

**§ 13.22 Paid sick leave.**

The contractor shall allow all employees performing work on or in connection with a covered contract to accrue and use paid sick leave as required by Executive Order 13706 and this part.

**§ 13.23 Deductions.**

The contractor may make deductions from the pay and benefits of an employee who is using paid sick leave only if such deduction qualifies as a:

- (a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;
- (b) Deduction for payments made to third parties pursuant to court order;
- (c) Deduction directed by a voluntary assignment of the employee or his or her authorized representative;
- (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;
- (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

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(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

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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.

(b) Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

**§ 13.27 Timing of pay.**

The contractor shall compensate an employee for time during which the employee used paid sick leave no later than one pay period following the end of the regular pay period in which the paid sick leave was used.

**Subpart D—Enforcement**

**§ 13.41 Complaints.**

(a) Any employee, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. If the complainant is unable to file the complaint in English, the Wage

and Hour Division will accept the complaint in any language.

(b) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act, 5 U.S.C. 552, 29 CFR part 70, and the Privacy Act of 1974, 5 U.S.C. 552a.

**§ 13.42 Wage and Hour Division conciliation.**

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

**§ 13.43 Wage and Hour Division investigation.**

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's employees at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with employees, and in all aspects of investigations.

**§ 13.44 Remedies and sanctions.**

(a) *Interference.* When the Administrator determines that a contractor