Subpart 22.21 - Establishing Paid Sick Leave For Federal Contractors

Parent topic: Part 22 - Application of Labor Laws to Government Acquisitions

22.2100 Scope of subpart.


22.2101 Definitions.

As used in this subpart (in accordance with 29 CFR 13.2)-

*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 (see 29 CFR 13.5(b)(1)).

*Certification issued by a health care provider* has the meaning given in 29 CFR 13.2.

*Employee*-

(1)

(i) Means any person engaged in performing work on or in connection with a contract covered by E.O. 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including *employees* who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) An employee performs on a contract if the employee directly performs the specific services called for by the contract; and
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.

*Health care provider* has the meaning given in 29 CFR 13.2.

*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.

*Paid sick leave* means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

### 22.2102 Policy.

(a) The Government shall require contractors to allow employees performing work on or in connection with a contract covered by E.O. 13706 to accrue and use paid sick leave in accordance with the E.O. and 29 CFR Part 13.

(b) Interaction with other laws. Nothing in E.O. 13706 or 29 CFR Part 13 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 E.O. 13706 and 29 CFR Part 13. For additional details regarding interaction with the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Family and Medical Leave Act, and State and local paid sick time laws, see 29 CFR 13.5(f)(2) through (4).

(c) Interaction with paid time off policies. In accordance with 29 CFR 13.5(f)(5)(i), the paid sick leave requirements of E.O. 13706 and 29 CFR Part 13 may be satisfied by a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise, where the voluntary paid time off policy meets or exceeds the requirements. For additional details regarding paid time off policies, see 29 CFR 13.5(f)(5)(ii) and (iii).

(d) Unless otherwise provided in this subpart, compliance is the responsibility of the contractor, and enforcement is the responsibility of the Department of Labor.

### 22.2103 Applicability.

This subpart applies to-

(a) Contracts that-

(1) Are covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis-Bacon Act, subpart 22.4); and

(2) Require performance in whole or in part within the United States. When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that
is performed within the United States; and

(b) Employees performing on or in connection with such contracts whose wages are governed by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, 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.

22.2104 Exclusions.

The following are excluded from coverage under this subpart:

(a) Employees performing in connection with contracts covered by the E.O. for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to employees performing on contracts covered by the E.O., i.e., those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek (see 29 CFR 13.4(e)).

(b) Until the earlier of the date the agreement terminates or January 1, 2020, employees whose covered work is governed by a collective bargaining agreement ratified before September 30, 2016, that-

(1) Already provides 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year; or

(2) Provides less than 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year, provided that each year the contractor provides covered employees with the difference between 56 hours (or 7 days) and the amount provided under the existing agreement in accordance with 29 CFR 13.4(f).

(c) The Government's unilateral exercise of a pre-negotiated option to renew an existing contract that does not contain the clause at 52.222-62 will not automatically trigger the application of that clause. (See definition of "new contract" at 29 CFR 13.2).

22.2105 Paid sick leave for Federal contractors and subcontractors.

In accordance with 29 CFR 13.5, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, the following contractor requirements apply:

(a) Accrual.

(1) Contractors are required to 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 contract covered by the E.O. (see 29 CFR 13.5(a)(1)).

(2) Contractors are required to inform each employee, in writing, of the amount of paid sick
leave 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 29 CFR 13.5(b)(4) (see 29 CFR 13.5(a)(2)).

(3) Contractors may choose to provide employees 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 (see 29 CFR 13.5(a)(3)).

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

(1) Contractors may limit the amount of paid sick leave employees are permitted to accrue to not less than 56 hours in each accrual year (see 29 CFR 13.5(b)(1)).

(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 (see 29 CFR 13.5(b)(2)).

(3) Contractors 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 (see 29 CFR 13.5(b)(3)).

(4) Contractors are required to reinstate paid sick leave for employees only when rehired by the same contractor within 12 months after a job separation (see 29 CFR 13.5(b)(4)).

(5) Nothing in E.O. 13706 or 29 CFR Part 13 requires contractors 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 29 CFR 13.5(c)(3) 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 29 CFR 13.5(b)(4) (see 29 CFR 13.5(b)(5)).

(c) Use. Contractors are required to permit an employee to use paid sick leave in accordance with 29 CFR 13.5(c).

(d) Request for paid sick leave. Contractors are required to 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 29 CFR 13.5(c) and, to the extent reasonably feasible, the anticipated duration of the leave (see 29 CFR 13.5(d)).

(e) Certification or documentation for leave of 3 or more consecutive full workdays. Contractors may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(i), (ii), or (iii), or documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(iv), only if the employee is absent for 3 or more consecutive full workdays (see 29 CFR 13.5(e)).

22.2106 Prohibited acts.

In accordance with 29 CFR 13.6, and by operation of the clause at 52.222-62, Paid Sick Leave Under
Executive Order 13706, a contractor may not-

(a) Interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR Part 13 (see 29 CFR 13.6(a));

(b) Discharge or in any other manner discriminate against any employee for-

(1) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR Part 13;

(2) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 or 29 CFR Part 13;

(3) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 or 29 CFR Part 13; or

(4) Informing any other person about his or her rights under E.O. 13706 or 29 CFR Part 13 (see 29 CFR 13.6(b)); or

(c) Fail 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 29 CFR 13.25, or otherwise fail to comply with the requirements of 29 CFR 13.25 (see 29 CFR 13.6(c)).

22.2107 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under E.O. 13706 or 29 CFR Part 13 (see 29 CFR 13.7).

22.2108 Multiemployer plans or other funds, plans, or programs.

Contractors may fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multi-employer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

22.2109 Enforcement of Executive Order 13706 paid sick leave requirements.

(a) Authority. Section 4 of the E.O. grants to the Secretary of Labor the authority for investigating potential violations of, and obtaining compliance with, the E.O. The Secretary of Labor, in promulgating the implementing regulations required by section 3 of the E.O., has assigned this authority to the Administrator of the Wage and Hour Division. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR Part 13 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.
(b) Complaints.

(1) Complaints are filed with the Administrator of the Wage and Hour Division and may be brought by any person (including the employee), entity, or organization that believes a violation of this subpart has occurred.

(2) 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, unless otherwise authorized by law.

(3) If the contracting agency receives a complaint or is notified that the Administrator of the Wage and Hour Division has received a complaint, the contracting officer shall report, within 14 days, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue N.W., Room S3006, Washington, D.C. 20210, all of the following information that is available without conducting an investigation:

   (i) The complaint or description of the alleged violation.

   (ii) Available statements by the employee, contractor, or any other person regarding the alleged violation.

   (iii) Evidence that clause 52.222-62, Paid Sick Leave Under Executive Order 13706, was included in the contract.

   (iv) Information concerning known settlement negotiations between the parties, if applicable.

   (v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) Investigations. Complaints will be investigated by the Administrator of the Wage and Hour Division, if warranted, in accordance with the procedures in 29 CFR 13.43.

(d) Remedies and sanctions.

(1) Withholding or suspending payment. The contracting officer shall, upon his or her own action or upon written request of the Administrator of the Wage and Hour Division-

   (i)

   (A) Withhold or cause to be withheld from the contractor under the contract covered by the E.O. or any other Federal contract with the same contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of E.O. 13706 or 29 CFR Part 13; and

   (B) In the event of any such violation, the contracting agency may, after authorization or by direction of the Administrator of the Wage and Hour Division and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased; or

   (ii) Take action to cause suspension of any further payment, advance, or guarantee of
funds to a contractor that has failed to make available for inspection, copying, and transcription any of the records identified in 29 CFR 13.25.

(2) Civil actions to recover greater underpayments than those withheld.

(i) If the payments withheld under 29 CFR 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary of Labor, may bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount.

(ii) The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the employees who suffered the violation(s) of 29 CFR 13.6(a) or (b).

(iii) Any sum not paid to an employee because of inability to do so within 3 years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(3) Termination. Contracting officers may consider the failure of a contractor to comply with the requirements of E.O. 13706 or 29 CFR Part 13 as grounds for termination for default or cause.

(4) Debarment.

(i) The Department of Labor may initiate debarment proceedings under 29 CFR 13.44(d) and 29 CFR 13.52 whenever a contractor is found to have disregarded its obligations under E.O. 13706 or 29 CFR Part 13.

(ii) Contracting officers shall consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart (see subpart 9.4).

(5) Remedies for interference.

(i) When the Administrator of the Wage and Hour Division determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of 29 CFR 13.6(a), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include–

(A) Any pay and/or benefits denied or lost by reason of the violation;

(B) Other actual monetary losses sustained as a direct result of the violation; or

(C) Appropriate equitable or other relief.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the E.O. or 29 CFR Part 13.
(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(6) Remedies for discrimination.

(i) When the Administrator of the Wage and Hour Division determines that a contractor has discriminated against an employee in violation of 29 CFR 13.6(b), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include, but is not limited to-

(A) Employment;

(B) Reinstatement;

(C) Promotion;

(D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the E.O. or 29 CFR Part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) Recordkeeping. When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the Administrator of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor fails to produce required records upon request, the contracting officer shall, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) Inclusion of contract clause. If a contracting agency fails to include the clause at FAR 52.222-62 in a contract to which the E.O. applies, the contracting officer, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, shall
incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

22.2110 Contract clause.

Insert the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).