

§ 13.24

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such employee with “board, lodging, or other facilities,” as defined in 29 U.S.C. 203(m) and 29 CFR part 531;

(e) Deduction, to the extent permitted by law, for the purpose of recouping pay and benefits provided for paid sick leave as to which the contractor retroactively denied the employee’s request pursuant to §13.5(e)(3)(iii) or because the contractor approved the use of the paid sick leave based on a fraudulent request.

§ 13.24 Anti-kickback.

All paid sick leave used by employees performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in §13.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor’s benefit for the whole or part of the paid sick leave are prohibited.

§ 13.25 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13706 and this part shall make and maintain during the course of the covered contract, and preserve for no less than 3 years thereafter, records containing the information specified in paragraphs (a)(1) through (15) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and Social Security number of each employee;

(2) The employee’s occupation(s) or classification(s);

(3) The rate or rates of wages paid (including all pay and benefits provided);

(4) The number of daily and weekly hours worked;

(5) Any deductions made;

(6) The total wages paid (including all pay and benefits provided) each pay period;

29 CFR Subtitle A (7–1–20 Edition)

(7) A copy of notifications to employees of the amount of paid sick leave the employees have accrued as required under §13.5(a)(2);

(8) A copy of employees’ requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;

(9) Dates and amounts of paid sick leave used by employees (unless a contractor’s paid time off policy satisfies the requirements of Executive Order 13706 and this part as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);

(10) A copy of any written responses to employees’ requests to use paid sick leave, including explanations for any denials of such requests, as required under §13.5(d)(3);

(11) Any records relating to the certification and documentation a contractor may require an employee to provide under §13.5(e), including copies of any certification or documentation provided by an employee;

(12) Any other records showing any tracking of or calculations related to an employee’s accrual and/or use of paid sick leave;

(13) The relevant covered contract;

(14) The regular pay and benefits provided to an employee for each use of paid sick leave; and

(15) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to §13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by §13.5(b)(4).

(b) *Segregation of time.* (1) If a contractor wishes to distinguish between an employee’s covered and non-covered work (such as time spent performing work on or in connection with a covered contract versus time spent performing work on or in connection with non-covered contracts or time spent performing work on or in connection with a covered contract in the United States versus time spent performing work outside the United States, or to establish that time spent performing solely in connection with covered contracts constituted less than 20 percent of an employee’s hours worked during a particular workweek), the contractor

must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly deny an employee's request to take leave under §13.5(d) on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(2) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to §13.5(a)(1)(i) or (iii), the contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered contracts be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(c) If a contractor is not obligated by the Service Contract Act, Davis-Bacon Act, or Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, and the contractor chooses to use the assumption permitted by §13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (a)(4) of this section to keep records of the employee's number of daily and weekly hours worked.

(d)(1) Records relating to medical histories or domestic violence, sexual assault, or stalking, created by or provided to a contractor for purposes of Executive Order 13706, whether of an employee or an employee's 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, shall be maintained as confidential records in separate files/records from the usual personnel files.

(2) If the confidentiality requirements of the Genetic Information Non-discrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to medical information contained in records or documents that the contractor created or received in connection with compliance with the recordkeeping or other requirements of this part, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in §1635.9 of this title, 41 CFR 60-741.23(d), and §1630.14(c)(1) of this title, respectively.

(3) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in §13.5(c)(1)(iv) (as described in §13.5(d)(2)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(e) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(f) Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their implementing regulations, or other applicable law.

§ 13.26 Notice.

(a) The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706 and this part by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees.