

## Publications

### *Labor and Employment Alert: More Burdens for Federal Contractors with Mandatory Paid Sick Leave*

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On September 29, 2016, the U.S. Department of Labor released its **final rule** requiring that federal contractors provide up to 56 hours of paid sick leave per year to their employees. The final rule implements President Obama's 2015 Executive Order 13706 and is expected to affect more than 1.1 million employees – including those who currently receive no sick leave and those who receive some paid sick leave but are entitled to receive additional leave under the final rule.

### **Covered Federal Contractors and Employees**

The paid sick leave requirements apply to new or modified contracts on or after January 1, 2017, that are: (1) procurement contracts for construction under the Davis-Bacon Act; (2) contracts for services covered by the Service Contract Act; (3) contracts for concessions (such as operating souvenir shops in national parks or fast food restaurants in federal buildings); or (4) contracts in connection with federal property and related to offering services for federal employees, their dependents, or the general public (such as operating a child care center, credit union, gift shop, or fitness center in a government building to serve federal employees). The requirements apply to subcontracts of covered prime or upper-tier contracts if the subcontract itself is one of the four types of covered contracts, and the requirements apply regardless of the value of the subcontract.

Covered employees are those performing work “on or in connection with” covered contracts and whose wages under those covered contracts are governed by the Davis-Bacon Act, Service Contract Act, or the Fair Labor Standards Act (including employees who are otherwise exempt from the Act's minimum wage and overtime provisions).

### **Accrual and Use of Paid Sick Leave**

The final rule entitles covered employees to at least 1 hour of paid sick leave for every 30 hours worked, with the accrual capped at 56 hours of paid sick leave annually. Instead of accruing paid leave, contractors may frontload the full amount of leave at the beginning of each accrual year.

Frontloaded leave for newly hired employees may be pro-rated. A contractor's existing paid time off policy will satisfy the final rule if the policy meets the same terms and conditions.

## Carryover and Payment for Unused Paid Sick Leave

Contractors must allow employees to carry over their accrued, but unused sick leave each year. However, contractors may limit the maximum amount of carried-over leave to 56 hours. At the same time, contractors may limit the annual accrual to 56 hours. As a result, accrual in the new year could be limited to less than 56 hours if necessary to keep an employee's balance to not more than 56 hours. This effectively caps an employee's leave bank to 56 hours annually.

If a contractor frontloads the full amount of leave year, it may limit the carryover to the next year to 56 hours. But the contract must still frontload the full amount of leave at the beginning of the accrual year. This means that the employee's leave bank may have more than 56 hours in it each year.

Employees are not entitled to be paid for their unused sick leave upon termination or resignation. But unused sick leave must be reinstated if an employee is rehired within 12 months after being separated.

## Permissible Uses of Paid Sick Leave

Sick leave may be used for: (1) the employee's physical or mental illness, injury, or medical condition; (2) the employee's need to obtain diagnosis, care, or preventative care; (3) similar 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; or (4) domestic violence, sexual assault, or stalking, if the time absent from work is for one of those, or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, or assist an individual related to the employee in engaging in any of these activities. In most cases, sick leave may be used in increments of 1 hour.

## Requesting and Certifying Paid Sick Leave

Contractors must inform employees, in writing, of the amount of accrued paid sick leave at least once each pay period or month, whichever interval is shorter, as well as upon separation from employment and reinstatement of sick leave.

Employees can request to use sick leave orally or in writing and must include the timing and amount of leave needed. The request need not contain detailed information about the reason for the leave and a contractor may not require such information. If the need to use sick leave is foreseeable, the employee's request must be made at least 7 calendar days in advance. Otherwise, the employee must make the request for leave as soon as is practicable. Contractors must respond to any such request as soon as practicable – either orally or in writing if granted and in writing (with an explanation) if denied.

A contractor may require certification from a health care provider – or other documentation for domestic violence, sexual assault, or stalking leave – to verify the need for sick leave only if the employee is absent for three or more consecutive full workdays and only if the employee received notice of the certification/documentation requirement before returning to work. The contractor may request further certification or

documentation of the employee's request is deficient.

## **Anti-Retaliation and Employee Protections**

The final rule prohibits contractors from interfering with an employee's accrual or use of paid sick leave as well as from discharging or discriminating against an employee for using leave, filing a complaint, cooperating in an investigation, or informing others of their right to use such leave.

Federal contractors should determine whether their government contracts are covered by the final rule before it becomes effective on January 1, 2017. In addition, contractors should review their existing leave policies and any state or local sick leave laws to harmonize their leave policies with the varying requirements.

Contact your Vorys lawyer if you have questions about compliance with the paid sick leave final rule or other paid leave requirements.