

## § 13.2

## 29 CFR Subtitle A (7–1–23 Edition)

(c) *Scope.* Neither Executive Order 13706 nor this part creates or changes any rights under the Contract Disputes Act or creates any private right of action. The Executive Order provides that disputes regarding whether a contractor has provided paid sick leave as prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided in this part. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order and this part similarly do not preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

### § 13.2 Definitions.

For purposes of this part:

*Accrual year* means the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours.

*Administrative Review Board* (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

*Administrator* means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

*As soon as is practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances of the individual case.

*Certification issued by a health care provider* means any type of written document created or signed by a health care provider (or by a representative of the health care provider) that contains information verifying that the physical or mental illness, injury, medical condition, or need for diagnosis, care, or preventive care or other need for care referred to in § 13.5(c)(1)(i), (ii), or (iii) exists. The health care provider (or representative) need not have seen the employee or the individual for whom the employee is caring in person to create a valid certification.

*Child* means:

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*; or

(4) A child, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Concessions contract* or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes, but is not limited to, a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

*Contract* or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source

under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

*Contracting officer* means a representative of an executive department or agency with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

*Contractor* means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees. The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

*Davis-Bacon Act (DBA)* means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.*, and its implementing regulations.

*Domestic partner* means an adult in a committed relationship with another adult. A committed relationship is one in which the employee and the domestic partner of the employee are each other's sole domestic partner (and are not married to or domestic partners with anyone else) and share responsi-

bility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic violence* means:

(1) Felony or misdemeanor crimes of violence (including threats or attempts) committed:

(i) By a current or former spouse, domestic partner, or intimate partner of the victim;

(ii) By a person with whom the victim shares a child in common;

(iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse, domestic partner, or intimate partner;

(iv) By a person similarly situated to a spouse of the victim under civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred; or

(v) By any other adult person against a victim who is protected from that person's acts under the civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred.

(2) Domestic violence also includes any crime of violence considered to be an act of domestic violence under the civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred.

*Employee* means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *employee* includes any

## § 13.2

## 29 CFR Subtitle A (7–1–23 Edition)

person performing work on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. An employee performs "on" a contract if the employee directly performs the specific services called for by the contract. An employee performs "in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

*Executive departments and agencies* means executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, or any independent establishments within the meaning of 5 U.S.C. 104(1) or 39 U.S.C. 201, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

*Executive Order 13495 or Nondisplacement Executive Order* means Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, 74 FR 6103 (Feb. 4, 2009), and its implementing regulations at 29 CFR part 9.

*Executive Order 13658 or Minimum Wage Executive Order* means Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors, 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10.

*Fair Labor Standards Act (FLSA)* means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.*, and its implementing regulations.

*Family and Medical Leave Act (FMLA)* means the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*, and its implementing regulations.

*Family violence* means any act or threatened act of violence, including any forceful detention of an individual that results or threatens to result in physical injury and is committed by a person against another individual (including an elderly individual) to or with whom such person is related by blood, is or was related by marriage or

is or was otherwise legally related, or is or was lawfully residing.

*Federal Government* means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

*Health care provider* means any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer's group health plan. The term includes, but is not limited to, doctors of medicine or osteopathy, podiatrists, dentists, psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants, physical therapists, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

*Independent agencies* means independent regulatory agencies within the meaning of 44 U.S.C. 3502(5).

*Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship* means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

*Intimate partner* means a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

*Multiemployer plan* means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

*New contract* means a contract that results from a solicitation issued on or after January 1, 2017, or a contract that is awarded outside the solicitation process on or after January 1, 2017. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2017 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2017:

- (1) The contract is renewed;
- (2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or
- (3) The contract is amended pursuant to a modification that is outside the scope of the contract.

*Obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action*, used in reference to domestic violence, sexual assault, or stalking, means to spend time arranging, preparing for, or executing acts related to addressing physical injuries or mental or emotional impacts resulting from being a victim of domestic violence, sexual assault, or stalking. Such acts include finding and using services of a counselor or victim services organization intended to assist a victim to respond to or prevent future incidents of domestic violence, sexual assault, or stalking; identifying and moving to a different residence to avoid being a victim of domestic violence, sexual assault, or stalking; or a victim's pursuing any related legal action.

*Obtaining diagnosis, care, or preventive care from a health care provider* means receiving services from a health care provider, whether to identify, treat, or otherwise address an existing condition or to prevent potential conditions from arising. The term includes time spent traveling to and from the location at which such services are provided or recovering from receiving such services.

*Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

*Option* means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

*Paid sick leave* means compensated absence from employment that is required by Executive Order 13706 and this part.

*Parent* means:

- (1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;
- (2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;
- (3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis*; or
- (4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Physical or mental illness, injury, or medical condition* means any disease, sickness, disorder, or impairment of, or any trauma to, the body or mind.

*Procurement contract for construction* means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the Davis-Bacon Act.

*Procurement contract for services* means a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the Service Contract Act.

*Related legal action or related civil or criminal legal proceeding*, used in reference to domestic violence, sexual assault, or stalking, means any type of legal action, in any forum, that relates

### § 13.3

to the domestic violence, sexual assault, or stalking, including, but not limited to, family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay-away order proceedings, and other similar matters; and criminal justice investigations, prosecutions, and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy.

*Secretary* means the Secretary of Labor and includes any official of the U.S. Department of Labor authorized to perform any of the functions of the Secretary of Labor under this part.

*Service Contract Act (SCA)* means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.*, and its implementing regulations.

*Sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

*Solicitation* means any request to submit offers, bids, or quotations to the Federal Government.

*Spouse* means the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a common law marriage that was entered into in a State that recognizes such marriages or, if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

*Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

*United States* means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United

### 29 CFR Subtitle A (7-1-23 Edition)

States, by the foregoing departments, establishments, agencies, and instrumentalities, including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States* means the 50 States and the District of Columbia.

*Victim services organization* means a nonprofit, nongovernmental, or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for victims of domestic violence, sexual assault, or stalking, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, sexual assault, or stalking.

*Violence Against Women Act (VAWA)* means the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.*, and its implementing regulations.

*Wage and Hour Division* means the Wage and Hour Division, U.S. Department of Labor.

#### § 13.3 Coverage.

(a) This part applies to any new contract with the Federal Government, unless excluded by §13.4, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at §4.133(b); or

(iv) It is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of employees performing on or in connection with such contract are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime