

CLIENT UPDATE

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EXECUTIVE ORDER 13706 – ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

On September 7, 2015, with his goal of “improved economy and efficiency in Government procurement,” President Barack Obama signed a new executive order guaranteeing employees of federal government contractors and subcontractors an annual 7 days of paid sick leave. The executive order seeks to achieve this goal of government efficiency through (1) promoting the health and performance of federal contractor employees and (2) ensuring that Federal contractors’ benefits packages remain competitive with “model employers.”

The Order does not apply to contracts for goods. It applies to the same types of contracts as the previously-issued minimum wage Executive Order. It applies to:

- Procurement contracts for services or construction
- Service Contract Act-covered contracts
- Concession contracts or
- 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.

Moreover, it applies only to “employees on those contracts.”

All new or modified contracts on or after January 1, 2017 shall include a provision stating that the following standards must be met as a condition of payment:

- Minimum of 1 hour of paid sick leave for every 30 hours worked;
- Minimum of 56 hours of paid sick leave per year;
- Accrued paid sick leave shall carry over from 1 year to the next and to employees rehired by a contractor within 12 months of separation.

Paid sick leave may be used by an employee for absence resulting from:

- Physical or mental illness, injury or medical condition;
- Obtaining diagnosis, care, or preventative care from a health care provider;
- Caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity equivalent to a family relationship who is in need of care; or
- Care or legal preparation for an employee or related individual as a result of having been the victim of domestic violence, sexual assault, or stalking.

These standards will apply to covered lower-tier subcontractors. A contractor's existing paid leave policy will satisfy the requirements of the Executive Order if the amount of paid leave already meets the above standards and is made available to all covered employees.

The leave may not be made contingent on the requesting employee finding a replacement to cover any work time to be missed.

Where the need for the leave is foreseeable, paid sick leave shall be granted if the request is made 7 calendar days in advance. Most "sick days" tend not to be foreseeable, however.

If the employee is absent for three (3) days (or more), the employer may require certification, and may compel the employee to provide that certification within 30 days of the first day of the leave. If the absence is for one or two days at a time, the employer may not require certification. In the special case of sick leave for absences of 3 or more consecutive work days related to domestic violence, sexual assault or stalking, the required documentation may be provided by individuals or organizations, and does not necessarily need to be medical certification. There are additional confidentiality provisions associated with the certification evidence in this instance.

The Executive Order makes clear that employers are not required to pay employees for unused sick leave upon separation from employment. The Order also highlights that contractors are prohibited from interfering with the use of sick leave and discriminating in any way against employees' use of the Executive Order.

The Order directs the Secretary of Labor to implement regulations by September 30, 2016.

About Roffman Horvitz

Roffman Horvitz, PLC was built from the ground up to provide a best-in-class outside counsel option for federal contractor employers in the areas of OFCCP compliance, affirmative action plan preparation and design, and employment data analytics.

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**About Alissa Horvitz**

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on representing clients in various matters before the OFCCP, preparing for and defending OFCCP audits and onsite visits, responding to OFCCP information requests, and conducting live and in-person training seminars on OFCCP compliance.

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