

EXPANSION OF PAID LEAVE LAWS MAY ALTER FEDERAL CONTRACTORS' RESPONSIBILITIES IN 2023

Insights
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A new year often brings about new beginnings – and federal contractors across the country may have to face a new normal in 2023 when it comes to paid leave obligations. Given that federal paid leave proposals proved unsuccessful over the past two years, many state and local lawmakers are moving towards enacting family and medical leave policies of their own. Michigan and Minnesota legislatures appear to be at the forefront of this initiative, but they are by no means the only states that will see movement in this area in 2023 given the political composition of other state legislatures. This means that federal contractors subject to Executive Order 13706 may need a refresher not only on their existing paid leave obligations but on the interplay with state and local leave laws that may alter or expand their responsibilities. Here's what federal contractors need to know as we head into this new era.

What Types of Contracts are Impacted By the Executive Order?

Not all federal contractors are implicated by [Executive Order 13706](#). Generally, if the contractor is also subject to the federal contractor minimum wage regulations (typically through a Davis Bacon Act (DBA) or Service Contract Act (SCA) qualifying contract), they will also be covered by the paid leave obligations. That's because the definition of covered contractor has purposely paralleled those regulations for the paid sick leave rules.

Employers should first confirm whether their government contracts or subcontracts are covered by the SCA or DBA.

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This will allow you to determine whether you must comply with the Executive Order. (Hint: those federal contractors that had determined they were covered by the Federal Contractor vaccine mandate are likely subject to the Federal Paid Sick Leave (FPSL) requirements.)

What Accrual Options do Contractors Have Under the Executive Order?

The Executive Order requires contractors to provide workers on the qualifying contract(s) with at least 56 hours of FPSL per year. Contractors have the option to “frontload” the leave by providing workers with 56 hours of leave at the beginning of each accrual year, or to “track” accrual by providing workers with one hour of paid sick leave for every 30 hours worked until the 56-hour threshold is met.

What is Covered Under the Executive Order?

Workers may use paid sick leave for a wide variety of purposes: for their own illness or other health care needs, including preventive care; and for the care of a family member or loved one who is ill or needs health care, including preventive care. Paid sick leave expands the definition of “family” to also encompass those persons who have a familial-like relationship with the employee, such as a long-time neighbor or close friend.

Leave goes further than the Family Medical Leave Act (FMLA) by also permitting paid leave for issues related to domestic violence, sexual assault, or stalking where the employee or a family member or loved one is a victim (such as obtaining counseling, seeking relocation, receiving assistance from a victim services organization, or taking legal action).

The standard for whether an illness, injury, or life event is covered under this rule is very broad. The rule specifically states that it could include a wide variety of situations such as the common cold, an upset stomach, a headache, a sprained ankle, and similar maladies – well beyond FMLA-covered serious health conditions.

What About the Family Medical Leave Act?

A contractor’s obligations under the Executive Order have no effect on its obligations to comply with, or ability to act pursuant to, the FMLA.

What is the Interplay Between the Executive Order, the FMLA, and State or Local Laws?

A contractor's compliance with a state or local law requiring that workers be provided with paid sick time does not excuse the contractor from compliance with any of its obligations under the Executive Order. A contractor may, however, satisfy its obligations under the Executive Order by providing paid sick time that fulfills the requirements of a state or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds all of the requirements of the Executive Order. Where the requirements of an applicable state or local law and the Executive Order differ, satisfying both will require a contractor to comply with the requirement that is more generous to employees.

Similarly, where the requirements of an applicable state or local law and the federal FMLA differ, satisfying both will require a contractor to comply with the requirement that is more generous to employees.

What Should Contractors Do Now?

If you have existing leave policies in place, you should carefully review them for an understanding on how your workers are provided paid sick time and family and medical leave.

With various state legislatures declaring an intent to enact generous state and/or local family and medical leave laws, one-size-fits-all policies may no longer be viable. You will want to determine whether you have federal contractors working in states where state and/or local laws have been or may be enacted that provide more generous family and medical leave than your existing policies.

For example, Colorado, Oregon, and New York have all made changes that have gone into effect at the beginning of 2023 or will go into effect sometime in 2024:

- **California:** On September 30, 2022, California Governor Newsom signed Senate Bill 951, which increases wage replacement rates for low-wage earners under the state Paid Family Leave program (PFL) and the State Disability Insurance (SDI) program. Effective January 1, 2025, PFL and SDI benefits for low-wage workers will increase to 90% of their weekly income. Currently, low-wage earners

(i.e. individuals earning less than \$27,000) may be eligible for 70% of their regular wages under these programs.

- **Colorado:** Colorado's Paid Family and Medical Leave Insurance (CO FAML I) program provides up to 12 weeks of paid leave for family, medical, or safe leave. Eligible employees who experience pregnancy or childbirth complications can receive an additional four weeks of paid leave, for a total of 16 weeks of leave. Coverage under the CO FAML I program begins January 1, 2024.
- **New York:** New York State Family Leave (NY Paid Family Leave) expands the list of family members for whom eligible workers can take paid family leave to care for to now include siblings with a serious health condition. This includes biological siblings, adopted siblings, step-siblings, and half-siblings. These family members can live outside of New York State and even outside of the country. Coverage under NY Paid Family Leave began January 1, 2023.
- **Oregon:** Oregon's Paid Family and Medical Leave Insurance (OR FAML I) program provides up to 12 weeks of paid leave for family, medical, or safe leave. Eligible employees who experience pregnancy or childbirth complications can receive an additional two weeks of paid leave, for a total of 14 weeks of leave. Coverage under the OR FAML I program begins September 3, 2023.

We anticipate that states such as Minnesota and Michigan, where Democrats are taking control of the legislatures, will take strides to expand state paid family and medical leave as soon as practicable.

California, Connecticut, Hawaii, New Jersey, Rhode Island, and Washington have updated paid family and medical leave premium rates annually. Although the 2023 rates have not yet been announced for these states, employers with employees in these states should keep an eye out for the updated 2023 rates and adjust as necessary.

Conclusion

Given that contractors must comply with the requirement that is more generous to employees, the failure to provide workers with the proper amount of leave may result in penalties and fines under either the Executive Order and state and/or local laws. For this reason, it is imperative that

contractors have safeguards in place to monitor worker locations, policy language, and state and local law developments.

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have any questions regarding how these state laws can impact your organization, or best practice for addressing adaptation to them, please consult your Fisher Phillips attorney, the authors of this Insight, or a member of Fisher Phillips' [Affirmative Action and Federal Contract Compliance Practice Group](#).