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SPECIAL BULLETIN

Executive Order 13706—Paid Sick Leave for Federal Contractors

On September 7, 2015, President Obama signed Executive Order 13706, which requires some federal contractors and subcontractors to provide certain employees with up to seven days of paid sick leave annually. The Order directed the Secretary of Labor to issue regulations implementing the Order's requirements, and the Secretary of Labor did so on September 30, 2016.

Contracts That Are Covered

According to the Secretary of Labor, the coverage of contracts and employees under the Order is “nearly identical to coverage under the regulations implementing Executive Order 13658,” the order mandating a minimum wage for certain federal contractors.¹ Specifically, the Order only applies to four types of contracts:

1. Procurement contracts for construction covered by the Davis-Bacon Act;
2. Service contracts covered by the Service Contract Act;
3. Concessions contracts; and
4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Additionally, the Order only applies to new contracts, replacements for expiring contracts, and subcontracts of any covered contract issued on or after January 1, 2017. However, for the Order to apply, the new contract must include a clause setting forth the Order's requirements. If the contract includes the required clause, the contracting government agency can withhold funds due under the contract if a contractor or subcontractor fails to abide by the Order's requirements. Note that contractors are required to include a clause outlining the Order's requirements in all new subcontracts issued.

Employees That Are Covered

With respect to employees, the Order only applies to individuals engaged in performing work directly related to the subject matter of the contract, or “in connection with” a covered contract; however, employees that spend less than twenty percent of their working hours performing work in connection with a contract (such as providing administrative or other support services) are not covered by the Order.

Employees that are covered are entitled to one hour of paid sick leave for every thirty hours worked on or in connection with a covered contract. The Order also gives contractors the option to provide covered employees with at least fifty-six hours of paid sick leave at the beginning of each accrual year, rather than allowing employees to accrue leave based on hours worked. Moreover, contractors who already provide employees with paid sick leave (for the same types of absences described in the Order) can take credit for the amount of leave provided, and are only required to provide employees with the difference between the amount already provided and the mandated fifty-six hours.

¹The Department of Labor adjusts the required minimum wage rate for covered federal contractors annually. The minimum wage rate for 2017 is \$10.20.

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Contractors must permit employees to “carry over” accrued, unused paid sick leave from one year to the next. Additionally, contractors are required to reinstate an employee’s accrued, unused paid sick leave if the employee is rehired by the same contractor within twelve months after a job separation, unless contractors pay employees for accrued, unused paid sick leave upon separation. That being said, contractors are not required to pay employees for accrued, unused paid sick leave at the time of termination, but if they do, they will not be required to reinstate unused leave for returning employees. Contractors are required to notify covered employees in writing of the amount of paid sick leave they have accrued at the end of each pay period or each month, whichever interval is shorter.

Absences That Are Covered

The Order requires contractors to allow covered employees to use their paid sick leave in increments as small as one hour for any absence resulting from:

1. Physical or mental illness, injury, or medical condition of the employee;
2. Obtaining diagnosis, care, or preventive care from a health care provider by the employee;
3. Caring 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;² or
4. Domestic violence, sexual assault, or stalking.

When employees use their paid sick leave, contractors must provide them with the same regular pay and benefits they would have received if they had not used the leave, except that employees do not earn additional paid sick leave during their absence.

Under the Order, an employee is required to request paid sick leave “as soon as is practicable,” either orally or in writing. If a contractor denies an employee’s request, it must communicate the denial in writing with an explanation as to why the request was denied. A contractor can only require an employee to document or verify absences of three or more consecutive days, and the contractor must inform the employee of the requirement to provide documentation before he or she returns to work. If the absence is healthcare-related, the contractor can require the certification to be made by a healthcare provider. If the absence is related to domestic violence, sexual assault, or stalking, the documentation or verification can come directly from the employee.

If you have any questions about this new development, please contact the attorney with whom you usually speak.

²Note that this definition of family is fairly broad.

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