

§ 13.5 Paid sick leave for Federal contractors and subcontractors.

(a) *Accrual.* (1) A contractor shall permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. A contractor shall aggregate an employee's hours worked on or in connection with all covered contracts for that contractor for purposes of paid sick leave accrual.

(i) Hours worked has the same meaning for purposes of Executive Order 13706 and this part as it does under the Fair Labor Standards Act, as set forth in 29 CFR part 785. To properly exclude time spent on non-covered work from an employee's hours worked that count toward the accrual of paid sick leave, a contractor must accurately identify in its records the employee's covered and non-covered hours worked, or, if the employee performs work in connection with rather than on covered contracts, a contractor may estimate the portion of an employee's hours worked spent in connection with covered contracts provided the estimate is reasonable and based on verifiable information.

(ii) A contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each pay period or each month, whichever interval is shorter. A contractor need not allow an employee to accrue paid sick leave in increments smaller than 1 hour for completion of any fraction of 30 hours worked. Any such fraction of hours worked shall be added to hours worked for the same contractor in subsequent pay periods to reach the next 30 hours worked provided that the next pay period in which the employee performs on or in connection with a covered contract occurs within the same accrual year.

(iii) 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, the contractor may, as to that employee, calculate paid sick leave accrual by tracking the employee's actual hours worked or by using the assumption that the employee

works 40 hours on or in connection with a covered contract in each workweek. If such an employee regularly works fewer than 40 hours per week on or in connection with covered contracts, whether because the employee's time is split between covered and non-covered contracts or because the employee has a part-time schedule, the contractor may allow the employee to accrue paid sick leave based on the employee's typical number of hours worked on or in connection with covered contracts per workweek provided the contractor has probative evidence to support the number it uses or, if the employee performs work in connection with rather than on covered contracts, a contractor may estimate the employee's typical number of hours worked in connection with covered contracts per workweek provided the estimate is reasonable and based on verifiable information.

(2) A contractor shall inform an employee, in writing, of the amount of paid sick leave that the employee has accrued but not used no less than once each pay period or each month, whichever interval is shorter, as well as upon a separation from employment and upon reinstatement of paid sick leave pursuant to paragraph (b)(4) of this section. A contractor's existing procedure for informing employees of their available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements provided it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).

(3) A contractor may choose to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time.

(i) If a contractor chooses to use the option described in this paragraph, the contractor need not comply with the accrual requirements described in paragraph (a)(1) of this section. The contractor must, however, allow carry-over of paid sick leave as required by

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paragraph (b)(2) of this section, and although the contractor may limit the amount of paid sick leave an employee may carry over to no less than 56 hours, the contractor may not limit the amount of paid sick leave an employee has available for use at any point as is otherwise permitted by paragraph (b)(3) of this section.

(ii) If a contractor chooses to use the option described in this paragraph and the contractor hires an employee or newly assigns the employee to work on or in connection with a covered contract after the beginning of the accrual year, the contractor may provide the employee with a prorated amount of paid sick leave based on the number of pay periods remaining in the accrual year.

(iii) A contractor may use the option described in this paragraph as to any or all of its employees in any or all accrual years.

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.*

(1) A contractor may limit the amount of paid sick leave an employee is permitted to accrue to not less than 56 hours in each accrual year. An accrual year is a 12-month period beginning on the date an employee's work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor's fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees' leave entitlements under the FMLA pursuant to § 825.200 of this title. A contractor may choose its accrual year but must use a consistent option for all, or across similarly situated groups of, employees and may not select or change any employee's accrual year in order to avoid the paid sick leave requirements of Executive Order 13706 and this part.

(2) Paid sick leave shall carry over from one accrual year to the next. Paid sick leave carried over from the previous accrual year shall not count toward any limit the contractor sets on annual accrual.

(3) A contractor may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours.

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Accordingly, even if an employee has accrued fewer than 56 hours of paid sick leave since the beginning of the accrual year, the employee need only be permitted to accrue additional paid sick leave if the employee has fewer than 56 hours available for use.

(4) Paid sick leave shall be reinstated for employees rehired by the same contractor within 12 months after a job separation. This reinstatement requirement applies whether the employee leaves and returns to a job on or in connection with a single covered contract or works for a single contractor on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor in between periods of working on covered contracts.

(5) Nothing in Executive Order 13706 or this part shall require a contractor to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment in an amount equal to or greater than the value of the pay and benefits the employee would have received pursuant to paragraph (c)(3) of this section had the employee used the paid sick leave, the contractor is relieved of the obligation to reinstate an employee's accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to paragraph (b)(4) of this section.

(c) *Use.* (1) Subject to the conditions described in paragraphs (d) and (e) of this section and the amount of paid sick leave the employee has available for use, a contractor must permit an employee to use paid sick leave to be absent from work for that contractor during time the employee would have been performing work on or in connection with a covered contract or, if the contractor estimates the employee's hours worked in connection with such contracts for purposes of accrual, during any work time because of:

(i) A physical or mental illness, injury, or medical condition of the employee;

(ii) Obtaining diagnosis, care, or preventive care from a health care provider by the employee;

(iii) Caring for the employee's 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 who has any of the conditions or needs for diagnosis, care, or preventive care referred to in paragraphs (c)(1)(i) or (ii) of this section or is otherwise in need of care; or

(iv) Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in paragraphs (c)(1)(i) or (ii) of this section or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or assist an individual related to the employee as described in paragraph (c)(1)(iii) of this section in engaging in any of these activities.

(2) A contractor shall account for an employee's use of paid sick leave in increments of no greater than 1 hour.

(i) A contractor may not reduce an employee's accrued paid sick leave by more than the amount of time the employee is actually absent from work, and a contractor may not require an employee to use more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using an increment of no greater than 1 hour.

(ii) The amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen.

(iii) If it is physically impossible for an employee using paid sick leave to commence or end work mid-way through a shift, such as if a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed "clean room" during a certain period of time, and no equivalent position is available, the entire period that the employee is forced to be absent constitutes paid sick leave. The period of the physical impossibility is limited to the period during which the contractor is unable to permit the employee to work prior

to the use of paid sick leave or return the employee to the same or an equivalent position due to the physical impossibility after the use of paid sick leave.

(3) A contractor shall provide to an employee using paid sick leave the same regular pay and benefits the employee would have received had the employee not been absent from work. Regular pay means payments that would be included in the calculation of the employee's regular rate for hours worked under the Fair Labor Standards Act as set forth in 29 CFR part 778.

(4) A contractor may not limit the amount of paid sick leave an employee may use per year or at once on any basis other than the amount of paid sick leave an employee has available.

(5) An employee is encouraged to make a reasonable effort to schedule preventive care or another foreseeable need to use paid sick leave to suit the needs of both the contractor and employee, and a contractor may ask an employee to make a reasonable effort to schedule foreseeable paid sick leave so as to not disrupt unduly the contractor's operations, but a contractor may not make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or on the fulfillment of the contractor's operational needs.

(d) *Request for leave.* (1) A contractor shall permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in paragraph (c)(1) of this section and, to the extent reasonably feasible, the anticipated duration of the leave.

(i) An employee's request to use paid sick leave need not include a specific reference to the Executive Order or this part or even use the words "sick leave" or "paid sick leave," and a contractor may not require an employee to provide extensive or detailed information about the need to be absent from work or the employee's family or

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family-like relationship with an individual for whom the employee is requesting to care.

(ii) Although an employee shall make a good faith effort to provide a reasonable estimate of the length of the requested absence from work, a contractor shall permit the employee to return to work earlier, or continue to use available paid sick leave for longer, than anticipated.

(iii) The employee's request shall be directed to the appropriate personnel pursuant to a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave or otherwise address scheduling issues on behalf of the contractor.

(iv) The contractor shall maintain the confidentiality of any medical or other personal information contained in an employee's request to use paid sick leave as required by § 13.25(d).

(2) If the need for leave is foreseeable, the employee's request shall be made at least 7 calendar days in advance. If the employee is unable to request paid sick leave at least 7 calendar days in advance, the request shall be made as soon as is practicable. When an employee becomes aware of a need to use paid sick leave less than 7 calendar days in advance, it should typically be practicable for the employee to make a request for leave either the day the employee becomes aware of the need to use paid sick leave or the next business day. In all cases, however, the determination of when an employee could practicably make a request must take into account the individual facts and circumstances.

(3)(i) A contractor may communicate its grant of a request to use paid sick leave either orally or in writing (including electronically, if the contractor customarily corresponds with or makes information available to its employees by such means).

(ii) A contractor shall communicate any denial of a request to use paid sick leave in writing (including electronically, if the contractor customarily corresponds with or makes information available to its employees by such means), with an explanation for the denial. Denial is appropriate if, for example, the employee did not provide suffi-

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cient information about the need for paid sick leave; the reason given is not consistent with the uses of paid sick leave described in paragraph (c)(1) of this section; the employee did not indicate when the need would arise; the employee has not accrued, and will not have accrued by the date of leave anticipated in the request, a sufficient amount of paid sick leave to cover the request (in which case, if the employee will have any paid sick leave available for use, only a partial denial is appropriate); or the request is to use paid sick leave during time the employee is scheduled to be performing non-covered work. If the denial is based on insufficient information provided in the request, such as if the employee did not state the time of an appointment with a health care provider, the contractor must permit the employee to submit a new, corrected request. If the denial is based on an employee's request to use paid sick leave during time she is scheduled to be performing non-covered work, the denial must be supported by records adequately segregating the employee's time spent on covered and non-covered contracts.

(iii) A contractor shall respond to any request to use paid sick leave as soon as is practicable after the request is made. Although the determination of when it is practicable for a contractor to provide a response will take into account the individual facts and circumstances, it should in many circumstances be practicable for the contractor to respond to a request immediately or within a few hours. In some instances, however, such as if it is unclear at the time of the request whether the employee will be working on or in connection with a covered or non-covered contract at the time for which paid sick leave is requested, as soon as practicable could mean within a day or no longer than within a few days.

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* (1)(i) A contractor may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in paragraphs (c)(1)(i), (ii), or (iii) of this section only if the employee is absent for 3 or more consecutive full workdays. The contractor shall protect

the confidentiality of any certification as required by § 13.25(d).

(ii) A contractor may only require documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in paragraph (c)(1)(iv) of this section only if the employee is absent for 3 or more consecutive full workdays. The source of such documentation may be any person involved in providing or assisting with the care, counseling, relocation, assistance of a victim services organization, or related legal action, such as, but not limited to, a health care provider, counselor, representative of a victim services organization, attorney, clergy member, family member, or close friend. Self-certification is also permitted. The contractor may only require that such documentation contain the minimum necessary information establishing a need for the employee to be absent from work. The contractor shall not disclose any verification information and shall maintain confidentiality about the domestic abuse, sexual assault, or stalking, as required by § 13.25(d).

(2) If certification or documentation is to verify the illness, injury, or condition, need for diagnosis, care, or preventive care, or activity related to domestic violence, sexual assault, or stalking of an individual related to the employee as described in paragraph (c)(1)(iii) of this section, a contractor may also require the employee to provide reasonable documentation or a statement of the family or family-like relationship. This documentation may take the form of a simple written statement from the employee or could be a legal or other document proving the relationship, such as a birth certificate or court order.

(3)(i) A contractor may only require certification or documentation if the contractor informs an employee before the employee returns to work that certification or documentation will be required to verify the use of paid sick leave if the employee is absent for 3 or more consecutive full workdays. The contractor may inform an employee of this requirement each time the employee requests to use or does use paid sick leave, or the contractor may in-

form employees of a general policy to require certification or documentation for absences of 3 or more consecutive full workdays if it does so in a manner reasonably calculated to provide actual notice of the requirement to employees.

(ii) A contractor may require the employee to provide certification or documentation within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave but may not set a shorter deadline for its submission.

(iii) While a contractor is waiting for or reviewing certification or documentation, it must treat the employee's otherwise proper request for 3 or more consecutive full workdays of paid sick leave as valid. If the employee provides certification or documentation that is insufficient to verify the employee's need for paid sick leave, the contractor shall notify the employee of the deficiency and allow the employee at least 5 days to provide new or supplemental certification or documentation. If after 30 days the employee has not provided any certification or documentation, or if after the 5 or more days allowed for resubmission the employee has either provided no new or supplemental certification or documentation or the new certification or documentation is still insufficient to verify the employee's need for paid sick leave, the contractor may, within 10 calendar days of the employee's deadline for providing sufficient certification or documentation, retroactively deny the employee's request to use paid sick leave. In such circumstances, the contractor may recover the value of the pay and benefits the employee received but to which the employee was not entitled, including through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not otherwise violate applicable Federal, State, or local wage payment or other laws.

(4) A contractor may contact the health care provider or other individual who created or signed the certification or documentation only for purposes of authenticating the document or clarifying its contents. The contractor may not request additional

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details about the medical or other condition referenced, seek a second opinion, or otherwise question the substance of the certification. To make such contact, the contractor must use a human resources professional, a leave administrator, or a management official. The employee's direct supervisor may not contact the employee's health care provider unless there is no other appropriate individual who can do so. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, set forth at 45 CFR parts 160 and 164, must be satisfied when individually identifiable health information of an employee is shared with a contractor by a HIPAA-covered health care provider.

(f) *Interaction with other laws and paid time off policies.* (1) *General.* Nothing in Executive Order 13706 or this part shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under the Executive Order and this part.

(2) *SCA and DBA requirements.* (i) Paid sick leave required by Executive Order 13706 and this part is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act. A contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and this part.

(ii) A contractor may count the value of any paid sick time provided in excess of the requirements of Executive Order 13706 and this part (and any other law) toward its obligations under the Service Contract Act or Davis-Bacon Act in keeping with the requirements of those Acts.

(3) *FMLA.* A contractor's obligations under the Executive Order and this part have no effect on its obligations to comply with, or ability to act pursuant to, the Family and Medical Leave Act. Paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to § 825.207 of this title. As to time

off that is designated as FMLA leave and for which an employee uses paid sick leave, all notices and certifications that satisfy the FMLA requirements set forth at § 825.300 through 300.308 of this title will satisfy the request for leave and certification requirements of paragraphs (d) and (e) of this section.

(4) *State and local paid sick time laws.* A contractor's compliance with a State or local law requiring that employees be provided with paid sick time does not excuse the contractor from compliance with any of its obligations under the Executive Order 13706 or this part. A contractor may, however, satisfy its obligations under the Order and this part by providing paid sick time that fulfills the requirements of a State or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds all of the requirements of the Order and this part including but not limited to the accrual and use requirements in this section and the prohibitions on interference and discrimination in § 13.6. Where the requirements of an applicable State or local law and the Order and this part differ, satisfying both will require a contractor to comply with the requirement that is more generous to employees.

(5) *Paid time off policies.* (i) The paid sick leave requirements of Executive Order 13706 and this part need not have any effect on a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise.

(ii) A contractor's existing paid time off policy (if provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable) will satisfy the requirements of the Executive Order and this part if the paid time off is made available to all employees described in § 13.3(a)(2) (other than those excluded by § 13.4(e)); may be used for at least all of the purposes described in paragraph (c)(1) of this section; is provided in a manner and an amount sufficient to comply with the rules and restrictions regarding the accrual of paid sick leave set forth in paragraph (a) of this section and regarding maximum accrual, carryover, reinstatement, and payment

for unused leave set forth in paragraph (b) of this section; is provided pursuant to policies sufficient to comply with the rules and restrictions regarding use of paid sick leave set forth in paragraph (c) of this section, regarding requests for leave set forth in paragraph (d) of this section, and regarding certification and documentation set forth in paragraph (e) of this section, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section; and is protected by the prohibitions against interference, discrimination, and record-keeping violations described in §13.6 and the prohibition against waiver of rights described in §13.7, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section.

(iii) A contractor satisfying the requirements of the Executive Order and this part with a paid time off policy that provides more than 56 hours of leave per accrual year may choose to either provide all paid time off as described in paragraph (f)(5)(ii) of this section or track, and make and maintain records reflecting, the amount of paid time off an employee uses for the purposes described in paragraph (c)(1) of this section, in which case the contractor need only provide, for each accrual year, up to 56 hours of paid time off the employee requests to use for such purposes in compliance with the Order and this part.

§ 13.6 Prohibited acts.

(a) *Interference.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or this part.

(2) Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring the employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification

or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(b) *Discrimination.* (1) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and this part;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 or this part;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 or this part; or

(iv) Informing any other person about his or her rights under Executive Order 13706 or this part.

(2) Discrimination includes, but is not limited to, a contractor's considering any of the activities described in paragraph (b)(1) of this section as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy.

(c) *Recordkeeping.* A contractor's failure to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for inspection, copying, and transcription as required by §13.25, or any other failure to comply with the requirements of §13.25, constitutes a violation of Executive Order 13706, this part, and the underlying contract.

§ 13.7 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706 or this part.

§ 13.8 Multiemployer plans or other funds, plans, or programs.

(a) A contractor may fulfill its obligations under Executive Order 13706 and this part jointly with other contractors—that is, as though all of the contractors are a single contractor—through a multiemployer plan that provides paid sick leave in compliance