# Part 5222 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

The official NMCARS regulation resides at https://www.secnav.navy.mil/rda/DASN-P/Pages/NMCARS.aspx


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# Subpart 5222.1 - BASIC LABOR POLICIES

## 5222.101 Labor relations.

### 5222.101-1 General.

(a) Contracting officer shall notify the Navy Labor Advisor of all major issues regarding contract labor standards application, administration, or enforcement. Contracting Officers shall coordinate with the Navy Labor Advisor responses to inquiries from, and other contacts with, national or international offices of contractor or industrial associations, labor unions, or Federal agencies (other than routine contacts with the DOL). Contracting Officers, who receive a non-routine inquiry involving DON contractor industrial labor relations policies or procedures, or who is confronted with an industrial labor relations matter not covered by SECNAVINST 4200.36B, shall coordinate with the Navy Labor Advisor before responding or taking independent action. Submit questions to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil , except for questions involving the application of contract labor standards to NAVFACENGCOM contracts. Questions concerning labor issues on NAVFACENGCOM contracts should be submitted to the labor advisor in the appropriate NAVFACENGCOM division, or to the NAVFACENGCOMHQ Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil .

(2)(i) Submit requests for approval to DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject “PGI 222.101-1 – [Labor Relations Contact Approval Request/Plant Seizure/Injunctive Action].”

(ii)Immediately notify DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject “PGI 222.101-1 – [Labor Relations Contact/Seizure/Injunctive Action].”

### 5222.101-3 Labor Disputes.

(1) Immediately upon receipt of notice of an actual or potential labor dispute involving or impacting a contractor or subcontractor, including an actual or potential strike, other work stoppage, or picketing, the contracting officer shall provide notification to the Navy Labor Advisor. When the labor dispute is on a government installation, the contracting officer shall also immediately notify the base commander. Notification procedures are as follows:

(i) Notification to the Navy Labor Advisor shall be made by email at NavyLaborAdvisor@navy.mil with the subject line “NMCARS 5222.101-3: Labor Dispute Notification.”

(ii) The notification shall include:

(A)Name of the contractor or subcontractor and the collective bargaining representative (union);

(B) Copy of current or most recent collective bargaining agreement between the contractor (or subcontractor) and union;

(C) Number of employees in the collective bargaining unit;

(D) Contract number;

(E) Location of dispute and, if on a government installation, the name of installation;

(F) Brief statement on the reason(s) for dispute;

(G) Actual or potential impact on contract performance, base operations, support services, DON mission, DON program(s)(with identification of any such programs), and any active or projected construction projects;

(H) Need to remove government property or material from a strike-bound plant or facility;

(I) Any actions the contractor has taken and plans to take to settle the dispute, including whether the contractor has obtained the assistance of a mediator from the Federal Mediation and Conciliation Service or another alternative dispute resolution resource;

(J) Contractor’s contingency plan to continue contract performance in the event of a strike or work stoppage, such as through the use of non-striking personnel and/or new hires;

(K) Contracting Officer’s assessment of the contractor’s contingency plan;

(L) Alternative sources to provide the supplies or services if necessary; and

(M) Any other information related to the labor dispute requested by the Navy Labor Advisor.

(iii) Follow-up Notifications. Until the parties resolve the labor dispute, the contracting officer shall provide frequent follow-up notifications to the Navy Labor Advisor, and immediate notification to the Navy Labor Advisor if significant changes occur. The follow-up notifications shall provide updates to all topics required in the original notification and any topics added in later communications.

(iv) The contracting officer shall request the advice and assistance of the Navy Labor Advisor on appropriate courses of action for the Department during an actual or potential labor dispute, including:

(A) Measures to mitigate the impact of the dispute on contract performance, base operations, support services, and any active or projected construction projects;

(B) Options to proceed when the dispute results or may result in the contractor being unable to continue to perform contract requirements; and

(C) Options to proceed when it becomes necessary to remove government-owned material from a strike-bound plant or facility because the contractor is unable to deliver due to the strike.

## 5222.102 Federal and State labor requirements.

**5222.102-2 Administration.**

(c)(1) The Contracting Officer shall refer questions from DOL or other interested parties regarding the application of labor laws to government acquisitions under FAR Part 22 and its corresponding contract clauses, to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil , or for NAVFAC contracts, to the NAVFACENGCOM Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil .

(2) When a contracting officer receives a complaint or other indication of violation of the labor standards in a service or supply contract, the complaint shall be referred promptly to the nearest office of DOL, making every effort to maintain the confidentiality of the complainant except to DOL and directing any related questions to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil .

## 5222.103 Overtime.

**5222.103-4 Approvals.**

(a) The CCO is the designated agency approving official.

**5222.103-90 Exceptions.**

The provisions of FAR 22.103, DFARS 222.103 and 5222.103 of this supplement are not applicable to ballistic missile programs.

# Subpart 5222.3 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

## 5222.302 Liquidated damages and overtime pay.

(c) The Navy Labor Advisor is delegated authority to act for the agency head. The NAVFACENGCOM Labor Advisor is delegated authority for liquidated damages on NAVFACENGCOM contracts. The contracting officer’s recommendation regarding liquidated damages under the Contract Work Hours and Safety Standards statute shall be forwarded directly to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil (or via the NAVFACENGCOM Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil if the matter involves a NAVFACENGCOM contract).

# Subpart 5222.4 - LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

## 5222.406 Administration and enforcement.

### 5222.406-1 Policy.

(a) The contracting officer shall respond promptly to any complaint received alleging labor standards violations on construction contracts. Allegations of Wage Rate Requirements (Construction) or Contract Work Hours and Safety Standards statute violations shall be investigated and resolved in accordance with established procedures. Allegations of other labor violations (e.g., safety and health, undocumented workers, discrimination) shall be referred to the appropriate enforcement agency (e.g., Occupational Safety and Health Administration, Office of Immigration and Customs Enforcement, Equal Employment Opportunity Commission). The NAVFACENGCOM Labor Advisor shall be notified via email at NAVFAC_Labor_Advisor@navy.mil of investigations that disclose particularly egregious violations (e.g., significant underpayment of wages or benefits due workers, extensive falsification of records, findings of willful violation, and recommendations for debarment).

### 5222.406-8 Investigations.

(d) *Contracting officer's report*. (1) For NAVFACENGCOM contracts, the contracting officer's report shall be forwarded to NAVFACENGCOMHQ via email at NAVFAC_Labor_Advisor@navy.mil . For all other contracts, forward the report to DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject “DFARS 222.406-8 – Labor Standards Compliance: Contracting Officer’s Report.”

(2)(iv) Forward the report to the Attorney General of the United States via DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject “DFARS 222.406-8 – Labor Standards Compliance: Contracting Officer’s Report – Attorney General Notification.” DASN(P) will notify the Administrator, Wage and Hour Division.

# Subpart 5222.10 - SERVICE CONTRACT LABOR STANDARDS

## 5222.1006 Solicitation provisions and contract clauses.

(c)(1) The Desk Guide for Service Contract Price Adjustments contains DON guidance on processing price adjustments under FAR 52.222-43 and FAR 52.222-44 that result from:

(i) Changes in wage determinations issued under the Service Contract Labor Standards statute, or

(ii) Amendments changing the minimum wage required by the Fair Labor Standards Act.

(S-90) The DON's Price Adjustment Calculation Tool (PACT) is available to automate the calculation of Service Contract Labor Standards price adjustments and streamline the process for contractors and contracting officers. PACT is available at https://www.secnav.navy.mil/rda/OneSource/Pages/PACT/PACT.aspx .

# Subpart 5222.11 - PROFESSIONAL EMPLOYEE COMPENSATION

### 5222.1103 Policy, procedures, and solicitation provision.

(S-90) Incorporate provision 52.222-46, Evaluation of Compensation for Professional Employees, in full text, in applicable solicitations. Contracting officers shall ensure that Source Selection Plans, along with Sections L and M of competitive solicitations, accurately reflect consideration of the total compensation plan when required by this provision.

# Subpart 5222.70 - RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES

### 5222.7003 Waivers.

Submit waiver requests to DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject "DFARS 222.7002 - Waiver of Requirements—National Security Interest."

# Subpart 5222.74 - RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

### 5222.7404 Waiver.

Submit waiver requests for the Secretary of Defense via DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject "DFARS 222.7404 -Waiver-Mandatory Arbitrations."

# Subpart 5222.90 - DEPARTMENT OF THE NAVY NON-CONSTRUCTION CONTRACTS CONTAINING CONSTRUCTION WORK

## 5222.9000 Department of the Navy non-construction contracts containing construction work.

The DON created the DON Non-Construction Contract with Construction Work Guide containing procedures that supplement existing policy for non-construction contracts (*e.g.* for supplies, services, research and development) that contain elements of construction valued in excess of the micro-purchase threshold. The procedures apply to all HCAs that award and administer contracts (including task and delivery orders) for assigned program requirements. The Guide is available on the ASN(RDA) website.