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INTRODUCTION

Service Contract Act (SCA) wage determinations set forth the prevailing wages and benefits that are to be paid to service employees working on covered contracts exceeding \$2,500.

◇ **Wages**

- ◇◇ Wages are the monetary compensation provided employees. The minimum monetary wages required under the SCA are usually listed in wage determinations applied to covered contracts exceeding \$2,500, as hourly wage rates for the various classes of service employees. 29 C.F.R. § 4.161.
- ◇◇ Where no SCA wage determination applies to a covered service contract, such as those valued at \$2,500 or less, the SCA requires payment of not less than the minimum wage under section 6(e)(1) of the FLSA to service employees engaged in contract work. 29 C.F.R. § 4.159.
- ◇◇ If an employee works in different capacities in the performance of a covered contract, then the time spent the employee spends in work properly related to each classification should be segregated and paid according to the wage rate specified for each class of work . If the contractor cannot provide affirmative proof (employer records) of the hours spent in each class of work, then the contractor must pay the employee the highest of such rates in the applicable wage determination for all hours worked in the workweek. 29 C.F.R. § 4.169.
- ◇◇ Workers with disabilities and apprentices that meet certain criteria may work on SCA-covered contracts at wage rates below those contained in the applicable SCA wage determination under an “administrative exemption” pursuant to section 4(b) of SCA. 29 C.F.R. §§ 4.6(o) – 4.6(p).

◇ **Fringe Benefits**

- ◇◇ As provided in section 2(a)(2) of the SCA, fringe benefits include:
 - [M]edical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other *bona fide* fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. 29 C.F.R. § 4.162.
- ◇◇ Fringe benefits listed above are illustrative of those that may be furnished.

- ◇ **Two Separate Requirements – Monetary Wages and Fringe Benefits**
 - ◇◇ The SCA monetary wage requirement and the fringe benefit requirement are two separate requirements in the SCA. SCA §§ 2(a)(1) and 2(a)(2).
 - ◇◇ SCA wage determinations generally state the fringe benefit requirements after the listing of monetary wage rates that apply to each classification of service employee.
 - ◇◇ The fringe benefits required under the SCA must be furnished, separately from and in addition to the specified monetary wages, by the contractor/subcontractor to the employees engaged in the performance of a covered contract. 29 C.F.R. § 4.170.
 - ◇◇ An employer must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

EMPLOYEE NOTIFICATION AND POSTER

SCA § 2(a)(4), 29 C.F.R. § 4.6(e) and FAR, 48 C.F.R. § 52.222-41(g)

- ◇ The SCA contract clauses require contractors on covered contracts to notify each service employee commencing work the contract of the minimum monetary wage and any fringe benefits required to be paid under the contract (in accord with the SCA wage determination in the contract), or post the wage determination.
- ◇ Contractors are also required to post the “Notice to Employees Working on Government Contracts” (WH Publication 1313) in a prominent and accessible place at the worksite. WH 1313 is available at:

<http://www.dol.gov/whd/regs/compliance/posters/sca.htm>

TIMELY PAYMENT OF WAGES AND FRINGE BENEFITS

- ◇ **Wages**
 - ◇◇ The SCA does not permit pay periods longer than semi-monthly (twice a month). Wage payments at greater intervals are not proper payments in compliance with SCA. 29 C.F.R. §§ 4.6(h) and 4.165(b).
 - ◇◇ Failure to pay for certain hours of work at the required rate cannot be offset by reallocating excess payments made for other hours. 29 C.F.R. § 4.166.
- ◇ **Fringes**
 - ◇◇ Payments to employees in cash for fringe benefits must be made promptly on the regular payday for wages. 29 C.F.R. § 4.165(a)(1).
 - ◇◇ Payments to “bona fide” fringe benefit plans may be made on a periodic payment basis that is not less often than quarterly. 29 C.F.R. § 4.175(d)(1).

HOURS WORKED

- ◇ The hours worked by employees on an SCA-covered service contract are determined in accordance with the principles established under the Fair Labor Standards Act (FLSA), as set forth in 29 C.F.R. Part 785. 29 C.F.R § 4.178.
- ◇ In general, FLSA hours worked by an employee include all periods in which the employee is “suffered or permitted” to work, whether or not required to do so, and for all periods of time during which the employee is required to be on duty or to be on the employer’s premises or to be at a prescribed workplace.
- ◇ Hours worked subject to the compensation provisions of the SCA are those in which the employee is engaged in performing work on SCA-covered.
 - ◇◇ In any workweek where the contractor/subcontractor is not exclusively engaged in work on a covered service contract, the contractor should identify separately and accurately in its records, or by other means, those periods during which its employees are engaged in work on a covered service contract. 29 C.F.R. § 4.179.
 - ◇◇ In the absence of records that adequately segregate periods of covered contract work from non-covered work, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of contract performance. 29 C.F.R. § 4.179.

“BONA FIDE” FRINGE BENEFITS

- ◇ An employer may discharge his/her obligation to provide SCA fringe benefits by paying the specified fringe benefit contributions to an trustee or third person pursuant to a “bona fide” fund, plan, or trust on behalf of covered employees. Examples are life or health insurance, pension plan or retirement plans. 29 C.F.R. §§ 4.170 and 4.171.
- ◇ To be considered a “bona fide” fringe benefit for purposes of the SCA, a fringe benefit plan, fund or program must constitute a legally enforceable obligation which meets the following criteria. 29 C.F.R. § 4.171(a).
 - ◇◇ The fringe benefit plan, fund or program must be specified in writing and must be communicated in writing to the affected employees.
 - ◇◇ The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.
 - ◇◇ The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.
 - ◇◇ Contributions must be made pursuant to the terms of such plan, fund, or program. Any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with 29 C.F.R. § 4.168. (No contribution towards fringe benefits made by the employees themselves or provided from monies deducted from their wages may be included or used by an employer in satisfying any part of any SCA fringe benefit obligation.)
 - ◇◇ Generally, the contractor’s contributions must be paid irrevocably to a trustee or third person, no less often than quarterly, pursuant to an insurance agreement, trust or other funded arrangement (except as indicated below with regard to certain “unfunded” fringe benefit plans).
 - ◇◇ Unfunded fringe benefit plans:

With the exception of fringe benefit plans to provide vacations and holidays, unfunded "self-insured" plans under which a contractor typically pays insurance claims out of pocket to cover fringe benefit obligations are normally not considered “bona fide” plans or equivalent benefits for purposes of SCA. 29 C.F.R. § 4.171(b). A contractor must request approval by the WHD Administrator for an unfunded self-insured plan. 29 C.F.R. § 4.171(b)(2).
- ◇ The following are not “bona fide” fringe benefits (nor can they be considered equivalent benefits for SCA purposes):

- ◇◇ Benefit plans or trusts which are disapproved by the Internal Revenue Code as not satisfying the requirements of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974. 29 C.F.R. § 4.171(a)(5).
- ◇◇ Any benefit required by any other federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security. 29 C.F.R. § 4.171(c).
- ◇◇ Board, lodging or other facilities for which the cost or value, determined in accordance with regulations under the FLSA contained in 29 C.F.R. Part 531, is creditable toward the monetary wages specified under the SCA. 29 C.F.R. §§ 4.167 and 4.171(d).
- ◇◇ Facilities primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor, such as relocation expenses, travel and transportation expenses incident to employment; incentive or suggestion awards, recruitment bonuses; tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business; and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, the SCA contract, by law, or by the nature of the work, to wear such items. 29 C.F.R. §§ 4.168 and 4.171(e).
- ◇◇ Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues. 29 C.F.R. § 4.171(f).
- ◇ Fringe benefits and overtime pay:
 - ◇◇ CWHSSA requires that on contracts to which it applies, any laborer or mechanic, including any guard or watchmen, who performs over 40 hours of contract work in a workweek must be compensated "at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek". The basic rate of pay excludes "bona fide" fringe benefits and cash equivalent payments.
 - ◇◇ 29 C.F.R. § 778.215 and 29 C.F.R. §§ 4.177(e) and 4.182 discuss the parallel exclusion of fringe benefits from the "regular rate" for overtime purposes under the FLSA.

FRINGE BENEFIT REQUIREMENTS – HEALTH AND WELFARE BENEFITS

- ◇ The health and welfare fringe benefit requirement for the covered service employees is indicated in the applicable contract wage determination.
- ◇ There are three types of health and welfare fringe benefit requirements under the SCA:
 - ◇◇ **“Fixed cost” per employee health and welfare benefit requirement** – Where the SCA wage determination states this type of fringe benefit, it is required to be paid for each individual employee and the benefit is computed on the basis of “all hours paid for” up to 40 per week and 2080 per year. 29 C.F.R. § 4.175(a).
 - ◇◇ **“Average cost” health and welfare fringe benefit** – Where the SCA wage determination states this type of fringe benefit, the employer contribution is required to average at least \$3.16 per hour computed on the basis of all hours worked by service employees employed on the contract (or portion of the contract to which the wage determination applies). 29 C.F.R. § 4.175(b).
 - ◇◇ Pursuant to section 4(c) of the SCA, **collectively bargained fringe benefits** are required to be paid by a successor contractor under a contract to furnish substantially the same services as a predecessor contractor. 29 C.F.R. § 4.53.
- ◇ A single nationwide health and welfare rate method has been established for determining the health and welfare fringe benefit requirement incorporated in SCA wage determinations. Since June 1, 1997, adjustments to the single rate for the health and welfare fringe benefits listed on prevailing wage determinations are made annually. 29 C.F.R. § 4.52(b); All Agency Memorandum No. 188 (May 22, 1997).

“Fixed Cost” Per Employee Health and Welfare Fringe Benefit

- ◇ Most SCA wage determinations require health and welfare benefits to be paid on a per hour per employee basis. Such wage determinations state the health and welfare fringe benefit requirement as a simple rate. Annual adjustments are based on new data. For example, on June 1, 2009, the amount specified for upcoming contracts was raised from \$3.16 to \$3.35 per hour. Thus, wage determinations issued on or about June 1, 2007, listed the “fixed cost” health and welfare fringe benefit amount as “\$3.16 an hour, \$126.40 a week, or \$547.73 a month.” 29 C.F.R. § 4.175(a).
- ◇ This method requires health and welfare benefits in terms of a fixed contribution per hour on behalf of each service employee working on the contract. Under this type of wage determination, the specified health and welfare benefit is due each service employee on the basis of “all hours paid for,” including paid vacations, holidays, and sick leave, up to a maximum of 40 hours per week and 2,080 hours per year.

- ◇◇ Under this type of wage determination, the actual benefits may differ among employees, so long as the total amount paid by the contractor for fringe benefits (and/or cash equivalents) provided to each individual, on an hourly basis, totals at least the fringe benefit rate specified in the contract wage determination for the work the individual performs for all his/her paid hours up to 40 per week.
- ◇◇ The type(s) and amount of benefits (if any), or cash equivalents to be provided is strictly a matter to be decided by the employer.
- ◇◇ Employees excluded from participation in a fringe benefit plan must be furnished equivalent bona fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan. On the other hand, it is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from the plan at all times. For example, an employee who is eligible to participate in an insurance plan may be prohibited from receiving benefits from the plan during a 30-day waiting period. Contributions made on behalf of these employees would be creditable against the contractor's fringe benefit obligations. 29 C.F.R. § 4.175(c)(1).
- ◇◇ **Example: Bi-weekly Payroll** - \$3.16 per hour paid up to 40 hours a week per each employee:

<u>Employee</u>	<u>Hours Paid For</u>	<u>Cost of Fringe Benefits</u>	<u>Cash in Lieu of Fringes</u>	<u>Total Compensation</u>
Libby	80	\$162.80	\$90	\$252.80 (/ 80 = \$3.16)
Jean	*100	\$180.80	\$72	\$252.80 (/ 80 = \$3.16)
Ann	20	0	\$63.20	\$ 63.20 (/ 20 = \$3.16)
Tim	80	\$252.80	0	\$252.80 (/ 80 = \$3.16)
Tom	60	\$160.00	\$29.60	\$129.60 (/ 60 = \$3.16)

* Note 20 hours of overtime excluded from payments.

“Average Cost” Health and Welfare Fringe Benefit

- ◇ In rare instances an average cost (even-numbered) wage determination applies. Such wage determinations apply only where an even-numbered wage determination applied to the preceding contract with the same agency contracts for the same services at the same location
- ◇ The \$3.16 per hour health and welfare benefit is an average cost fringe benefit requirement computed on the basis of **“all hours worked.”**
- ◇◇ The term “all hours worked” includes overtime hours and is not limited to 40 hours per week or 2,080 hours per year for each employee; the term **“all hours worked”** does not include paid leave hours, such as for vacations, holidays, or

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sick leave. Also, it does not include unpaid leave time, such as that provided under the Family and Medical Leave Act.

- ◇◇ Under the average cost concept, the fringe benefits provided by the contractor may vary among individual service employees, and compliance is achieved when the actual cost of these benefits divided by the total hours worked by service employees in a payment period equals or exceeds the amount required by the wage determination. 29 C.F.R. § 4.175(b).
- ◇ The types and amounts of benefits, if any, to be provided, and the eligibility requirements for service employees to participate in a fringe benefit plan, are decided by the contractor.
- ◇ If the contractor's contributions average less than the amount required by the wage determination during a payment period, then the contractor must make up the deficiency by providing **cash equivalent payments** to all service employees who worked on the contract during the payment period.
- ◇ Cash equivalent payments under average cost fringe benefit requirements can only be made in an amount determined to be deficient after payments have been made to the fringe benefit plans, and the payments must be made equally to all covered service employees.

Examples:

- (a) \$3.16 average cost requirement - compliance through fringe benefit plan **contributions only:**

<u>Employee</u>	<u>Hours Worked</u>	<u>Employer Contributions for Fringe Benefits</u>
Libby	250	\$900
Jean	150	\$450
Ann	250	\$900
Tim	50	0
Tom	<u>100</u>	<u>\$350</u>
	800	\$2600

\$2600 (total contributions)/800 (total hours) = \$3.25 average

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- (b) \$3.16 average cost requirement - compliance through fringe benefit plan
contributions and cash payments:

<u>Employee</u>	<u>Hours Worked</u>	<u>Employer Contributions for Fringe Benefits</u>
Libby	250	\$650
Jean	150	\$450
Ann	250	\$650
Tim	50	0
Tom	<u>100</u>	<u>\$250</u>
	800	\$2,000

\$2000 (total contributions)/800 (total hours) = \$2.50 average

Libby	250	x	\$.66	\$165
Jean	150	x	\$.66	\$ 99
Ann	250	x	\$.66	\$165
Tim	50	x	\$.66	\$ 33
Tom	<u>100</u>	x	\$.66	<u>\$ 66</u>
	800			\$528

Total contribution: \$2000 (fringe benefits) + \$528 (cash) = \$2528

\$2528 (contributions)/800 (hours) = \$3.16

Collectively Bargained Fringe Benefits

- ◇ Section 4(c) of the SCA provides that no contractor or subcontractor under a contract which succeeds a contract subject to the SCA, under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits (including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits) provided for in a collective bargaining agreement (CBA) to which such service employees would have been entitled if they were employed under the predecessor contract. 29 C.F.R. § 4.1b.
- ◇ In almost all cases, the DOL issues a wage determination that recognizes the application of the fringe benefits (and wages) contained in the predecessor contractor's CBA. However, section 4(c) of the SCA is self-executing, and can apply regardless of whether such a contract wage determination was issued or incorporated in the contract. Certain administrative requirements and limitations may affect application of the predecessor contractor's negotiated wages and fringe benefits. 29 C.F.R. §§ 4.1b(b).
- ◇ Section 4(c) of the SCA does not require a successor to follow terms of the CBA other than the wage and fringe benefit provisions.

- ◇ Where section 4(c) applies, the successor contractor may discharge the obligation to furnish fringe benefits by any combination of bona fide fringe benefits and equivalent cash payments (as is the case where no predecessor's CBA is involved).
- ◇ As the successor is not permitted to pay less than the fringe benefits (and wages) to which employees would have been entitled under the predecessor contractor's CBA, any interpretation of the wage and fringe benefit provisions of the CBA, where its provisions are unclear, must be based on the intent of the parties to the CBA, provided that such interpretation is not violative of law. Thus, some principles discussed in regulations 29 C.F.R. §§ 4.170 – 4.177 regarding specific interpretations for the fringe benefit provisions of SCA prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). (Similarly, some principles discussed in 29 C.F.R. § 4.167, regarding wage payments, may also not be applicable in section 4(c) successorship situations.)
- ◇ In 29 C.F.R. § 4.163, regulatory guidance is provided specifically concerning compensation standards, including fringe benefits, under section 4(c) of the SCA.

FRINGE BENEFIT REQUIREMENTS – VACATION BENEFITS

- ◇ Vacation fringe benefits can be determined from the language of the fringe benefit provision in the wage determination.

Example:

“One week paid vacation after one year of service with a contractor or successor.” 29 C.F.R. § 4.173(a). Two factors must be considered for vacation benefits under this wage determination requirement:

- ◇◇ The total length of time an employee has been in the employer’s service, both performing commercial work and performing on the federal contract, and
 - ◇◇ The total length of time an employee has been employed in any capacity in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same federal facility.
- ◇ By requiring prospective contractors who employ the same personnel to provide the same vacation benefits as an incumbent contractor, equity in bidding is achieved – otherwise the incumbent contractor would be at a distinct disadvantage when bidding.

Note: Not less than 10 days before contract completion, the incumbent prime contractor must furnish the contracting officer a list of all service employees who were on the contractor or subcontractor’s payroll during the last month of the contract, together with the employees’ anniversary dates of employment (when employment began with the incumbent as well as with any predecessor contractors). A copy of this list is provided to the successor contractor. 29 C.F.R. § 4.6(1)(2).
 - ◇ Vacation need not be paid immediately but must be provided at a mutually agreed upon time or payment made before the next anniversary date of employment, termination of employment, or completion of the current contract, whichever occurs first. 29 C.F.R. § 4.173(c)(2).
 - ◇ If an employee’s rate increases during the period of the contract, the rate applicable to computation of any required vacation benefits is the hourly rate in effect in the workweek in which the paid vacation (or the cash equivalent) is provided, unless the wage determination specifies otherwise. 29 C.F.R. § 4.173(e).
 - ◇ Whether the previous contract was covered by a wage determination is immaterial.
 - ◇ The contractor by whom a person is employed at the time the vacation vests (i.e., the employee’s anniversary date of employment) is liable for the full fringe benefits. 29 C.F.R. § 4.173(d).

- ◇ There is no accrual or vesting of vacation eligibility before the employee's anniversary date and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in the wage determination. 29 C.F.R. § 4.173(c)(1).
 - ◇◇ For example, if an employee entitled to one week paid vacation after one year of service has worked thirteen months for an employer (or one month with a successor contractor after one year with the predecessor contractor) is separated without receiving any vacation benefit, he would be entitled to one week of paid vacation. The employee would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless so stated in the applicable wage determination.

Continuous service

- ◇ If an employee's total length of service adds up to one year, he/she would be eligible for one week's vacation. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. 29 C.F.R. § 4.173(b).
 - ◇◇ The term continuous service does not require the combination of two entirely separate periods of employment. Whether or not there is a break in continuity so as to deprive an employee of his or her vacation entitlement is dependent upon the facts in a particular case.
 - ◇◇◇ The primary consideration in making a determination of "break in service" is what caused the interruption and why did it occur, not the length of time of the break.
 - ◇◇◇ In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work because of reasons beyond their control, there would not be a break in service. (Example of situation where a break has not occurred - employee absent for five months due to illness but employed continuously for three years.) 29 C.F.R. § 4.173(b).
 - ◇◇ If an employee quits or is fired for cause, a break in service would have occurred even if the employee was rehired at a later date. However, a contractor may not discharge and rehire at a later date in order to evade vacation fringe benefits requirements. 29 C.F.R. § 4.173(b)(2).

**FRINGE BENEFIT REQUIREMENTS –
HOLIDAY BENEFITS**

- ◇ An employee's entitlement to holiday pay vests by working in the workweek in which the named holiday occurs, or is on paid sick leave or vacation leave. 29 C.F.R. §§ 4.174(a)(1) – (2).
- ◇ Unless there is a provision in the wage determination to the contrary, an employee must receive the holiday fringe benefits even though he/she worked only part of the week in which the holiday occurred.
- ◇ An employee need not be paid for a holiday that occurs earlier in the workweek prior to his/her hiring, provided the holiday does not occur during the first week of the contract. 29 C.F.R. § 4.174(b).
- ◇ A contractor need not provide holiday pay to any employee who does not perform any work in the workweek in which the holiday occurred provided that the employer did not lay off the employee during that workweek to avoid having to pay for the holiday. 29 C.F.R. § 4.174(a)(2).
- ◇ If the SCA wage determination applicable under a contract does not include a paid holiday provision for any day declared by the President of the United States to be a holiday, the contractor is not required to pay covered service employees for that day off, even if they do not work that day. For example if the building where they work is closed because of a presidential declaration affecting federal employees on a Friday, December 26, and the contract wage determination does not indicate that holiday pay is required for the day, holiday pay would not be required under SCA. Such pay would be a matter of discretion for the contractor, and contract payments for such time not worked would be a procurement matter within the purview of the contracting agency.

EQUIVALENT BENEFITS

The employer may discharge the obligation to provide specified fringe benefits (including vacation and holiday pay) by:

- ◇ Furnishing at least the benefit amount listed on the contract wage determination for each employee to a third party or trustee, such as for life or health insurance and/or a pension plan, or by
- ◇ Furnishing equivalent combinations of bona fide fringe benefits (the types of fringe benefits may be different for individual workers), or by
- ◇ Making equivalent payments in cash to the employee. “Equivalent” means equal in terms of monetary cost to the employer, or by
- ◇ Providing any combination of bona fide fringe benefits and cash payments needed to meet the fringe benefit requirements under the contract.

Cash equivalents for fringe benefits 29 C.F.R. § 4.177.

- ◇ Examples of cash equivalents:
 - ◇◇ If a wage determination requires health and welfare benefits of \$3.16 per hour, that fringe benefit obligation may be discharged by paying the employee \$3.16 per hour in cash in addition to his/her monetary wage, if separately stated in the employer’s records.
 - ◇◇ If a wage determination requires a successor contractor to pay the fringe benefits set forth in a collective bargaining agreement which has a health and welfare benefit of \$2.30 per hour, and a pension benefit of \$1.50 per hour, the fringe benefit obligation may be discharged by paying the employee \$3.80 per hour in cash in addition to his/her monetary wage, if separately stated in the employer’s records.
- ◇ Cash equivalents for fringe benefits stated in terms other than a cash amount:
 - ◇◇ Where fringe benefits are stated as a weekly or monthly amount, the hourly cash equivalent can be determined as shown in the following example.

Example: The fringe benefits for pension is \$120 per week, the hourly cash equivalent is \$120 divided by 40 hours or \$3.00 per hour.

Note: If the fringe benefits do not specify the daily or weekly hours of work for which fringe benefits are to be measured, a standard 8-hour day, 40-hour workweek will be applicable.

- ◇◇ Where fringe benefits are specified in terms such as “ten (10) paid holidays per year” or “one week paid vacation after one year of service,” the employee’s hourly rate of pay is multiplied by the number of hours making up the paid vacation or holidays to determine annual cost. (A standard 8-hour day and 40-hour week will be applicable unless the wage determination specifies otherwise.) The total annual cost is divided by 2,080 hours (40 hours a week x 52 weeks) to arrive at an hourly cash equivalent.

Example: The fringe benefit is 10 paid holidays per year.
Employee’s hourly rate is \$9.00.
 $\$9.00 \times 80 \text{ hours (10 days of 8 hours each)} = \$720.$
 $\$720/2,080 \text{ hours} = \0.346 per hour.

Example: The fringe benefit is one week paid vacation after one year of service. Employee’s hourly rate is \$10.00.
 $\$10.00 \times 40 \text{ hours} = \$400.$
 $\$400/2,080 \text{ hours} = \0.19 per hour.

- ◇◇ Where an employer decides to pay an hourly cash equivalent instead of the vacation fringe benefit, the cash payments need not commence until the employee has completed “one year of service.” However, if the employee should terminate employment before receiving the full cash amount of the vested fringe benefit due, the employee must be paid the full amount of any difference remaining as a final cash payment.

Example: An employee became eligible for one week paid vacation on May 1 and the employer elects to pay the hourly cash equivalent to the employee in lieu of the paid vacation beginning that date. The employee terminates his employment on July 1. If the employee has received only one-sixth (2 of 12 months) of the vacation to which he/she is entitled, the employee is still due the remaining five-sixths (10 of 12 months) of the vacation pay upon termination.

DISCHARGING WAGE AND FRINGE BENEFIT OBLIGATIONS

- ◇◇ A contractor/subcontractor cannot offset an amount of monetary wages paid in excess of that required by the applicable wage determination in order to satisfy the fringe benefit obligations of the applicable wage determination. 29 C.F.R. § 4.170. In other words, a contractor may not credit wage payments higher than the applicable minimum monetary wage to satisfy a fringe benefit deficiency, or vice versa.
- ◇◇ Thus, in the following example, where a fixed cost per employee H&W fringe benefit applies, and the contractor provides vacation and holiday benefits the wage determination specifies, available records show that an individual service employee is being paid a monetary wage of \$11.00 per hour, and the employer pays \$2.41 per hour (up to 40 hours per week) for the employee's health insurance, the fringe benefit requirement would not be met:

Wage Determination requires:	Contractor has paid:
Wage \$10.25	Wage \$11.00
<u>H&W benefits</u> 3.16	<u>H&W benefits</u> 2.41
Total \$ 13.41	Total \$13.41

- ◇◇ In this example, the contractor/subcontractor would be in compliance with the wage requirement of the applicable minimum monetary wage requirement. However, the fringe benefit requirement would not be met. The cost of the fringe benefits furnished payment is \$.75 below the minimum listed in the wage determination.
- ◇◇ As discussed above, the obligation to furnish the specified benefits may be discharged by furnishing any equivalent combination of fringe benefits, or by making equivalent or differential payments in cash. Thus, in the example above, if the contractor/subcontractor met the vacation and holiday benefit requirements, as listed on the wage determination, and beyond that, only provided health insurance benefits by contributing an hourly amount of \$2.41 for the worker's health insurance, the remaining \$.75 could be paid as a cash equivalent, or that amount could have been contributed to provide another benefit such as a 401k plan, to be in compliance with the applicable fringe benefit obligation of \$3.16 H&W benefit required by the wage determination. However, it should be noted that employer contributions to bona fide fringe benefit plans must be regularly, at least quarterly.

TEMPORARY AND PART-TIME EMPLOYMENT

- ◇ SCA makes no distinction between temporary, part-time, and full-time employees. In the absence of an expressed limitation on a wage determination, wage and fringe benefit requirements apply equally to all such employees. 29 C.F.R. § 4.165(a)(2).
- ◇ However, part-time employees need only be provided with a proportionate amount of the vacation and holiday fringe benefits due full-time employees. 29 C.F.R. § 4.176.

Examples:

- ◇◇ Full-time employees due one week vacation (40 hours). A part-time employee works a regularly scheduled workweek of 20 hours. The part-time employee is due 20 hours ($20/40 = 1/2$) the hours due the full-time worker's paid vacation, based on working half the time the full-time employee works.
- ◇◇ Full-time employee works an 8 hour day and receives 8 hours pay as a holiday benefit. A part-time employee works 5 hours per day. The part-time employee is due 5 hours pay ($5/8$) as holiday benefit.
- ◇◇ Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs, or with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. 29 C.F.R. § 4.176(a)(3).
- ◇◇ Health and welfare fringe benefits must be paid at the specified amount in the wage determination for temporary and part-time employees. In general, the temporary and part-time employees are entitled only to an amount proportional to the amount of time spent in contract work. 29 C.F.R. § 4.176.

OVERTIME REQUIREMENTS OF FLSA AND CWHSSA

- ◇ The SCA does not require overtime pay, but FLSA and/or CWHSSA overtime pay requirements may apply to SCA contracts. 29 C.F.R. §§ 4.180 and 4.181.
- ◇ FLSA has the broadest application and contractors/subcontractors performing on contracts subject to SCA may be required to compensate their non-exempt employees working on or in connection with SCA-covered contracts for overtime work pursuant to its overtime pay standards.
- ◇ CWHSSA applies to any service contract in excess of \$100,000 that employs laborers, mechanics, guards, and watchmen.
- ◇ CWHSSA applies to **laborers, mechanics, guards, and watchmen** for the time spent on covered contract work only (i.e., all time each employee spent working **on covered contracts** - excluding all commercial, non-government work). (Service employees on the contract who are not laborers, mechanics, guards or watchmen, are not subject to CWHSSA).
- ◇ FLSA requires the payment of time and one-half the “regular rate of pay” for all hours worked in excess of 40 hours in a week.
- ◇ CWHSSA requires the payment of time and one-half the “basic rate of pay” for all hours worked in excess of 40 hours in a week. The “basic rate of pay” under CWHSSA is the individual’s straight time hourly rate and can not be less than the “basic hourly rate” required in an applicable SCA wage determination.
- ◇ Under the SCA and FLSA, amounts paid as fringe benefits – both contributions to “bona fide” fringe benefit plans and cash payments made to meet fringe benefit requirements in the wage determination – are excluded in computing overtime obligations. This exclusion applies to CWHSSA as well. 29 C.F.R. § 4.177(e) and 29 C.F.R. § 778.7.
- ◇ For example, for an employee who worked 44 hours on a covered contract as a janitor, where the wage determination rate for a janitor is \$15.00 (basic hourly rate) plus \$3.16 in health and welfare fringe benefits per hour per employee, the correct computations under SCA and CWHSSA would be:

$$\begin{array}{rcl}
 40 \text{ hours} \times \$ 3.16 & = & \$126.40 \text{ in fringe benefits} \\
 44 \text{ hours} \times \$15.00 & = & \$600.00 \text{ for prevailing wages} \\
 4 \text{ hours} \times \$15.00 \times \frac{1}{2} & = & \underline{\$ 30.00} \text{ for CWHSSA O/T earnings} \\
 & & \$756.40
 \end{array}$$

Note that a wage determination including the “average cost” benefits would compute such benefits for **all** hours worked ($\$3.16 \times 44 = \139.04).

- ◇ If an employee worked in two or more classifications at different rates during a workweek, the overtime pay may be computed based on the hourly rate in effect for the hours worked beyond 40 hours in the workweek so long as the employee agrees. (The contractor's records must clearly identify the hours worked in the separate job classifications.) Overtime also may be computed based on the weekly average rate (or "regular rate") paid for all hours worked. 29 C.F.R. §§ 778.6, 778.115 and 778.415 – 778.419.
- ◇ The following examples demonstrate two methods for computing the overtime premium pay under FLSA and/or CWHSSA for an employee who worked in different job classifications and at different rates of pay in the same workweek.
 - ◇◇ An employee is hired to perform work on a covered service contract in two job classifications: painter and electrician. The wage determination rate for an electrician is \$22.00 (basic hourly rate). The wage determination rate for a painter is \$20.00 (basic hourly rate).

Method 1: Computation of the overtime premium based on the "rate in effect" when the overtime hours were worked. (See section 7(g) of the FLSA.)

	S	M	T	W	T	F	S
Painter hours		8	8	8			
Electrician hours					8	8	4

In this example the overtime hours occurred on Saturday. The overtime **premium** could be computed based as follows:

$$\frac{1}{2}(\$22.00) \times 4 = \$44$$

Method 2: Computation of the overtime **premium** based on the "regular rate" for the workweek.

Step 1: Determine the straight time wages due, excluding fringe benefits:

24 hours at the painter's rate of \$20.00	=	\$480.00
20 hours at the electrician's rate of \$22.00	=	<u>440.00</u>
Total straight time wages	=	\$920.00

Step 2: Calculate the "regular rate":

$$\$920.00/44 \text{ hours worked} = \$ 20.91 \text{ regular rate}$$

Step 3: Compute the overtime premium due:

$$\frac{1}{2}(\$20.91) \times 4 \text{ overtime hours worked} = \$41.82$$

RECORDKEEPING

Basic Payroll Records

The recordkeeping requirements of the SCA are stated in the SCA contract clauses. 29 C.F.R. § 4.6(g). The employer is required to maintain the following records for each employee subject to the SCA and to make these records available for inspection and/or transcription on the request of an authorized representative of the Wage and Hour Division (WHD). These records must be maintained for three years from the completion of the work. Also, the contractor may be required to provide the basic time and payroll records required under the FLSA. 29 C.F.R. § 516.2.

- ◇ Name, address, social security number of each employee.
- ◇ The correct work classification(s), rate(s) of monetary wages paid and fringe benefits provided, rate(s) of cash payments in lieu of fringe benefits, and total daily and weekly compensation paid to each employee.

Note: If the employer chooses to pay a cash equivalent to meet the fringe benefit requirements of the wage determination, the cash payment must be clearly identified as fringe benefits in the employer's records. 29 C.F.R. § 4.170.
- ◇ The number of daily and weekly hours worked by each employee subject to SCA requirements.
- ◇ Any deductions, rebates or refunds from the total daily or weekly compensation of each employee.
- ◇ A list of monetary wages and fringe benefits for which wages rates and fringe benefits have been determined in accordance with the contract clause setting forth the conformance procedures. 29 C.F.R. § 4.6(b).
- ◇ The list of a predecessor contractor's employees furnished to the contractor pursuant to 29 C.F.R. § 4.6(1)(2).
- ◇ Relevant records for any service employee(s) covered by a WHD certificate that allows for the payment of special minimum wages to workers with disabilities under Section 14 of the FLSA, and for any apprentices registered in an approved "bona fide" apprenticeship program. SCA: 29 C.F.R. §§4.6(o) – (p); FLSA: 29 C.F.R. Part 525; National Apprenticeship Act: 29 C.F.R. § 29.6.