



SESSION GUIDE
SEASON 2023, EPISODE FOURTEEN
FAR PARTS 22 & 23:
LABOR AND OTHER WORKPLACE-
RELATED LAWS

I. Introduction

Continuing our policy focus from the previous chapter, this chapter covers other important Government policy goals; including keeping contractor workplaces safe, promoting sustainability, protecting the environment, prohibiting human trafficking, and requiring payment of fair wages and benefits to employees working on U.S. Government contracts. **Part 22** deals specifically with application of certain wage and labor laws to Government contracts, and **Part 23** deals with a variety of workplace-related issues, including renewable energy technologies and establishing certain drug-free workplaces. Both these Parts implement existing laws and regulations and also apply FAR-specific regulations to supplement those instruments. While some of these laws apply broadly, and not just to government contractors, the implementing regulations support several Guiding Principles of the FAR, particularly the seventh, which we find at **1.102(b)(4)** ("fulfilling policy objectives").

II. Application of Labor Laws to Government Acquisitions

A complex amalgam of history, policies, and politics underlies **Part 22** of the FAR and all the laws it incorporates. **Part 22** actually has 21 different subsections, which we will sort into six broad categories: generally-applicable labor policies, construction and other manual labor policies, services policies, anti-discrimination policies, employee rights, and special statutory prohibitions.

A. Generally-Applicable Labor Policies

We begin our discussion of labor policy in **Subparts 22.1, 22.2, and 22.6**. These Subparts deal with basic labor policies that are applicable to nearly every Government contract. Contractors are required to notify the Government if it "has knowledge that any actual or potential labor dispute is delaying or threatening to delay contract performance". **FAR 52.222-1**. Notwithstanding being provided notice, as a general rule, the Government is supposed to remain impartial during any labor dispute. **22.101-1(b)(1)**. However, this does not mean that the Government cannot assist in settling labor disputes or in crafting collective bargaining agreements. In fact, to speed the resolution of disputes, the Government is encouraged to refer labor issues to the appropriate dispute resolution authorities, such as the National Labor Relations Board (NLRB). **22.101-1(d)**. This helps Government contracts to be performed in a timely manner. **22.101-2(b)**. Additionally, agencies must cooperate with all federal and state agencies responsible for enforcing labor requirements, and must also encourage contractors to do the same. **22.102-1** and **22.102-2**.

As a buyer, the Government prefers that contractors not require its employees to work overtime during the performance of a government contract. **22.103-2**. The reasoning in the FAR is that paying overtime will increase the contractor's costs, which in turn will increase the price the Government must pay on a contract. **22.103-1** contains the definitions of overtime for the purposes of the FAR. See also **FAR 52.222-2** for specific types of work that may result in overtime payments, if permitted by the contract.

Question 1 – In what situations might the FAR allow a contractor to work overtime? [Hint: check out 22.103-4(a)]

We noted that **FAR 8.6** encourages agencies to directly purchase supplies and services manufactured or provided by prison labor – through the Federal Prison Industries (a.k.a., UNICOR) – “to the maximum extent practicable”. Similarly, **Subpart 22.2** indicates that contractors are permitted to subcontract and use “convict labor” to perform supply contracts. What does that mean? **FAR 22.201**, which implements several executive orders that allow convict labor, indicates that convict labor is simply work performed by prison inmates. The executive orders also include the use of persons on parole or probation and persons who have pardoned or who have served their terms. **FAR 22.201(a)(2)**. We should note, however, that the Government and contractors must take measures to ensure that convict labor is not exploitative, and that it does not unfairly compete with any other types of labor. **FAR 22.201(a)**. Contractors may also not use “convict labor” if such employment (i) results in the displacement of employed workers, (ii) if there is available gainful labor in the locality, or (iii) impairs existing contracts for services. **FAR 22.201(a)(4)(iii)**.

Subpart 22.6 applies labor standards to contracts for everything but construction and services. **22.602**. Interestingly, this Subpart is defined more by what is exempt from it than what it actually governs; the large majority of the Subpart actually indicates which specific industries and actions are exempt from the Subpart. We can find a full list of exemptions in **22.604**, which is conveniently labeled “Exemptions”.

B. Construction and Other Manual Labor Policies

Now we move into more specialized industrial labor standards, which we find in **Subparts 22.3, 22.4, and 22.5**. These Subparts deal with policies regarding manual labor and construction-specific issues. Their goal is to provide as safe a workplace as possible for people who work in potentially dangerous professions, and to ensure that such workers are paid adequately and not overworked.

Subpart 22.3 implements the Contract Work Hours and Safety Standards Act, a law that applies broadly, not just to government contractors. It addresses manual labor pay standards, and mandates that

“laborers or mechanics”—a term which includes apprentices, firefighters, and just about every other manual labor job you can think of (except seamen)—should not work more than 40 hours per week, unless they are paid for their overtime at a minimum of 1.5 times their regular rate. **22.301**. If contractors fail to pay required overtime they may be subject to liquidated damages—and, of course, will be required to pay their employees appropriate back wages! **22.302(a) and (b)**.

Subpart 22.4 prescribes the labor standards for use in every construction contract in excess of \$2,000 involving a public building or a public work. (This was previously called the Davis-Bacon Act, until that and other statutes included in the FAR were “codified” and the folks at NARA decided to rename them something completely different.)

*Question 2 – What is the current name of the statute that formerly was known as the “Davis-Bacon Act”? [Hint: check out **22.403-1**]*

In **Subpart 22.4**, construction does not just mean building new structures; it also includes altering or repairing existing structures and painting or decorating any public building or public work. **22.401**. Like **22.3**, this Subpart also applies to apprentices, but only to individuals apprenticed in the construction industry.

What if a contract is not primarily for construction, but still has a construction element? If the construction element can be separated out from the rest of the contract, is substantial, and is to be performed on some public building or public work, then this Subpart will apply to that portion of the contract. **22.402(b)(1)**. If, on the other hand, the construction aspect is merely incidental to the rest of the contract, such as if a single wall needs to be altered slightly to accommodate a large scanning electron microscope, then this Subpart does not apply. It also does not apply if the construction aspect cannot be separated out from the rest of the contract, such as if the contract is for rewiring a building and rewiring would necessitate rebuilding parts of walls. **22.402(b)(2)**. It also does not apply if the construction will be closely related to some type of research and development or experimental process, such as research regarding construction of more energy-efficient buildings. **22.402(a)(2)(ii)**.

*Question 3 – As noted above, the labor standards for “contracts involving construction” set forth in **FAR 22.4** often extend to workers who may not be directly involved in performing “construction services”. Under what circumstances would a “watchmen” or “guard” protecting a construction site “after hours” be subject to these employment related compensation/benefit rules.*

What about wages? As it turns out, **FAR Subpart 22.403** is extremely specific about the ways in which construction workers ought to be paid. It applies multiple statutes, regulations, and executive orders to wages and paid sick leave for construction workers. The purpose of these regulations is to protect local

labor from wage reductions caused by a “race to the bottom” in response to unfettered competition for government construction contracts. One major way in which the Government ensures that construction workers are paid fairly is through “Wage Determinations”. **FAR 22.404**. Put simply, a Wage Determination is a determination from the Department of Labor which reflects prevailing wages for particular job codes in a particular industry, including fringe benefits. These terms are defined more fully in **FAR 22.406-2**.

*Question 4 – Thinking back to what we learned about the “Standard Contract Format” included in **FAR Part 15**. What section of an RFP might a contracting officer include the required Department of Labor Wage Determination?*

There are two different types of wage determinations: general wage determinations and project wage determinations. General wage determinations are the preferred wage determination method, apply to broad categories of labor, and are available publicly on the DOL website (**FAR 22.404-1(a)**); project wage determinations apply only to specific projects (**FAR 22.404-1(b)**). COs can apply general wage determinations to a contract without notifying the DOL, unless the DOL has not made any general wage determination yet. **FAR 22.404-3(a)**. In that case, the agency should request a general wage determination. If a CO wishes to apply a project wage determination, he must request the determination from the DOL, and cannot make it himself. **FAR 22.404-3(b)**. Project wage determinations may also reflect wages set forth by a labor union in the locality to level the playing field.

Note that the DOL may later modify (**FAR 22.404-6**) or correct (**FAR 22.404-7**) already-issued wage determinations. COs enforce proper application of wage determinations by requiring contractors to submit certified payrolls and statements periodically (**FAR 22.406-6**), and may withhold payments on the contract if the contractor fails to properly submit such documents (**FAR 22.406-9**). Knowingly failing to provide accurate payrolls could result in lawsuits under the False Claims Act.

*Question 5 – Is there anyone who can appeal construction wage determinations? If so, who and how? [Hint: check out **FAR 22.404-11**]*

FAR Subpart 22.5 indicates that the Government can, and often should, place project labor agreements in federal construction projects, provided such projects are “large-scale.” **FAR 22.503(a)**. For the purposes of this Subpart, “large-scale” means a construction project which will have a total cost to the Government of at least \$25 million. **FAR 22.502**. The requirements for project labor agreements are included in **FAR 22.504**.

C. Services Policies

Subpart 22.10 applies to all Government contracts , the “principal purpose of which is to “furnish services” in the United States through the use of “service employees”. **Subparts 22.11, and 22.12** deal with policies that are specific to certain contracts for services. Many of these policies (though not necessarily the wage levels) are quite similar to the manual labor and construction policies we have already discussed. These Subparts simply apply such requirements to service contracts as well.

Question 6 – Identify four (4) types of services that are NOT subject to the employment compensation/benefit rules set forth in FAR 22.10. [Hint: check out **FAR 22.1003-3 and -4]**

Subpart 22.10 details the general policies applicable to service contracts. **22.1002** briefly alludes to the wage determination process used for service contracts; **22.1008** describes it in far greater detail, and **22.1007** indicates when the parties should seek a wage determination from the DOL. **22.1010** allows collective bargaining agreements, and **22.1012** indicates the applicability of revisions to wage determinations. On the whole, the process for obtaining a service contract wage determination is similar to the wage determination process for other contracts, which we found in **22.404**. However, other wage-related mechanisms also exist for service contracts, which **22.1003** covers. **22.1003** applies the Service Contract Labor Standards Act to federal Government contracts for services, provided those contracts are to be performed in the U.S. **22.1003-2**. There are some other exemptions from the Service Contract Labor Standards, which **22.1003-3** outlines.

Note that the FAR draws a distinction between “repair” and “remanufacturing” contracts, and applies different statutes to these two categories. In general, remanufacturing of equipment happens when a piece of equipment is so beyond fixing that it essentially has to be taken apart and manufactured all over again. **22.1003-6(a)**. By contrast, repair is simply what it sounds like—replacement or retooling of a few parts here and there. **22.1003-6(b)**. The Service Contract Labor Standards statute only applies to repair work, not to remanufacturing work. Remanufacturing work is instead governed by **41 U.S.C. 65**. If a CO has any questions regarding the Service Contract Labor Standards statute, she should ask the agency labor advisor. **22.1003-7**.

What happens if the CO can't determine where the contract is to be performed? While this situation might seem a little far-fetched at first glance, it's more likely than we might think to have a service contract where place of performance might be unclear. For example, a fair amount of technical support is now sourced from other countries as well as from the U.S. Since the technical support itself could be performed outside the U.S., the labor standards we've been discussing would not apply. Thus, it can be really important for COs to determine where a contract will be performed. **22.1009** tells us what to do in these situations. The remainder of **Subpart 22.10** primarily deals with procedures for dealing with an infraction of this Subpart (as well as some miscellaneous provisions).

Question 7 – What three (3) pieces of information may a contracting officer rely upon when determining a contract's "place of performance" for purposes of applicability of FAR 22.10? [Hint: check out FAR 22.1009-2]

Subpart 22.11 talks about "professional employees." Under the FAR, professional employees are a specific class of employees, which includes accountants, lawyers, doctors, engineers, and similar individuals who are involved in discharging "professional duties." **22.1102**. These employees are paid an "annualized" salary and not an hourly rate. Thus, the FAR only notes that such employees should be compensated "fairly and properly." **22.1103** outlines multiple tests for "fair and proper" compensation, as well as for determining who is a "professional employee."

D. Non-Discrimination Policies

Subparts 22.8, 22.9, 22.13, and 22.14 all incorporate various non-discrimination policies into the FAR. In general, they simply fold existing federal non-discrimination laws and policies into Government contracts. However, they also make certain exceptions to non-discrimination laws which are not present in most private-sector situations.

Subpart 22.8 incorporates Executive Order 11246, which requires all agencies to include an Equal Opportunity clause in their contracts (**22.802**); this Subpart also mandates inclusion of affirmative action programs, where applicable (**22.804**). The Secretary of Labor is responsible for enforcing and administering prescribed portions of **E.O. 11246**, and for adopting rules, regulations, and orders necessary to attain the goals of that executive order. **22.803(a)**. However, the Secretary has delegated much of that authority—except the authority to issue general rules and regulations—to the Deputy Assistant Secretary. **22.803(b)**. Agency heads are responsible for ensuring that their agencies act in accordance with the DOL's requirements. **22.803(c)**. A detailed rundown of the procedures for applying non-discrimination requirements to contracts is in **22.805**.

There are several exceptions to and exemptions from the non-discrimination requirements, which we find in **22.807**. If the CO receives a complaint alleging violation of these requirements, the CO must

forward that complaint to the Office of Federal Contract Compliance Programs (OFCCP), which is a part of the Department of Labor. **22.808**. The Deputy Assistant Secretary of Labor is responsible for enforcing the **Subpart 22.8** requirements. **22.809**.

Question 8 – What type(s) of employment discrimination is specifically prohibited under E.O. 11246?
[Hint: Check out **FAR 22.802**]

Subpart 22.9 discusses equal employment opportunity protection based on the age of the worker. There are no specific contract clauses that require contractors to provide this protection. While there are no specific clauses that must be included in any contracts to enforce this Subpart, COs must still bring this Subpart to the attention of contractors. **22.901(c)**. Since the protections in this Subpart are not enforced by DOJ or DOL, complaints go only to the agency itself. **22.902**.

Subpart 22.13 discusses equal opportunity protections to veterans. This includes both combat and non-combat veterans, as well as disabled veterans. **22.1301**. The equal opportunity requirements relating to veterans are substantially similar to other equal opportunity requirements; essentially, contractors should make a special effort to include veterans in their hiring processes, though there are a couple of very specific exceptions to this rule. **22.1302(a)**. We should note, however, that these requirements may be waived in some circumstances, like all the other equal opportunity requirements. We can find the situations in which waiver is appropriate in **22.1305**. The procedures regarding collective bargaining agreements (**22.1307**), complaints (**22.1308**), and enforcement actions (**22.1309**) are also substantially similar to other equal opportunity requirements we have discussed.

Subpart 22.14 discusses equal employment protection for workers with disabilities. Like the other equal opportunity Subparts, this Subpart encourages contractors to actively seek out people with disabilities for employment. **22.1401(a) and (b)**. Contractors are also required to create utilization goals for individuals with disabilities, and generate reports each year comparing their actual utilization of individuals with disabilities with their goals. **22.1401(c)**. The Director of the OFCCP or the head of an agency may waive the requirements in this Subpart in certain situations, but either of these officers may also retract the waiver later if they find that it was not actually necessary. **22.1403**. The collective bargaining agreements provisions (**22.1405**), complaint procedures (**22.1406**), and enforcement actions (**22.1407**) are all substantially similar to other equal opportunity Subparts.

E. Employee Rights

Subparts 22.16, 22.19, and 22.21 incorporate employee rights protections into the FAR. Like the other Subparts we have discussed here, these Subparts uphold the final Guiding Principle of the FAR at **1.102(b)**.

Subpart 22.16 requires contractors to notify their employees of certain employment rights provided under the National Labor Relations Act. **E.O. 13496**. Contractors comply with this obligation by placing a DoL created poster in a place commonly used by its covered workers (e.g., cafeteria, copy room, break room, etc.). A few exceptions to this requirement exist, and are detailed in **22.1603**. In case of complaints or violations, **22.1604** contains procedures for sanctions and other consequences.

Subpart 22.19 enforces **29 C.F.R. 10** and **E.O. 13658**, which establish a minimum wage for contractors. As of January 30, 2022, the minimum hourly wage rate for contractor employees became \$15.00, and in 2023 thereafter to be adjusted each year by the Secretary of Labor. **22.1902(a)**. This requirement does not negate other wage rate requirements. **22.1902(b)**. We find its applicability in **22.1903**, and the procedures for its enforcement in **22.1905**.

Subpart 22.21 establishes paid sick leave for contractor employees, to implement **29 C.F.R. 13** and **E.O. 13706**. Contractors are required to have a paid sick leave policy for their employees (**22.2102(a)**); however, this Subpart does not allow noncompliance with other regulations (**22.2102(b)**) and it also does not require separate voluntary paid time off and paid sick leave policies (**22.2102(c)**). We find the applicability for these requirements at **22.2103**, exclusions at **22.2104**, and enforcement procedures at **22.2109**. Specific requirements are at **22.2105** and specific prohibitions at **22.2106**.

Question 9 – Can a contractor employee waive his right to paid sick leave? Explain your answer.

[Hint: check out **22.2107**]

F. Special Statutory Prohibitions

Subparts 22.15, 22.17, and 22.18 detail specific statutory prohibitions on specific types of labor. Forced child labor, for example, is expressly prohibited in acquisitions of supplies exceeding the micro-purchase threshold. [Of course, this is merely an attempt to reduce the red tape on micro-purchases; it does not mean that child labor is acceptable in those contracts!] These prohibitions support the final Guiding Principle of the FAR in **1.102(b)**.

As we noted, **Subpart 22.15** prohibits forced or indentured child labor. This simply means that the Government will not acquire supplies produced by people under the age of 18 who are working involuntarily. Specific products from specific countries must actually come with a certification that they

were not produced using forced child labor. **22.1501**. There is a list of these products and countries on the [DOL website](#). Procedures for procuring any of the product on the DOL list are outlined in **22.1503**. **22.1504** details the procedures to be used if a contractor violates this Subpart, and what remedies should be provided.

Subpart 22.17 implements **22 U.S.C. 78** and **E.O. 13627**, both of which provide protections against human trafficking. Human trafficking includes many different activities, including prostitution, domestic labor, and manual labor, to name a few. Unlike most other portions of the FAR, this Subpart actually applies to *all* acquisitions, regardless of dollar threshold, type of acquisition, or location of performance. **22.1701(a)**. Additional information regarding the Government's human trafficking prohibitions is located on the [Department of State's website](#). The prohibitions on human trafficking in this Subpart are quite specific; a laundry list of prohibited activities (and some required activities) is in **22.1703**, which indicates that the Government *shall* prohibit everything therein. It's not just a *may* or a *should*, but an emphatic *shall*! If a contractor fails to comply with any of the requirements in this Subpart, it will be subject to the consequences in **22.1704**.

Question 10 – Identify three prohibited activities included in the Combatting Trafficking in Persons clause found at **52.222-50**.

Subpart 22.18 could be considered a prohibition on contractor use of ineligible employees. What does that mean? Basically, **22.18** requires contractors to use only legal labor in performance of their contracts (i.e., citizens and non-citizens with green-cards or other work permits). Contractors must use various resources from agencies like the Department of Homeland Security to verify that their workers are, in fact, permitted to work in the U.S. **22.1800**. This is not a ban on any use of foreign workers; it is simply an enforcement of existing immigration law. **22.1802(a)**. However, we should note that these requirements only apply to acquisitions above the simplified acquisition threshold, and that there are also a few other exceptions to their application. **22.1803**.

Question 11 – What is the name of the system that contractor must use to determine whether an employee is “eligible” to perform under a contract subject to **FAR 22.18**?

III. Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

Part 23 is a bit of a catch-all for everything workplace-related that is not also labor-related. Thus, this Part seems a little disjointed, especially coming off the relative cohesion of **Part 22**. **Part 23** has eleven

different Subparts, all addressing different aspects of workplace issues. As we did in our discussion of **Part 22**, we will arrange these Subparts into categories, three to be specific: sustainability, workplace safety, and pollution issues.

A. Sustainability

Subparts 23.1, 23.2, 23.4, and 23.7 outline contractors' responsibility to pursue sustainability in their performance. Here, sustainability means environmental sustainability. One of the Government's policy goals is to help protect the environment, and not damage it unnecessarily. Thus, these Subparts exist to support that policy goal, in line with the Guiding Principles of the FAR.

Subpart 23.1 requires agencies to "advance sustainable acquisition." They do this by ensuring that 95 percent of new contract actions contain provisions requiring energy efficiency, among other things. **23.103(a)**. Agency heads may exempt some contracts from this requirement. **23.105**. *Question 12 – What are the only two acquisition types that are specifically exempted from the **Subpart 23.1** requirements? [Hint: check out **23.104**]*

Subpart 23.2 contains additional sustainability requirements, specifically, energy and water efficiency requirements. **23.1** touched on those requirements briefly, but **23.2** goes into a little more detail, and provides additional authorities for enforcing these requirements. **23.201** and **23.205**. The policies (**23.202**), required types of products (**23.203**), and exemptions (**23.204**) are all extremely similar to those in **23.1**.

*Question 13 – Under what circumstance is an agency NOT required to procure an ENERGY STAR® or FEMP designated product under a contract covered by **FAR 22.2**?*

Subpart 23.4, like **23.2**, contains additional sustainability requirements, this time pertaining to use of recovered materials. Recovered materials are usually designated by the EPA or USDA. **23.401**. Agencies are required to establish an "affirmative procurement program" aimed at procuring products made from recovered materials as much as is practicable. **23.404(a)**. As with any other part of the FAR, some exemptions apply. **23.404(b)**. The procedures for procuring designated items are in **23.405**.

Subpart 23.7 applies environmental safeguarding laws to procurement of electronics, including computers, imaging devices like X-ray machines, and TVs. It's a little surprising how much pollution

electronics manufacturing can create! Thus, this Subpart provides policies (**23.703**) and tools (**23.704**) to help minimize pollution in procurement. It also provides plenty of authority for COs to rely on in **23.702**.

B. Workplace Safety

Subparts 23.3, 23.5, 23.6, and 23.11 are concerned with creating a safe workplace environment. The labor regulations we've discussed are nice and all, but minimum wages aren't much good if they'll be earned in an egregiously unsafe environment! Thus, the following Subparts establish some basic requirements for workplace safety.

Subpart 23.3 details the policies and procedures for use when handling hazardous materials. The Occupational Safety and Health Administration (OSHA) issues and administers regulations requiring contractors to tell them employees about any hazards they might be exposed to, as well as any symptoms that could arise from such hazards, appropriate treatment for symptoms, and proper precautions and handling procedures. **23.302(a)**. Contractors must keep track of the hazardous materials they use and submit the data to the contracting agency. **23.302(b)**. The requirements for hazardous material data are in **23.302(c) through (e)**.

Question 14 – What two specific materials are not covered by 23.3? [Hint: check out 23.300]

Subpart 23.5 applies **41 U.S.C. 81**, the Drug-Free Workplace Act, to Government procurement. This Subpart applies to all contracts, including contracts with 8(a) contractors, though naturally there are some exceptions. **23.501**. Offerors who do not agree that they will provide a drug-free workplace will be automatically considered non-responsible. **23.504(a)**. COs can take several actions if they determine, in writing, that adequate evidence exists to suspect that a contractor is not in compliance with **Subpart 23.5**. These actions are outlined at **23.506**.

Question 15 – True or False? The requirements of Subpart 23.5 are applicable to a contracts awarded to an individual below the simplified acquisition threshold? Explain your answer.

Subpart 23.6 takes the hazardous material notification requirements a step further, particularly with respect to radioactive material. This Subpart requires contractors to notify not only their employees, as

required by **23.3**, but also the CO if the contractor is delivering radioactive material. That way, the CO can notify any receiving activities of the presence of radioactive material, allowing them to take appropriate precautions. **23.601**.

Subpart 23.11 encourages contractors to ban text messaging while driving. At this point, a lot of states have already banned cell phone use while driving. This Subpart seeks to support such laws—and to create a safe work environment—by encouraging contractors to ban text messaging while driving.

23.1104. Note that this is just an encouragement; agencies can't really force contractors to create such policies. However, encouragement is still a step in the right direction!

C. Pollution Issues

Subparts 23.8, 23.9, and 23.10 implement other environmental protocols that are specifically related to pollution. These protocols are a little different from the sustainability issues we discussed in Part III.A. Instead of being concerned with whether a contract action will be sustainable, these Subparts are concerned with whether a contract action will result in environmental damage. You might say that Part III.A deals with creating long-lasting, environmentally-friendly systems, whereas Part III.C deals with damage control.

Subpart 23.8 sets out procedures to be used when procuring products which in some way use ozone-depleting substances. **23.800**. This use can be as a direct component of the product or as part of the manufacturing process. Ideally, the Government would not procure anything requiring such substances, and in fact the Government is required to give preference to products that do not use them. **23.802**. The procedures for these preferences are in **23.803**.

Subpart 23.9 requires contractors to comply with environmental management systems (EMS). These systems do exactly what it sounds like they do: manage the environmental impact of a contractor's activities. The FAR has little else to say on the subject, other than the basic requirement to comply with EMS. **23.902**.

Subpart 23.10 deals with right-to-know laws and pollution prevention requirements. Right-to-know laws give communities the right to know whether their land is being polluted, and if so, with what. **23.1001**. Therefore, Government facilities need to keep track of what pollutants might be present, and plan for any emergencies. **23.1004**.

*Question 16 – Where can you find a list of “toxic chemicals” to which **Subpart 23.10** applies? [Hint: check out **52.223-5**] _____*

Discussion Questions

1. What are the two stated purposes of the Copeland Act? [Hint: check out **FAR 22.403-2**]

2. How does the Government check compliance with wage determinations? [Hint: check out **22.406-6**]

3. True or False? All federal contractors are required to establish and comply with a Combatting Human Trafficking Compliance Program. Explain your answer. [Hint: check out **22.1703(c)**]

4. What specific actions must a contractor take when it has been informed by an employee that she has been convicted of a drug abuse violation in the workplace that is covered by FAR clause **52.223-6 (Drug-Free Workplace)**?

5. In order to request Wage Determination and Response to Request, contractors must complete an SF-308 form. Name three things required to be listed on the form and to whom the completed form should be sent. [See Resources]

6. According to the Department of Labor "Sample Affirmative Action Plan", what type of material/documentation should a contractor retain to "evidence its affirmative action efforts" and compliance with its "plan"? [Hint: Check out the Appendix below]

7. **FAR Question:** True or False? Apprentices and trainees are **ALWAYS** covered by the employment compensation/benefit rules set forth at **FAR 22.4**? Explain your answer.

Answer Key

Answer 1 – Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to-

- (1) Meet essential delivery or performance schedules;
- (2) Make up for delays beyond the control and without the fault or negligence of the contractor; or
- (3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

Answer 2 – 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction)

Answer 3 – The construction work is so merged with non- construction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

Answer 4 – Section J; In my experience, the DOL Wage Determination for the work required – or at least a hyperlink reference to the WD – would more likely be found at Section J (List of Attachments) or Section L (Instructions, Conditions and Notices to Offerors).

Answer 5 – Contracting agency or other interested party may file a petition

Answer 6 – (a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

- (b) Any work required to be done in accordance with the provisions of 41 U.S.C.chapter 65;
- (c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;
- (d) Any contract for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934;
- (e) Any contract for public utility services;
- (f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or
- (g) Any contract for operating postal contract stations for the U.S. Postal Service.

Answer 7 – The following may indicate possible places of performance:

- (a) Locations of previous contractors and their competitors.
- (b) Databases available via the Internet for lists of prospective offerors and contractors.
- (c) Responses to a presolicitation notice (see 5.204).

Answer 8 – (i) To promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, sexual orientation, gender identity, or national origin; and

(ii) To prohibit contractors from discharging, or in any other manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

Answer 9 – Employees cannot waive, nor may contractors induce employees to waive, their rights under E.O. 13706 or 29 CFR Part 13.

*Answer 10 – (1) Threats of serious harm to or physical restraint against any person;
(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
(3) The abuse or threatened abuse of the legal process.*

Answer 11 – Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify).

Answer 12 – (a) Contracts performed outside of the United States, unless the agency head determines that such application is in the interest of the United States.

(b) Weapon systems.

Answer 13 – (a) No ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the agency; or

(b) No ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into account.

Answer 14 – Ammunition and Explosives

Answer 15 – (a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

(d) By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

Answer 16 – TRI List.

Discussion Questions Answer Key

1. Makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.
2. (i) The correctness of classifications and rates;
 - (ii) Fringe benefits payments;
 - (iii) Hours worked;
 - (iv) Deductions; and
 - (v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.
3. True. In all solicitations and awards.
4. (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency
5. WDOL submission
Type of Work
Date of Request
Estimated \$ Value of Contract
6. Copy of CBA's, employee policy and practices, letters to vendors and EEO policy.
7. If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

[DOL Prevailing Wage Resource Book - DBA Compliance Principles](#)

U.S. Department of Labor's "Prevailing Wage Resource Book" covering BDA/DBRA Compliance Principles. This guide book covers the laborers and mechanics, site of the work, truck drivers, apprentices and trainees, helpers, area practice – proper classification of workers, fringe benefits, certified payrolls & use of electronic signatures, and leases as contracts for construction.

[DOL Prevailing Wage Resource Book - DBA Wage Determinations](#)

U.S. Department of Labor's "Prevailing Wage Resource Book" covering Davis-Bacon Wage Determinations. This guide book covers the Davis-Bacon Act, physical inclusion of wage determinations, general and project wage determinations, modifications and superseded decisions, selecting the proper wage determination(s), a project wage determination request form and more.

[DOL Prevailing Wage Resource Book - SCA Compliance Principles](#)

U.S. Department of Labor's "Prevailing Wage Resource Book" covering SCA Compliance Principles. This guide book covers discharging wage and fringe benefit obligations, employee notification and poster, timely payment of wages and fringe benefits, hours worked, other fringe benefit topics, payment of overtime, recordkeeping and more.

[DOL Prevailing Wage Resource Book - SCA Wage Determinations](#)

U.S. Department of Labor's "Prevailing Wage Resource Book" covering SCA Wage Determinations. This guide book covers SCA Wage Determinations, SCA directory of occupations, obtaining SCA wage determinations, contents of an SCA wage determination, sample materials, and more.

[DOL Sample Affirmative Action Program \(AAP\)](#)

This is a sample of an Affirmative Action Program (AAP) for illustrative purposes only, constructed around a company with less than 150 employees with formulated job groups according to OFCCP occupational categories. This sample includes a workforce analysis, job group analysis, utilization analysis, designation of responsibility for implementation, identification of problem areas, action-oriented programs, internal audit and reporting system, support data, guidelines on discrimination because of religion or national origin, and more.

[FLSA Digital Reference Guide](#)

This Digital Reference Guide to the Fair Labor Standards Act was released by the Wage and Hour Division of the Department of Labor. The presentation covers basic wage standards, who is covered, minimum wage, exemptions, youth employment, terms used in the FLSA, recordkeeping, nursing mothers, computing overtime, enforcement, retaliation prohibited, other WHD labor laws, SBREFA, and equal pay.

Form WH347 – Copeland Act Compliance

This is a sample form that is compliant with the Copeland Act concerning payroll information.

Form WH347 breaks down all the categories necessary for reporting contractor payroll.

Instructions can be found at: www.dol.gov/whd/forms/wh347instr.htm

Navy - Contractor Labor Standards Fact Sheet

The Contract Labor Standards fact sheet was published by the Department of the Navy and provides the federal contractor with basic information regarding federal contractor labor standards commonly required in service, supply and construction contracting. It specifically covered the Wage Laws and Labor Standards,

FUN WITH THE FAR
Episode 14
FAR Parts 22 & 23
Summary Outline

I. Introduction

II. FAR PART 22

A. General Observations

B. Generally-Applicable Labor Laws

C. Construction and Other Manual Labor Laws

D. Service Labor Laws

E. Non-Discrimination Policies

F. Specific Prohibitions

III. FAR PART 23

A. Workplace Safety Issues

B. Environmental Issues

IV. Closing Remarks