

FYI[®] Alert

For Your Information[®]

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DOL Finalizes Paid Sick Leave Rules for Federal Contractors

Today, the DOL issued final regulations implementing the president's 2015 executive order establishing paid sick leave for federal contractors. The regulations require certain contractors to provide covered employees with up to 56 hours of paid sick leave annually, including paid leave for family care, under contracts solicited on or after January 1, 2017. Contractors that intend to do business with the government should consider what, if any, steps they may have to take to ensure compliance.

Background

In September 2015, President Obama issued [Executive Order 13706](#) (EO) extending paid sick leave benefits to employees of federal contractors and subcontractors. The EO called for contractors to provide up to 56 hours of annual paid sick leave to employees who work on covered contracts and solicitations entered into on or after January 1, 2017. On February 25, the DOL published [proposed rules](#) to implement the EO. (See our *For Your Information* from [March 17, 2016](#).)

Final Rule

On September 30, the DOL issued its [final rule](#) establishing paid sick leave for federal contractors. According to the DOL, the rule will cover more than a million employees of federal contractors — including nearly 600,000 workers who currently receive no paid sick leave at all — when it is fully implemented and cost employers \$27.3 million per year for the first 10 years, up from \$18.4 million under the proposed rule. The DOL's Wage and Hour Division has posted information on the final rule on its [website](#), including a [fact sheet](#), [frequently asked questions](#), [poster explaining EO 13706](#), and a [video](#) on the new rule.



Key Provisions

Key provisions of the final rule confirm which contractors and employees are covered by the new paid sick leave requirements, leave accrual and carryover requirements, and use restrictions.

Covered Contractors. The paid sick leave requirements apply to federal contractors and subcontractors performing services on certain categories of “new” and replacement contracts entered into — through solicitations or awarded outside the solicitation process — on or after January 1, 2017. The following four major categories of contracts are covered by these requirements:

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

Regardless of their value, subcontracts of covered prime or upper-tier contracts will be subject to the paid sick leave requirements if the subcontract is one of these four types of contracts. As the final rule confirms, only contracts (or portions of federal contracts) that are performed within the 50 states and the District of Columbia are covered.

Covered Employees. With certain narrow exceptions, the paid sick leave requirements apply to any individual who performs work “on or in connection with” covered contracts and whose wages under those covered contracts are governed by the DBA, SCA, or Fair Labor Standards Act (FLSA), including employees who are exempt from the FLSA’s minimum wage and overtime provisions (such as employees employed in a *bona fide* executive, administrative or professional capacity). The final rule does not apply to employees performing work in connection with (necessary to the performance of the contract but not specifically called for by the contract) covered contracts who spend less than 20% of their hours worked in a particular workweek performing that work.

There is also a carve-out for certain employees covered by collective bargaining agreements (CBAs) ratified before September 30, 2016. If the CBA applies to the work on a covered contract, and provides at least 56 hours (or seven days) of paid sick leave (or paid time off) that can be used for health-related reasons annually, the final rule will not apply until the earlier of the date the CBA terminates or January 1, 2020. If the CBA provides less paid sick time (or paid time off that may be used for reasons related to sickness or healthcare), the contractor must provide covered employees with the difference.

Accrual, Use and Carryover. Under the final rule, employees accrue at least one hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to at least 56 hours per year. Employers are not required to allow employees to accrue paid sick leave in increments smaller than one hour for a full 30 hours worked. Because “hours worked” for these purposes has the same meaning as under the FLSA, employees will not accrue leave when they are not working but are in paid time off status (such as on vacation). While a contractor may choose its accrual year (the 12-month period in which an employee can be limited to accruing 56 hours of paid sick leave), it must use a consistent option for all similarly situated employees.

Frontloading. To facilitate administration, the final rule allows a contractor to avoid accruals by frontloading at least 56 hours of paid sick leave at the beginning of each accrual year. For employees who begin work on or in connection with a covered contract after the accrual year begins, a prorated amount of paid sick leave based on the number of pay periods remaining in the accrual year may be provided. A contractor may use the frontloading option for any or all of its employees, but it cannot change its accrual systems during an accrual year.

Accrual Cap. Under the final rule, employers may cap annual accruals at 56 hours at any point in time, effectively limiting the amount of paid sick leave then available for the employee's use.

Carryover. While contractors may limit accruals to 56 hours each year, they must allow employees to carry over any accrued but unused paid sick leave from one year to the next. The carryover requirement applies regardless of whether the employer accrues or frontloads paid sick leave.

Use. The final rule prohibits employers from establishing an annual or per event usage cap. Employees may use accrued paid sick leave for their own or a covered family member's mental or physical illness, injury or medical condition, or preventive care from a healthcare provider. Leave may also be used for reasons relating to domestic violence, sexual assault or stalking of the employee or covered family member. For these purposes, covered family members include 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.

Reinstatement. The final rule does not require employers to pay employees for accrued, unused sick leave on separation, but it generally requires its reinstatement for rehires within 12 months thereafter. In a noteworthy shift from the proposed rules, the final rule removes the reinstatement obligation if the employer cashed out the employee's accrued sick leave on separation.

Notice Requirement. Under the final rule, contractors will have to account for an employee's use of paid sick leave in maximum increments of one hour, and at the employee's regular rate of pay. A contractor must calculate an employee's accrual of paid sick leave, and notify the employee in writing of the amount of leave available each pay period or each month (whichever is shorter), at separation and on rehire within 12 months of separation. The notice can accompany the paycheck or be provided electronically, but must indicate the amount of accrued paid sick leave separately from other types of paid time off. Unlike the proposed rule, the final rule does not require employers to provide notice of available leave balances to employees upon request.

In Closing

Employers that intend to do business with the federal government will want to review their sick leave and/or paid time off policies in light of the final rule, and consider what, if any, steps they would have to take to ensure compliance if they enter into new contracts or solicitations beginning next year.

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