Executive Orders: The Employment Transformers for Federal Contractors

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As we have detailed on several occasions over the past year, President Obama has used executive orders to implement sweeping new workplace policies for federal contractors and their employees. For example, the president has signed orders requiring federal contractors to pay their employees a minimum wage of $10.10 per hour and prohibiting discrimination on the basis of gender identity or sexual orientation for employees of federal contractors. This time around, the president has signed an Executive Order now mandating that federal contractors provide paid sick leave to their employees.

The new Executive Order provides that, as of January 1, 2017, all employees of federal contractors, as well as those of federal subcontractors, will accrue at least one hour of paid sick leave for each 30 hours worked, with a minimum accrual of 56 hours per year. This Executive Order applies to new contracts or contract-like instruments, subject to certain limitations described in related federal laws or regulations. The Executive Order also specifically provides the following:

- The accrued sick leave may be used for an absence related to the employee’s own physical or mental illness, obtaining health care, caring for an ill relative, or absences relating to domestic violence, sexual assault, or stalking when the absence is to seek care or assistance related to those matters.
- The accrued sick leave may be carried over from year to year, and shall be reinstated if an employee is rehired within 12 months after a job separation.
- There is no obligation for the federal contractor to pay out accrued sick leave upon the employee’s separation from the contractor.
- Paid leave may be used by an employee upon either oral or written request, which should include the duration of leave sought, be made at least seven calendar days in advance if the need for leave is foreseeable, and in all other cases, as soon as possible.
- The federal contractor may only require certification issued by a health care provider for absences of three or more consecutive work days.
- A federal contractor may not condition use of the leave upon the employee finding a replacement to cover his or her work during the absence, and may not interfere with an employee’s use of the leave or retaliate against the employee for taking the leave.
- Federal contractors that already have leave programs in place which meet or exceed the standards set forth in the Executive Order may continue those programs so long as they are extended to each employee.
- The requirements of the Executive Order are in addition to the requirements for prevailing wage...
and fringe benefit obligations under the Service Contract Act and the Davis-Bacon Act, and federal contractors will not receive any credit toward those obligations for the new sick leave required under this Executive Order.

The Secretary of Labor is responsible for issuing regulations to carry out the directives of the Executive Order and must do so by September 30, 2016. The secretary is also responsible for obtaining compliance with and investigating violations of the Executive Order.

Though these requirements will not go into effect until the very end of the president’s term, it is important for federal contractors to be aware of them and to make sure that they are considering these obligations when bidding on federal contracts. If you have any questions regarding this Executive Order, or others impacting federal contractors, you should consult an attorney experienced with government contracts and regulations.

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