

HR COMPLIANCE BULLETIN



DOL Guidance Addresses Federal Contractors and FFCRA Leave Pay

The U.S. Department of Labor (DOL) has issued [questions and answers](#) (Q&As) on when federal contractors must include Service Contract Act (SCA), Davis-Bacon Act (DBA) or Executive Order (EO) 13706 fringe benefits—or their monetary equivalent—for workers taking leave under the Families First Coronavirus Response Act (FFCRA).

According to the Q&As, federal contractors whose work is covered by the SCA, the DBA or EO 13706 generally do **not** have to pay the health and welfare fringe benefit rate that those laws and the executive order would normally require when employees take FFCRA paid sick leave or expanded family and medical leave.

However, when FFCRA leave is taken **concurrently** with leave under the SCA, DBA or executive order, the fringe benefit rate **does** have to be paid to the employee on leave, if the employer was providing cash in lieu of fringe benefits. In either situation, any employee health insurance benefits must be continued as if the employee were working.

The SCA and DBA require certain federal contractors to pay their workers at least the local prevailing wage rate, including fringe benefits. EO 13706 mandates that contracts covered by the SCA and DBA provide workers with accrued paid sick leave.

This Compliance Bulletin contains the DOL's new questions and answers.

Action Steps

Employers should become familiar with the DOL's questions and answers on this topic. They should also review their leave policies for compliance with the new guidance.

Provided to you by [Wallace Welch & Willingham](#)

Highlights

Fringe Benefit Payment Required Only During Concurrent Leaves

Cash in lieu of fringe benefits under the SCA, DBA or EO 13706 is not required when employees take FFCRA leave, unless the leave is concurrent with leave under the SCA, DBA or order.

Health and Welfare Rate Not Included in Regular Rate

The FFCRA mandates compensation only at the employee's regular rate, which does not include the health and welfare fringe benefit rate.

Links and Resources

[DOL Q&As on COVID-19 and the Service Contract Act](#)

[DOL Web Page: Davis Bacon and Related Acts](#)

[DOL Q&As on the Families First Coronavirus Response Act](#)



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INSURANCE & RISK MANAGEMENT SINCE 1925



COVID-19 and the Service Contract Act: Questions and Answers

- 1. I have a service contract with the federal government covered by the SCA, and my employees work under a wage determination that contains a health and welfare fringe benefit rate. Do I have to pay my employees the SCA health and welfare fringe benefit rate in addition to the SCA prevailing wage rate when they take paid sick leave or expanded family and medical leave? What if my employees are covered by EO 13706, which requires paid sick leave?**

Answer: No, not unless they are taking the FFCRA leave concurrently with leave provided under the SCA or EO 13706. If your employee is taking paid sick leave under FFCRA for reasons related to COVID-19, you are required to pay the employee based on the higher of the employee's regular rate of pay, the federal minimum wage in effect under the Fair Labor Standards Act (FLSA), or the applicable state or local minimum wage; if your employee is taking expanded family and medical leave, you are similarly required to pay based on the employee's regular rate. The SCA health and welfare rate is not included in the regular rate of pay. Thus, to the extent you have been paying cash in lieu of fringe benefits, you would not be required to pay the health and welfare fringe benefit rate for leave taken pursuant to the FFCRA. However, to the extent you have been providing health insurance to the employee, you must maintain the employee's health insurance while the employee is taking FFCRA paid leave as if the employee were working. [Questions 7 and 8](#) provide guidance regarding pay requirements under the FFCRA.

However, unless otherwise specified in the wage determination, you must provide health and welfare payments for all hours paid for under the SCA, including paid vacation, sick leave and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract. Thus, you are required to provide health and welfare payments to an employee who is using existing paid vacation, sick leave or holiday hours under the SCA at the same time he or she is using expanded family and medical leave under the FFCRA.

Similarly, if your employees are using expanded family and medical leave under the FFCRA concurrently with paid sick leave under EO 13706, you must pay any health and welfare benefit, or monetary equivalent, required by the executive order, for the hours paid under the executive order.

- 2. I have a federal construction contract covered by the Davis-Bacon Act. Do I have to include fringe benefits when I pay employees paid sick leave or expanded family and medical leave under the FFCRA? What if my employees are covered by EO 13706, which requires paid sick leave?**

Answer: No, not unless they are taking the FFCRA leave concurrently with leave provided under the SCA or EO 13706. If your employee is taking paid sick leave under the FFCRA for reasons related to COVID-19, you are required to pay the employee based on the higher of the employee's regular rate of pay, the federal minimum wage in effect under the FLSA, or the applicable state or local minimum wage; if your employee is taking expanded family and medical leave, you are similarly required to pay the employee based on the employee's regular rate. Davis-Bacon fringe benefits are not included in the regular rate. Thus, to the extent you have been paying cash in lieu of fringe benefits, you would not be required to pay the fringe benefit rate for leave taken pursuant to the FFCRA. However, to the extent you have been providing health insurance to the employee, you must maintain the employee's health insurance while the employee is taking FFCRA paid leave as if the employee were

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working. Similarly, if your employees are using expanded family and medical leave under the FFCRA concurrently with paid sick leave under EO 13706, you must pay any fringe benefits or monetary equivalent, required by the executive order, for the hours paid under the executive order.

Source: [U.S. Department of Labor](#)