

Subpart 22.3 - Contract Work Hours and Safety Standards Act

Parent topic: [Part 22 - Application of Labor Laws to Government Acquisitions](#)

22.300 Scope of subpart.

This subpart prescribes policies and procedures for applying the requirements of [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards (the statute) to contracts that *may* require or involve laborers or mechanics. In this subpart, the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

22.301 Statutory requirement.

The statute requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract *shall* be required or permitted to work more than 40 hours in any workweek unless paid for all such *overtime* hours at not less than 1 1/2 times the basic rate of pay.

22.302 Liquidated damages and overtime pay.

(a) When an *overtime* computation discloses underpayments, the responsible contractor or subcontractor *must* pay the affected employee any unpaid wages and pay liquidated damages to the Government. The *contracting officer must* assess liquidated damages at the rate specified at 29 CFR [5.5\(b\)\(2\)](#) per affected employee for each calendar *day* on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying *overtime* wages required by the statute. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 ([28 U.S.C. 2461](#) Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(b) If the contractor or subcontractor fails or refuses to comply with *overtime* pay requirements of the statute and the funds withheld by *Federal agencies* for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the statute despite the exercise of due care, the *agency head may*-

- (1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;
- (2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less;
or
- (3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.
- (d) After the *contracting officer* determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

22.303 Administration and enforcement.

The procedures and reports required for *construction* contracts in subpart 22.4 also apply to investigations of alleged violations of the statute on other than *construction* contracts.

22.304 Variations, tolerances, and exemptions.

- (a) The Secretary of Labor, under 40 U.S.C.3706, upon the Secretary's initiative or at the request of any *Federal agency*, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the statute (see 29 CFR5.15).
- (b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR5.14).

22.305 Contract clause.

Insert the clause at 52.222-4, Contract Work Hours and Safety Standards-*Overtime* Compensation, in *solicitations* and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in *solicitations* and contracts-

- (a) Valued at or below \$150,000;
- (b) For *commercial products* and *commercial services*;
- (c) For transportation or the transmission of intelligence;
- (d) To be performed outside the *United States*, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR5.15);
- (e)) For work to be done solely in accordance with 41 U.S.C. chapter 65, (see subpart 22.6);
- (f) For *supplies* that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR5.15).