PAID SICK LEAVE ON FEDERAL CONTRACTS

EO 13706 and the Hospitality Industry
EO 13706 – ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

- Executive Order 13706
  - Issued: September 7, 2015

- Proposed Rule:
  - Issued by Dept. of Labor on February 25, 2016
  - Comment Period Ends: March 28, 2016
EO 13706 – Establishing Paid Sick Leave for Federal Contractors

- Basic operation of the rule:
  - Certain government contractors are required to provide employees with up to 56 hours (7 days) of paid sick leave over the course of a year
  - Applies generally to new contracts awarded pursuant to solicitations issued after January 1, 2017 and:
    - Contracts that are renewed after January 1, 2017
    - Contract is extended unless it is extended on a short-term limited basis, or
    - Contract is amended pursuant to a modification that is outside the scope of the contract.

- Risk of noncompliance:
  - DOL investigations - Withholding of contract funds
  - Debarment actions
  - Civil actions to recover underpayments
  - Fraud or false statement actions
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- Which contracts are covered?
  - Construction contracts covered by the Davis Bacon Act
  - Service contracts covered by the Service Contract Act
  - Concessions contracts not subject to the Service Contract Act
  - Contracts in connection with Federal property or land and related to offering services for federal employees, their dependents, or the general public

- The EO and the proposed rule do cover grants governed by the Federal Grant and Cooperative Agreement Act

- Includes all subcontractors regardless of tier
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- Which employees accrue paid sick leave:
  - Any person engaged in performing work on or in connection with a contract covered by the EO
  - Employees whose wages are governed by:
    - Davis-Bacon Act
    - Service Contract Act
    - Fair Labor Standards Act …
      - Including employees who qualify for an exemption under FLSA’s minimum wage and overtime provisions (administrative, executive and professional employees)
Accrual of benefits:

- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract.
- Hours worked on multiple contracts are to be aggregated.
- Hours worked includes all time for which an employee is or should be paid – includes time when employee is using other paid leave, including paid sick leave under this rule.
- Calculation of accrued leave to be done on a weekly basis.
- Contractors must inform employees of their current amount of leave at least monthly, upon request, or upon the end of employment.
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- What are the immediate implications of the rule?
  - Record keeping:
    - Contractors will have to implement a system to track time of FLSA exempt workers or
    - Accrue benefits based on assumption of the employee will work 40 hours on covered contracts a week
    - Contractors may choose to provide a full “bank” of 56 hours of leave at the beginning of a year
  - Roll over:
    - Unused sick leave rolls over to the next year but does not count against future accrual
What are the immediate implications of the rule?

Seasonal employees:
- If an employee is rehired within 12 months of separation, paid sick leave is to be reinstated.
- Reinstatement also required in a successor contract situation.

Pay out:
- No requirement in the rule to pay out unused sick leave at the end of the year.
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- How can employees use their paid sick leave?
  - Physical or mental illness, injury or medical condition of the employee
  - Obtaining diagnosis, care, or preventive care from a healthcare provider
  - Caring for employee’s child, parent, spouse, domestic partner, relative
  - Seeking counseling, assistance, legal services for domestic violence, sexual assault or stalking
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Additional issues to consider:

- Requests must be made 7 days in advance by employee when practicable
- Denial of a request must be made in writing and requests must be responded to as soon as practicable
- Employers may request certification or documentation when an employee uses paid sick leave for 3 or more full workdays
- Employers may contact health care providers who provide certification or documentation only to authenticate the document or clarify its contents
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- Additional issues to consider:
  - Record retention: No less than 3 years
  - Predecessor contractors must provide a certified list of employees and paid leave accrued and remaining for the past 12 months at the completion of a contract

- Possible penalties:
  - Withholding on federal contracts
  - Liquidated damages
  - Debarment
  - Civil actions to recover underpayments
  - False statement prosecution
QUESTIONS?

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