

# EXPERT UPDATE



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## Key Elements of the New Federal Contractor Paid Sick Leave Requirements

By Shari Herrle, Director of Compliance

On September 29, 2016, the Department of Labor (DOL) released a final rule implementing the regulations for Federal Contractors and subcontractors to provide employees with paid sick leave. The requirement, which will take effect for covered contracts entered into on or after January 1, 2017, applies to four major categories of contractual agreements:

1. Procurement contracts for construction covered by the Davis-Bacon Act (DBA)
2. Service contracts covered by the Service Contract Act (SCA)
3. Concessions contracts, including any concessions contract excluded from the SCA by the Department of Labor's regulations at 29 CFR 4.133(b)
4. Contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

The rule imposes specific accrual, use, carryover, reinstatement and notice requirements similar to what we have been seeing in new state and city paid leave regulations. An existing Paid Time Off (PTO) policy can fulfill this new Federal requirement as long as the existing policy provides employees with AT LEAST the same rights and benefits required under the final rule.

*Please note that the information contained in this document is designed to provide authoritative and accurate information, in regard to the subject matter covered. However, it is not provided as legal or tax advice and no representation is made as to the sufficiency for your specific company's needs. This document should be reviewed by your legal counsel or tax consultant before use.*

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## Key elements of the final rule include:

### Absences

Paid sick leave must be made available for:

- 1) Physical or mental illness, injury, or medical condition of the employee;
- 2) Obtaining diagnosis, care, or preventive care from a health care provider by the employee;
- 3) Caring for the employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has a physical or mental illness, injury or medical condition in need of diagnosis, care, or preventive care from a health care provider;
- 4) Domestic violence, sexual assault or stalking, if the time absent from work is for the purposes described in 1) or 2) above, or to obtain counseling, seek relocation, seek assistance from a victim services organization, take legal action, or assist an individual related to the employee as described in 3) above.

### Accrual details

- 1 hour of paid sick leave for every 30 hours worked or in connection with a covered contract.
- If an employee is in a position that does not require hours to be recorded, contractors can assume a 40 hour work week. An estimate of time worked may also be used as long as the estimate is reasonable and based on verifiable information.
- 56 hours of paid sick leave may be provided at the beginning of each accrual year instead of allowing the employee to accrue leave based on hours worked. This approach is often referred to as "frontloading."

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## **Employee notice of accrual**

Employees are to be notified in writing of the amount of paid sick leave they have available at the end of each pay period or each month, whichever interval is shorter.

## **Requests**

Employees may make the request for paid sick leave orally or in writing and the request must be made at least 7 calendar days in advance where the need is foreseeable, and, in other cases, practicable. Any denial issued by the contractor following a request must be provided in writing and must contain an explanation of why the request was denied.

## **Certifications**

Certifications may only be requested for absences of 3 or more consecutive full days and the employee must have received notice of this requirement before he or she returns to work.

## **Use**

- Contractors must allow employees to use paid sick leave in 1 hour increments with limited exceptions.
- No limits may be imposed on the amount of sick time used if sick time is available.
- Regular pay and benefits must be provided when sick time is used.
- There is no requirement allowing employees to earn additional paid sick leave during the time they are using paid sick leave.

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## **Permitted limits and carryover**

- Accrued time may be limited to 56 hours each year but employees must be permitted to carry over unused sick leave from one year to the next.
- Contractors are permitted to limit the amount of paid sick leave employees have to 56 hours at any point in time.

## **No cash-out required**

There is no requirement that contractors pay employees for accrued, unused sick time at the time of job separation.

## **Reinstatement**

- Contractors are required to reinstate an employee's accrued, unused paid sick leave if the employee is rehired by the same contractor within 12 months of the job separation.
- No reinstatement of unused sick leave is required for contractors that choose to provide a cash-out at job separation.

## **SCA health & welfare benefit rate**

The DOL's Wage and Hour Division will be releasing an SCA health and welfare benefit rate specifically for contractors whose employees receive paid sick leave in accordance with the new rule.

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## **Recordkeeping**

Employers are required to maintain records that include: hours worked when accrual is based on actual hours worked, copies of notifications of accrued sick time, denials, certification information, dates and amounts of time used by employees, and any other information the employer finds necessary for administering the paid sick leave rule properly.

Additional information, including how this rule applies to Collective Bargaining Agreements ratified before September 30, 2016, contracts not covered by the rule, etc., can be found in the [Wage and Hour Fact Sheet](#).

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