Paid Sick Leave Executive Order for Federal Contractors Drafted

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Cheryl Behymer was quoted in *SHRM* on August 7, 2015. The article "Paid Sick Leave Executive Order for Federal Contractors Drafted" discussed an executive order (E.O.) draft, currently under review by the White House, that would require federal contractors and subcontractors to provide up to seven days of paid sick leave annually to employees on government contracts. The sick leave would include paid time for family care.

Employers have a number of concerns about the paid sick leave draft executive order, noted Cheryl.

She said that administrative tracking and coordination may be challenging. "The draft E.O. says that Davis-Bacon Act (DBA) and Service Contract Act (SCA) contracts will be covered in the relevant threshold amounts covered in those statutes and that procurement contracts subject to the Fair Labor Standards Act will be covered if they exceed the micro-threshold amounts. Thus, employers might struggle with determining to which contracts the requirements apply."

An additional administrative issue involves which employees are entitled to the leave, she observed. "Draft Section 2(a) follows the standard DBA/SCA language where the benefit applies to 'all employees, the performance of the contract or subcontract.'" This means that the employer will need to track which employees are actually working on contract or subcontract.

"While this may be done already through the DBA/SCA requirements, if the employer has opted to just make the DBA/SCA wage payments to all employees, it will either need to do the same with the paid sick leave so that employees not entitled also receive it or to set up a tracking procedure," she said.

She added that the language is not clear about whether paid leave is only for the hours worked on government contract work or total hours worked. This makes a difference for employees whose work only sometimes involves performing work on a government contract.

Then there are the coordination-of-leave challenges the order would raise, Cheryl added.

For example, the Family and Medical Leave Act (FMLA) exempts from coverage employees working at establishments with fewer than 50 employees.

"There does not appear to be any similar exemption contemplated for the draft executive order," Behymer remarked. "Thus, small employers would still be required to track and award this paid leave, even where they are not covered under the FMLA."

Also, the situations covered by the draft order mirror the FMLA in some ways, but add other categories for use of the paid leave as well, she pointed out. "This further complicates the contractor employer's analysis of when to allow the leave to be taken."

Multistate employers will face their own concerns. "For companies that have attempted to issue standardized employee policies, they must either expand the paid sick leave to all employees or create different policies and handbooks, risking employee relations issues and simple errors in dissemination."

And the carry-over provision proposed in the draft order may conflict with use-it-or-lose-it policies for other types of paid time off or leave.

Similarly, language saying that paid sick leave need not be paid out when an employee terminates will conflict with some state laws that require accrued leave to be paid upon termination, Behymer observed.

"The length of the draft E.O. itself suggests that it may be difficult to explain the policy to the contractor employers and even more challenging to explain the policy to the employees affected," she said. If the draft E.O. is issued, she concluded, "Leave policies already in place will need to be revised."

To read the full article, please visit *SHRM*.

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