

Employment & Labor Issue Alert

Federal Contractors Will Have to Provide Paid Sick Leave



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by Boyd Byers and Sarah Burch

On Labor Day, President Obama issued an Executive Order (“EO”) directing the Secretary of Labor to issue regulations by September 30, 2016, implementing mandatory paid sick leave for employees of federal contractors and subcontractors. Assuming regulations are issued on schedule, the rules will apply to new federal contracts beginning January 1, 2017.

Covered Contractors

Subject to minimum thresholds, the EO applies to new contracts if employees’ wages under the contract are governed by the Davis-Bacon Act, the Service

Contract Act, or the Fair Labor Standards Act, and if the contract fits into one of the following four categories:

- procurement contracts for services or construction;
- contracts for services covered by the Service Contract Act;
- contracts for concessions; or
- contracts entered into with the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Requirements

Under the EO, employees must receive at least one hour of paid sick leave for every 30 hours worked, up to 56 hours each year. Contractors may adopt policies limiting the total number of hours each employee is able to accrue per year, so long as employees are entitled to the minimum 56 hours. Employees may use this sick leave to care for themselves or for a family member (including preventative care) and for absences resulting from domestic violence or sexual abuse.

Employees may request leave orally or in writing and must provide seven calendar days of advanced notice if the leave is foreseeable, or as soon as practicable if the need for leave is not foreseeable. Requests for sick leave should include the expected duration of leave. Contractors may only request certification for absences lasting three or more consecutive workdays. If certification is requested, employees have 30 days from the first day of leave to provide such certification. Employees may not be required to secure a replacement worker in order to receive paid sick leave.

Sick leave not used during the year in which it is earned must be allowed to carry over to the following year. Although the EO does not create an entitlement to payment for accrued sick leave upon separation, it requires reinstatement of all previously accrued and unused sick leave if an employee separates from employment and is rehired within 12 months.

The mandated paid sick leave described above is in addition to – and not a credit toward – the vacation and other fringe benefits currently required by the Service Contract Act and Davis-Bacon Act.

Next Steps

The regulations, once issued, should provide additional guidance. Until then, contractors should remember these requirements kick in only on new contracts after January 1, 2017 (or later if the regulations are delayed). After the regulations go into effect, new subcontracts entered in connection with new contracts must include language informing subcontractors that compliance with the sick leave requirements is a condition of payment. For now, contractors may want to assess how their existing sick leave or paid time off policies square with the EO, to start planning ahead, and keep these new requirements in mind when planning for future government contracts.

For More Information

If you have questions or want more information regarding this Executive Order or other legal obligations of federal government contractors, you should contact your labor law counsel. If you do not have regular labor law counsel, Foulston Siefkin LLP would welcome the opportunity to work with you to specifically meet your business needs. You may contact **Boyd Byers**, Foulston Siefkin's Employment and Labor Practice Group Leader, at 316.291.9716 or **bbyers@foulston.com**. You may also contact **Sarah Burch** at **sburch@foulston.com** or 316.291.9752. For more information on the firm, please visit our website at **www.foulston.com**.

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