



# Wage Laws for Government Contractors

- Introductions
- Services
- Construction
- Modifications
- Supplies and Manufacturing
- Practical Tips
- Upcoming Changes
- Resources



# Who is Palmetier Law

Palmetier Law was founded to help small and medium-sized businesses navigate the maze of government contracting regulations. As a WOSB/SDVOSB, Karri understands the entrepreneurial spirit of a small business and appreciate the difficulties they face to enter the government contract market. With more than two decades of experience in the Air Force, major defense contractor and law firm, she brings a unique perspective as a trusted adviser to support companies.

My Primary Practice areas are:

- Small Business Requirements
- Data Rights and Patents
- Ethics Programs
- Contract Administration and Terms/Conditions
- Commercial Item Status
- Subcontract Management
- Non-FAR Contracts
- Compliance and Training

This presentation has been prepared for information purposes and general guidance only and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice.

## Governmental Goals

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- Protect workers and ensure treated fairly
  - Establishes minimum hourly rates
  - Ensure fringe benefits are provided
  - Ensure overtime is compensated
- Set a level playing field for competitions
- Protect local small businesses

- Service Contract Labor Standards
  - Formerly Service Contract Act
  - FAR 52.222-41, Service Contract Labor Standards
- Professional Employee Compensation
  - FAR 52.222-46, Evaluation of Compensation for Professional Employees

- Applies to contracts
  - Principal purpose to provide services through “service employees”
  - Work in the United States
  - Over \$2500
  - Unless excepted
- Requires payment of prevailing wages
  - Wage determination applies
  - Fringe benefits
  - Required to be included with contract
- Pay at least twice a month
- Employees and independent contractors
- Special rules for apprentices and trainees

- Employees of professions
  - having a recognized status
  - based upon an acquired professional knowledge
  - through prolonged study
- Examples include: accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, etc
- Offerors must provide information on total compensation of professional employees
  - No minimum salaries established
  - May consider low salaries as deficiency or risk

- Construction Wage Rate Requirements
  - Formerly Davis Bacon Act
  - 52.222-5, Construction Wage Rate Requirements
  - 52.222-7, Withholding of Funds
  - 52.222-8, Payrolls and Basic Records
  - 52.222-9, Apprentices and Trainees
  - 52.222-10, Compliance with Copeland Act Requirements
  - 52.222-11, Subcontracts (Labor Standards)
  - 52.222-12, Contract Termination-Debarment
  - 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations
  - 52.222-14, Disputes Concerning Labor Standards
  - 52.222-15, Certification of Eligibility
  - 52.222-16, Approval of Wage Rates
  - 52.222-33, Notice of Requirement for Project Labor Agreement
- Copeland (Antikickback) Act
  - FAR 22.403-2
- Project Labor Agreements
  - FAR 22.5



- Applies to contracts for
  - Construction, alteration or repair of public buildings or works
  - The U.S. Government is a party (at any tier)
  - Involving mechanics or laborers
  - In the United States
  - In excess of \$2,000
- Requires payment of
  - Prevailing wages
  - Benefits
- Employees and independent contractors

- Wage Determinations must be included in the contract
  - Valid for life of contract
  - Updated with modifications and options
- Site of Work means
  - Physical location of work
  - Others like job headquarters and tool yards
  - Excludes sites used for multiple contracts
- Special rules for apprentices and trainees

- Payrolls must be certified and submitted weekly
  - Pay at least weekly
- Copeland Act criminalizes acts by a company to incentivize employees to refund wages, provide rebates or in any way reduce total compensation

- Common Issues:
  - Job Classifications
  - Fringe Benefits
- Contract Work Hours and Safety Standards Act
  - FAR 52.222-4, Contract Work Hours and Safety Standards-Overtime Compensation
- Minimum Wage for Contractors
  - FAR 52.222-55, Minimum Wages Under Executive Order 13658
- Paid Sick Leave
  - FAR 52.222-61, Paid Sick Leave Under Executive Order 13706

- Similar for Services and Construction
  - Wage Determinations posted at [www.SAM.gov](http://www.SAM.gov)
- Job classifications – you must map laborers to categories
  - Multiples = highest paid
  - Different contracts could have different categories for same person
- If no classification exists
  - Request Department of Labor determination
  - Takes at least 30 days
  - Not available for sub-categories

- Similar for Services and Construction
- Bona Fide Criteria – 29 CFR 4.17(a)
  - Written plan and communicated to employees
  - Employee contributions must be voluntary
- Types of Benefits
  - Traditional health and welfare benefits
  - 401K or Pension
  - Time Off, vacation, holiday
- Some benefits cannot be included
  - Statutory payments (FICA, workers comp)
  - Tools, Uniforms
  - Social or morale
  - Reimbursements like travel and expenses

## Contract Work Hours and Safety Standards Act (CHWSSA)

- Applies to contracts for
  - Services or Construction
  - In the United States
  - In excess of \$150,000
  - Some exclusions such as commercial item
- Overtime Required
  - Rate of 50% of basic pay
  - For all hours worked in excess of 40
  - During a work week

- Applies if contract subject to Services or Construction wage requirements
- Establishes minimum wage for all federal contractors
  - 1/30/2022 - \$15/hour and \$12.75/hour (85%)
  - Increased annually with inflation
  - Includes non-direct workers if at least 20% of time performed in connection with covered contract
- Side note: with cost reimbursement contracts, overtime may require government approval in advance

Some States May Impose Higher Minimum Wages



# Paid Sick Leave

- EO 13706, Establishing Paid Sick Leave for Federal Contractors
- Applies if contract subject to Services or Construction wage requirements
  - Excluded if Collective Bargaining Agreement
- Requires 1 hour of paid sick leave for every 30 hours worked
  - Maximum of 56 hours a year
  - Must be carried from year to year
  - Can combine with vacation
  - Must receive same fringe benefits for paid sick leave as for ordinary hours
- Termination
  - Not required to pay out
  - If don't pay out, must reinstate if return to work within 12 months
- Employees must be able to use for *a broad variety* of personal and family health issues
- May not retaliate or discriminate if employees use or how choose to use

- Construction has four options
  - All years must be priced in proposal. FAR 52.222-30 Construction Wage Rate Requirements-Price Adjustment (None or Separately Specified Method)
  - As per the method specified in the contract. FAR 52.222-30
  - Percentage based on an economic indicator. FAR 52.222-31 Construction Wage Rate Requirements-Price Adjustment (Percentage Method)
  - Based on Actual Costs. FAR 52.222-32 Construction Wage Rate Requirements-Price Adjustment (Actual Method)

- Services
  - Updates may be mandatory
  - Contractors must notify of potential increase/decrease within 30 days
  - Request an equitable adjustment for changes in wages (not overhead or profit) caused by change in wage determination
    - Current wage rate is \$12.00 per hour but contractor paid \$12.10
    - New wage determination increases rate to \$12.50 and contractor increases rate paid to \$12.75 per hour
    - May recover \$.40 per hour
  - Clauses: 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) and 52.222-44 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment

- Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000
  - Formerly Walsh-Healey
  - FAR 52.222-20, Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000
- Applies to contracts for manufacturing or furnishing of materials, supplies, articles or equipment

- Excludes
  - Expressly authorized by statute to purchase “in the open market”
  - immediate delivery for public exigency
  - Perishables
  - Certain agricultural products
- Establishes minimum wage
- Different requirements for learners, student learners, apprentices and workers with disabilities

- Wage Laws Apply to Subcontractors
  - Include clauses in subcontracts except
    - FAR 52.222-20 (supplies) does not apply in commercial item subcontracts
- Primes are responsible for monitoring subcontractors' compliance
  - Validate wage classifications and compensation
  - Review payroll documents
  - Add clause to allow audits

- Simple is better; multiple classifications increase
  - Documentation
  - Opportunity for mistakes
  - compliance costs
- Documentation is Key
  - Document job classification mapping and rationale
  - Keep time records per job and contract
  - Certified payrolls for regular hours and overtime
  - Written benefit plans
- Post all posters at all sites

- Read request for proposals carefully
  - Determine if wage laws explicitly apply or *should* apply
  - Price proposal carefully to include minimum wages, benefits, overtime and cost of compliance
- Contract Modifications can result in
  - Contract value exceeding threshold
  - New labor categories
  - Notify government immediately if price increases



- Government Audits and Inspections
- Most frequent findings:
  - Inaccurate labor classification mapping
  - Old or wrong wage rate determinations
  - Insufficient or inaccurate fringe benefit plans
  - Violations by subcontractors
- Penalties Include
  - Withhold of payments
  - Liquidated damages
  - Termination for default
  - Suspension/Debarment
  - Criminal/Civil False Claims

## Upcoming Changes

- On November 18, 2021, Executive Order 14055 was issued to revive and expand nondisplacement rule for service contracts
  - Had been suspended during Trump administration
- Grants rights to employees for right of first refusal in successor contract
- New regulations to be published

- Department of Labor has many resources:
  - OFCCP - <https://www.dol.gov/ofccp/>
  - Wage and Hour Division for government contractors -  
[https://www.dol.gov/agencies/whd/government-contracts](https://www.dol.gov/agencies/whd/government-contracts;);  
<https://www.dol.gov/general/topic/wages/govtcontracts>
  - Posters -  
<https://www.dol.gov/general/topics/posters>



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