U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

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ALL AGENCY MEMORANDUM NUMBER 225

TO: All Contracting Agencies of the Federal Government and the District of Columbia

FROM: Patricia Davidson, Deputy Administrator for Program Operations

SUBJECT: 2017 Service Contract Act Health and Welfare Fringe Benefit

In accordance with 29 C.F.R. Section 4.52, the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) will be increased to a rate of $4.41 per hour. As prescribed by the regulations, the benefit rate is derived from the latest Bureau of Labor Statistics (BLS) Employment Cost Index (ECI), summary of Employer Cost for Employee Compensation (ECEC). Effective August 1, 2017, the SCA health and welfare benefit rate of $4.41 per hour will be posted on the Wage Determinations Online (www.wdol.gov) and Wage and Hour Division (WHD) (www.dol.gov/whd) websites.

History

Based on the regulations adopted in 1996, SCA wage determinations (WDs) have contained two different health and welfare fringe benefit levels: a "low" (employee-by-employee) level benefit and a "high" (average cost) level benefit. The high and low health and welfare benefits have different methods for determining compliance. Compliance with the low level benefit is determined on an employee-by-employee basis whereas compliance with the high level benefit is determined based upon the contractor's average fringe benefit cost for all service employees working on the contract.

In 2004, when the BLS publication of Employer Costs for Employee Compensation indicated that the low benefit rate was about to exceed the grandfathered high benefit rate of $2.56 per hour, the Wage and Hour Division announced (in All Agency Memorandum Number 197) that it would increase the fringe benefit rate for all wage determinations, but would retain the two different methods for determining compliance. That policy will be continued again this year. The employee-by-employee benefit will be $4.41 per hour, or $176.40 per week, or $764.40 per month. In addition, the average cost fringe benefit rate will also be $4.41 per hour. Consistent with the policy established in 1996 and updated since 2004, the average cost fringe benefit wage determination will be issued only for those contracts where the formerly grandfathered "high" (average cost) benefit rate would have applied.

Executive Order 13706

Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (EO 13706), requires certain employers that contract with the federal government to provide their employees with up to 56 hours (seven days) of paid sick leave annually, including for family care and absences resulting from domestic violence, sexual assault, and stalking. EO 13706 applies to new contracts with the federal government that result from solicitations issued on or after January 1, 2017 (or that are awarded outside the solicitation process on or after January 1, 2017). More information about EO 13706 is available at https://www.dol.gov/whd/govcontracts/eo13706/.

Employer contributions that are made to satisfy the employer's obligations under EO 13706 may not be credited toward the contractor's obligations under the SCA. To comply with EO 13706, an alternate health and welfare rate has been established that excludes the sick leave portion of the calculated health and welfare rate (determined in a manner similar to Hawaii WDs accounting for the Hawaii Prepaid Health Care Act, as described below). The SCA health and welfare fringe benefits level for employees performing on contracts covered by EO 13706 will be $4.13 for each hour performing work on such a contract, or $165.20 per week, or $715.87 per month.

Wage Determination for the State of Hawaii

Under Section 2(a)(2) of the SCA, fringe benefit payments that are required by state law may not be used to satisfy an employer's fringe benefit obligations. In Hawaii, most employers are required by law to provided health insurance coverage for their employees. Therefore, employer contributions that are made to satisfy an employer's obligations under the Hawaii Prepaid Health Care Act (HPHCA) may not be credited toward meeting the contractor's obligations under the SCA. The SCA WDs have addressed this issue in the past by excluding the health insurance portion of the nationwide health and welfare fringe benefit rate.

Consistent with past practice, and in recognition of the fact that Hawaii law requires employers to provide health care coverage for most employees, the SCA WDs for Hawaii will continue to exclude the health insurance portion of the nationwide health and welfare fringe benefit rate for all employees on whose behalf the employer provides benefits pursuant to the HPHCA. Some Hawaii employers, however, are not required to make, and in fact do not make, contributions for certain employees under the HPHCA. If this is the case, then the reduced fringe benefit level is not appropriate for these employees.

Therefore, the new SCA health and welfare fringe benefits level for Hawaii will be $1.91 per hour, or $76.40 per week, or $331.07 per month for all employees on whose behalf the contractor is required to provide health care benefits pursuant to the HPHCA. For employees on whose behalf the contractor is required to provide health care benefits pursuant to the HPHCA and who are performing on contracts covered by EO 13706, the health and welfare fringe benefits level will be $1.63 for each hour performing work on such a contract, or $65.20 per week, or $282.53 per month. For those employees not receiving mandated health care benefits under the HPHCA,

the new health and welfare amount will be $4.41 per hour (or, as noted above, $4.13 per hour for employees performing work on contracts covered by EO 13706).