President Obama Issues Executive Order Requiring Federal Contractors to Provide Mandatory Sick Leave

posted on: Monday, September 14, 2015

The executive order poses another significant financial and administrative burden for federal contractors.

Continuing his practice of using executive orders to implement his labor and employment agenda, on September 7, US President Barack Obama signed an executive order (the Order) requiring federal contractors to provide covered employees with the ability to accrue at least seven days of paid sick leave per year. Starting in 2017, the Order will apply to new contracts, contract-like instruments, and solicitations. Covered federal contractors should strongly consider starting to prepare now for the potential impact of the Order.

Covered Contracts

Although the Order is effective immediately, the sick time obligations will apply to covered federal contracts solicited or awarded on or after January 1, 2017. The Order defines “covered contracts” to include:

- procurement contracts for services or construction;
- contracts or contract-like instruments for services covered by the Service Contract Act;
- contracts or contract-like instruments for concessions; and
- contracts or contract-like instruments “with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.”

Additionally, to be covered by the Order, the wages of employees under the above categories of contracts or contract-like instruments must be governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from its minimum wage and overtime provisions.

Accrual of Paid Sick Leave

The Order requires covered employers to guarantee one hour of paid sick leave for every 30 hours worked by employees who work on covered contracts—up to a minimum of 56 hours a year. The Order applies to both full-time and part-time employees who work on a covered contract. Covered employees must be permitted to carry sick time over from year-to-year, although the Order itself does not require a contractor to “pay out” accrued-but-unused sick time upon termination. Rehired employees must have their accrual reinstated if they return within 12 months after a job separation.

Permissible Uses of Paid Sick Leave

The Order allows covered employees to use paid sick leave for a broad range of reasons. Specifically, the Order allows employees to use paid sick leave for...
taking care of personal illness, injuries, or medical conditions;
caring for a child, parent, spouse, domestic partner, or other individual related by
blood or affinity whose close association with the employee is the equivalent of a family
relationship; and
recovering from or dealing with matters related to domestic violence, sexual assault, or
stalking.

Paid sick leave will be required to be provided upon the oral or written request of an employee—made
at least seven calendar days in advance where the leave is foreseeable, and in other cases as soon
as practicable—and should include the expected duration of the leave. If an employee is absent for
three or more consecutive work days on paid sick leave, the employer is permitted to request
certification from a healthcare provider (if the absence is related to a medical condition) or
documentation from the appropriate individual or organization containing the minimum information
necessary to establish a need for the employee to be absent from work (if the absence is related to
domestic violence, sexual assault, or stalking). The employer shall not disclose any verification
information and shall maintain confidentiality about any domestic violence, sexual assault, or
stalking, unless the employee consents or if disclosure is required by law.

Use of paid sick leave cannot be made contingent upon the requesting employee finding a replacement
to cover the work to be missed.

Effective Date

The Order applies only to covered contracts entered into on or after January 1, 2017. The Order
directs the Secretary of Labor to issue regulations it deems necessary and appropriate to carry out
the Order by September 30, 2016. These regulations will define the terms used in the Order[1] and
set forth recordkeeping obligations for covered employees. The Order grants the DOL with the
authority to investigate potential violations of the Order and ensure compliance. Within 60 days of
the Secretary of Labor issuing such regulations, the Federal Acquisition Regulatory Council shall
issue regulations in the Federal Acquisition Regulation.

Next Steps for Employers

Although the Order applies only to contracts entered into on or after January 1, 2017 and the DOL’s
regulations regarding the Order have not been issued, we nonetheless recommend that federal
contractors evaluate coverage and start preparing now, given that the Order will raise a number of
administrative challenges. For example, federal contractors may wish to start planning ways to track
sick leave used and prepare to revise and reconcile leave policies to reflect the new requirements.
Federal contractors should also begin thinking about how the new sick leave requirement will factor
into pricing their bids for federal contract work, and how to staff projects to account for the sick
leave. Contractors should carefully examine the DOL regulations and the Federal Acquisition
Regulations when they are issued.

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