

DOL Issues Final Rule on Government Contractor Sick Pay

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The U.S. Department of Labor issued its Final Rule on Thursday, September 29, 2016, implementing a 2015 Executive Order requiring federal contractors to provide at least seven days of paid sick leave annually. Under the Final Rule, government contractors are required to give employees at least one hour of paid sick leave for every 30 hours of work and to permit employees to accrue at least 56 hours of sick leave per calendar year. "Hours worked" under the Final Rule denotes time spent working and does not include hours on paid time off status.

The Final Rule, which applies to contracts entered into after January 1, 2017, covers any worker engaged in performing work on or in connection with a covered contract, including employees who are exempt under the Fair Labor Standards Act (FLSA). Covered contracts include procurement contracts for construction under the Davis-Bacon Act, services contracts covered by the Service Contract Act, concession contracts, and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. The Final Rule does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the federal government that are subject to the Walsh Healey Public Contracts Act. The Final Rule provides a narrow exemption for workers who perform work duties necessary to the performance of a covered contract, but who are not directly engaged in performing the work specified by the contract, provided those workers spend less than 20 percent of their hours worked in any given workweek performing work in connection with such contracts.

The Final Rule permits paid sick leave to be used for a variety of reasons, including:

- An employee's own illness or other health care needs, including preventative care;
- The care of a family member or loved one who is ill or needs health care, including preventative care; and
- Absences related to domestic violence, sexual assault, or stalking where the employee, family member or loved one is a victim, including to obtain counseling, seek relocation, seeking assistance from a victim services organization, or for purposes of seeking legal action.

Under the Final Rule, illnesses and injuries are defined broadly to include the common cold, upset stomach, headache, and other ailments.

If an employer does not have a separate sick leave policy, the employer may use its paid time off policy to comply with the paid sick leave requirements of the Final Rule, as long as the employer provides at least 56

hours of paid time off and the employee may use that time for the purposes listed in the Final Rule. The Final Rule does not require employers to pay out accrued unused sick leave at the time of termination, but if the employee is rehired within 12 months, the sick leave must be reinstated.

Under the Final Rule, contractors are required to track the number of hours employees spend on, or in connection with, covered contracts. Contractors are permitted to estimate those hours. Contractors must also track employees' accrual and use of paid sick leave.

Companies with covered contracts will need to review their paid time off and sick leave policies to ensure compliance with the Executive Order and the Final Rule. Federal contractors requiring assistance complying with the Executive Order and Final Rule should contact a member of our Employment Law Group.

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