

Questions and Answers from 10-31-17 SCDP Labor Standards Webinar

Q: On the contractor/subcontractor certification form, do you want to have the wages paid or the wage from the wage decision? Sometimes we run into a situation where the contractor is already paying more than what is listed on the wage decision. The instructions on the contractor/subcontractor certification do not clearly specify.

A: Remember that the Contractor/Subcontractor Certification and the Contractor Profile are forms to be completed by the contractors. We want the contractors to provide you with the wage and fringe rates that they intent to pay. When collected, they are screening tools to help you predict how the contractor intends to meet or exceed the straight and fringe rates that are provided in the enforced wage decision.

It is best to look at the straight and fringe rates as an aggregate figure. For example, if a wage decision for a Roofer has a straight rate of \$30 per hour and a fringe rate of \$5 an hour, you are looking to make sure that the contractor will be compensating the employee with wages and allowable fringe benefits (see page 41 from the Forms and Reference Attachment) that have a total value of at least \$35 per hour. The contractor would be allowed to pay less in fringe or a less in a straight rate than what is assigned in the wage decision as long as it is made up with a higher fringe or straight raga. For example, the contractor could pay \$28 for a straight rate and \$7 in cash and still be compliant. Or, \$32 in a straight rate and \$3 an hour in fringe. The combination of the two needs to meet or exceed the aggregate figure in the wage decision. It is allowable for contractors to exceed that aggregate, but they cannot pay less unless the employee is in an apprenticeship program that is correctly certified.

If you see problems with the Contractor/Subcontractor Certification (Classifications not in the enforced wage decision, or too low of aggregate pay) and/or the Contractor Profile (allows you to determine that fringes they intend to pay are allowable), it is highly recommended that you do not allow the project to proceed until you are completely confident that the contractor will pay adequate aggregate wages and/or either conforms workers to a Classification in the wage decision or requests an Additional Classification.

Q: Are MN DOLI Certified Payroll forms allowed if they submit the last 4 #'s of Social Security number for employees?

A: We strongly recommend the use of the DOL's 347 form for certified payrolls. Any alternative payrolls need to contain the same information as the 347 form requests and be easily understood by you and the SCDP. We have seen many examples of it being quite confusing trying to determine compensation, overtime, etc. from alternative payrolls. Your rule of thumb should be that if you should only allow contractors to use alternative forms only if you can easily explain and interpret all information contained in it and the Statement of Compliance (contractor signature page). The DOLI payroll form is extremely close in content to DOL's 347 form.

Q: *What should we look for in regards to FICA and Withholdings?*

A: The main thing we are looking for with withholdings is that the contractor is not trying to meet a fringe or aggregate rate with something, such as FICA, that is not allowed as a fringe benefit.

It should be noted that child support is an allowed withholding that can be subtracted from straight pay. HUD wants to see a copy of the court order or a written, signed statement from the worker authorizing the withholding and the amount.

Q: *Is it possible to have FICA one week and then not the other?*

A: We imagine that in this case the contractor is trying to adjust to paying weekly. FICA is an IRS issue that we do not enforce nor monitor.

Q: *What can we do if the contractor forgot to pay weekly and they were only onsite one week?*

A: If payrolls are not received or omitted the contractor should be instructed to supply them. If payrolls need to be corrected, the contractor should be contacted about how they should be corrected and then supplied to you. The payroll(s) should then clearly be labeled as "Corrected." Your leverage in obtaining payrolls or corrected payrolls is holding back payments to them or the general contractor until the situation is resolved.

Q: *On the Notice of Contract Award, the example shows MN15-18#1. Do you not want the full number listed on the wage decision?*

A: Either the short version like the sample indicates or the full number listed on the wage decision are fine to provide on the Notice of Contract Award.