

FEDERAL CONTRACTORS PAID SICK LEAVE – EXECUTIVE ORDER 13706

Federal contractors (customers) would have to insert a clause (see Pages 5 to 8) regarding paid sick leave requirements into any covered lower-tier “new” contracts and ensure that lower-tier contractors comply with them.

The rule broadly defines “contract,” stating that the term “includes all contracts and any subcontracts of any tier thereunder.”

The rule details consequences for contractors failing to include the required contract clause in covered contracts.

Covered *new* contracts include:

- Procurement contracts for services or construction covered by the Davis-Bacon Act (DBA);
- Contracts for services covered by the McNamara-O’Hara Service Contract Act (SCA) (Prime Only in excess of \$2,500);
- Contracts for concessions, including any concessions contracts excluded by DOL regulations at 29 CFR 4.133(b); and
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Employees must be working **on or in connection** with a covered contract in order to accrue and use paid sick leave under the rule. That means the employee is covered if they are doing the work called for in the contract or they are doing work necessary for the performance of the contract even if it is work not specifically called for in the contract.

- Employees performing work **“in connection with”** covered contracts for **less than 20% of their work hours** in a given workweek are excluded from the sick leave requirement under the rule.
- However, employees performing work **“on”** covered contracts, **regardless of the amount**, are NOT excluded from coverage.



EFFECTIVE: 1/1/2017

What Does New Contract Mean?

- Contracts (performed within the United States) with the Federal Government that result from solicitations issued on or after 1/1/2017 or that are awarded outside the solicitation process on or after 1/1/2017.
- A contract that is entered into prior to 1/1/2017 if through bilateral negotiation on or after 1/1/2017, the contract is:
 - Renewed
 - Extended, unless the extension is made pursuant to a term in the contract as of 12/31/2016 providing for a short-term limited extension; or
 - Amended pursuant to a modification that is outside the scope of the contract.

Note: Does not include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

Employees performing work “on” covered contracts – are those directly performing the specific services called for by the contract.

Employees performing work “in connection with” a covered contract - are performing activities that are necessary to the performance of the contract, but are not directly engaged in performing the specific services called for by the contract.

Note: In order for a contractor’s existing policy such as vacation, sick, or other paid time off policies (if provided in addition to the fulfillment of SCA or DBA obligations, if applicable) to suffice, it must meet or exceed all requirements of the executive order.

The Executive Order requires certain employers that contract with the Federal Government to provide their employees **with up to seven days (56 hours) of paid sick leave annually**, including for family care and absences resulting from domestic violence, sexual assault, and stalking.

Paid Sick Leave – Accrual

- Hourly eligible employees **will accrue 1 hour of paid sick leave for every 30 hours worked “on or in connection” with a covered contract.**
- “Hours worked” has the same meaning as it does under the FLSA; employees will accrue sick leave only when they are **actually working.**
- Exempt employees – contractor may calculate by tracking the employee’s actual or typical hours worked or by assuming the employee works 40 hours on or in connection with a covered contract in each workweek.

A contractor or subcontractor may not exclude time spent on non-covered work unless the contractor accurately records the employee’s covered and non-covered work hours.

For employees performing work in connection with—rather than “on”—covered contracts, a contractor may estimate the portion of the employee’s hours worked in connection with covered contracts provided the estimate is reasonable and based on verifiable information.

A contractor shall calculate an employee’s paid sick leave accrual no less frequently than at the conclusion of each pay period or each month, whichever interval is shorter.

The amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen.

Accrual Cap and Carryover Option

Options (Method)	Annual Accrual Cap	Maximum Sick Leave Bank	Carryover	Example
1 Accrual (Will use this option)	56 Hours	56 Hours (at any point)	1. Paid sick leave carried over from previous accrual year shall not count toward annual accrual cap (we will not use this option) OR 2. May cap amount available for use at 56 hours (we will use this option)	An employee accrues 56 hours in the first year but does not use any of that time. All 56 hours carry over to the second year. In the second year, the employee may not accrue any more time until the employee uses some of the 56 hours. If the employee uses all 56 hours in the second year, the employee may accrue up to another 56 hours by the end of the second year. The employee never carries over more than 56 hours in a year.

A contractor may select an accrual year, which is a 12-month period.

We will use January 1 to December 31.

Note: Paid sick leave under this Executive Order 13706 is in addition to a contractor’s obligation under the SCA and DBA. Thus, a contractor may *not* receive a credit toward its prevailing wage or fringe benefit obligations under those Acts for paid sick leave provided in satisfaction of the executive order or the rules.

Any paid sick time given above the executive order requirements *can* count toward SCA or DBA obligations if it complies with the requirements under those statutes.

Paid Sick Leave – Use of

Contractors are only required to allow employees to use paid sick leave at times the employees would be working on one of the four types of covered contracts described above.

- Employee’s own physical or mental illness, injury, or medical condition;
- When an employee needs to obtain diagnosis, care, or preventative care;
- To care for a child (any age), 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 an illness, injury, medical condition, or who needs to obtain diagnosis, care, or preventative care; or
- For domestic violence, assault, or stalking situations resulting in an illness, injury or medical condition or the need for obtaining diagnosis, care, or preventative care, or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action for the employee or one of the above-listed individuals in domestic violence, assault or stalking situations.

Employee can use paid sick time in one (1) hour increments.

Use may be limited to time the employee would otherwise have spent working on or in connection with a covered contract, but employers must have adequate records to distinguish between covered and non-covered work.

Child

- Biological, adopted, step, or foster son or daughter of the employee or employee’s spouse or domestic partner;
- Legal ward;
- Person for whom the employee stands in loco parentis or stood in loco parentis when individual was a minor or required someone to stand in loco parentis.

Parent

- Biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee, employee’s spouse or domestic partner was a minor;
- Person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian
- Person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

Spouse or Domestic Partner

Individual Related by Blood or Affinity whose close association with the employee is the equivalent of a family relationship – any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

Request for Leave

- An employee may request paid sick days in writing or verbally. An employee cannot be required to find a replacement as a condition for using paid sick days.
- If the employee has not complied with the notice requirements, a contractor could deny the employee’s request to use paid sick leave.
- If the need for paid sick leave is foreseeable, the employee shall provide at least seven (7) calendar days advance notification to the customer **and** company branch representative about his/her need for paid sick leave.
- If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for paid sick leave to the customer **and** company branch representative as soon as practicable.

Certification or Documentation for Leave of Three (3) or More Consecutive Full Workdays

Employers may require that the employee taking leave provide a certification (only if the contractor informs the employee of the requirement before the employee returns from leave)--or other documentation if the leave is related to domestic violence, sexual assault, or stalking--issued by a health care provider (or by a representative of the health care provider) only if the sick leave lasted for three or more consecutive full workdays. The employee will be allowed 30 days from the first day of the three or more consecutive absences to obtain the certification.

The documentation should contain only “the minimum necessary information establishing a need for the employee to be absent from work.

Confidentiality

Records relating to medical histories shall be maintained as confidential records, and contractors are prohibited from disclosing any verification information and are required to maintain confidentiality about domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

Termination

Accrued unused paid sick leave **is not paid out** upon termination, resignation, retirement, or other separation from employment

Rehires

If rehired by company within 12 months from the previous date of separation, previously accrued and unused paid sick days up to 56 hours shall be reinstated.

If a contractor does payout upon termination, then they are relieved of their obligation to reinstate an employee's accrued paid sick leave upon rehiring within 12 months of the separation.

Recordkeeping Requirements (Keep for 3 years from completion of contract)

<input type="checkbox"/>	Name, Address, SSN of each employee	<input type="checkbox"/>	Dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the requirement of Executive Order 13706) (leave must be designated in records as paid sick leave pursuant to Executive Order 13706)
<input type="checkbox"/>	Employee's occupation(s) or classification(s)	<input type="checkbox"/>	A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests
<input type="checkbox"/>	Rate or rates of wages paid (including all pay and benefits provided)	<input type="checkbox"/>	Any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee
<input type="checkbox"/>	Number of daily and weekly hours worked	<input type="checkbox"/>	Any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave
<input type="checkbox"/>	Any deductions made	<input type="checkbox"/>	The relevant covered contract
<input type="checkbox"/>	Total wages paid (including all pay and benefits provided) each pay period	<input type="checkbox"/>	The regular pay and benefits provided to an employee for each use of paid sick leave
<input type="checkbox"/>	A copy of notifications to employees of the amount of paid sick leave the employees have accrued	<input type="checkbox"/>	Any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required (Not applicable for our company)
<input type="checkbox"/>	A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests		