Insights: Alerts

# Department of Labor Publishes a Final Rule Establishing Paid Sick Leave Requirements for Federal Contractors

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On September 30, 2016, the United States Department of Labor, implementing Executive Order 13706, published its final rule establishing paid sick leave requirements for certain federal contractors. The final rule will apply to all employers with covered federal contracts that result from solicitations issued on or after January 1, 2017, that are awarded outside the solicitation process on or after January 1, 2017, or that are renewed, extended, or amended on or after January 1, 2017 as a result of bilateral negotiation. However, that effective date will be delayed if a covered employer's employees are subject to a collective bargaining agreement that provides at least 56 hours of paid sick leave each year. In that event, the final rule will not apply to the covered employer until the date the collective bargaining agreement terminates or January 1, 2020, whichever occurs first. If the collective bargaining agreement provides less than 56 hours of paid sick leave, then the covered federal contractor must increase the paid sick leave to 56 hours annually in a manner consistent with the agreement or with the final rule.

The Department of Labor established four major categories of federal contracts that are covered by the final rule establishing mandatory paid sick leave:

(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; and
(4) contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

The new rule does contain some exceptions and exclusions from coverage for certain types of agreements that might otherwise fall into one of the categories above. However, those exceptions and exclusions are narrow, and potentially covered contracts will require careful review by employers to determine whether they would qualify for an exception or exclusion. The new rule applies not only to covered federal contracts, but also to subcontracts of any tier under a covered contract.

The final rule specifies how mandatory sick leave for covered employees accrues. Covered federal contractors will be required to grant employees at least one hour of paid sick leave for every 30 hours worked in connection with the covered federal contract. Employers may limit the amount of sick leave employees accrue to 56 hours each year. Additionally, while covered employers must permit employees to carry over accrued and unused paid sick leave from year to year, they may also limit employees' total amount of accrued paid sick leave to 56 hours at any point in time, regardless of their ability to carry over accrued leave.

Under the final rule, employees of covered federal contractors may use accrued paid sick leave for absences related to any of the following: (1) the physical or mental illness, injury, or medical condition of the employee; (2) obtaining a diagnosis, care, or preventative care from a health care provider; (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 who has any of the conditions or need for diagnosis, care, or preventative care described in (1) or (2) above; or (4) domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (1) or (2) above 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.

Finally, under the new regulations, employees may request the use of paid sick leave either orally or in writing. However, leave requests must be made at least seven days in advance when the need is foreseeable, and when the leave is unexpected, the request should be made as soon as practicable. Any covered federal contractor who denies a request for paid sick leave must communicate the denial in a writing that documents the reason for denial, which cannot include whether the employee has found a replacement worker or the contractor's operational needs. Additionally, a covered federal contractor may require certification of the reasons for the absence only if the leave consists of three or more consecutive days and the employer has given notice of the requirement to provide certification before the employee returns to work.

The final rule contains detailed guidelines for implementing the required paid sick leave program. The paid sick leave provisions described in the final rule establish minimum requirements for covered federal contractors, and employers may choose to adopt more generous policies as long as all minimum requirements of the final rule are met. Additionally, many state and local governments have passed laws and ordinances related to paid sick leave. However, those laws often have different provisions than the final rule, and sick leave policies designed to comply with those state and local laws may not comply with the final rule for federal contractors.

**Practical Implications**

Employers that are federal contractors or subcontractors should review their contracts that are entered into, renewed, modified, or extended on or after January 1, 2017, to determine if they will be covered by the Department of Labor's final rule related to paid sick leave. If they are covered, then a review of the employer's paid sick leave policies should be conducted to ensure they comply with the minimum accrual rate and provide sick leave for all of the reasons described in the final rule. Covered federal contractors that are not in compliance could be subject to enforcement procedures, including Department of Labor investigations resulting in damages to affected employees and potential sanctions for violations.

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