "true up" payments to its covered employees that cover the time frame between when the SCA wage determination should have been incorporated versus when it actually was incorporated? And if a contractor provides those "true up" payments, can they recover those amounts from the agency?

Of course, these are all complicated questions and there is no "one-size-fits-all" answer to these questions, but experience has shown that there are significant compliance benefits to being proactive in providing "true-up" payments to affected employees where there has been a late incorporation of an SCA wage determination revision particularly if there is a future DOL SCA audit. Whether to voluntarily pay at higher, yet unincorporated wage rates, requires a thorough analysis of the risks and benefits to this approach. Either way, we recommend that contractors promptly initiate and document communications with the agency contracting officer about these incorporation issues when they arise.

Although the timing in DOL guidance of revised wage determination incorporation is well established, the rapid increase in remote work under SCA-covered contracts has thrown this process into even more flux. Not infrequently, we review SCA-covered contracts that are years into performance yet have not had their wage determinations updated since award. Or, worse yet, there were no SCA wage determinations incorporated by the agency contracting officer from the beginning of contract performance for reasons unknown. Or the contract simply does not contain SCA wage determinations for locations where employees are actually performing the work. These contracts are easy targets for DOL auditors and catching up to the current wage rates in geographically applicable wage determinations could require the contractor to incur significant back pay costs.

The COVID-19 pandemic really has brought this wage determination applicability issue to the forefront. Remote work expanded dramatically during the pandemic. For instance, it was not unusual for SCA-covered work to have shifted from all employees working in the same brick and mortar office in 2019 to having employees working remotely from a multitude of different states just one year later. The question for contractors is how, if at all, does a change in the employee's geographic location of performance impact the wage and fringe benefit rates applicable to that employee's performance. Is a contractor obligated to request that an agency contracting officer incorporate SCA wage determinations for every location where a remote or hybrid worker performs SCA-covered work? If so, how often? What should a contractor do if the contracting officer refuses to include new SCA wage determinations for any new place of performance?

Once again, these are all good but far from simple questions and ones with even more elusive answers. We recommend engaging counsel familiar with the SCA when faced with these issues. So far, even after the end of the pandemic, the DOL has still yet to publish SCA-specific guidance addressing these wage determination applicability questions even though contractors continue to struggle with this question for remote and hybrid workers. Even more troubling, we have seen DOL auditors reach differing conclusions on the issue. Some auditors have asserted that remote or hybrid work at locations other than the stated place of performance in the contract require incorporating SCA wage determinations covering those remote/hybrid geographic locations. Other auditors take the opposite position.

Given inconsistent enforcement and the lack of guidance from the DOL, as well as contracting officer failures to incorporate updated or missing SCA wage determinations into contracts, federal service contractors face audit risk in this area. To mitigate potential liability, we recommend that contractors proactively address these place of performance issues through dialogue and formal or informal inquiries to the

contracting officer. If nothing else, contractors should seek to develop a written record of communications to the agency contracting officer so that the contractor can share it with DOL Wage and Hour Division investigators if there is ever an SCA audit of the contract.

Conclusion

As contractors' work performance locations and methods continue to evolve, the burden on federal service contractors to ensure compliance with the SCA will continue to grow. There is no better time than now for federal services contractors to take the time to ensure they have an SCA compliance plan in place and that the plan is up-to-date and consistent with the latest SCA-related developments.

Guidelines

These *Guidelines* are intended to assist you in understanding key aspects of SCA compliance for federal service contractors. They are not, however, a substitute for professional representation in any particular situation.

1. SCA compliance is ever-evolving due, in part, to changes in applicable SCA wage determination rates and impacts associated with related government contracts labor and employment requirements. Periodic assessment of contractor compliance and training is essential.

2. Recent relevant case decisions and related developments have placed a greater share of the burden on federal service contractors to determine whether a specific procurement is covered by the SCA. And when there is doubt, ask a question to the agency contracting officer and document any response.

3. Remote and hybrid work have complicated the SCA wage determination incorporation process by raising questions as to which geographic locality must be used to determine a service employee's applicable SCA wage rate and fringe benefits.

4. Failure to comply with the SCA can result in not only significant back wage or fringe payments, but also a three-year debarment from federal contracting absent unusual circumstances. Strict compliance with the SCA is non-negotiable.

5. Assessing the full scope of SCA and related wage rate obligations (such as federal contractor minimum wage or state or local minimum wage rate obligations) should be part of the pre-proposal submission pricing exercise to ensure these costs are all considered.

6. If wage compression issues arise following incorporation of the federal contractor minimum wage, begin a dialogue with the agency contracting officer to maximize the possibility of recovery of these costs.

7. SCA audits by the DOL Wage and Hour Division are costly, burdensome, and almost three quarters of the time result in some type of violation finding, so whatever steps you can take as a service contractor to avoid such audits, are well worth the investment.

ENDNOTES:

[1]41 U.S.C.A. §§ 6701–6707; see 29 C.F.R. pt. 4; FAR subpt. 22.10.

[2]41 U.S.C.A. §§ 6705, 6706; see 29 C.F.R. §§ 4.187, 4.188, 4.190; FAR 22.1022; FAR 22.1023; FAR 22.1025; FAR 52.222-41(k); see also FAR subpt. 9.4.

[3]"Service Contract Labor Standards," FAR 52.222-41.

[4]See FAR 22.1006 (prescribing solicitation provisions and contract clauses).

[5]See 29 C.F.R. pt. 4.

[6]41 U.S.C.A. § 6702(a).

[7]40 U.S.C.A. §§ 3141–3148.

[8]Updating the Davis-Bacon and Related Acts Regulations, 88 Fed. Reg. 57526 (Aug. 23, 2023) (amending 29 C.F.R. pts. 1, 3 & 5).

[9]29 C.F.R. § 5.5(e); see 88 Fed. Reg. at 57662–70.

[10]G.L. Christian & Assocs. v. United States, 312 F.2d 418 (Ct. Cl. 1963) (holding that a mandatory clause will be read into in a contract, even it had been omitted, if that clause reflects a significant or deeply ingrained strand of public procurement policy).

[11]Innovative Techs., Inc., ASBCA No. 61686, 2023 WL 5322866 (July 26, 2023).

[12]The SCA does have certain narrow statutory or administrative exceptions and exemptions that apply to a narrow category of services. 41 U.S.C.A.

§ 6702(b); 29 C.F.R. § 4.123; FAR 22.1003-3; FAR 22.1003-4. Most of these exemptions, however, are narrowly crafted and interpreted. We would recommend seeking legal counsel as part of making (and documenting) any exception or exemption determination—especially because the DOL and the FAR both require certain exemptions to be supported by contractor certifications. See, e.g., 29 C.F.R. § 4.123(e)(1)(ii)(D), (e)(2)(ii)(G); FAR 22.1003-4(c)(2)(iv), (d)(2)(vii) "Exemption From Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification," FAR 52.222-48; "Exemption From Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification," FAR 52.222-52.

[13]41 U.S.C.A. § 6701(3); 29 C.F.R. § 4.113(b); FAR 52.222-41(a).

[14]41 U.S.C.A. § 6701(3)(C); 29 C.F.R. § 4.113(b); 29 C.F.R. § 4.156; FAR 52.222-41(a); see 29 U.S.C.A. § 213(a)(1); 29 C.F.R. pt. 541.

[15]29 C.F.R. § 4.153.

[16]41 U.S.C.A. § 6701(3)(c); 29 C.F.R. § 4.113(b); 29 C.F.R. § 4.156; FAR 52.222-41(a); see 29 U.S.C.A. § 213(a)(1); 29 C.F.R. pt. 541.

[17]29 C.F.R. pt. 541.

[18]Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 89 Fed. Reg. 32842 (Apr. 26, 2024) (amending 29 C.F.R. pt. 541).

[19]29 C.F.R. § 4.153.

[20]See 29 C.F.R. pt. 10; 29 C.F.R. pt. 23; FAR 22.1002-5; FAR subpt. 22.19; "Minimum Wages for Contractor Workers Under Executive Order 14026," FAR 52.222-55; see also Minimum Wage for Federal Contracts Covered by Executive Order 14026, Notice of Rate Change in Effect as of January 1, 2024, 88 Fed. Reg. 66906 (Sept. 28, 2023).

[21]See 29 C.F.R. pt. 13; FAR subpt. 22.21; "Paid Sick Leave Under Executive Order 13706," FAR 52.222-62.

[22]29 C.F.R. § 4.179.

[23]Minimum Wage for Federal Contracts Covered by Executive Order 14026, Notice of Rate Change in Effect as of January 1, 2024, 88 Fed. Reg. 66906 (Sept. 28, 2023).

[24]See 29 C.F.R. pt. 23; FAR subpt. 22.19; see, e.g., 88 Fed. Reg. 66906.

[25]See FAR 22.1904(b); FAR 52.222-55(b)(3).

[26]See "Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts)," FAR 52.222-43; "Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment," FAR 52.222-44.

[27]See Federal Acquisition Regulation: Increasing the Minimum Wage for Contractors, 87 Fed. Reg. 4117, 4118 (Jan. 26, 2022) (stating that language of the FAR 52.222-55 clause and the price adjustment calculation process and examples in FAR 22.1904(b)(2) do not prohibit an agency from permitting a price increase to address wage compression impacts of modifying the contract to include the new minimum wage rate "if the agency determines such an adjustment will result in better contract performance").

[28]See Adjusting Wages To Address Wage Compression Caused by the Federal Minimum Wage Increase, GSA Acquisition Letter MV-21-08 (Mar. 7, 2022) , available at https://www.gsa.gov/system/files/AL%20MV-21-08_0.pdf.

[29]See https://www.denvergov.org/files/assets/public/v/3/auditor/documents/denver-labor/2024/materials/citywide-minimum-wage-overview-eng-2024.pdf.

[30]Didlake, Inc. v. Gen. Servs. Admin., CBCA No. 7769, 7911, 2024 WL 1814717 (Apr. 23, 2024)

[31]See FAR 22.1007; FAR 22.1012.

[32]FAR 22.1007.

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