

LABOR NOTES

A Newsletter for Air Force Contracting Personnel on
Contract Labor Standards and Contractor Labor Relations

Please share with any and all interested parties. Knowledge is power!

1. DoL initiatives targeting low-wage industries: DoL is currently putting a lot of effort into pre-emptive as well as corrective compliance actions in what are traditionally low-wage industries. At a meta-level, this is tied to the implementation of the \$10.10 minimum wage executive order, but also makes good sense since employees in these industries are also traditionally prone to being abused by their employer. Specifically, we are aware that DoL is targeting janitorial and mail-hauling contracts on a national basis; many contractors will be audited, to ensure that they are in compliance with SCA, FLSA, and the full smorgasbord of federal labor laws. If you have a janitorial or custodial contract, don't be surprised if DoL reaches out to you- and remember, that just because DoL is auditing or investigating, it does not necessarily mean that a problem exists. To the contrary, this effort is truly focused at preventative care and feeding of contractors instead of punitive action.

We expect this effort to expand. We expect additional special focus on FLSA/CWHSSA/overtime in the very near term, with special emphasis on misclassification of covered workers as 'exempt.' A traditional (to use the same word 3 times in an article) favorite is also the so-called 'independent' subcontractor- expect DoL to exert particular effort there, since most of the time an individual classified as an independent subcontractor by an employer does not truly fit the bill. In fact, independent subcontractors are probably the lowest-hanging fruit so to speak. DoL has had, in comparison to decades past, a huge influx of resources, and now is the time for them to demonstrate that the influx was effective and had results.

If DoL does contact you, remember that your regional labor advisor can help you navigate the wilderness of mirrors- don't be shy about calling up or emailing your regional labor advisor.

2. Defense Base Act: Following up on an article from last year, DoL continues to look at revising and overhauling the Defense Base Act. DoL proposed legislation last year

(Overseas Contractor Compensation Act- OCCA) that would have eliminated the Defense Base Act and essentially replace it with a government-run insurance program. That legislation failed to pass; it is on the table again this year, but support is lukewarm. At the time the idea was conceived, we had a lot of contractors performing overseas and a shrinking insurance marketplace for Defense Base Act policies. With the drawdowns in the CENTCOM AOR, those numbers have fallen...in other words, the problem OCCA sought to solve may have solved itself to a large degree. Regardless, we will see what the future brings; even if OCCA passes, it is unlikely to be implemented before FY17 at earliest. So, if you have contracts performing Defense Base Act-eligible work (and it's a very broad net), this is something to keep an eye on.

3.Thanks and congratulations to all of the men and women of the following organizations who participated in labor standards training during the last few months: 460 CONS, 50 CONS, 633 CONS, 436 CONS and the ACC AMIC group. The Air Force Labor Advisors welcome the opportunity to conduct labor standards training for your office. Please contact us and let us know how we can accommodate your training needs. Training is free (other than possible TDY funding for the Labor Advisor). We look forward to hearing from you. Don't need a "full blown" training session? We can tailor labor standards training to a specific topic, such as SCA collective bargaining agreement issues or DBA compliance enforcement, and Executive Orders, etc. We're only a phone call or email away.....

4.Bill introduced to abolish/repeal the Davis-Bacon Act: A bill has been introduced in the House of Representatives to completely and totally repeal the Construction Wage Rate Requirements Statute aka the Davis-Bacon Act. At time of writing, the bill (H.R.987) has 7 co-sponsors and has been referred to the House committee on Education and the Workforce. The bill is being pitched as a way of attacking "artificial inflation of the cost of federal contracts and the ability of small businesses to compete for those contracts."

We do not expect this bill to become law; a similar measure is introduced in either the House or Senate almost every year, yet fails to gain any traction.

5. Payroll Review Tip-- Computation of Overtime (OT): OT is required for all hours worked over 40 per week, at 1 1/2 times the regular rate of pay. The regular rate of pay, for OT computation, can be no less than the applicable DBA WD rate- even if the contractor is paying part of the required rate in fringe benefits. Where required fringe benefits are paid in cash, the fringe benefit portion should be excluded from the overtime calculation. While fringe benefits are required to be paid on overtime hours, they are added after the calculation of "1 1/2 X regular rate".

Example: If the WD wage is \$20.00 plus \$6.00 for fringe benefits, then the overtime rate is \$36.00 (1 1/2 X \$20.00 = \$30.00, + \$6.00).



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