



Legal News & Data

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## Vacation Benefits Under The Service Contract Act

Law360, New York (November 10, 2011, 1:15 PM ET) -- Without a question, one of the most difficult laws for federal contractors to understand is the Service Contract Act of 1965. The SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees.

Contractors and subcontractors performing services under an SCA-covered contract in excess of \$2,500 are required to pay service employees in various classes no less than the monetary 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 compensation requirements of the SCA are enforced by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor.

One of the most challenging issues faced by federal contractors on SCA-covered contracts pertains to the payment of vacation benefits. Under the SCA, liability for the payment of vacation falls on whomever is the employer when the vacation time/benefit accrues. The applicable area wage determination will list the vacation benefits for all eligible service employees.

An employee's anniversary date of hire is the reference point for vacation eligibility, and is based on an employee's continuous service. Continuous service includes the time spent employed by the: (1) current contractor in any capacity; and/or (2) predecessor contractor(s) in the performance of similar services at the same facility.

An employee is eligible for vacation pay as required by the area wage determination if: (1) an employee's total length of service adds up to at least one year; and (2) there is no break in service.

The employer's obligation to pay for vacation must be discharged before the earliest of: (1) the next anniversary date; (2) completion of the contract; or (3) when the employee terminates employment.

In an opinion letter dated Feb. 23, 1990, the DOL interpreted the SCA to prevent employees from accruing unused vacation and carrying it forward into subsequent years of service. As such, federal contractors are required to provide the benefit either in vacation time or payment before the occurrence of one of the above-listed events.

Based on the SCA vacation regulations, if an employee has less than one year of service, the employee would not be eligible for any vacation. Likewise, if an employee quits before

completing one year of service, under the SCA, there would be no obligation to pay that employee any monies for accrued vacation.

However, employers should be mindful of any state law requirements and ensure that the payment, or nonpayment, of vacation complies with state law. For example, the state of California does not accept the “vesting” basis of the SCA. Instead, California treats vacation plans on an accrual basis, and vacation vests on a pro rata basis.

Frequently, contractors who are awarded a federal contract hire the predecessor’s employees. Often in these situations, the new contractor is unsure as to when vacation benefits and requests for leave should be granted.

If the predecessor contractor complied with the SCA, all vested vacation that went unused should have been paid out in cash upon the completion of the predecessor contract. Therefore, employees hired by the new contractor would not have any accrued vacation, and the contractor would have no corresponding obligation to provide the vacation benefit, until the employees’ next anniversary dates of hire.

On rare occasions, a contractor, after award, may discover that the predecessor contractor did not pay out vested vacation benefits. In such instances, the new contractor is not responsible for unpaid vacation benefits. If a contractor succeeds to a contract, the only requirement is to maintain the level of wages and benefits already in place. The successor contractor has absolutely no legal responsibility for obligations over which the predecessor contractor has defaulted.

If there is a complaint regarding unpaid vacation benefits that vested with the predecessor contractor, the complaining employees should be directed first to the predecessor contractor, and if that does not work, then to the DOL. The new contractor should not consider granting the vacation request in hopes that the contracting agency will reimburse the costs. There is no obligation for the contracting agency to do so, and likely the current contractor will not recoup the lost expense.

In summary, although seemingly a confusing issue, vacation benefits under the SCA are more simply understood if the employer/contractor is in possession of anniversary dates of hire and thereafter properly tracks the use of vacation.

Accordingly, when you are in the position of a predecessor contractor, you must be prepared to comply with the SCA and furnish the required information. And, when you are in the position of a successor contractor, you must be sure you obtain the necessary information from the predecessor contractor and understand all of your obligations as the new employer of the incumbent workforce.

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