

PUBLICATION

Proposed Executive Order Mandates Paid Sick Leave for Employees of Federal Contractors

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President Obama may soon issue an executive order mandating that employers who contract with the Federal government, and their subcontractors, provide paid sick leave to employees. A report in *The New York Times* released a draft of the executive order, which was marked "confidential" as well as "pre-decisional and determinative;" therefore, the specifics of the executive order are subject to change.

As previously addressed on this blog, there is a growing trend towards mandating paid sick leave on a local and state level. The proposed executive order would expand that trend as it relates to Federal contractors and subcontractors. The proposed order would apply to the following contracts where employees' wages are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act: (1) procurement contracts for construction covered by the Davis-Bacon Act; (2) contracts for services covered by the Service Contract Act; (3) contracts for concessions; and (4) contracts "entered into 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."

The proposed order requires that for every thirty hours worked, employees earn at least one hour of paid sick leave. Employees must be allowed to accrue at least fifty-six hours, or seven days, of paid sick leave per year. Additionally, unused leave will not expire, but will accrue year after year. Employees may use the paid leave: (1) for the employee's own physical or mental illness; (2) to obtain a diagnosis or preventative care; (3) to care for a child, parent, spouse, domestic partner, "or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship;" or (4) to seek medical attention, obtain counseling, seek relocation assistance from victim services organizations, or prepare civil or criminal proceedings in connection with domestic violence, sexual assault, or stalking. If an employee can foresee the need for leave, they must provide their employer at least seven days' notice.

The proposed order explicitly provides that employers cannot require an employee using sick leave to find a replacement worker to cover their missed shift. Under the proposed order, an employer can ask for certification of illness from the employee's health care provider, but only if the employee is absent for three or more consecutive workdays. The proposed order provides that employees will not be obligated to pay employees for their unused sick time upon their separation from employment.

Of course, the terms of the executive order are subject to change, as the draft released by *The New York Times* is labeled "pre-decisional." Many details about the practical application of the order would be fleshed out through regulations. The proposed order provides that the Secretary of Labor must issue regulations to implement the order by September 30, 2016. The proposed order specifically provides that those regulations address employers' recordkeeping obligations regarding employees' accrual and use of paid sick leave. The proposed order would apply to contracts entered into on or after January 1, 2017. Currently-existing contracts would therefore not be affected by the proposed order.

We will monitor the status of this proposed executive order and any changes to its terms. If the executive order is issued, employers who contract with the Federal government, and their subcontractors, must review their sick leave policies to ensure compliance with the executive order.