



# Service Contract Act Training Session I

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Nichole D. Atallah  
Partner  
Labor & Employment  
PilieroMazza PLLC

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PilieroMazza—a business law firm—serves as a strategic partner to government contractors and commercial businesses from across the United States.

We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

PilieroMazza is privileged to represent clients in the following areas:

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- Bid Protests
- Business & Transactions
- Business Succession Planning
- Construction
- Corporate and Organizational Governance
- Cybersecurity & Data Privacy
- Debt Financing
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- Government Contract Claims & Appeals
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# Nichole D. Atallah



Nichole D. Atallah  
Partner, Labor & Employment  
Pilieromazza PLLC  
202.857.1000  
natallah@pilieromazza.com

Nichole Atallah counsels clients in a broad range of employment matters, including compliance with Title VII, ADA, ADEA, FLSA/wage and hour, FMLA, wrongful termination, and reduction in force. She advises clients in general business matters, including interpreting and drafting employee compensation and benefit arrangements, confidentiality, non-compete and non-solicitation agreements, as well as separation agreements.

Ms. Atallah has substantial experience assisting government contractors with FAR Part 22 compliance, including the Davis Bacon Act, the Service Contract Act, and Equal Employment Opportunity requirements specific to government contractors. Additionally, she has advised tribally-owned entities on unique labor and employment issues, including Native American preferences, sovereign immunity questions, and Title VII jurisdiction.



# Session 1 Overview

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SCA Applicability

Classification

Wage Determinations

Conformances

Minimum Wages and Overtime



# SCA Compliance Throughout Life of a Contract

## Contracts/ Business development teams

- Need to be able to identify whether SCA is incorporated into contract and, if so, how it will impact price
- Pricing vacation and sick leave
- May need to submit questions to the government
- Do you build escalation into your bid?

## Accounting

- Accurately calculating H&W benefits
- Recordkeeping considerations

## Human Resources

- Onboarding employees
- Classification determinations
- Monitoring leave

# Service Contract Act Overview

## McNamara O'Hara Service Contract Act of 1965

Requires general contractors and subcontractors providing services on prime contracts (**United States and D.C.**) in excess of **\$2,500** to pay **service employees** in various wage classes **no less than the wage rates and fringe benefits found prevailing in the locality** as determined by Department of Labor (DOL), or the rates contained in the predecessor's collective bargaining agreement.

Applies to contracts “...the principal purpose of which is to provide services...in the US...through the use of service employees...”

- “Principal purpose”: simple majority of contract requirements
- Greater than 20% of contract effort
- US is defined as 50 states, District of Columbia, and US territories

# Pitfall: Accurately Determining SCA Applicability

Is the SCA clause (FAR 52.222-41) in the contract?

Is there a wage determination (WD) in the contract?

Is the WD correct?

If the SCA clause / WD is **not** in the contract:

- Ask questions.
- Wait for contract adjustment before paying SCA wages.
- Pay employees back wages required by DOL (if appropriate).
- Keep careful records of all employee payroll documentation.
- Submit a request for a price adjustment or equitable adjustment.

# Classification

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Step 1: Classify as a Service Employee (or not)

Step 2: Determine ALL applicable minimum wages

Step 3: Determine SCA occupation code

Step 4: Pay the higher of all applicable minimum rates



# Classification: Step 1

## Who **is** a “service employee”?

- Any person engaged in the performance of the contract
- Non-exempt employees under the FLSA
- Regardless of contractual relationship (independent contractors)

## Who is **not** a service employee?

- Employees who qualify for exemption as bona fide executive, administrative or professional employees under the FLSA
  - Salary Basis Test
  - Job Duties Test
- Teachers, computer systems analysts / programmers, outside salespersons, creative professionals (e.g. actors, musicians, cartoonists)

# Classification: FLSA Exemptions

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Administrative

Professional

Executive

Computer Professional



# Classification Step 2: Minimum Wages and Overtime

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Federal, state and local minimum wage

Federal Contractor Minimum Wage

- FAR 52.222-55
- Automatically increases each January 1
- DOL publishes increase
- Price adjustment

Contract Work Hours and Safety Standards Act

# Classification Step 3: Wage Determination Occupation Mapping

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## Finding the Wage Determination

- Contract

- By reference in contract

- GSA Schedule

- FAR 52.222-49 Place of Performance Unknown

## Directory of Occupations

- Broad occupational code

- Narrow from there

- Does not have to be perfect

- Work actually performed

# Understanding the Wage Determination

Sample Wage Determination  
 WD 05-2214 (Rev.-15) was first posted on www.wdol.gov on 06/19/2012  
 \*\*\*\*\*  
 REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT  
 By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
 EMPLOYMENT STANDARDS ADMINISTRATION  
 WAGE AND HOUR DIVISION  
 WASHINGTON D.C. 20210

Wage Determination No.: 2005-2214  
 Revision No.: 15  
 Date Of Revision: 06/13/2012

Diane C. Koplewski      Division of  
 Director      Wage Determinations

State: Kansas

Area: Kansas Counties of Brown, Clay, Cloud, Coffey, Dickinson, Geary, Jackson, Jefferson, Lyon, Marshall, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington

\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		12.46
01011 - Accounting Clerk I		12.46
01012 - Accounting Clerk II		14.00
01013 - Accounting Clerk III		15.65
01020 - Administrative Assistant		18.70
01040 - Court Reporter		16.14
01051 - Data Entry Operator I		11.27
01052 - Data Entry Operator II		12.31
01060 - Dispatcher, Motor Vehicle		14.93
01070 - Document Preparation Clerk		12.34
01090 - Duplicating Machine Operator		12.34
01111 - General Clerk I		11.85
01112 - General Clerk II		12.94
01113 - General Clerk III		14.52
01120 - Housing Referral Assistant		16.31
01141 - Messenger Courier		9.90
01191 - Order Clerk I		11.73
01192 - Order Clerk II		12.93
01261 - Personnel Assistant (Employment) I		13.97
01262 - Personnel Assistant (Employment) II		15.59
01263 - Personnel Assistant (Employment) III		17.37
01270 - Production Control Clerk		21.17
01280 - Receptionist		11.12
01290 - Rental Clerk		12.18
01300 - Scheduler, Maintenance		12.18
01311 - Secretary I		12.18
01312 - Secretary II		14.66
01313 - Secretary III		16.31
01320 - Service Order Dispatcher		12.18
01410 - Supply Technician		16.70
01420 - Survey Worker		13.09
01531 - Travel Clerk I		12.58
01532 - Travel Clerk II		13.25
01533 - Travel Clerk III		14.27
01611 - Word Processor I		12.47
01612 - Word Processor II		14.01
01613 - Word Processor III		15.93
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		19.18
05010 - Automotive Electrician		17.36
05040 - Automotive Glass Installer		16.62
05070 - Automotive Worker		16.62

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Sample Wage Determination

99810 - Sales Clerk	11.92
99820 - School Crossing Guard	12.01
99830 - Survey Party Chief	19.88
99831 - Surveying Aide	12.44
99832 - Surveying Technician	15.54
99840 - Vending Machine Attendant	13.20
99841 - Vending Machine Repairer	15.03
99842 - Vending Machine Repairer Helper	13.20

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: Life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans. Minimum employer contributions costing an average of \$3.71 average computed on the basis of all hours worked by service employees employed on the contract.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year. New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals. (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or

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# Understanding the Wage Determination

## Consolidated Wage Determinations:

- Wage rates for approximately 400 occupations grouped by several broad occupational categories
- Based primarily on cross-industry survey data
- Job descriptions are listed in the SCA Directory of Occupations: [Directory of Occupations](#).
  - Contains standard position descriptions for most SCA occupations listed in prevailing WDs
  - If WD occupation is not listed in the Directory, the position description may be included in the WD

# Understanding the Wage Determination

## Odd vs. Even-Numbered WD

- ODD (i.e., 2012-2019) pay Health & Welfare (“H&W”) for all hours paid each week (work and paid leave) up to 40 hours. “Per-person” H&W rate.
- EVEN (i.e., 2012-2020) pay minimum contribution for benefits costing an average of the H&W for all hours worked (including overtime) by all service employees. “Averaging” H&W rate.

## Collective Bargaining Agreements



# Mapping

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**Step 1: Determine the actual job duties the employee will perform or is performing.**

**Step 2: Determine the broad occupational class**

01000 ADMINISTRATIVE SUPPORT AND CLERICAL OCCUPATIONS This category includes occupations concerned with preparing, transcribing, transferring, systematizing, and preserving both written and computerized communications and records; gathering and distributing information. The duties in this category also include: operating office machines; storing, distributing, accounting for stores of materials; distributing mail, and delivering messages. Performing other administrative support and clerical duties may be required.

**Step 3: Check Federal Grade Equivalent (FAR 52.222-42)**

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/Vers5SCAIndex.pdf>



# Mapping

## Step 4: Determine occupational base/classification

**CUSTOMER SERVICE REPRESENTATIVE (Occupational Base)** The Customer Service Representative (CSR) provides information and solutions in response to inquiries pertaining to products, services and/or customer complaints. Duties may include, but are not limited to, accessing databases to retrieve and/or record information such as customer complaints or orders; responding to customer complaints or inquiries; taking orders for products or merchandise; calculating charges; processing billing or payments; processing customer claims; handling returns, refunds, and exchanges; keeping records of customer interactions; and updating customer account information.

**CUSTOMER SERVICE REPRESENTATIVE I** This position receives, comprehends, provides, and responds to routine informational inquiries and service requests through the use of various communication technologies including but not limited to telephones, e-mail, facsimile, postal mail, and the Internet.

**CUSTOMER SERVICE REPRESENTATIVE II** Position is responsible for performing duties detailed in CSR I job description. In addition, CSR II is responsible for responding to escalated and more complex inquiries on a broader scope of topics. Tasks may require simple adaptation and interpretation of provided reference materials. 01043 **CUSTOMER SERVICE REPRESENTATIVE III** Position is responsible for performing duties detailed in CSR I and CSR II job descriptions. In addition, CSR III is responsible for supervising and advising CSR I and CSR II.

# Conformance

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Just because an employee's duties / classification are not listed in the directory does not mean that an employee is exempt.

Contractors must request a conformance for non-exempt employees who are not in the wage determination.

- Must be submitted no later than 30 days after employee starts to perform work.

# Pitfall: Properly Classifying Employees and Independent Contractors as Service Employees

**Example:** Contractor employs a biologist whose duties would generally qualify for an FLSA exemption, but due to scheduling preferences pays the biologist an hourly wage. Is the employee exempt from the SCA?

**Example:** A temporary employee is filling in for an SCA employee out on leave. Must a contractor pay the employee in accordance with SCA wage and benefit requirements?

# Pitfall Properly Classifying Employees and Independent Contractors as Service Employees

Service employees include full-time, part-time and temporary employees, as well as independent contractors

Employees must be classified based on the actual work they perform, not their job titles or the contract description.

Remember that hourly employees are non-exempt, service employees.

This is why it's imperative to include HR at the bidding stage.

Ultimate responsibility falls to the prime contractor! Just because you include a flow-down provision does not relieve you of responsibility.

# Questions?



Nichole Atallah  
Partner, Labor & Employment  
PilieroMazza PLLC  
202.857.1000  
natallah@pilieromazza.com

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