

DOL Issues Proposed Rule Establishing Paid Sick Leave for Federal Contractors

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On February 25, 2016, the United States Department of Labor's Wage and Hour Division (DOL) published a lengthy [notice of proposed rulemaking](#) implementing [Executive Order 13706](#) (EO 13706), *Establishing Paid Sick Leave for Federal Contractors*. EO 13706, signed by President Barack Obama on September 7, 2015, requires that certain parties contracting with the federal government provide their employees with up to seven days of paid sick leave annually, including paid leave allowing for family care. See our client briefing, [President Obama Issues Executive Order Establishing Paid Sick Leave for Federal Contractors](#). The proposed rule issued by the DOL would apply to new or renewed contracts beginning in 2017.

According to the DOL, EO 13706 "will provide additional paid sick leave to an estimated 828,000 workers. Nearly 437,000 of those currently receive no paid sick leave." As discussed in detail below, the proposed rule describes the categories of contracts and employees covered by EO 13706; the rules and restrictions regarding the accrual and use of paid sick leave; the obligations of contracting agencies and the DOL; and the remedies and enforcement procedures to implement EO 13706's requirements.

A 30-day public comment period is now in effect, and interested parties may submit written comments on the proposed rule electronically at www.regulations.gov, or by mail. Pursuant to the terms of the EO, the DOL has until September 30, 2016 to issue a final rule. The proposed rule is available [here](#) and an FAQ document is [here](#). A summary of key provisions of the proposed rule also follows below.

Covered Contractors

EO 13706 applies to new federal contracts and replacements for expiring contracts that result from solicitations issued on or after January 1, 2017, or that are awarded outside the solicitation process on or after January 1, 2017. The rule only applies to contracts, or portions of contracts, performed within the U.S. (defined as the 50 states and District of Columbia). Coverage of contracts and employees under the proposal is nearly identical to coverage under the regulations implementing the Minimum Wage Executive Order, except that the proposed rule also covers employees who qualify for an exemption from the Fair Labor Standards Act's (FLSA) minimum wage and overtime provisions.

The proposed rule applies to four categories of federal contracts:

1. Procurement contracts for construction covered by the Davis-Bacon Act (DBA);
2. Service contracts covered by the McNamara-O'Hara Service Contract Act (SCA);
3. Concessions contracts, including any concessions contracts excluded from the SCA by DOL regulations; and
4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Covered Employees

The proposed rule applies to any covered person engaged in performing work “on or in connection with” covered contracts and whose wages under such contract are governed by the SCA, DBA, or FLSA, including employees who qualify for an exemption from the FLSA’s minimum wage and overtime provisions. The proposal includes a narrow exemption from coverage for employees who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing work in connection with such contracts.

Paid Sick Leave Entitlements

Accrual

Under the proposal, covered employees must accrue at least one hour of paid sick leave for every 30 hours worked, up to 56 hours (seven days) of total paid sick leave. Additionally, the proposal creates an option for covered contractors to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year, rather than allowing the employee to accrue the leave based on hours worked.

Maximum Accrual, Carryover, Reinstatement & Payment for Unused Leave

The proposal further provides that contractors may limit the amount of paid sick leave employees may accrue to 56 hours each year and must permit employees to carry over accrued, unused paid sick leave from one year to the next. Contractors would be able to limit the amount of paid sick leave employees have accrued to 56 hours at any point in time. Contractors would also be required to reinstate an employee’s accrued, unused paid sick leave if the employee is rehired by the same contractor or a successor contractor within 12 months after a job separation. Contractors would not be required to “cash-out” employees for accrued, unused paid sick leave at the time of a job separation.

Usage

A covered employee could, under the proposed rule, use paid sick leave for absences resulting from:

1. The employee’s physical or mental illness, injury, or medical condition;
2. The employee’s need to obtain diagnosis, care, or preventive care from a health care provider;
3. Care for the employee’s child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or need for diagnosis, care, or preventive care; or
4. Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described above, or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including assistance of individual related to the employee as described in (3) in engaging in any of these activities.

Covered employees could use as little as an hour of paid sick leave, or up to the full amount of accrued, unused sick leave at a time. Moreover, a contractor would have to provide an employee who uses paid sick leave the same pay and benefits the employee would have received had the leave not been used.

Notification & Certification

The proposed rule requires that covered contractors provide paid sick leave following the employee's oral or written request. The request for leave should provide an estimate of timing and amount of leave needed. If the need to use paid sick leave is foreseeable, the employee's request would need to be made at least seven calendar days in advance. If the leave is not foreseeable, the request must be made as soon as is practicable. After the request for leave is made, a contractor would have to respond as soon as is practicable. The contractor may communicate its grant of a request to use paid sick leave orally or in writing, but must inform the employee *in writing* of the amount of paid sick leave the employee has available for use. In addition, any denial of a request to use paid sick leave must be communicated in writing, and must be accompanied by an explanation for the denial.

Under the proposed rule, a contractor may only require certification from a health care provider for absences of three or more consecutive days. If the paid sick leave is used for an absence resulting from domestic violence, sexual assault, or stalking, the documentation provided would be from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work. The contractor would be prohibited from disclosing any verification information and would be required to maintain the confidentiality of information relating to any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

Interaction with Other Laws & Paid Time Off (PTO) Policies

The proposed rule does not supersede any applicable federal, state, municipal ordinance, or collective bargaining agreement requiring greater paid sick leave or rights. The proposed rule also provides, if certain conditions are met, that a contractor's existing PTO policies can fulfill the paid sick leave requirements.

Anti-retaliation & Discrimination

Under the proposed rule, a contractor may not interfere with the accrual or use of paid sick leave, and may not discriminate or retaliate against any employee for the exercise of rights pursuant to the EO or the proposed rule.

Enforcement & Damages

The DOL is responsible for enforcement of the EO and the implementing regulations. The procedures for enforcement set forth in the proposed rule are nearly identical to those adopted the Executive Order 13658, Establishing a Minimum Wage for Contractors, and its implementing regulations. Remedies and sanctions for violations of EO 13706, and its implementing regulations, would include monetary damages, liquidated damages, and equitable relief.

6 Min Read

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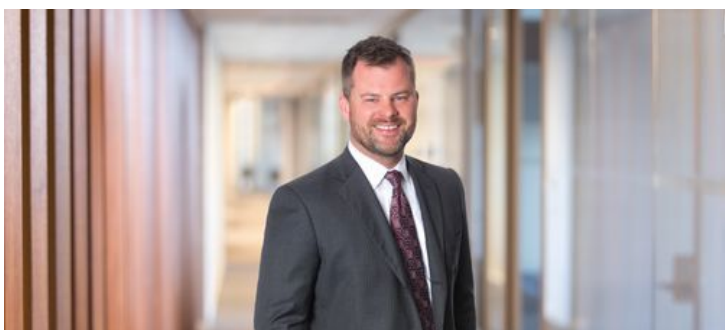
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