

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
Washington, D. C. 20210

REFERENCE COPY

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~~DEPT. OF LABOR~~

February 4, 1969

SCA 304
27 CC 319
27CC301

This is in further reference to your letter of November 15, 1968, asking whether it would be illegal under the Service Contract Act for employees of the subject employer to pay their own round trip travel costs between point of hire and Kwajalein Atoll, Marshall Islands. You also inquire as to the status under the act of the re-employment bonus which is paid to certain of the subject employer's employees.

The deduction from the wages of employees performing work subject to the Service Contract Act of travel costs incurred by the employer transporting the employees from place of hire to the worksite, as described in your letter, would be controlled by the provisions of Regulations, Part 531, which are issued pursuant to section 3(m) of the Fair Labor Standards Act.

As indicated in sections 4.167 through 4.170 of Regulations, Part 4, which regulations provide labor standards for Federal service contracts, the Department of Labor has adopted section 3(m) of the Fair Labor Standards Act and Regulations, Part 531, issued pursuant thereto, for the purposes of determining cash wages under the Service Contract Act.

Section 3(m) of the Fair Labor Standards Act provides, in part, that the wage paid to an employee includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities. It also authorizes the Secretary of Labor to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on the average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations by the Secretary, where they are applicable and pertinent, shall be used instead of the actual cost in determining the wage paid to any employee.

The procedures for making determinations of reasonable cost or fair value under section 3(m) of the Fair Labor Standards Act are stated in sections 531.4 and 531.5, respectively, of Regulations, Part 531. The conditions applicable to the inclusion of the reasonable cost or fair value of board, lodging, or other facilities, in the wage paid an employee are discussed in sections 531.27 through 531.37. Your attention is directed to section 531.33 which refers to three methods whereby an employer may ascertain whether any furnished facilities are a part of wages within the meaning of section 3(m).

Your attention is also invited to sections 531.3(d)(1) and 531.32(c) of Part 531, which indicate that the cost of furnishing facilities which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not, therefore, be included in computing wages. The enclosed copy of a letter dated May 11, 1960, deals with a situation similar to yours. In that case, we found that the cost of transporting certain employees to and from the point of hire was normally borne by the contractor and not the employees as a cost incidental to the recruitment program of the contractor and, therefore, would not be properly considered as a part of wages. For the reasons stated in sections 531.36 and 531.37 of Part 531, withholding of monies from employees against the transportation costs described in your letter could not legally be made to the extent that they reduce the wages of the employees below the minimum wage required under either the Fair Labor Standards Act or the Service Contract Act. Such deductions are also illegal to the extent that they reduce the amount of overtime compensation below that required under either the Fair Labor Standards Act or the Contract Work Hours Standards Act.

With respect to the recruitment bonus, we would not question the practice of payment of this bonus in ten equal monthly installments for the runout of ten months after two months of satisfactory service following the signing of the follow-on employment contract.

Sincerely yours,

Ben P. Robertson

Acting Administrator