

PAID SICK LEAVE ON FEDERAL CONTRACTS

EO 13706 and the Hospitality Industry

PRESENTED BY:

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EO 13706 – ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

- Executive Order 13706
 - Issued: September 7, 2015
- Proposed Rule:
 - Issued by Dept. of Labor on February 25, 2016
 - Comment Period Ends: March 28, 2016

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- Basic operation of the rule:
 - Certain government contractors are required to provide employees with up to 56 hours (7 days) of paid sick leave over the course of a year
 - Applies generally to new contracts awarded pursuant to solicitations issued after January 1, 2017 and:
 - Contracts that are renewed after January 1, 2017
 - Contract is extended unless it is extended on a short-term limited basis, or
 - Contract is amended pursuant to a modification that is outside the scope of the contract.
- Risk of noncompliance:
 - DOL investigations - Withholding of contract funds
 - Debarment actions
 - Civil actions to recover underpayments
 - Fraud or false statement actions

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- Which contracts are covered?
 - Construction contracts covered by the Davis Bacon Act
 - Service contracts covered by the Service Contract Act
 - **Concessions contracts not subject to the Service Contract Act**
 - **Contracts in connection with Federal property or land and related to offering services for federal employees, their dependents, or the general public**
- The EO and the proposed rule do cover grants governed by the Federal Grant and Cooperative Agreement Act
- Includes all subcontractors regardless of tier

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- Which employees accrue paid sick leave:
 - Any person engaged in performing work on or in connection with a contract covered by the EO
 - Employees whose wages are governed by:
 - Davis-Bacon Act
 - Service Contract Act
 - Fair Labor Standards Act ...
 - Including employees who qualify for an exemption under FLSA's minimum wage and overtime provisions (administrative, executive and professional employees)

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- **Accrual of benefits:**
 - Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract
 - Hours worked on multiple contracts are to be aggregated
 - Hours worked includes all time for which an employee is or should be paid – includes time when employee is using other paid leave, including paid sick leave under this rule
 - Calculation of accrued leave to be done on a weekly basis
 - Contractors must inform employees of their current amount of leave at least monthly, upon request, or upon the end of employment

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- What are the immediate implications of the rule?
 - Record keeping:
 - Contractors will have to implement a system to track time of FLSA exempt workers or
 - Accrue benefits based on assumption of the employee will work 40 hours on covered contracts a week
 - Contractors may choose to provide a full “bank” of 56 hours of leave at the beginning of a year
 - Roll over:
 - Unused sick leave rolls over to the next year but does not count against future accrual

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- What are the immediate implications of the rule?
 - Seasonal employees:
 - If an employee is rehired within 12 months of separation, paid sick leave is to be reinstated
 - Reinstatement also required in a successor contract situation
 - Pay out:
 - No requirement in the rule to pay out unused sick leave at the end of the year

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- How can employees use their paid sick leave?
 - Physical or mental illness, injury or medical condition of the employee
 - Obtaining diagnosis, care, or preventive care from a health care provider
 - Caring for employee's child, parent, spouse, domestic partner, relative
 - Seeking counseling, assistance, legal services for domestic violence, sexual assault or stalking

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- Additional issues to consider:
 - Requests must be made 7 days in advance by employee when practicable
 - Denial of a request must be made in writing and requests must be responded to as soon as practicable
 - Employers may request certification or documentation when an employee uses paid sick leave for 3 or more full workdays
 - Employers may contact health care providers who provide certification or documentation **only to authenticate the document or clarify its contents**

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- Additional issues to consider:
 - Record retention: No less than 3 years
 - Predecessor contractors must provide a certified list of employees and paid leave accrued and remaining for the past 12 months at the completion of a contract
 - Possible penalties:
 - Withholding on federal contracts
 - Liquidated damages
 - Debarment
 - Civil actions to recover underpayments
 - False statement prosecution

QUESTIONS?

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