

EXPERT UPDATE



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Federal Contractor Paid Sick Leave: Overview of Proposed Rules

By Shari Herrle, Director of Compliance

Paid sick leave for federal contractors will be implemented for new and replacement contracts resulting from solicitations issued on or after January 1, 2017, according to proposed rules released by the Department of Labor (DOL).

This new order comes as a result of an [Executive Order](#) and requires most federal contractors to provide their employees with up to seven days of paid sick leave each year. It also includes paid leave for family care.

Major categories of contractual agreements impacted:

1. Procurement contracts for construction covered by the Davis-Bacon Act (DBA);
2. Service contracts covered by the McNamara-O'Hara Service Contract Act (SCA);
3. Concessions contracts, including any concessions contracts excluded from the SCA by DOL's regulations at 29 CFR 4.133(b); *and*
4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Employees exempted from coverage

The regulations will include a narrow exemption for employees who:

- spend less than 20 percent of their hours worked in a particular workweek in connection with the contract.
- perform work duties necessary to the performance of the contract.
- are not directly involved in performing the specific work required by the contract.

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Agreements and contracts exempted from coverage

General excluded agreements and contracts include those that are:

- Subject only to DBA-Related Acts
- Grants
- Contracts with Indian Tribes
- Subject to Walsh-Healy Public Contracts Act
- Performed outside the United States

Prime contractors must meet dollar thresholds to be covered

Dollar thresholds that must be satisfied before prime contractors would be covered:

- DBA- \$2,500
- SCA- \$2,000
- All other procurement contracts- \$3,000

Nonprocurement contracts for concessions or for subcontracts to covered contracts have no monetary threshold for coverage.

Basic leave requirements

Employees with wages governed by the Davis-Bacon Act, SCA and FLSA who are performing work on covered federal contracts and subcontracts will earn 1 hour of paid sick leave for every 30 hours worked, accruing up to 56 hours (or 7 days) of earned paid sick leave per year.

Paid leave can be carried over from year to year and must be reinstated when an employee is rehired within 12 months of separation. No financial payment is due the employee for unused accrued time when employment ends.

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Covered leave is provided for employee for own condition or to care for family member

Events eligible for paid sick leave include:

- With physical or mental illness; injury or medical condition;
- Obtaining diagnosis, care or preventive care from healthcare provider;
- Caring for a child, parent, spouse, domestic partner or other individual equivalent* who has any of the conditions or needs diagnosis, care, or preventive care from a healthcare provider or is otherwise in need of care;
- With an absence resulting from domestic violence, sexual assault, stalking if the time is needed to seek medical attention, counseling, relocation needs, assistance from victim services organizations, legal action or to assist an individual related to the employee for any of these activities.

** person related by blood or affinity whose close association with the employee is the equivalent of a family relationship*

Existing paid leave policy can be used if it complies with all of the DOL's requirements

A contractor's current leave policy will meet the new requirements if the leave is made available to all employees, it satisfies the covered leave obligations and the amount of time equals or exceeds the basic leave requirements illustrated above.

Requesting leave

Leave time may be requested orally or in writing at least seven days in advance of the need for leave if the leave is foreseeable or as soon as practicable when the leave is not foreseeable and the employee must identify how long the leave is expected to last.

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Certifying leave

Certification can only be required by the employer for requested leave of three or more consecutive work days used and it must be provided by the employee no later than 30 days from the first day of leave.

Impacted contractors should be prepared to implement this new requirement in 2017.

HBI will follow this new ordinance closely and will report on new developments as they become available.

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