The DOL's Final Rule Requires Paid Sick Leave for Federal Contractors

Legal Alert

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Nearly 500,000 federal contractors and subcontractors will be required to provide paid sick leave to employees beginning January 1, 2017, under new regulations just issued by the U.S. Department of Labor (DOL).

The DOL issued its Final Rule on September 30, implementing President Obama's Executive Order 13706, "Establishing Paid Sick Leave for Federal Contractors." It requires federal contractors and subcontractors to provide their employees working on covered government contracts with up to seven days of paid sick leave per year. The DOL estimates that this Final Rule will provide paid sick leave to 1.15 million workers, and could affect 489,419 contractors.

What are covered contracts?

The Final Rule applies to contracts solicited or entered into with the federal government *on or after January 1, 2017*. The Final Rule sets forth four categories of covered contracts:

- Procurement contracts for services or construction covered by the Davis-Bacon Act (DBA);
- Contracts for services covered by the Service Contract Act (SCA);
- Concessions contracts, including any concessions contracts excluded from the SCA by the Department of Labor's 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 families, or the general public.

The Final Rule broadly defines "contract," stating that the term "includes all contracts and any subcontracts of any tier thereunder."

Are any contracts excluded?

The Final Rule narrowly excludes from coverage the following types of contracts:

- "Grants" within the meaning of the Federal Grant and Cooperative Agreement Act;
- Contracts with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act;
- Procurement contracts for construction that are not subject to the DBA coverage (i.e., those worth less than $2,000); and
- Contracts for services that are exempted from coverage under the SCA (i.e., those worth under $2,500).

What types of absences does the paid sick leave cover?

The Final Rule title references "sick leave," but the unpaid leave must also be available for absences for family care and absences resulting from domestic violence, sexual assault, and stalking. Specifically, paid sick leave applies to:

i. physical or mental illness, injury, or medical condition;

ii. obtaining diagnosis, care, or preventive care from a health care provider;

iii. caring for a child, a parent, a spouse, a 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 any of the conditions or needs for diagnosis, care, or preventive care described in (i) or (ii) or is otherwise in need of care; or

iv. domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (i) or (ii), to obtain additional counseling, to seek relocation, to seek assistance from a victim services organization, or take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or to assist an individual related to the employee as described in (iii) in engaging in any of these activities.

The Final Rule defines "equivalent of a family relationship" broadly. Employees are permitted to use paid sick leave to care for family-like members who does not necessarily have a biological or legal relationship to the employee, including a "close friend" whom the employee considers to be like family.

When can a contractor require an employee to provide certification or documentation for the use of this paid sick leave?

- A contractor may require certification issued by a health care provider for paid sick leave used only for the first three types of leave for employee absences (i-iii above) of 3 or more consecutive workdays.
- If 3 or more consecutive days of paid sick leave are used for the purposes listed in section four (iv above), documentation may be required from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work.
- An employer may not disclose any verification information and must maintain confidentiality about domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

I'm a covered contractor, what does this mean for me?

- Paid sick leave carries over from one year to the next and will be reinstated for employees rehired by a covered contractor within 12 months after a job separation.
- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract.

- Accrual is calculated, and employees must be notified in writing of the amount of paid sick leave they have available, at the end of each pay period or each month, whichever interval is shorter.
- Paid sick leave cannot be made contingent on the requesting employee finding a replacement to cover any work time to be missed.
- Paid sick leave is in addition to a contractor's obligations under the SCA and DBA, and contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided within the Final Rule's requirements.
- Paid sick leave must be provided upon the oral or written request of an employee that includes the expected duration of the leave, and is made at least 7 calendar days in advance when the need for leave is foreseeable, and in other cases as soon as is practicable.
- If a contractor decides to deny a request for sick leave, the contractor must inform the employee of the denial, and provide an explanation for the denial in writing.
- The Final Rule prohibits contractors from discriminating or retaliating against any employee who exercises his or her rights under the Final Rule.
- Covered contractors must post a notice of the sick leave coverage prominently in the workplace so employees are on notice of their rights, available by clicking here.

To learn more about the new regulations, or to address other labor and employment issues, we invite you to contact Annie Kernicky or any other member of Flaster Greenberg's Labor & Employment Practice Group.