

## Fact Sheet #67: The McNamara-O’Hara Service Contract Act (SCA)

This fact sheet provides general information concerning the McNamara-O’Hara Service Contract Act.

### Coverage

The [McNamara-O’Hara Service Contract Act \(SCA\)](#) covers contracts entered into by federal and District of Columbia agencies that have as their principal purpose furnishing services in the U.S. through the use of “service employees.” The definition of “service employee” includes any employee engaged in performing services on a covered contract other than a [bona fide executive, administrative, or professional employee](#) who meets the exemption criteria set forth in [29 CFR Part 541](#).

The SCA does not apply to certain types of contract services. The contracts exempt from SCA coverage include:

- Contracts for construction, alteration, or repair, including painting, and decorating, of public buildings or public works (these are covered by the Davis-Bacon Act);
- Work required in accordance with the provisions of the Walsh-Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a federal agency by an individual or individuals;
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts subject to [administrative exemptions](#) granted by the Secretary of Labor in special circumstances because of the public interest or to avoid serious impairment of government business.

### Basic Provisions/Requirements

[SCA contract clauses](#) require contractors and subcontractors performing services under prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The Department of Labor issues SCA wage determinations for the federal contracting agencies to incorporate them, along with the required contract clauses, into covered contracts. The fringe benefit requirements (usually “health and welfare,” vacation, and holiday benefits) are separate and in addition to the hourly monetary wage requirement under the SCA.

On contracts equal to or less than \$2,500, at least the federal minimum wage established by section 6(a)(1) of the Fair Labor Standards Act applies (\$7.25 per hour effective July 24, 2009, under the “Fair Minimum Wage Act of 2007”).

Contractors and subcontractors must notify employees performing SCA contract work of the compensation due them under the applicable SCA determination in the covered contract, and must post the “Notice to Employees

Working on Government Contracts,” Department of Labor Publication [WH-1313](#), at a prominent and accessible place at the worksite.

### **Penalties/Sanctions and Appeals**

Violations of the SCA may result in the withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments, contract termination and liability for any resulting costs to the government, legal action to recover the underpayments, and debarment from future contracts for up to three years.

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department’s Administrative Review Board. Final Board determinations on violations and debarment may be appealed to and are enforceable through the federal courts.

### **Typical Problems**

(1) Underpayment of service workers due to misclassification. (2) Erroneously considering workers exempt without regard to 29 C.F.R. Part 541 rules. (3) Failure to make timely payment of wages or fringe benefit contributions. (4) Lack of proper recordkeeping when cash payments are made to satisfy fringe benefit requirements. (5) Failure to notify service employees of the applicable wage and fringe benefit requirements, or failure to post the “Notice to Employees Working on Government Contracts” at a prominent and accessible place at the worksite. (6) Failure to use the conformance procedure for unlisted classes of employees. (7) Failure to segregate and keep records on hours spent on contract work and non-contract work for employees who do both. (8) Failure to implement rate increases (if any) in a new wage determination in a multi-year contract subject to annual appropriations.

### **Relation to State, Local, and Other Federal Laws**

This Act applies only to contracts for services awarded by the federal or District of Columbia governments. Some contracts covered by SCA also call for construction work to which the Davis-Bacon Act prevailing wage requirements apply. Employees performing SCA contract work may also be subject to overtime pay requirements under [Contract Work Hours and Safety Standards Act](#) (which applies to prime contracts over \$100,000) and/or the [Fair Labor Standards Act](#). Both laws require at least time and a half pay for all hours worked over 40 in a workweek. State and local wage and hour laws may also apply to workers concurrent with compensation requirements under 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).**

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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