

Executive Order 13706 Establishing Paid Sick Leave for Federal Contractors



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Welcome

Executive Order (EO) 13706 requires certain Federal contractors to allow their employees to earn and use up to 7 days of paid sick leave each year.

EO 13706 has many similarities to EO 13658, which establishes a minimum wage that certain Federal contractors must pay.

This presentation will look at the following topics:

1. Covered Contracts and Employees
2. Accrual and Use of Paid Sick Leave
3. Contractor Obligations, Interactions with Other Laws, and Enforcement



Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- EO 13706 was signed on September 7, 2015.
 - It requires covered contractors to allow employees to accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to 56 hours (7 days) per year, and to use accrued leave for certain purposes.
- Regulations for the EO were published on September 30, 2016 ([29 CFR Part 13](#)).
 - The regulations provide details about coverage, exclusions, the accrual and use of paid sick leave, requirements for contractors and contracting agencies, and enforcement.

Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- Requirements are effective as of January 1, 2017.
 - The requirements of the EO and regulations are effective as of January 1, 2017, though they only apply to “new contracts” on or after that date.



Coverage

Which Contracts and Employees are Covered by EO 13706?



Coverage:

Which contracts are covered by EO 13706?

EO 13706 applies to **four types of contracts** entered into by the federal government (29 CFR 13.3(a)(1):

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA).
 - This includes prime contracts at the \$2,000 threshold and DBA-covered lower-tier contracts of any monetary value.
- Service contracts covered by the Service Contract Act (SCA).
 - This includes prime contracts at the \$2,500 threshold and SCA-covered lower-tier contracts of any monetary value.

Coverage:

Which contracts are covered by EO 13706?

- Concessions contracts, including concessions contracts excluded from the SCA by 29 CFR 4.133(b).
 - These include contracts principally for furnishing food, lodging, auto fuel, souvenirs, newspaper stands and recreational equipment to the general public. 23 CFR 13.2.

Coverage:

Which contracts are covered by EO 13706?

- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.
 - These include leases of space in a federal building to operate a child care center, credit union, gift shop, barber shop, coffee shop or fitness center to serve federal employees and/or the general public.
 - Contracts in this category may also fit into the second and/or third covered categories.

Coverage:

Which contracts are covered by EO 13706?

EO 13706 applies to “new contracts” beginning January 1, 2017.
29 CFR 13.3(a)(1).

A “new contract” is (29 CFR 13.2):

- A contract solicited or awarded without solicitation on or after January 1, 2017.
- The term also includes a contract that existed before January 1, 2017 but that is renewed, extended (other than short-term limited extensions), or subject to a modification that is outside the scope of the contract after that date.
- It does not include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

Coverage:

Which contracts are not covered by the EO?

EO 13706 **does not** apply to:

- Contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those subject to the Walsh-Healey Public Contracts Act (29 CFR 13.3(d));
- Contracts that are subject only to the Davis-Bacon Related Acts (81 FR 67613);
- Grants within the meaning of the Federal Grant and Cooperative Agreement Act (29 CFR 13.4(a)); or
- Contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (29 CFR 13.4(b)).

Coverage:

Which employees does EO 13706 apply to?

EO 13706 covers employees (29 CFR 13.3(a)(2)):

1. Working “on” or “in connection with” a covered contract
2. Whose wages are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA’s minimum wage and overtime provisions.



Coverage:

Which employees does EO 13706 apply to?

- An employee works “on” a contract if he or she directly performs the specific services called for by the contract. Examples include:
 - Laborers or mechanics performing on a DBA contract;
 - Service employees performing on a SCA contract; or
 - Tellers in a credit union that leases space in a federal building.
- An employee works “in connection with” a contract if he or she performs work activities that are necessary to the performance of a covered contract (but that are not the specific services called for by the contract). Examples include:
 - A security guard patrolling a DBA contract site; or
 - A clerk processing payroll records for an SCA or DBA contract.

Coverage:

Which employees does EO 13706 apply to?

- Employees whose wages are governed by the DBA include laborers and mechanics who are covered by the DBA. 29 CFR 13.2 and 13.3(a)(2).
- Employees whose wages are governed by the SCA include those who are “service employees” under the SCA. 29 CFR 13.2 and 13.3(a)(2).



Coverage:

Which employees does EO 13706 apply to? (continued)

- Employees whose wages are governed by the FLSA include those entitled to minimum wage and/or overtime compensation under that law.
 - Includes employees working on or in connection with DBA- or SCA-covered contracts who aren't entitled to prevailing wages but must be paid in accordance with the FLSA (e.g., employees who assist with a DBA construction project but don't work at the site of the work).
 - Includes employees whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214.
- Unlike the minimum wage EO (EO 13658), EO 13706 also applies to employees exempt from the FLSA's minimum wage and overtime requirements.
 - Includes employees employed in a bona fide executive, administrative, or professional capacity as provided in 29 U.S.C. 213(a)(1).

Coverage:

Which employees does EO 13706 apply to? (continued)

- The EO applies to any individual working on a 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. 29 CFR 13.2.



Coverage:

Which employees are excluded from EO 13706?

- An employee who works only “in connection with” covered contracts and spends less than 20% of his or her time in any workweek doing so does not accrue paid sick leave in that workweek. 29 CFR 13.4(e).
 - This exemption does not apply to employees who perform “on” a covered contract at any point in a workweek. Such employees are entitled to accrue sick leave for all hours worked on or in connection with covered contracts in that workweek.

Coverage:

Which employees are excluded from EO 13706? (continued)

Additionally, the EO does not apply to an employee who works on or in connection with a covered contract under a collective bargaining agreement ratified before September 30, 2016 that provides the employee with paid sick time, or paid time off that can be used as sick time, until the CBA terminates or January 1, 2020, whichever occurs first. 29 CFR 13.4(f).

- If the CBA provides 56 hours (or 7 days) per year of such time, this temporary exemption is complete.
- If the CBA provides less than 56 hours (or 7 days) per year, the contractor must provide the difference between 56 hours and the amount provided consistent with either the EO's requirements or the CBA's terms and conditions.

Paid Sick Leave

How do Employees Accrue and Use Paid Sick Leave?



How does an employee accrue paid sick leave?

- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. 29 CFR 13.5(a)(1).
 - Hours worked are determined using the FLSA standard. 29 CFR 13.5(a)(1)(i).
 - Contractors can assume FLSA-exempt employees work 40 hours each workweek. 29 CFR 13.5(a)(1)(iii).
- Contractors must inform employees, in writing, of how much paid sick leave they have available each pay period. 29 CFR 13.5(a)(2).
- Instead of tracking time on covered contracts week by week, contractors can “frontload” leave at the beginning of the accrual year by giving employees 56 hours of paid sick leave in a lump sum. 29 CFR 13.5(a)(3).

How does an employee accrue paid sick leave?



What are the limits on accrual of paid sick leave?

- Employees can be limited to earning 56 hours of paid sick leave per accrual year, and to having 56 hours of paid sick leave available at any point in time. 29 CFR 13.5(b)(1),(3).
- Unused sick leave can be carried over into the next accrual year. 29 CFR 13.5(b)(2).
 - Carryover does not count toward the new year's accrual limit.



What are the limits on accrual of paid sick leave? (continued)

- Contractors must reinstate an employee's unused paid sick leave if the employee is rehired within 12 months of a job separation. 29 CFR 13.5(b)(4).
- Contractors are not obligated to cash out unused leave, but choosing to cash out relieves them of the obligation to reinstate unused leave. 29 CFR 13.5(b)(5).

What are the limits on accrual of paid sick leave? (continued)

Here's an example of how carryover works:

- 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.

What are the limits on accrual of paid sick leave? (continued)

- Let's say she uses 24 hours of paid sick leave in the same accrual year. She will have 32 hours remaining available for use.
- At that point, she must be permitted to accrue up to at least 16 more hours. Because those 16 are in addition to the 40 hours she has already accrued during the accrual year, she has accrued a total of 56 hours in that year.

What can an employee use paid sick leave for?

Employees may use paid sick leave if they are absent because of [29 CFR 13.5(c)(1)]:

1. A physical or mental illness, injury, or medical condition.
 - This is broader than the “serious health condition” required under the FMLA.
 - Examples include a common cold, ear infection, ulcer, flu, migraine, sprained ankle, broken arm, or depressive episode.

What can an employee use paid sick leave for?

Employees may use paid sick leave if they are absent because of [29 CFR 13.5(c)(1)]:

2. Obtaining diagnosis, care, or preventive care from a health care provider.
 - A “health care provider” is 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.
 - Examples include medical doctors, nurse practitioners, physical therapists, and dentists.

What can an employee use paid sick leave for? (continued)

Employees may use paid sick leave if they are absent because of [29 CFR 13.5(c)(1)]:

3. Caring for a family member, or someone who is the equivalent of family, 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.
 - This includes care for a child, parent, spouse, domestic partner, sibling, aunt/uncle, grandparent, or grandchild.
 - It also includes any other person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

What can an employee use paid sick leave for? (continued)

Employees may use paid sick leave if they are absent because of [29 CFR 13.5(c)(1)]:

4. An issue related to domestic violence, sexual assault, or stalking of the employee or the employee's family member, or someone who is the equivalent of family.
 - The time absent from work can be for the purposes described in (1) or (2).
 - It can also be to obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action, including preparation for or participation in any related civil or criminal legal proceeding.

How does an employee request and use Paid Sick Leave?

- Contractors must permit an employee to use available paid sick leave for time the employee would be working on or in connection with a covered contract. 29 CFR 13.5(c)(1).
- Employees must be permitted to use paid sick leave in increments of no greater than 1 hour. 29 CFR 13.5(c)(2).
- The only limit on the proper use of paid sick leave (at a time or per year) is the amount of paid sick leave the employee has available, not the employer's operational needs. 29 CFR 13.5(c)(4), (5).

How does an employee request and use Paid Sick Leave?

(continued)

- An employee's request to use paid sick leave may be a oral or written; should indicate that the leave is for one of the proper purposes; and if possible should indicate the duration of the leave. 29 CFR 13.5(d)(1).
- The request should be made 7 days in advance if the need for leave is foreseeable. If not, the request should be made as soon as practicable. 29 CFR 13.5(d)(2).
- The contractor must respond to a request as soon as practicable. A denial, with an explanation, must be in writing. 29 CFR 13.5(d)(3).

How does an employee request and use Paid Sick Leave? (continued)

- Contractors may require that employees provide verification of the need for paid sick leave only if the employee is absent for 3 or more consecutive, full workdays and the employee is informed of this requirement before returning from leave. 29 CFR 13.5(e)(1), (3).
 - If the absence is because of a health-related issue, the contractor can require certification from a health care provider.
 - If the absence is because of domestic violence, sexual assault, or stalking, documentation can be from any person with knowledge of the need for leave.

How does an employee request and use Paid Sick Leave?

(continued)

- The contractor must give the employee 30 days to provide the certification or documentation and at least 5 days to correct any deficiencies in it. While waiting for the information, the contractor must treat the paid sick leave as properly used. 29 CFR 13.5(e)(3).
- If the certification or documentation is not adequate and not supplemented, the contractor may retroactively deny the leave and recover the value of the pay and benefits received by the employee. 29 CFR 13.5(e)(3).

Paid Sick Leave

Contractor Obligations, Interactions with Other Laws, and Enforcement



What are the contractor's obligations under EO 13706?

- Comply with the EO 13706 contract clause by allowing employees to accrue and use paid sick leave as provided in the EO and regulations (29 CFR 13.21(a), 13.22);
- Include the EO 13706 contract clause in covered subcontracts (29 CFR 13.21(b));
- Provide employees with their regular pay and benefits (without illegal deduction or kickback) while they are using paid sick leave (29 CFR 13.5(c)(3) and 13.23);
- Post a notice at the worksite informing employees of the paid sick leave requirements (29 CFR 13.26);

What are the contractor's obligations under EO 13706?

(continued)

- Keep records (29 CFR 13.25(a)). These include:
 - Copies of notifications to employees about the amount of paid sick leave they have accrued;
 - Copies of employee requests to use paid sick leave;
 - Dates and amounts of paid sick leave used by employees;
 - Copies of written response to employee requests to use paid sick leave;
 - Records relating to certification or documentation of need for paid sick leave;

What are the contractor's obligations under EO 13706? (continued)

- Any records showing tracking or calculation of accrual or use of paid sick leave;
 - Records of pay and benefits paid for use of paid sick leave and/or financial payments for unused paid sick leave;
 - Records distinguishing between an employee's covered and non-covered work time.
- Maintain confidentiality of medical records or records related to domestic violence, sexual assault, or stalking (including compliance with the ADA and GINA) (29 CFR 13.25(d)).

How does Paid Sick Leave interact with other laws and rules that apply?

- **General:** The EO does NOT 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 the EO. 29 CFR 13.5(f)(1), (4).
- **FMLA:** EO 13706 does not affect rights and obligations under the Family and Medical Leave Act. 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. 29 CFR 13.5(f)(3).

How does Paid Sick Leave interact with other laws and rules that apply? (continued)

- **DBA/SCA:** Paid sick leave 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. 29 CFR 13.5(f)(2)(i).
 - The 2017 All-Agency Memorandum announcing the SCA nationwide health and welfare rate also includes a rate for service employees performing on contractors covered by EO 13706.
 - If a contractor chooses to provide more paid sick leave 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. 29 CFR 13.5(f)(2)(ii).

How does Paid Sick Leave interact with other laws and rules that apply? (continued)

- **State & Local Paid Sick Time Laws:** Contractors can comply with EO 13706, state and/or local paid sick leave laws simultaneously if they comply with the more generous requirements of each. 29 CFR 13.5(f)(4).
- **Employers' Paid Time Off Policies:** A contractor's existing paid time off (PTO) policy can fulfill the EO's requirements as long as it provides employees with at least the same rights and benefits that the EO requires if the employee chooses to use that PTO for the purposes covered by the EO. 29 CFR 13.5(f)(5).

Multi Employer Plans

A contractor can comply with EO 13706 jointly with other contractors through a multiemployer plan that provides paid sick leave on the same terms as the EO and the regulations. 29 CFR 13.8.

- For this purpose, a multiemployer plan is a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more CBAs between one or more employee organizations and more than one employer. (This is broader than the ERISA definition.) 29 CFR 13.2.
- In other words, through a multiemployer plan, two or more contractors can act as though they are a single contractor for purposes of Executive Order 13706 and its implementing regulations.

Multi Employer Plans

- Regardless of what functions the plan performs, each contractor remains responsible for any violation of the Order or part 13 that occurs during its employment of the employee.



Are there prohibitions against retaliation or discrimination included in the Final Rule?

A contractor may not interfere (29 CFR 13.6(a)) with the accrual or use of paid sick leave. Examples of interference include:

- miscalculating the amount of paid sick leave;
- denying a proper request to use paid sick leave;
- discouraging an employee from using paid sick leave; or
- transferring an employee to non-covered contracts to prevent the accrual of paid sick leave.

Are there prohibitions against retaliation or discrimination included in the Final Rule?

A contractor may not discriminate against (29 CFR 13.6(b)) an employee for activities related to paid sick leave for:

- (1) using, or attempting to use, paid sick leave as provided for under the EO;
- (2) filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under the EO;

Are there prohibitions against retaliation or discrimination included in the Final Rule? (continued)

- (3) cooperating in any investigation or testifying in any proceeding under the EO; or
- (4) informing any other person about his or her rights under the EO.

Discrimination includes a contractor's considering any of these activities as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy.

How will the EO be enforced?

Investigations (29 CFR 13.41, 43)

- The U.S. Department of Labor Wage and Hour Division (WHD) has exclusive authority to investigate and enforce EO 13706.
- WHD will accept complaints of EO violations from any party. Contracting agencies have no obligation to investigate compliance, but must notify WHD of complaints received.
- The investigation process for these investigations will be similar to those for other government contracts cases: obtaining information from the contractor, interviews with employees at the worksite, inspection of contractor records, production of documents or other evidence.

How will the EO be enforced?

Administrative Process (29 CFR 13.51-.58)

- Challenges to WHD findings of violations will be considered by Administrative Law Judges; any appeals go to the Administrative Review Board.
- Questions about EO 13706 may be sent to the Administrator for a ruling.

How will the EO be enforced? (continued)

Remedies for Violations (29 CFR 13.44)

- For interference: lost pay/benefits; other actual monetary losses; appropriate equitable or other relief; liquidated damages.
- For discrimination: employment; reinstatement; promotion; restoration leave; lost pay/benefits; liquidated damages.
- For recordkeeping violations: suspension of funds.

How will the EO be enforced? (continued)

- If there are monetary damages, withholding (or if necessary, civil action to recover underpayments).
- 3-year debarment if a contractor disregards its obligations to employees or subcontractors under the EO or regulations.
- Retroactive inclusion of contract clause.

Guidance Materials

- Additional guidance materials, including FAQs, a fact sheet, and the implementing regulations are available at:
www.dol.gov/whd/govcontracts/eo13706.
- Fact Sheet
<https://www.dol.gov/whd/govcontracts/eo13706/PaidLeaveFS.htm>
- Frequently Asked Questions
<https://www.dol.gov/whd/govcontracts/eo13706/faq.htm>
- Poster
<https://www.dol.gov/whd/regs/compliance/wh1090.pdf>

References

- DOL Implementing Regulations at 29 CFR Part 13
- FAR Implementing Regulations at 48 CFR Subpart 22.21
- DOL's website for Executive Order 13706:
<https://www.dol.gov/whd/govcontracts/eo13706/>

Presentation Conclusion

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