

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
OFFICE OF THE ADMINISTRATOR
WASHINGTON
20210

May 31, 1968

MEMORANDUM # 76

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29 CFR,
SUBTITLE A, PART 5

FROM: Clarence T. Lundquist, Administrator
Wage and Hour and Public Contracts Divisions

SUBJECT: Plan for Coordinating Investigation Activities of the
Wage and Hour and Public Contracts Divisions and Con-
tracting Agencies -- Davis Bacon and Related Acts (DERA)
and Contract Work Hours Standards Act (CWHSA).

REFERENCE: Memorandum # 75 from Solicitor of Labor

The Secretary of Labor's Order 21-67 (copy attached) transferred certain of his responsibilities relative to the administration of DERA/CWHSA from the Solicitor of Labor to the Administrator of WHPC. In connection with this transfer, proposed amendments to 29 CFR, Parts 5 and 7, were published for comment (30 days) in the Federal Register for March 28, 1968 (copy attached). These proposals will be made final by publication in the Federal Register on June 7, 1968.

Meetings were held with representatives of the principal contracting agencies to discuss the effects of the transfer of DERA/CWHSA functions within the Department of Labor and to secure comments and suggestions as to cooperation between WHPC and contracting agencies. After careful study of the comments and suggestions made, it is planned to proceed along the following lines:

1. WHPC now makes investigations for compliance with the Fair Labor Standards Act (FLSA), the Walsh-Healey Public Contracts Act (PCA), the McNamara-O'Hara Service Contract Act (MOSCA), and other laws with labor standards.
2. WHPC will make DERA/CWHSA investigations concurrently with investigations under other laws providing labor standards (FLSA-PCA-MOSCA, etc.) in those cases where there is DERA/CWHSA coverage. Since FLSA coverage is almost total in the construction industry, and CWHSA applies to most service contracts under MOSCA, an investigation under

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DERA/CWWSA (as applicable) can readily and economically be made by WHPC investigators at the same time. Where overtime is worked, the regular rate of pay used in computing overtime compensation under the FLSA cannot be less than any legal rate, such as the DERA rate. The proper DERA rate must therefore be determined for overtime purposes under FLSA. Also, investigation for CWWSA overtime compliance requires but little additional work in addition to that under FLSA since the only significant difference is that CWWSA requires daily overtime. Thus any investigation under FLSA-MOSCA lends itself to a determination of compliance with DERA/CWWSA and one investigation for compliance with these various laws is more economical to the Government and less burden to the employer and his employees, particularly where more than one contracting agency is involved.

3. In recognition of the responsibilities and the authority of the contracting agencies, the agencies will be contacted as soon as it is determined that there is any violation of DERA/CWWSA. Cognizance will be taken of any recent enforcement activity by a contracting agency and an opportunity will be afforded the contracting agency to review DERA/CWWSA findings and to participate in any conference with the employer as it relates to DERA/CWWSA.

4. If there are possible violations of DERA/CWWSA, but no wage violations of other statutes being enforced by WHPC, WHPC will take no further action concerning DERA/CWWSA and information obtained about such possible violations will be reported to the contracting agency or agencies for investigation or other appropriate action unless the contracting agency requests WHPC to complete the DERA/CWWSA investigation.

5. WHPC will also make concurrent investigations on the basis of complaints received. Rarely, on the basis of the complaint alone, can it be determined in advance that questions of compliance with FLSA-MOSCA are not present. In these cases, notice of complaints and notice of proposed investigation will be made to the contracting agency immediately as long as there is some information indicating the possibility of DERA/CWWSA coverage. In instances where there is no reason to make an FLSA-MOSCA investigation, the complaints will be sent to the contracting agencies. Complaint notification will indicate whether WHPC intends to investigate the complaint and when. Investigations will also be made by WHPC at the request of contracting agencies.

6. Where the employer voluntarily agrees to the payment of back wages, the case will be completed as is presently done in cases involving FLSA and MOSCA, and in coordination with the contracting agency as to DERA/CWWSA aspects. This does not involve any withholding or disbursement of Government funds; it simply involves the direct payment by the employer out of his own funds of wages that he should have previously paid. A report of such an investigation will be furnished to the contracting agency and will include pertinent

information as to the DERA/CWWSA violations found and back wages paid. If CWWSA liquidated damages are due, no action will be taken by WHPC with respect to such damages. A report in each such instance, including any computation of liquidated damages, will be furnished to the contracting agency so that it may exercise its responsibility concerning the assessment of the liquidated damages. If the contracting agency feels that the report is not adequate for a decision as to liquidated damages, the contracting agency may request WHPC to furnish additional information or the contracting agency may make any further investigation.

7. In the absence of voluntary agreement to pay back wages, or in any cases involving a refusal to comply, no action will be taken by WHPC under DERA/CWWSA. A separate report will be prepared and transmitted to the contracting agency. The report will contain all information obtained by the WHPC investigator up to the time he determines the matter should be referred to the contracting agency. The contracting agency will make any further investigation it deems necessary in order to make a proper decision concerning withholding of funds, assessment of liquidated damages, or recommendations concerning litigation or blacklisting.

8. WHPC will process reports of investigations by the contracting agencies, recommendations as to liquidated damages, and blacklisting in a manner similar to that previously in effect in the Division of Wage-Determinations, Office of the Solicitor. Until further notice, WHPC will process these reports in the Washington office.

9. Investigations conducted by WHPC are assigned and completed under the supervision of the WHPC Regional Director or District Director in whose jurisdiction the establishment is located. For this reason, questions relating to a particular DERA/CWWSA investigation being conducted by WHPC can be dealt with more effectively by referring such questions to the appropriate Regional Director or District Director for response.

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

October 19, 1967

SECRETARY'S ORDER NO. 21-67

Subject: Delegation of Enforcement Responsibility for
Wage Standards on Federally Financed or
Assisted Work Contracts

1. Purpose. This order delegates authority and assigns responsibility for the performance of functions of the Secretary of Labor under the wage standards provisions of each of the laws listed on the attachment to this order.
2. Delegation of Authority and Assignment of Responsibility.

(a) Solicitor of Labor. Except with reference to the duties specified in subparagraph (b) below, the Solicitor of Labor shall carry out the functions of the Secretary of Labor under the Wage and Hour standards provisions of the statutes and reorganization plan listed on the attachment to this order and generally interpret, administer and apply these statutes. This authority and responsibility shall include: (1) determining wage rates as authorized under such statutes, including resolution of conformable rate questions existing under contracts subject to such statutes; (2) performing the enforcement functions of the Secretary of Labor; (3) interpreting the statutes and reorganization plan listed on the attachment to this order; and (4) granting or revoking such variations, tolerances and exemptions as are authorized by any of the statutes referred to with regard to construction work.

(b) Administrator of the Wage and Hour and Public Contracts Divisions. The Administrator of the Wage and Hour and Public Contracts Divisions, or his delegate, subject to the supervision of the Assistant Secretary for Labor-Management Relations, shall (1) conduct investigations with respect to compliance and enforcement of labor standards prescribed under the statutes listed on the attachment to this order, determine the investigation program, settle cases of violations where appropriate, upon the payment of wages withheld and liquidated damages due, coordinate the enforcement activities of the contracting agencies, request the

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contracting agencies to withhold funds and authorize the disbursement of such funds to accomplish payment of wages withheld, receive complaints of violations and investigations from contracting agencies, (2) grant or revoke such variations, tolerances, and exemptions as are authorized by any of the statutes listed on the attachment to this order with regard to non-construction work and (3) approve or disapprove recommendations of the contracting agencies concerning relief from liquidated damages.

3. Authority. This order is issued under authority of 5 U.S.C. 301, Reorganization Plan No. 6 of 1950 (64 Stat. 1263), and the plan and the statutes listed on the attachment to this order.

4. Effective Date. This order is effective immediately.

W. Willard Wirtz
Secretary of Labor

Attachment

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