Welcome to Wage and Hour Boot Camp

**Moderator:** David Rose, Esq., Moser Rose LLP

**Speakers:**
- Vanessa Shaw-Jennings, Labor Advisor, Contract Industrial Relations Officer, HQ USACE
- Josephine Nunez, President, Consular Inc.
Wage Law Boot Camp

SAME 2015 Small Business Conference
November 4-6, 2015 – New Orleans Convention Center
Wednesday, November 4, 2015 from 1:00PM until 2:00PM in Room 217

Moderator:
David A. Rose - Partner, Moser Rose Law Firm

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Fair Labor Standards Act

• Overview
  • minimum wage
  • overtime pay (covered, non-exempt)
    - State law important!
  • recordkeeping
  • child labor (protect education and health)
Fair Labor Standards Act

• Overtime
  • Covered, nonexempt employees
  • One and one-half times the regular rate of pay
  • Hours worked over 40 per workweek
  • ... or over 8 hours per day e.g. California

• No limit on the number of hours employees may work
Fair Labor Standards Act

• Hours Worked: When are employees “working?”
• Strict liability
• Exemptions

• Most exemptions require:
  • Job duties test
  • Paid on salary basis of not less than $455 per week
  • Job titles/descriptions do not determine exempt status
  • Review the regulations applicable to the exemption
Fair Labor Standards Act

• Exemptions from both Minimum Wage and Overtime Pay
  • Executive, administrative, and professional employees
  • Outside sales employees
  • Employees in certain computer-related occupations
  • Seasonal
McNamara O’Hara Service Contract Act of 1965

— Minimum Wages for Service Employees

• Contracts for services in excess of $2,500
• Wage rates for various labor categories prevailing in the locality
• Or the rates contained in the predecessor’s collective bargaining agreement.
• Fringe benefits
• FAR 52.222-41
McNamara O’Hara Service Contract Act of 1965

• Coverage

• Applies to contracts in the United States, its territories and D.C.
• “Principle purpose” to
• Provide services
- Contractor’s responsibility

- Read the solicitation CAREFULLY
- Pick the correct labor classification from the WD in the contract
- If none, request conformance or guidance from DoL
- Pay at least the required hourly rate
  a) Maintain a record of all hours worked
  b) Maintain pay records
Non-Displacement of Qualified Workers

• Service Employees
• Right of First Refusal
• Employees of predecessor presumptively qualified
• Offers must be bona fide
• Solicitations issued on or after January 18, 2013
• If the clause is not incorporated does it not apply?
Non-Displacement of Qualified Workers

• Obligations – NOT INTUITIVE
  • Predecessor provides a list of employees
  • Right of first refusal
    • GOOD FAITH
  • Extend an offer continues 90 days after contract performance
  • 10 days = response time
  • Offer orally or in writing
Davis Bacon Act of 1931

- Prevailing wage
  - Prevailing wage = Wage + Bona Fide Fringe
  - Interchangeable components (unlike SCA)
  - Any combination
  - Do not need to be separated out on documentation
  - Fringe must be paid for all hours worked – straight time and overtime
• Be a responsible contractor!
  • Read the solicitation CAREFULLY
  • Pick the correct labor classification from the WD in the contract
  • Pay the prevailing wage
  • Flow down clauses to subcontractor
  • Have subcontracts that protect your business
  • Certify payrolls weekly
Enforcement of FSLA, SCA, Non-Displacement, DBA

• Solely by DOL Wage and Hour Division
• Inexperienced contracting personnel
• Reliance on advice from agency officials is not a defense!
• What will DoL look for?
• Contract-specific
Consequences of Non-Compliance

- Back-payment
- Liquidated damages, if applicable
- Stop payment
- Suspension and debarment (SCA presumption of debarment as opposed to DBA where must seek a recommendation)
- Personal Liability (FLSA)
Miller Act

– Liability for your subcontractor’s payments to workers
  • Protecting your business
  • You are never fully protected
We Build Our Relationships
One Client at a Time

Office of Federal Contract Compliance Programs (OFFCP)

• Executive Order 11246
  • Prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin.
  
• Just Added: Sexual orientation and gender identity (EO 13672)
  • Requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.
• Section 503 of the Rehabilitation Act

• Contract over $10,000 take affirmative action to employ and advance in employment qualified individuals with disabilities.

• Review advertising methodology

• Retain records
New Executive Orders

• Fair Play and Safe Workplaces
• EO 13673
  • Expected to be implemented on new contracts beginning in 2016
  • Requires government contractors and subcontractors over $500,000 to disclose violations of 14 different labor laws
  • 3-year look back requirement
    - Start caring now!

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New Executive Orders

• New advisor scheme within agencies
• CO obligated to refer to **suspension/debarment**
• **DoL to inform CO** of investigations
• Responsible for subcontractors (flow down)
• Attacks mandatory **arbitration provisions** (contracts over $1 million)
• Streamlined reporting
Questions

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