

SERVICE CONTRACT ACT

ORGANIZING_ABOUT THE SERVICE CONTRACT ACT OF 1965, AS AMENDED

The Service Contract Act applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services in the United States through the use of service employees. Contractors and subcontractors performing on such Federal contracts must observe minimum wage and safety and health standards, and must maintain certain records, unless a specific exemption applies.

Every service employee performing any of the Government contract work under a service contract in excess of \$2,500 must be paid not less than the monetary wages, and must be furnished fringe benefits, which the Secretary of Labor has determined to be prevailing in the locality for the classification in which the employee is working or the wage rates and fringe benefits (including any accrued or prospective wage rates and fringe benefits) contained in a predecessor contractor's collective bargaining agreement. The wage rates and fringe benefits required are specified in the SCA wage determination included in the contract. If no wage determination has been made applicable to the contract, employees performing work under the contract must be paid not less than the federal minimum wage provided in section 6(a)(1) of the [Fair Labor Standards Act](#).

Service contracts which do not exceed \$2,500 are not subject to wage and fringe benefit determinations or to the safety and health requirements of the SCA. However, the SCA does require that employees performing work on such contracts be paid not less than the above minimum wage rate provided by section 6(a)(1) of the Fair Labor Standards Act.

All provisions of the SCA except the safety and health requirements are administered by the Wage and Hour Division.

Frequently Asked Questions

I. General

Does the SCA apply to all government contract work?

No, the SCA does not apply to: 1) contracts for construction, alteration and/or repair, including painting and decorating of public buildings or public works; 2) work covered by the Walsh-Healey Public Contracts Act; 3) contracts for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect; 4) contracts for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934; 5) contracts for public utility services, including electric light and power, water, steam, and gas; 6) contracts for direct services to a Federal agency by an individual or individuals; 7) contracts for the operation of postal contract stations; and 8) services performed outside

of the geographical scope. For additional exemptions, see Title 29, Part 4 of the Code of Federal Regulations, Section 4.123(d).

What geographical areas are covered under the SCA?

The SCA applies to all work performed within the United States. For purposes of the SCA, the term "United States" includes any State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Johnston Island, and the Commonwealth of the Northern Mariana Islands. The SCA does not apply to work performed in any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country. Also, the SCA does not apply to work performed on ships operating in international or foreign waters. If a portion of the contract services is performed within the United States and a portion is performed outside the United States, the SCA applies to the portion performed in the United States.

How do you obtain a SCA Directory?

A SCA Directory of Occupations may be obtained from www.wdol.gov.

What Safety and Health standards apply under the SCA?

No part of the services covered under the SCA will be performed in buildings, surroundings, or under working conditions which are unsanitary, hazardous, or dangerous to the health and safety of services employees. Safety and Health provisions of the SCA are administered by the Occupational, Safety, and Health Administration (OSHA).

What happens if a contractor violates the SCA?

The SCA provides authority to withhold contract funds to reimburse underpaid employees, terminate the contract, hold the contractor liable for associated costs to the government, and debar from future government contracts for a period of three years any persons or firms who have violated the SCA.

II. Wage Determinations

How are prevailing wage determinations developed?

Wage determinations are developed based on available data showing the rates that are prevailing in a specific locality. Where a single rate is paid to a majority (more than 50%) of the workers in a classification of service employees engaged in similar work in a particular locality, that rate is determined to prevail. When information is used from the Bureau of Labor Statistics (BLS) or other surveys, statistical measurements of central tendency (median) and the average (mean) are considered reliable indicators of the prevailing rate. Which of these statistical measurements will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification

data, patterns existing between survey periods, and the way separate classification data interrelate. Use of the median is the general rule. However, the mean may be used in situations where, after analysis, it is determined that the median is not a reliable indicator.

In addition, some occupational rates on the wage determination may be taken directly from the Non-Appropriated Fund schedule, Federal Wage System schedule, or the General Schedule "white collar" pay scales. Finally, several methodologies were developed to aid the analyst in developing rates for classes where no survey data exists.

How often do you update wage determinations?

Wage Determinations are reviewed periodically, as new data become available. Most wage determinations are updated once a year.

Must a wage determination be requested if the contract requires less than five employees?

Yes. The contracting agency must request a wage determination for every covered contract in excess of \$2,500 regardless of the number of employees expected to be employed on the contract. If the contract involves more than five service employees, the Department of Labor must issue a wage determination; however, this does not limit the contracting agency's obligation to request a wage determination for all contracts in excess of \$2,500.

In an emergency, how do you obtain a wage determination?

You may call the Wage and Hour Division, Branch of Service Contract Wage Determinations, and speak with a supervisor at (202) 693-0073.

III. Wage Rates

How are prevailing wage rates established?

The minimum monetary wages and fringe benefits to be paid are established based on what is prevailing in the locality. A rate is determined to prevail where a single rate is paid to a majority (50 percent or more) of the workers in the same class in a particular locality. If a single rate is not paid to the majority of workers in a locality, statistical measurements such as the median (a point in a distribution where 50 percent of the surveyed workers receive that or a higher rate and 50 percent receive a lesser rate) or the mean (average) are used to establish prevailing wage rates.

Is the rate on the wage determination the minimum hourly rate?

Yes. The wage rate on the wage determination is the prevailing rate for the occupation in the locality. The prevailing rate then becomes the minimum rate that the contractor must pay its employees working on the contract.

How are wage rates determined for classes that are not surveyed?

Often, wage surveys result in insufficient data for job classifications. Establishing a prevailing wage rate for these classifications can be accomplished through a "slotting," procedure, utilizing the grading system for Federal employees. Under "slotting," wage rates are derived based on a comparison of equivalent or similar job duties and skills between the classifications which were surveyed and those for which no survey data is available. For example, a surveyed rate for the janitorial classification may be adopted for the food service worker (cafeteria worker) classification because job duties and skills, required for both classifications, are rated at the same grade level under the grading system for Federal employees.

Why do wage rates go down?

The information used most frequently to establish prevailing rates is the Bureau of Labor Statistics (BLS) survey data. Based on BLS survey data the Department of Labor must issue rates which are represented in the survey as prevailing. Therefore, rates could decrease if surveys show that a lower rate is actually prevailing.

When is the majority rate (i.e. the rate paid to more than 50% of the workers in an occupation in a locality) used to establish the prevailing rate?

Union Dominance is where the same rate is paid to a majority (more than 50%) of the workers, covered by a union, employed in the same occupational class in a locality. This "union dominance" rate would be used as the prevailing rate for all workers in that locality.

Are there any wage requirements for employees who are not covered under the SCA?

Yes. No contractor or subcontractor shall pay any of his or her employees less than the minimum wage under the Fair Labor Standards Act of 1938.

Do tips count as part of an employee's minimum wage which must be paid by the contractor?

An employee engaged in an occupation in which he or she regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by the SCA. The following rules must be observed: (1) The employer must notify the employee about the tip credit allowance before the credit is utilized; (2) The employees must be allowed to retain all tips (individually or collectively); (3) The employer must be able to show by records that the employee

receives at least the applicable SCA minimum wage through the combination of direct wages and tip credit; and (4) The use of the tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the SCA.

What wage rate does a contractor pay an employee who works, for example, as a Computer Operator I for three hours and a Peripheral Equipment Operator for five hours?

If an employee during a workweek works in different capacities in the performance of the contract, the employee must be paid the highest of the wage rates for all hours worked in the workweek unless the employer segregates the hours worked in each capacity and pays accordingly. However, working in different capacities applies only to work in different job classifications, not levels within the same job classification.

How do service employees know what wage rate they are supposed to be paid?

On the date a service employee commences work on a SCA covered contract, the contractor or subcontractor is required by law to deliver to the employee or post a notice of the required compensation in a prominent place at the work site.

What can be done if the employee is not being paid the wage rate listed in the wage determination?

The contractor is liable for the amount of any underpayments of compensation due to the employee engaged in the performance of the contract. Any employer, employee, labor or trade organization, contracting agency, or other interested person or organization may report an apparent violation to any office of the Wage and Hour Division. Look in the Blue Pages under U.S. Government, Employment Standards Administration, Wage and Hour Division, for your local office.

IV. Conformances

How are wage rates obtained for occupations not listed in the wage determination?

Any class of service employee not listed in the wage determination must be classified by the contractor to provide a reasonable relationship (i.e. appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the wage determination.

How should a conformance be submitted, and if approved, when does the rate become applicable?

A class of service employee not listed in the wage determination must be classified by the contractor to provide a reasonable relationship (i.e. appropriate level of skill comparison)

between the unlisted classifications and the classifications listed in the wage determination.

The conformance procedure for the unlisted class must be submitted by the contractor to the contracting officer no later than 30 days after the unlisted class of employee performs any contract work. The contracting officer then reviews the proposed action and submits the conformance with their concurrence, and/or comments to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for approval. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

If approved, the wage and fringe benefits must be paid to all employees performing in the classification from the first day the contract work is performed. Regardless of whether the contracting officer agrees or disagrees, they must submit the conformance request to the Department of Labor for determination. However, the contracting officer can annotate that they disagree with the conformance request.

How are future rates calculated for classes that have been conformed?

In the case of a contract modification, an exercise of an option or extension of an existing contract, or any other case where a contractor succeeds a contract under which the classification in question was previously conformed, a new conformed wage rate may be assigned to the conformed classification by indexing (i.e. adjusting) the previously conformed rate by an amount equal to the average percentage increase or decrease between the wages specified for all classifications to be used on the contract or used in the same broad occupational category which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. However, the contractor has the option of resubmitting a new conformance request.

V. Fringe Benefits: Vacation, Holidays, and Health & Welfare

If an employee was employed by the predecessor contractor and hired by the successor, does the vacation time earned with the predecessor contractor continue, stop, or does the employee start accruing new vacation time with the new contractor?

The vacation time continues, as long as there is no break in service. The contractor by whom a worker is employed at the time the vacation right vests (i.e. on the employee's anniversary date of employment) must provide the full benefit required by the wage determination which is applicable on that date, whether or not it is the predecessor or the

successor contractor. This is described in Title 29, Part 4 of the Code of Federal Regulations, Section 4.173.

Do employees receive fringe benefits when they are working under a wage determination?

Every covered contract in excess of \$2,500 contains a provision specifying the fringe benefits to be furnished to service employees and must be paid in addition to the minimum wage. The fringe benefit amount is listed in the wage determination. SCA makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. However, temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work.

How is the health and welfare rate derived?

The health and welfare rate is the result of a nationwide survey of private industry conducted by the Bureau of Labor Statistics. The Employment Cost Index private industry data is used to derive the single "total" benefits rate.

I currently receive \$2.56 per hour for health and welfare benefits. How will the new single benefit rate affect me?

The \$2.56 (total benefit) rate will be grandfathered until the new single benefit rate reaches or exceeds \$2.56. The grandfathered rate will not apply to contracts for new services.

Is the health and welfare rate included in the hourly rate on the WD?

No. Fringe benefits are required to be provided separate from and in addition to the specified minimum hourly rate provided on the wage determination.

What does the health and welfare rate apply to, all hours worked or vacation and sick leave also?

Unless otherwise specified on the applicable wage determination, health and welfare payments are due for all hours, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract.

Can the contractor pay the employees their fringe benefits in cash instead of furnishing the required fringe benefits?

Yes. Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the

fringe benefits required. Records are kept separately showing the amounts to be paid for fringe benefits.

VI. Collective Bargaining Agreements (CBAs)

If I'm working under a CBA for one company and another company wins the contract and hires me, can my salary drop?

No. Not for the first year. The successor contractor's obligation is to ensure that all service employees are paid no less than the wages and fringe benefits to which the employees would have been entitled, including prospective increases, if employed under the predecessor's collective bargaining agreement for the first year of the contract (i.e. irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

Does the Federal agency enter the CBA occupations on the Standard Form 98-A or leave it blank since the CBA is attached? Does the Federal agency enter the occupations not covered by the CBA on the same Standard Form 98-A?

Do not enter the CBA occupations on the SF 98-A. Only classes which are not covered by the CBA should be listed separately on the SF 98-A so that the appropriate area-wide wage determination can be issued for those classes of employees.