



Subject: **U.S. Department of Labor
Paid Sick Leave Ruling**
Date: October 27, 2016

On September 29th, the Department of Labor issued a final rule requiring federal contractors to provide paid sick leave to employees who work on, or in connection with, certain federal contracts. This final rule implements Executive Order 13706, which was signed by President Obama in September, 2015.

When do the Rule's requirements start?

The Rule is effective on new covered contracts issued on or after January 1, 2017.

What contracts does the Rule cover?

The Rule covers federal contracts, including 1) procurement contracts for construction covered by the Davis Bacon Act (DBA), 2) contracts for services covered by the Service Contract Act (SCA), 3) contracts for concessions, including concessions contracts excluded from coverage by the SCA, or 4) a contract in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public. For DBA or SCA contracts, the Rule applies only at the thresholds specified in those statutes, \$2,500 and \$2,000 respectively. For procurement contracts, the threshold is the micro-purchase amount (\$3,500). The Rule applies to subcontracts of prime or upper-tier contracts so long as the subcontract is one of the 4 types of covered contracts.

What employees are covered?

The Rule applies to employees that work on or in connection with covered contracts and whose wages under those covered contracts are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions.

Employees who perform work "on" covered contracts are those who work on-site, including tradesmen and women.

The Rule defines that an employee performs work "in connection with" a covered contract if the employee performs work activities that are necessary to the performance of the contract. For those who work "in connection with" a covered contract, the Rule's accrual requirements only apply to such employees if 20% or more of their hours worked in a particular workweek are in connection with the contract. The Rule suggests that employers can estimate the amount of time an employee spends "in connection with" a covered contract by determining how much of the contractor's total revenue derives from the covered contract, assuming the employee's work is roughly divided across the contractor's other jobs.

What leave benefits does the Rule require?

For employees covered by the Rule, the employees must accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with the covered contract, up to the limit of 56 hours per year. The sick leave is accrued at shorter of the end of a pay period, or month. The Rule permits an employer to frontload 56 hours of paid sick leave at the beginning of an accrual year, rather than accruing hours as the employee works. Unused leave can be carried over from year-to-year, which may be capped at 56 hours. The Rule does not require that employees be able to cash-in unused leave.

Employers must inform employees, at least as often as once each pay period, as well as upon separation from employment and upon reinstatement, of the amount of paid sick leave that an employee has accrued. If an employee's employment ends, and the employee is rehired within 12 months, the unused sick leave upon separation must be reinstated, unless the employee received payment for the unused amount at separation, regardless of whether the employee will be working on a covered contract or not.

While an employee is using leave, the employer must provide to them the same benefits that would have been received were they working, but they do not, however, accrue additional leave time.

What purposes can leave be used for?

Leave may be used for time an employee would otherwise be working on, or in connection with, a covered contract because of:

1. A physical or mental illness, injury or medical condition;
2. Obtaining diagnosis, care, or preventive care from a health care provider;
3. Caring for a child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association is the equivalent of a family relationship, who has any of the conditions or needs for diagnosis, care, or preventive care described in (1) or (2) or is otherwise in need of care.
4. Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (1) or (2) or to obtain additional counseling, seek relocation, seeking assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal proceeding, or assist an individual related to the employee as described in (3) in engaging in any of these activities.

What obligation does an employee have in requesting or using leave?

In requesting use of leave, employees are obligated to provide sufficient information to enable their employer to determine whether it meets a valid purpose. An employer may request that the employee provide a certification to verify the need for use of sick leave – from a healthcare provider or other documentation if the leave is related to domestic violence, sexual assault or stalking – if the leave is 3 consecutive, full workdays, and the employee was told about the need for such a certification before returning to work.

If the request for leave is foreseeable, employees must make it at least 7 days in advance, and otherwise it must be made as soon as practicable.

Employers are not permitted to limit an employee's use of leave, or the amount that can be used at one time, other than to the amount which they have accrued.

Employers must allow employees to use leave in increments of no greater than one hour.

Can leave benefits be provided via a multiemployer plan?

The Rule allows that employers may satisfy their obligations by making leave benefits for employees covered by a collective bargaining agreement available through a multiemployer plan. For such a plan to satisfy the Rule, the plan's eligibility and payment rules must satisfy the Rule's requirements. That is, the employee must be allowed to use in not less than 1 hour increments, accrue leave at the same rate, and continue to be able to carry-over. Employers though continue to remain responsible for meeting the leave requirements under the Rule, even if the benefits are provided through a plan.

If a collective bargaining agreement, ratified before September 30, 2016, already provides at least 56 hours of paid time each year, the Rule does not apply to the employee until the earlier of January 1, 2020, or when the CBA terminates. If a collective bargaining agreement, ratified before September 30, 2016, provides less than 56 hours of leave, the transition relief still applies if the additional leave needed to bring the accrual up to 56 hours per year is provided.