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DOL Provides Guidance Regarding FFCRA and SCA/DBRA Interaction

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On August 3, 2020, the U.S. Department of Labor's Wage and Hour Division published two FAQs for employers that have a service contract with the federal government covered by the Service Contract Act ("SCA") or a federal construction contract covered by the Davis-Bacon and related Acts ("DBRA"). The FAQs help explain when fringe benefits must be provided to employees taking paid leave under the Families First Coronavirus Response Act ("FFCRA").

According to the FAQs from the DOL, the health and welfare rate (i.e., the monetary equivalent of health and welfare benefits) under SCA and DBRA is not included in the regular rate of pay for purposes of FFCRA.

The guidance establishes that fringe benefits would NOT need to be paid unless the employee is taking FFCRA leave concurrently with leave provided under SCA/DBRA or Executive Order 13706 (EO 13706). Specifically, if the employee is using existing paid vacation, sick leave, holiday hours or sick leave dictated by EO 13706 concurrently with FFCRA leave, then a health and welfare fringe payment would be required.

The DOL guidance is available at www.dol.gov/agencies/whd/pandemic/sca-questions