

United States Department of Labor

Wage and Hour Division

Paid Sick Leave for Workers on Federal Contracts

Executive Order 13706 - Frequently Asked Questions (FAQs) about the NPRM

General

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1 Q. Why are these regulations being proposed?

On September 7, 2015, President Barack Obama signed Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors. The Executive Order requires certain parties that contract with the Federal Government to provide their employees with up to 7 days of paid sick leave annually, including paid leave allowing for family care. The Executive Order directs the Secretary of Labor to issue regulations by September 30, 2016, to implement the Executive Order's requirements.

2 Q. Where can I review this proposal?

This Notice of Proposed Rulemaking (NPRM) is available through the Federal Register and the <http://www.regulations.gov> website. You can also access this document via the Wage and Hour Division's (WHD) website at <http://www.dol.gov/whd/>. The docket ID number for this proposed rule is 1235-AA13.

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1 Q. What contracts are covered by EO 13706 and the proposed regulations?

The requirements of the Executive Order apply only to certain categories of contracts with the Federal Government, and only to contracts that are "new" on or after January 1, 2017. As proposed, the categories of covered contracts are identical to those covered by the Final Rule implementing Executive Order 13658, Establishing a Minimum Wage for Contractors (Minimum Wage Executive Order).

Under the Executive Order and proposed regulations, the paid sick leave requirements apply to a new contract that is: (1) a procurement contract for construction covered by the Davis-Bacon Act (DBA); (2) a contract for services covered by the Service Contract Act (SCA); (3) a contract for concessions, including any concessions contract excluded from coverage under the SCA by Department of Labor regulations at 29 CFR 4.133(b); or (4) a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The regulations will not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act.

The NPRM only applies to contracts, or portions of contracts, with the Federal Government performed within the United States (defined as the 50 States and the District of Columbia).

2 Q. What is a "concessions contract"?

The proposed rule defines a "concessions contract" as a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term "concessions contract" includes but is not limited to every contract with the principal purpose of furnishing food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

Examples of concessions contracts that are generally covered by the Department's proposed rule include contracts with the Federal Government to operate souvenir shops in national parks or fast food restaurants in Federal buildings.

3 Q. What is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public?

This category of covered contracts would refer to leases of Federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services to Federal employees, their dependents, or the general public.

Examples of such agreements (which could also be subject to the SCA) include delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, barber shop, coffee shop, or fitness center in the Federal building to serve Federal employees and/or the general public.

4 Q. Are any contracts with the Federal government excluded from the requirements of the NPRM?

Under the proposed rule, the EO and the regulations do not apply to grants as that term is used in the Federal Grant and Cooperative Agreement Act. They also do not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended. In addition, they do not apply to contracts that are subject only to the Davis-Bacon Related Acts. As proposed, the regulations will also not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act.

5 Q. Would a contract have to meet a dollar amount threshold before the EO applies?

For contracts covered by the SCA or the DBA, the proposed regulations apply to prime contracts only at the thresholds specified in those statutes (\$2,500 and \$2,000, respectively), and for procurement contracts where employees' wages are governed by the FLSA (i.e., procurement contracts not covered by the SCA or DBA), the proposed regulations apply when the prime contract exceeds the micro-purchase threshold (\$3,000). There is no value threshold for application of the proposed regulations to subcontracts awarded under covered prime contracts or for non-

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procurement concessions contracts not covered by the SCA and non-procurement contracts with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public not covered by the SCA.

6 Q. What is a new contract?

The proposed regulations apply to "new contracts," that is, contracts with the Federal Government that result from solicitations issued on or after January 1, 2017 or that are awarded outside the solicitation process on or after January 1, 2017. A contract that is entered into prior to January 1, 2017 will constitute a new contract if, through bilateral negotiation, on or after January 1, 2017: (1) the contract is renewed; (2) the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or (3) the contract is amended pursuant to a modification that is outside the scope of the contract. The definition of "new contract" does not include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

7 Q. If I enter into a contract with the Federal Government, would it automatically be covered by the proposed rule?

No. In order for a contractual agreement to be covered, the agreement would need to: (1) fall within the definition of a "contract or contract-like instrument" as set forth in the proposed rule, and (2) qualify as one of the specifically enumerated types of contracts described in the Executive Order (a contract subject to the DBA or SCA, a concessions contract, or a contract entered into in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public). Moreover, as explained above, paid sick leave requirements would apply only to "new contracts" with the Federal Government.

8 Q. Would this rule apply to subcontracts?

Yes, under the proposal, the Executive Order's paid sick leave requirements would apply to subcontracts of covered prime or upper-tier contracts if the subcontract is one of the four types of covered contracts: (1) a contract for construction covered by the DBA; (2) a contract for services covered by the SCA; (3) a contract for concessions, including any concessions contract excluded from coverage under the SCA by Department of Labor regulations at 29 CFR 4.133(b); or (4) a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The requirements apply regardless of the value of the subcontract. Contractor obligations for ensuring compliance by subcontractors are consistent with obligations under DBA, SCA and the Final Rule implementing the Minimum Wage Executive Order.

Employee Coverage

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1 Q. Which employees are covered by the EO and these proposed regulations?

The paid sick leave requirements of Executive Order 13706 and the proposed regulations apply to employees performing work "on or in connection with" covered contracts and whose wages under those covered contracts are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions.

2 Q. What does it mean to work "on or in connection with" covered contracts?

The NPRM explains that employees performing "on" a covered contract are those employees directly performing the specific services called for by the contract (including, but not limited to, laborers and mechanics engaged in the construction of a public building or public work on the site of the work and service employees performing the specific services called for by an SCA-covered contract).

Employees performing "in connection with" a covered contract are those who are performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself (such as, for example, a security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or a clerk who processes the payroll for SCA contracts). These proposed interpretations are the same as under the Final Rule implementing the Minimum Wage Executive Order.

3 Q. What does it mean for an employee's wages to be governed by the DBA?

The proposed rule explains that employees whose wages are governed by the DBA include laborers and mechanics who are covered by the DBA, including any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

4 Q. What does it mean for an employee's wages to be governed by the SCA?

The proposed rule explains that employees whose wages are governed by the SCA include those who are "service employees" under the SCA, including individuals who are employed on an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

5 Q. What does it mean for an employee's wages to be governed by the FLSA?

The proposed rule explains that employees whose wages are governed by the FLSA include those entitled to minimum wage and/or overtime compensation under sections 6 and/or 7 of the FLSA and those whose wages are calculated pursuant to special certificates issued under section 14 of the FLSA. The EO and proposed regulations also apply to an employee who would be entitled to minimum wage and/or overtime compensation under the FLSA but for the application of an exemption from the FLSA's minimum wage and overtime requirements pursuant to section 13 of the Act. Such employees include those employed in a bona fide executive, administrative, or professional capacity as defined in section 13(a)(1) of the FLSA.

6 Q. Are any employees who work on or in connection with covered contracts excluded from the requirements of the NPRM?

The Department has proposed that the accrual requirements of the proposed rule do not apply to employees performing "in connection with" covered contracts (rather than "on" covered contracts) who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. An employee works "in connection with" a covered contract if she performs work duties necessary to the performance of the contract but is not directly engaged in performing the specific work called for by the contract (such as, for example, a security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or a clerk who processes the payroll for SCA contracts).

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1 Q. What is the amount of paid sick leave required under EO 13706?

Under the Executive Order, a contractor must permit an employee to accrue (earn) not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to the limits described below.

2 Q. Would an employee accrue paid sick leave based on all time spent working for a Federal contractor?

Under the proposed rule, a contractor would only be required to allow employees to accrue paid sick leave for hours worked on or in connection with the four types of covered contracts described above. For example, if an employee works on an SCA-covered contract for security services for 30 hours each workweek and works for the same contractor on a contract not covered by the proposed rule for an additional 30 hours each workweek, the contractor would only be required to allow the employee to accrue 1, rather than 2, hours of paid sick leave each workweek.

3 Q. What does "hours worked" mean for EO 13706?

The Department proposes that "hours worked" for purposes of this EO includes all time for which an employee is or should be paid, meaning time an employee spends working or in paid time off status, including time when the employee is using paid sick leave or any other paid time off provided by the employer. This definition is different from the use of the term "hours worked" in other contexts and under other laws.

4 Q. What if a contractor does not already keep a record of hours worked for certain employees?

Consistent with the regulations implementing the Family and Medical Leave Act (FMLA), for employees as to whom contractors are not obligated by another statute to keep records of hours worked, such as those who are employed in a bona fide executive, administrative, or professional capacity, the proposal would allow contractors to choose to continue not to keep records of such employees' hours worked, but instead to allow the employees to accrue paid sick leave as though the employees were working on or in connection with a covered contract for 40 hours per week.

5 Q. Would there be any limits to the amount of paid sick leave that could be accrued?

Under the proposed rule, the contractor could limit an employee's paid sick leave accrual each year to 56 hours, and the contractor could prohibit an employee from having more than 56 hours of paid sick leave available for use at any point in time.

6 Q. Could a contractor provide employees with the 56 hours all at once, or does each contractor have to track accrual over time?

In order to facilitate ease of compliance, the proposed rule would permit a contractor to choose to provide an employee 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. Certain rules regarding limits on the accrual of paid sick leave are different if a contractor chooses to use this option.

7 Q. When does the year in which an employee can be limited to 56 hours of paid sick leave begin and end?

The Department refers to this period as an "accrual year." Under the proposed rule, a contractor may choose its accrual year but must use a consistent option for all employees and may not select or change its accrual year in order to avoid the paid sick leave requirements of Executive Order 13706. An accrual year is a 12-month period beginning on the date an employee's work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor's fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees' leave entitlements under the FMLA.

8 Q. How often does paid sick leave accrue?

The proposed rule provides that a contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each workweek.

A contractor is not required to allow employees to accrue paid sick leave in increments smaller than 1 hour for completion of any fraction of 30 hours worked. In other words, an employee need only be permitted to accrue a full hour of paid sick leave after working a full 30 hours. For example, if an employee worked 40 hours on her first workweek on a covered contract, the first 30 of those hours would count toward the accrual of 1 hour of paid sick leave, and the 10 remaining hours would be added to hours worked for the same contractor in a future workweek or workweeks to reach the next 30 hours worked.

9 Q. How are the employees informed about the amount of accrued paid sick leave?

The proposed regulations would require a contractor to inform an employee, in writing, of the amount of paid sick leave that the employee has accrued but not used (1) no less than monthly, (2) at any time when the employee makes a request to use paid sick leave, (3) upon the employee's request for such information, but no more often than once a week, (4) upon a separation from employment, and (5) upon reinstatement of paid sick leave.

A contractor's existing procedure for informing employees of their available paid time off, such as notification accompanying each paycheck or an online system an employee can check at any time, can be used to satisfy or partially satisfy these requirements provided it is written (including electronically) and clearly indicates the amount of paid sick leave an employee has accrued separately from indicating amounts of other types of paid time off available.

10 Q. Does paid sick leave carry over from year to year?

Yes. The proposal requires a contractor to allow carryover of paid sick leave an employee has accrued but not used from one accrual year to the next. However, employers would not be required to allow total accrual of more than 56 hours of leave at any given time.

11 Q. If an employee carries over paid sick leave from the previous accrual year, is that employee's additional accrual that year limited to less than 56 hours?

No, provided that the employee uses some paid sick leave. Under the proposal, leave carried over from the previous accrual year does not count toward the 56-hour limit in the next accrual year, but contractors may limit employees' amount of paid sick leave at any point in time to 56 hours. For example, if an employee carries over 16 hours of paid sick leave into a new accrual year, she must be permitted to accrue 40 additional hours of paid sick leave even if she does not use any paid sick leave while that accrual occurs. Once she has 56 hours of paid sick leave accrued, the contractor may prohibit her from accruing any additional leave unless she uses some portion of the 56 hours. If she uses, for example, 24 hours of paid sick leave in the same accrual year (such that she has 32 hours remaining available for use), she must be permitted to accrue up to at least 16 more hours (in addition to the 40 hours she has already accrued during the accrual year) for a total of 56 hours accrued in that accrual year. If she did so, she would then have 48 hours of paid sick leave (32 previously available hours plus 16 newly accrued hours) available for use and could be limited to that amount until the next accrual year.

12 Q. Is a contractor required to pay employees for accrued, unused paid sick leave when an employee's job ends or at the end of the contract?

No. Nothing in the EO or the NPRM requires a contractor to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. The proposal provides, however, that a contractor cannot avoid the requirement to reinstate paid sick leave when it rehires an employee by cashing out the leave at the time of the original separation from employment.

13 Q. What happens to the paid sick leave accrual if an employee's employment terminates, but the employee is later rehired?

Under the proposal, paid sick leave would be reinstated for employees rehired by the same contractor or a successor contractor within 12 months after a job separation.

This reinstatement requirement would apply whether the employee leaves and returns to a job on or in connection with a single covered contract or works for a single contractor on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor to work on non-covered contracts in between periods of working on covered contracts. As proposed, the reinstatement requirement also applies if an employee is hired for a job on or in connection with a covered successor contract after working on or in connection with the predecessor contract, including when an employee is entitled to a right of first refusal of employment from a successor contractor under Executive Order 13495.

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1 Q. What are permissible uses for paid sick leave?

Under the proposed rule, an employee could use paid sick leave for time he or she would otherwise be working on or in connection with a covered contract if she is absent because of:

- (1) A physical or mental illness, injury, or medical condition.
- (2) Obtaining diagnosis, care, or preventive care from a health care provider.
- (3) Caring for her 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 any of the conditions or needs for diagnosis, care, or preventive care described in (1) or (2) or is otherwise in need of care.
- (4) Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (1) or (2) or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or assist an individual related to the employee as described in (3) in engaging in any of these activities.

2 Q. What counts as a physical or mental illness, injury, or medical condition?

Under the proposal, physical or mental illness, injury, or medical condition would be defined as any disease, sickness, disorder, or impairment of, or any trauma to, the body or mind. The Department understands the Executive Order to intend for this term to be understood broadly, to include any illness, injury, or medical condition, regardless of whether it requires attention from a health care provider or whether it would be a "serious health condition" that qualifies for use of leave under the Family and Medical Leave Act. See 29 U.S.C. 2611(11); 29 CFR 825.113. Examples include, but are not limited to, a common cold, ear infection, upset stomach, ulcer, flu, headache, migraine, sprained ankle, broken arm, or depressive episode.

3 Q. Who counts as a health care provider?

DOL proposes to define "health care provider" as any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer's group health plan. The term includes, but is not limited to, doctors of medicine or osteopathy, podiatrists, dentists, psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants, physical therapists, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. This definition is intended to be broad and inclusive.

4 Q. Can an employee use paid sick leave at any time when he or she is scheduled to perform work for a Federal contractor?

Under the proposal, contractors are only required to allow employees to use paid sick leave at times the employees would be working on one of the four types of covered contracts described above. For example, if an employee works on an SCA-covered contract for security services for 30 hours each workweek and works for the same contractor on a private contract for security services an additional 30 hours each workweek, the contractor would only be required to allow that employee to use paid sick leave during the 30 hours the employee works on the SCA-covered contract.

5 Q. Who is an individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship?

Under the proposed rule, this term means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship. It could include, for example, an individual who was a foster child in the same home in which the employee was a foster child for several years and with whom the employee has maintained a sibling-like relationship, a friend of the family in whose home the employee lived while she was in high school and whom the employee therefore considers to be like a mother or aunt to her, or an elderly neighbor with whom the employee has regularly shared meals and to whom the employee has provided unpaid caregiving assistance for the past five years and whom the employee therefore considers to be like a grandfather to her.

6 Q. Does an employee have to find a replacement worker in order to use paid sick leave?

No. A contractor may not make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or the fulfillment of the contractor's operational needs.

7 Q. What amounts of paid sick leave could an employee use, or would an employee have to use, when she needs to take leave?

A contractor could not limit an employee's use of accrued paid sick leave over the course of a year. The contractor also could not limit the amount of leave an employee can use at one time. An employee's use of paid sick leave is limited, however, by the amount of paid sick leave the employee has accrued and by the employee's compliance with rules regarding requesting the use of paid sick leave and providing information verifying the need for use of paid sick leave (addressed below).

A contractor would have to allow employees to use paid sick leave in increments of no greater than one hour. For example, if an employee needs to be an hour late for work because of a doctor's appointment, her contractor would have to permit her to use only one hour of leave (rather than, for example, a full day). If an employee needs to be a half an hour late for work because of the doctor's appointment, however, the contractor would not be required to allow the worker to use only half an hour of leave, but instead could require her to use one hour of accrued leave (provided the employer does not put the employee to work at any point during that one-hour period).

8 Q. How does an employee request leave?

Employees could request paid sick leave by any oral or written method, including in person, by phone, via email, or with a note reasonably calculated to provide timely notice of the employee's intent to take leave.

9 Q. What information would have to be contained in the request to use paid sick leave?

The request would have to contain enough information for a contractor to determine whether it is a proper use of paid sick leave. The contractor could ask questions narrowly tailored to making that determination.

The request for leave should provide an estimate of the timing and amount of leave needed. A request to use paid sick leave is acceptable if the employee directs it to the appropriate personnel under a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave on behalf of the contractor, such as a supervisor or human resources department staff.

The request for leave does not need to contain extensive or detailed information about the reason for the leave and a contractor could not require such information. The employee would not need to specify all symptoms or details of the need for leave, nor would she need to specifically request to use paid sick leave required by the Executive Order or the proposed regulations or even use the words "sick leave" or "paid sick leave."

10 Q. How far in advance would an employee have to request leave?

If the need to use paid sick leave is foreseeable, the employee's request would have to be made at least 7 calendar days in advance. If the employee is unable to request leave at least 7 calendar days in advance, the employee would have to make the request for leave as soon as is practicable.

11 Q. Could a contractor deny an employee's request to use paid sick leave?

If an employee has not complied with the notice requirements, a contractor could deny the employee's request to use paid sick leave.

For example, if an employee arranged a doctor's appointment for his son 3 weeks in advance but did not submit a request to use paid sick leave until 2 days before the appointment, the contractor typically could properly deny that request (because it did not comply with the requirement to request paid sick leave at least 7 days in advance if the need for leave was foreseeable). Denial of the request would not be proper, however, if the leave was not foreseeable.

12 Q. How does a contractor communicate approval or denial of a request to use paid sick leave?

A contractor could communicate its grant of a request to use paid sick leave either orally or in writing, but would have to inform the employee in writing of the amount of paid sick leave the employee has available for use. A contractor would also have to communicate any denial of a request to use paid sick leave in writing, with an explanation for the denial.

If a denial is based on insufficient information provided in the request, the contractor would have to allow the employee to submit a new, corrected request. If the denial is based on an employee's request to use paid sick leave during time she is scheduled to be performing non-covered work, the denial would have to be supported by records adequately segregating the employee's time spent on covered and non-covered contracts.

13 Q. How long does a contractor have to respond to a request to use paid sick leave?

As proposed, a contractor would have to respond to any request to use paid sick leave as soon as is practicable after the request is made. The determination of when it is practicable for a contractor to provide a response will take into account the individual facts and circumstances; it should in many circumstances be practicable for the contractor to respond to a request immediately or within a few hours. In some instances, such as if it is unclear at the time of the request whether the employee will be working on or in connection with a covered or non-covered contract at the time for which paid sick leave is requested, as soon as practicable could mean within a day or no longer than within a few days.

14 Q. May an employer require certification or documentation to verify the need to use paid sick leave?

A contractor could require certification issued by a health care provider – or other documentation if the leave is related to domestic violence, sexual assault, or stalking – to verify the need for paid sick leave only if the employee is absent for 3 or more consecutive full workdays.

Additionally, a contractor could only require certification or documentation if the contractor informed an employee before the employee returned to work that certification or documentation would be required.

15 Q. What type of certification or documentation would be sufficient?

Certification issued by a health care provider is any type of written document created or signed by a health care provider (or by a representative of the health care provider) that contains information verifying that the physical or mental illness, injury, medical condition, or need for diagnosis, care, or preventive care exists. For example, under the proposed rule, a note from a hospital nurse stating that an employee needed to have surgery and would need at least three days to recover before returning to work would meet the definition, as would a note from an employee's parent's doctor stating that the parent is in need of daily caretaking.

Documentation related to domestic violence, sexual assault, or stalking may come from any person involved in providing the employee care, counseling, relocation assistance, legal assistance or victims services, which would include a health care provider, counselor, employee of a victim services organization, or attorney. For example, the documentation could consist of a note from a social worker at a victim services organization stating that the employee received services from the organization related to being a victim of domestic violence and moved to a new home for reasons related to the domestic violence, as well as a receipt from a moving company or a note from a landlord that indicates the date(s) of the move. The certification need not name the perpetrator of the domestic violence, the nature of the acts that constitute domestic violence, the addresses of the old or new homes, or any other details beyond those sufficient to make clear that the time was used for a purpose that justifies the use of paid sick leave.

16 Q. When would a worker have to provide documentation related to the paid sick leave use if the contractor requires it, and when would the contractor have to respond?

A contractor could require the employee to provide certification or documentation within 30 days of the date the leave begins. A contractor would have to make any denial of the employee's request to use paid sick leave based on the certification or documentation within 10 calendar days of receiving it (or 10 calendar days of the deadline for receiving it if the employee fails to provide it).

17 Q. May a contractor contact a health care provider regarding certification?

The proposed rule would permit a contractor to contact the health care provider or other individual who created or signed any certification or documentation only for purposes of authenticating the document or clarifying its contents. The contractor would not be permitted to request additional details about the medical or other condition referenced, seek a second opinion, or otherwise question the substance of the certification.

18 Q. Who could make the contact to the health care provider regarding certification?

Just as under FMLA, to make contact with the health care provider or other individual who created or signed the certification or documentation, the contractor would have to use a human resources professional, a leave administrator, or a management official. For purposes of the Executive Order, the employee's direct supervisor could not contact the employee's health care provider unless there is no other appropriate individual who can do so.

19 Q. What is the status of pay and benefits while an employee is on paid sick leave?

A contractor would have to provide to an employee using paid sick leave the same pay and benefits the employee would have received had the employee not used paid sick leave.

Interaction with Other Laws and Paid Time Off

1. [What if another law or union collective bargaining agreement provides for more leave than is required under EO 13706](#)
2. [How do the EO's requirements interact with state or local paid sick time laws?](#)
3. [How do the EO's requirements interact with the SCA and DBA?](#)
4. [How do the EO's requirements interact with the FMLA?](#)
5. [How do the EO's requirements interact with a contractor's existing paid time off \(PTO\) policies?](#)

1 Q. What if another law or union collective bargaining agreement provides for more leave than is required under EO 13706

Nothing in the EO or the proposed regulations excuses noncompliance with or supersedes 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 the EO.

2 Q. How do the EO's requirements interact with state or local paid sick time laws?

A contractor's compliance with a State or local law does not excuse the contractor from compliance with Executive Order 13706 or the regulations. A contractor could satisfy its obligations under the EO by providing paid sick time that fulfills the requirements of a State or local law as long as the paid sick time is accrued and could be used in a manner that meets or exceeds the requirements of the EO and the proposed regulations.

3 Q. How do the EO's requirements interact with the SCA and DBA?

Paid sick leave required by Executive Order 13706 and the proposed rule is in addition to a contractor's obligations under the SCA and DBA. A 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 the EO.

If a contractor chooses to provide more paid sick time than is required by the EO, that additional paid sick time could count toward SCA or DBA obligations if it complies with the requirements under those statutes.

4 Q. How do the EO's requirements interact with the FMLA?

A contractor's obligations under the EO and proposed regulations have no effect on its obligations to comply with, or ability to act pursuant to, the FMLA. Paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to FMLA regulations. For time off that is designated as FMLA leave and for which an employee uses paid sick leave, all notices and certifications that satisfy the FMLA's regulatory requirements would satisfy the request for leave and certification requirements of the proposed regulations.

5 Q. How do the EO's requirements interact with a contractor's existing paid time off (PTO) policies?

A contractor's existing paid time off (PTO) policy (if provided in addition to the fulfillment of SCA or DBA obligations, if applicable) will satisfy the requirements of the Executive Order and the proposed regulations if the paid time off:

- Is made available to all employees covered by the EO and proposed regulations;
- Can be used for at least all of the same purposes as paid sick leave;
- Is provided in a manner and an amount sufficient to comply with the rules and restrictions regarding the accrual of paid sick leave described in the proposed regulations;
- Is provided pursuant to policies sufficient to comply with the rules and restrictions regarding use of paid sick leave, requests for leave, and certification and documentation, at least with respect to any paid time off used for the required purposes; and
- Is protected by the prohibitions against interference, discrimination, recordkeeping violations, and waiver of rights described in the proposed regulations, at least with respect to any paid time off used for the required purposes.

In other words, under the proposal, a contractor may use its paid time off policy to satisfy its obligations under the EO, but only if the policy complies with the EO's requirements of the Executive Order as described. If, for example, a contractor does not permit an employee to use the paid time off for reasons related to domestic violence, sexual assault, or stalking, its paid time off policy would not satisfy its obligations under the EO. In that case, the contractor could choose to amend its paid time off policy to include this reason for leave or could provide paid sick leave in addition to paid time off. That paid time off may be used for additional purposes, such as vacation, does not disqualify a paid time off policy from satisfying the obligations under the EO, provided that the paid time off policy satisfies all the requirements summarized above and set forth in more detail in the proposed rule.

Protections for Employees

1. [Are there prohibitions against retaliation or discrimination included in the proposal?](#)

1 Q. Are there prohibitions against retaliation or discrimination included in the proposal?

Under the proposal, a contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by the EO or proposed rule.

Additionally, a contractor may not discharge or in any other manner discriminate against an employee for: (1) using, or attempting to use, paid sick leave as provided for under the EO and proposed regulations; (2) filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under the EO and proposed regulations; (3) cooperating in any investigation or testifying in any proceeding under the EO and proposed regulations; or (4) informing any other person about his or her rights under the EO and proposed regulations.

Obligations of Contracting Agencies, DOL, and Contractors

1. [Are there requirements for contracting agencies under this proposal?](#)
2. [What are the requirements for the Department of Labor under this proposal?](#)
3. [What are the requirements placed on contractors under this proposal?](#)

1 Q. Are there requirements for contracting agencies under this proposal?

Yes. Contracting agencies would have to ensure that a clause regarding the paid sick leave requirements is inserted into covered contracts. Depending on the type of contract, this clause will be the one included in the Department's proposed rule or one issued by the Federal Acquisition Regulatory Council. Contracting agencies would also have to assist the Department of Labor in enforcing the obligations of contractors, such as by withholding funds from contractors that violate the EO's requirements.

2 Q. What are the requirements for the Department of Labor under this proposal?

The Department will put notices online and on DBA and SCA wage determinations of the requirement to provide paid sick leave under the EO and the proposed regulations. It will also notify contractors when it asks a contracting agency to withhold funds based on alleged violations of the EO and proposed regulations and is the agency responsible for enforcement of the EO.

3 Q. What are the requirements placed on contractors under this proposal?

Contractors would have to comply with the paid sick leave requirements. They would also have to insert a clause regarding those requirements into any covered lower-tier contracts and ensure that lower-tier contractors comply with them.

Contractors will be required to make and maintain records for purposes of the EO and the proposed regulations. These include:

- copies of notifications to employees of the amount of paid sick leave accrued;
- denials of employees' requests to use paid sick leave;

- dates and amounts of paid sick leave employees use; and
- other records showing the tracking of employees' accrual and use of paid sick leave.

Contractors would have to keep employees' medical and other records, especially those relating to domestic violence, sexual assault, and stalking, separate from other records and confidential.

Additionally, contractors are required to provide notice to employees of the paid sick leave requirements.

Enforcement

1. [How will the EO and regulations be enforced?](#)
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1 Q. How will the EO and regulations be enforced?

The Department of Labor is responsible for enforcement of the EO. Procedures for the Department's handling of complaints as well as other steps in the enforcement process are set out in the NPRM. These procedures are largely identical to those adopted in the [Final Rule implementing Executive Order 13658, Establishing a Minimum Wage for Contractors](#).

The NPRM also describes remedies available for violations of the proposed rule's prohibitions on interference with the accrual or use of paid sick leave or discrimination for an exercise or attempted exercise of rights under the EO or regulations. These include monetary damages, liquidated damages, and equitable relief.

Impacts

1. [How many employees would receive additional paid sick leave under the proposed rule?](#)
 2. [How many additional days of paid sick leave would employees receive as a result of the proposed rule?](#)
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1 Q. How many employees would receive additional paid sick leave under the proposed rule?

The Department estimated that about 828,200 employees would receive additional paid sick leave within five years of implementation of the proposed rule. This estimate includes approximately 436,700 employees who currently receive no paid sick leave and 391,400 employees who receive some paid sick leave but would be entitled to receive additional paid sick leave. Because the proposed rule only applies to "new contracts," coverage will be phased in over multiple years. The Department estimated that the vast majority of the universe of covered contracts will be covered within five years of implementation.

2 Q. How many additional days of paid sick leave would employees receive as a result of the proposed rule?

The Department estimated that a total of 681,700 additional days of paid sick leave would be available to workers in 2017 (563,000 days for full-time workers and 118,700 days for part-time workers).