52.222-62 Paid Sick Leave Under Executive Order 13706.

As prescribed at 22.2110 , insert the following clause:

Paid Sick Leave Under Executive Order 13706 (Jan 2022)

(a) *Definitions*. As used in this clause (in accordance with 29 CFR 13.2)-

Child, "domestic partner", and "domestic violence" have 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 Executive Order (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;

(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.

Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship 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.

Parent, "sexual assault", "spouse", and "stalking" have the meaning given in 29 CFR 13.2.

United States means the 50 States and the District of Columbia.

(b) Executive Order 13706.

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the *United States*, this clause only applies with respect to that part of the contract that is performed within the *United States*.

(c) *Paid sick leave*. The Contractor *shall*-

(1) Permit each *employee* engaged in performing work on or in connection with this contract to earn not less than 1 hour of *paid sick leave* for every 30 hours worked;

(2) Allow accrual and use of *paid sick leave* as required by E.O. 13706 and 29 CFR Part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;

(4) Provide *paid sick leave* to all *employees* when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for *paid sick leave* used no later than one pay period following the end of the regular pay period in which the *paid sick leave* was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR Part 13, and this clause.

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

(e) *Withholding*. The *Contracting Officer* will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this 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 the requirements of E.O. 13706, 29 CFR Part 13, or this clause, including-

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

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) Payment *suspension*/contract termination/contractor *debarment*.

(1) In the event of a failure to comply with E.O. 13706, 29 CFR Part 13, or this clause, the *contracting* agency *may*, on its own action or after authorization or by direction of the Department of Labor 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.

(2) Any failure to comply with the requirements of this clause *may* be grounds for *termination for default* or cause.

(3) A breach of the *contract clause may* be grounds for *debarment* as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The *paid sick leave* required by E.O. 13706, 29 CFR Part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (*Construction*) statute, and the 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 E.O. 13706 and 29 CFR Part 13.

(h) 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.

(i) Recordkeeping.

(1) The Contractor *shall* make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each *employee*, which the Contractor *shall* make available upon request for *inspection*, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

(i) Name, address, and social security number of each *employee*.

(ii) The *employee*'s occupation(s) or classification(s).

(iii) The rate or rates of wages paid (including all pay and benefits provided).

(iv) The number of daily and weekly hours worked.

(v) Any deductions made.

(vi) The total wages paid (including all pay and benefits provided) each pay period.

(vii) A copy of notifications to *employees* of the amount of *paid sick leave* the *employee* has accrued, as required under 29 CFR 13.5(a)(2).

(viii) 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.

(ix) Dates and amounts of *paid sick leave* taken by *employees* (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR Part 13 as described in 29 CFR 13.5(f)(5), leave *shall* be designated in records as *paid sick leave* pursuant to E.O. 13706).

(x) 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 29 CFR 13.5(d)(3).

(xi) Any records reflecting the certification and documentation the Contractor *may* require an *employee* to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an *employee*.

(xii) Any other records showing any tracking of or calculations related to an *employee*'s accrual or use of *paid sick leave*.

(xiii) The relevant contract.

(xiv) The regular pay and benefits provided to an *employee* for each use of *paid sick leave*.

(xv) Any financial payment made for unused *paid sick leave* upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such *paid sick leave* as otherwise required by 29 CFR 13.5(b)(4).

(2)

(i) If the Contractor wishes to distinguish between an *employee*'s covered and noncovered work, the Contractor *shall* keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the *employee*'s time will time spent on noncovered work be excluded from hours worked counted toward the accrual of *paid sick leave*. Similarly, only if the Contractor adequately segregates the *employee*'s time *may* the Contractor properly refuse an *employee*'s request to use *paid sick leave* on the ground that the *employee* was scheduled to perform noncovered work during the time he or she asked to use *paid sick leave*.

(ii) If the Contractor estimates covered hours worked by an *employee* who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(i) or (iii), the Contractor *shall* 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 noncovered work be excluded from hours worked counted toward the accrual of *paid sick leave*. If the Contractor estimates the amount of time an *employee* spends performing in connection with contracts covered by the E.O., the Contractor *shall* permit the *employee* to use his or her *paid sick leave* during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (*Construction*) statute, or the Fair Labor Standards Act to keep records of an *employee*'s hours worked, such as because the *employee* is exempt from the Fair Labor Standards Act's minimum wage and *overtime* requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the *employee*'s number of daily and weekly hours worked.

(4)

(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 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.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this *contract clause*, the records and documents *shall* 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 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) 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 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and *shall* maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the *employee* consents or when disclosure is required by law.

(5) The Contractor *shall* permit authorized representatives of the Wage and Hour Division to conduct interviews with *employees* at the worksite during normal working hours.

(6) Nothing in this *contract clause* limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (*Construction*) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) Interference/discrimination.

(1) The Contractor *shall* not in any manner interfere with an *employee*'s accrual or use of *paid sick leave* as required by E.O. 13706 or 29 CFR Part 13. Interference includes, but is not limited to-

(i) Miscalculating the amount of *paid sick leave* an *employee* has accrued;

(ii) Denying or unreasonably delaying a response to a proper request to use *paid sick leave*;

(iii) Discouraging an *employee* from using *paid sick leave*;

(iv) Reducing an *employee*'s accrued *paid sick leave* by more than the amount of such leave used;

(v) Transferring an *employee* to work on contracts not covered by the E.O. to prevent the accrual or use of *paid sick leave*;

(vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use *paid sick leave*; or

(vii) 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.

(2) The Contractor *shall* 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 E.O. 13706 and 29 CFR Part 13;

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

(iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR

Part 13; or

(iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR Part 13.

(k) *Notice*. The Contractor *shall* notify all *employees* performing work on or in connection with a contract covered by the E.O. of the *paid sick leave* requirements of E.O. 13706, 29 CFR Part 13, and this clause 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*. Contractors that customarily post notices to *employees* electronically *may* post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Contractor, whether external or internal, and customarily used for notices to *employees* about terms and conditions of employment.

(l) *Disputes concerning labor standards*. Disputes related to the application of E.O. 13706 to this contract *shall* not be subject to the general disputes clause of the contract. Such disputes *shall* be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 13. Disputes within the meaning of this *contract clause* include disputes between the Contractor (or any of its subcontractors) and the *contracting* agency, the Department of Labor, or the *employees* or their representatives.

(m) *Subcontracts*. The Contractor *shall* insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (*Construction*) statute, and are to be performed in whole or in part in the *United States*.

(End of clause)

***Parent* topic:** 52.222 [Reserved]