

# 52.222-41 Service Contract Labor Standards.

As prescribed in [22.1006\(a\)](#), insert the following clause:

Service Contract Labor Standards (Aug 2018)

(a) *Definitions*. As used in this clause—

*Contractor*, when this clause is used in any subcontract, *shall* be deemed to refer to the subcontractor, except in the term "Government Prime *Contractor*."

*Service employee* means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that *may* be alleged to exist between a *Contractor* or subcontractor and such persons.

(b) *Applicability*. This contract is subject to the following provisions and to all other applicable provisions of [41 U.S.C. chapter 67](#), Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 6702](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the *Contractor* or any subcontractor *shall* be paid not less than the minimum monetary wages and *shall* be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)

(i) If a wage determination is attached to this contract, the *Contractor shall* classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees *shall* be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure *shall* be initiated by the *Contractor* prior to the performance of contract work by the unlisted class of employee. The *Contractor shall* submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate, to the *Contracting Officer* no later than 30 days after the unlisted class of employee performs any contract work. The *Contracting Officer shall* review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which *must* include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in

the event of disagreement within 30 days of receipt or will notify the *Contracting Officer* within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division *shall* be transmitted to the *Contracting Officer* who *shall* promptly notify the *Contractor* of the action taken. Each affected employee *shall* be furnished by the *Contractor* with a written copy of such determination or it *shall* be posted as a part of the wage determination.

(iv)

(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used *may* vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors *may*, for example, be relied upon. Guidance *may* also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship *should* be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a *contract modification*, an exercise of an *option*, or extension of an existing contract, or in any other case where a *Contractor* succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits *may* be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the *Contractor shall* advise the *Contracting Officer* of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract *shall* in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause *shall* be paid to all employees performing in the classification from the first *day* on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work *shall* be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division *shall* make a final determination of conformed classification, wage rate, and/or fringe benefits which *shall* be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum

monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract *shall* be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The *Contractor* or subcontractor *may* discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the *Contractor* nor any subcontractor under this contract *shall* pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause *shall* relieve the *Contractor* or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the *Contractor* nor any subcontractor under this contract *shall* pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No *Contractor* or subcontractor under this contract *may* be relieved of the foregoing obligation unless the limitations of 29 CFR [4.1](#) b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR [4.10](#) that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR [4.11](#), that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR [4.10](#) and/or [4.11](#) and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor *Contractor's* collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination *shall* be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case *may* be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination *shall* be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The *Contractor* and any subcontractor under this contract *shall* notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or *shall* post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) *shall* be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of [41 U.S.C. 6703](#) and of this contract.

(h) *Safe and sanitary working conditions.* The *Contractor* or subcontractor *shall* not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the *Contractor* or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The *Contractor* or subcontractor *shall* comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.*

(1) The *Contractor* and each subcontractor performing work subject to the Service Contract Labor Standards statute *shall* make and maintain for 3 years from the completion of the work, and make them available for *inspection* and transcription by authorized representatives of the Wage and Hour Division, a record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute-

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor *Contractor's* employees which had been furnished to the *Contractor* as prescribed by paragraph (n) of this clause.

(2) The *Contractor shall* also make available a copy of this contract for *inspection* or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for *inspection* and transcription *shall* be a violation of the regulations and this contract, and in the case of failure to produce these records, the *Contracting Officer*, upon direction of the Department of Labor and notification to the *Contractor*, *shall* take action to cause *suspension* of any further payment or advance of funds until the violation ceases.

(4) The *Contractor shall* permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.

(j) *Pay periods.* The *Contractor shall* unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments *shall* be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute *may* not be

of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The *Contracting Officer* shall withhold or cause to be withheld from the Government Prime *Contractor* under this or any other Government contract with the Prime *Contractor* such sums as an appropriate official of the Department of Labor requests or such sums as the *Contracting Officer* decides may be necessary to pay underpaid employees employed by the *Contractor* or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the *Contracting Officer* may, after authorization or by direction of the Department of Labor and written notification to the *Contractor*, take action to cause *suspension* of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the *Contractor* in default with any additional cost.

(l) *Subcontracts.* The *Contractor* agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime *Contractor* or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime *Contractor* shall report such fact to the *Contracting Officer*, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a *Contractor* (predecessor) or successor (29 CFR 4.173), the incumbent Prime *Contractor* shall furnish the *Contracting Officer* a certified list of the names of all service employees on the *Contractor's* or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor *Contractors* of each such service employee. The *Contracting Officer* shall turn over such list to the successor *Contractor* at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.*

(1) By entering into this contract, the *Contractor* (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the *Contractor's* firm is a person or firm *ineligible* to be awarded Government contracts by virtue of the sanctions imposed under 41 U.S.C. 6706.

(2) No part of this contract *shall* be subcontracted to any person or firm *ineligible* for award of a Government contract under [41 U.S.C. 6706](#).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees *may* be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to [41 U.S.C. 6707](#) prior to its amendment by Pub.L.92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury *may* be employed at wages lower than the minimum wages otherwise required by [41 U.S.C. 6703\(1\)](#) without diminishing any fringe benefits or cash payments in lieu thereof required under [41 U.S.C. 6703\(2\)](#), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program *shall* be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices *shall* not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification *shall* not be greater than the ratio permitted to the *Contractor* as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips *may* have the amount of these tips credited by the employer against the minimum wage required by [41 U.S.C. 6703\(1\)](#), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit *shall* not exceed \$1.34 per hour beginning January 1, 1981. To use this provision-

(1) The employer *must* inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees *must* be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer *must* be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit *must* have been permitted under any predecessor collective bargaining agreement applicable by virtue of [41 U.S.C. 6707\(c\)](#).

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes *shall* be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the *Contractor* (or any of its subcontractors) and the *contracting* agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

**Parent topic:** [52.222 \[Reserved\]](#)