

Insights: Alerts

President Obama Signs Executive Order Requiring Paid Sick Leave for Federal Contractors' Employees

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On September 7, 2015, President Obama signed an executive order requiring federal contractors and subcontractors to offer their employees paid sick leave. The leave requirements in the executive order apply to new federal contracts entered into after January 1, 2017, with certain limited exceptions. For example, grants, agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, and contracts or contract-like instruments expressly excluded by the implementing regulations issued by the Secretary of Labor are excepted from the order's requirements. The order directs the Secretary of Labor to issue regulations implementing the requirements of the order by September 30, 2016.

Key Provisions of the Executive Order

The executive order mandates that federal contractors offer both their full-time and part-time employees up to seven days of paid sick leave per year. Executive departments and agencies are directed to ensure that new contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors must incorporate into lower-tier subcontracts, specifying, as a condition of contract payment, that all employees, in the performance of the contract or any subcontract thereunder, will earn not less than one hour of paid sick leave for every 30 hours worked. Eligible employees are permitted to use the paid sick leave to care for themselves and to care for a family member, such as a child, parent, spouse, or domestic partner, or another loved one, and for absences resulting from domestic violence, sexual assault, or stalking.

Paid sick leave accrued pursuant to the order carries over from one year to the next and must be reinstated for employees rehired within 12 months after a job separation. The order does not contain a cap on the amount of sick leave that may be accrued by a covered employee. A contractor is not required to pay a covered employee for accrued, unused sick leave on termination.

Contractors will be required to provide the paid leave upon the oral or written request of a covered employee when the request includes the expected duration of the leave and is made at least seven calendar days in advance when the need for the leave is foreseeable, and in other cases as soon as is practicable. When employees use paid sick leave lasting three or more consecutive workdays to care for themselves or to care for a family member, domestic partner, or other loved one, a contractor may require a certification issued by a health care provider verifying the need for leave. The certification is to be provided no later than 30 days from

the first day of the leave. If three or more consecutive days of paid sick leave are used for an absence resulting from domestic violence, sexual assault, or stalking, a contractor may require documentation from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work. The contractor is required not to disclose any verification information and must maintain confidentiality about the domestic violence, sexual assault, or stalking, unless the employee consents or disclosure is required by law.

The order also contains a prohibition against covered contractors interfering with, discriminating against, or retaliating against an employee for taking, or attempting to take, paid sick leave provided for under the order or for asserting, or assisting any other employee in asserting, any right or claim related to the order.

It also is worth noting that a contractor's existing paid leave policy provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations and made available to all covered employees will satisfy the requirements of the order if the amount of available paid leave complies with the order and if the leave may be used for the same purposes and under the same conditions as outlined above.

Practical Implications

The White House estimates that approximately 300,000 workers will begin receiving paid sick leave because of the order. It is important that employers expecting to be subject to the new paid sick leave requirements plan ahead for the implementation of the order's requirements, including budgeting for sick pay expenditures and revising applicable policies and procedures.

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