

Reproduced with permission from Daily Labor Report, 163 DLR A-11, 8/24/15. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Sick Leave

Contractors Should Focus on Anti-Retaliation Provisions in New Paid Sick Leave Laws

Government contractors should train managers in how to respond to requests for paid sick leave without running afoul of anti-retaliation protections, Joshua Alloy, counsel in Arnold & Porter LLP's Washington, D.C., labor and employment group, told Bloomberg BNA Aug. 21.

A draft executive order (150 DLR A-14, 8/5/15) requiring paid sick leave for federal contract workers includes "strong" prohibitions against interfering with employees' rights to that leave, Alloy said.

All managers should be carefully trained to handle sick leave requests to make sure they can't be accused of retaliating, Alloy said. This is an area where it could be "very easy to slip up," he said.

The draft order directs the Labor Department to issue regulations to enforce the paid sick leave requirements by Sept. 30, 2016.

Take These Steps to Prepare. In light of the draft order, Alloy advised contractors to be proactive if they're considering bidding on contracts that would be covered. Steps they can take include setting up systems to track accrual and use of paid sick leave, determining compliance and benefit costs, and instituting anti-retaliation measures.

Employees working on covered contracts would accrue one hour of paid sick leave for every 30 hours worked, with a 56-hour cap on the total amount of sick leave. The requirements would apply to contractor employees working on covered contracts.

The order's broad coverage is similar in scope to President Barack Obama's February 2014 minimum wage executive order, which took effect at the beginning of this year, Alloy said (29 DLR A-10, 2/12/14). That order raised the minimum wage for workers on federal service and construction contracts to from \$7.25 to \$10.10 per hour and was expected to benefit nearly 200,000 U.S. workers, according to administration estimates.

Like the minimum wage order, the draft order's paid sick leave requirements would apply to all construction contracts covered by the Davis-Bacon Act, services con-

tracts covered by the Service Contract Act, concessions contracts and contracts to provide services on federal property for federal employees or the general public.

The draft order is "very, very similar" to paid sick leave laws in various cities and states, such as those recently implemented by New York City, Washington, D.C., and California, Alloy said. According to a recent report from the White House, 17 cities and counties have implemented paid sick leave policies since January 2014.

The draft order is the latest in a string of directives from the president aimed at improving working conditions for contractor employees. Obama also issued the "Fair Pay and Safe Workplaces" executive order in July 2014, which requires contractors to disclose to agencies violations of 14 federal wage and hour, discrimination, health and safety, family and medical leave, labor and other workplace laws (147 DLR AA-1, 7/31/14).

Orders Are Response to Gridlock. The executive orders are seen as a way for the president to bypass the congressional gridlock that has stalled action on Democrat-backed bills, including ones requiring paid sick leave (H.R. 932, S. 497) and raising the federal minimum wage (H.R. 2150, S. 1150).

"There is no question that some of this activity is driven by the administration's inability to pass legislation on these issues in Congress, so they are doing what they can by executive order," Crowell & Moring LLP Partner Stephen McBrady told Bloomberg BNA in an e-mail Aug. 21.

If the draft order on paid sick leave is finalized, it would be the Obama administration's 13th executive order targeting federal contractors, he said. Sixteen new regulations have been promulgated to implement the first 12, he added.

The new regulations come with a price because they significantly increase the cost of doing business with the government, McBrady said, echoing sentiments expressed in an Aug. 3 letter to the White House from four industry groups (155 DLR A-8, 8/12/15).

BY DEBORAH BILLINGS

To contact the reporter on this story: Deborah Billings in Washington at dbillings@bna.com

To contact the editor responsible for this story: Jeff Kinney at jeffkinney@bna.com