

Re: Service Contract Act Project Contractors
Davis-Bacon Act Project Contractors
Federal State and Prevailing Wage Contractors



NAVIGATING BENEFIT COMPLIANCE & EXPENSE

In the world of contractors involved in public work initiatives, there usually exist Department of Labor mandates that require those operators to fund specified contribution – per hour worked – toward a “*bona fide*” benefit. That benefit may take the form of, and is typically:

1. A cash payout in employee payroll that is in addition to the also specified hourly wage.
2. A contribution to a pre-tax savings vehicle, such as a 401(k), on behalf of the affected employees.
3. A premium payment funding employee health, life and/or other welfare insurance.

How a contractor navigates those options can have a profound impact on both profit and operating margins, as well as liabilities (or the absence of liabilities) pursuant to regulatory compliances. This article attempts to basically sort out how these issues interface, and the most usual and prudent methods and means to do so.

COMPLIANCE

As previously referenced, nearly all concerns in these venues are subject to state and/or federal regulations that demand contractor compliance. Some of these extensive requirements pertain specifically to the aforementioned health and welfare funding mandates. Failure to maintain compliance, especially on a “willful” basis, promises, within said regulations, potentially onerous consequences for the employer. *Intent* to maintain compliance is a significant differentiating factor within the Department of Labor. Clearly, the intent, especially in federal regulations, is to have the contractor direct *bona fide* benefits – or health and welfare/pension contributions – into a “3rd party fund or plan” – *not* into direct cash payments. For example, Subpart D, para. 4.170(b) of the Part 4 Service Contract Act Regulations states that payments in cash are allowable only “where such a [*bona fide*] plan or fund does not exist.”

Ultimately, while the Department of Labor maintains some leeway pertaining to enforcement of the cash versus benefits issue, utilization of a *bona fide* benefit would appear to comply with the clear intent of the law, and therefore be more compliant than cash payout.

CASH BENEFIT VS. INSURANCE/SAVINGS BENEFIT

Irrespective of the previous compliance issue regarding cash payout vs. benefit contributions, a government service contractor must allow for considerable monetary consequences pursuant to these two options. When tendering the mandated monetary contribution into cash payroll the contractor exposes those payouts to various payroll burden assessments, including but not necessarily limited to FICA, FUTA, SUTA, workman's compensation and liability insurance premiums. In as much as these mandated contributions are incumbent upon the employer – and not the employee – said contractor is not required to provide these benefits on a voluntary basis. Directing these payments into “a *bona fide* 3rd party fund or plan” excludes same from the payroll stream and in turn from most, if not all of the aforementioned payroll assessments, depending on affected state law.

In this win-win scenario, the contractor – in utilizing a compliant non-cash benefit – may easily save upwards of \$.50 *per man-hour* while at the same time reducing compliance exposure. Furthermore, it allows the employee access to appreciably less expensive and

restrictive group coverage rates through the employer, as opposed to using his after-tax dollars to access individual coverage and rates. The referenced employer savings of payroll assessments may be utilized to reduce bid costs, improve margins, or both, depending on whether the affected business is a startup or is existing.

In the case of an existing business, the contractor may transition, midstream of a contract, from cash payment to insured benefits or a pre-tax savings plan. How to effect that change most efficiently and effectively while minimizing employee change-over issues is a subject for the contractor and the plan engineer – usually a licensed insurance professional with experience in these areas. Typically, a health and welfare option is preferred by most employees over investment plan options, especially given recent fund performances (losses). New business environments are less complicated, but both are reasonably easy to install, given some due diligence and case background. The actual benefits to be installed, how and when they are to be enrolled and various other conditions would typically be routine functions executed prior to a final decision and subsequent implementation.

**Article by: George J. Lehmann,
President**

America Protect, LLC

1-877-757-5600

<http://www.americaprotect.com/govcontractor-solutions.php>

