

## **Fact Sheet #39F: The Payment of Special Minimum Wages to Workers with Disabilities Who Are Employed on Federal Service Contracts Subject to the McNamara-O'Hara Service Contract Act**

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read [Fact Sheet # 39](#), The Employment of Workers with Disabilities at Special Minimum Wages, for an overview of the general provisions of FLSA Section 14(c). Please consult the Regulations, [29 CFR Part 525](#), Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c).

### [What is the McNamara-O'Hara Service Contract Act \(SCA\)?](#)

The SCA is a Federal labor standards statute that 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.

### **What wage rates must be paid to service employees employed on contracts subject to the SCA?**

Every service employee performing any of the contract work under a service contract in excess of \$2,500 must be paid not less than the monetary wages and be furnished the fringe benefits which the Secretary of Labor has determined to be prevailing in the locality for the classification of work being performed, 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 will be 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 [minimum wage](#) provided in section 6(a)(1) of the Fair Labor Standards Act (FLSA).

Service contracts that 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 minimum wage rate provided by section 6(a)(1) of the Fair Labor Standards Act.

### **May employers pay workers with disabilities who are performing on SCA contracts special minimum wages (SMW) as is permitted by Section 14(c) of the FLSA?**

Yes. The SCA, like the FLSA, allows an employer to pay employees who have disabilities for the work to be performed a SMW less than the prevailing wage required by the wage determination. Regulations, 29 CFR Part 4.6(o) instructs the employer to follow the same "conditions and procedures" required for the employment of workers with disabilities under section 14(c) of the FLSA. However, this exception is from the prevailing wage only. Employers are still required to pay the full fringe benefits, or the equivalent dollar cash payment in lieu of providing the benefits, to service employees who have disabilities for the work performed.

**Must an employer obtain a certificate from the Department of Labor prior to paying SMWs to workers with disabilities performing on SCA contracts?**

Yes. Employers who wish to pay SMWs to service employees with disabilities performing on contracts subject to the SCA must follow the same certification procedures as employers who perform non-contract work (work not subject to the SCA). In the past, SCA contract-specific certificates were issued to employers, but that is no longer the case. For more information regarding the certification process, please review the fact sheet in this series that covers Certification.

**How does an employer ensure that his/her service employees performing SCA covered work are properly classified?**

The wage determination that is included in the contract should list all job classifications that may be required in order to perform the contracted services. The definitions for the SCA job classifications are contained in the [SCA Directory of Occupations](#), which may be obtained from the Government Printing Office and is also available on the Wage and Hour Division Web site.

The duties which an employee actually performs governs the classification and the rate of pay to which the employee is entitled under the applicable wage determination.

**How does an employer determine the amount of the SMW that may be paid to a worker with disabilities who is employed as a service employee on a SCA contract?**

A properly computed SMW is a commensurate wage - one that is based on the worker's individual productivity in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity in which the worker with the disability will be employed. When determining the commensurate wage for an employee performing work subject to the SCA, the wage rate listed on the wage determination for the job classification actually performed is the prevailing wage. If no wage determination has been incorporated into the contract, the employer generally would be required to conduct a prevailing wage survey as described in regulations, [29 CFR Part 525.10](#).

**How does an employer determine the amount of fringe benefits to pay service employees performing work subject to the SCA?**

Generally, every covered contract in excess of \$2,500 contains a provision specifying the fringe benefits to be furnished to service employees, and these 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 that is proportionate to the amount of time spent in covered work. In workweeks where employees with disabilities who receive SMWs perform work subject to the SCA, they must receive the full fringe benefits listed in the wage determination, but only for those hours spent performing work subject to the SCA.

**How does SCA impact other employees who, though employed by an employer that is a contractor on an SCA contract, actually perform no work subject to the SCA?**

Section 6(e) of the FLSA requires an employer who is either a prime contractor or a subcontractor on an SCA contract to pay all employees, **including staff and employees not working on the service contract**, at least the FLSA [minimum wage](#). Therefore, all of a SCA contractor's employees employed at an establishment where SCA work is performed - whether covered under the FLSA or not - must receive at least the FLSA [minimum wage](#) for all hours worked. Employers who have obtained the proper certification under section 14(c) may pay a

SMW to SCA service employees and other employees not working on the contract who have disabilities for the work being performed.

### **Does the SCA require overtime payments to employees who work more than 40 hours in a week?**

No, the SCA has no overtime provisions. But employees may be due overtime under either the FLSA or the Contract Work Hours and Safety Standards Act (CWHSSA). The FLSA requires that all covered and nonexempt employees receive overtime compensation equal to one-half their regular rate of pay for all hours worked in excess of forty in a workweek. CWHSSA also requires additional overtime compensation for all hours worked in excess of forty in a workweek. The overtime requirements of CWHSSA apply to all workers, including those with disabilities, who are performing the duties of laborer, mechanic, guard or watchman on SCA contracts valued in amounts that exceed \$100,000.

### **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.

### **Who enforces the SCA?**

The labor standards provisions of the SCA are enforced by the Wage and Hour Division, which is part of the Department of Labor's Employment Standards Administration. The safety and health provisions of the SCA are enforced by the Department of Labor's [Occupational Safety and Health Administration](#) (OSHA).

### **What happens if a contractor violates the SCA?**

The Wage and Hour Division conducts investigations of contractors to ascertain compliance with 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.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

For more information about these provisions, review the other Fact Sheets in this series which address Section 14(c) compliance issues located at <http://www.dol.gov/esa/whd/fact-sheets-index.htm>.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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