# 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.

This subpart prescribes policies and procedures to implement E.O. 13706, Establishing *Paid Sick Leave* for Federal Contractors, dated September 7, 2015, and Department of Labor implementing regulations at 29 CFR Part 13.

## 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

(ii) 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).