

# **IMPLEMENTING A SERVICE CONTRACT ACT COMPLIANT PAID LEAVE POLICY**

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# OVERVIEW

- SCA Requirements for Vacation Leave
- State and Local Sick Leave Laws
- Executive Order 13706 – Paid Sick Leave for Federal Contractors
- Compliance Strategies



# **McNAMARA O'HARA SERVICE CONTRACT ACT OF 1965**



## COVERED CONTRACTS

- **Necessary Elements:**
  - Contract is principally for services
  - Performed in the U.S.
  - Performed through the use of service employees
- **Service Employees:** Any person engaged in the performance of the contract
- **Exception:** Exempt bona fide executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)
- **Regardless of contractual relationship (independent contractors)**



# CONTRACTOR RESPONSIBILITIES

- Area Wide Wage Determinations
- Pay the Wage Determination wage rates and fringe benefits
  - Classify employees to know wage rates
  - Health & Welfare, Vacation, Holidays, etc.
- Flow down requirements to subcontractors





# HEALTH AND WELFARE BENEFITS

- Employers may comply with the required benefits by providing
  - Cash payment (Segregate on Paycheck)
  - Bona fide benefits
- Bona fide benefits must “constitute a legally enforceable obligation” which meet the following criteria:
  - Specified in writing and communicated to the employee
  - Provide for the payment of benefits to employees on account of death, disability, retirement, medical expenses, unemployment benefits, etc.
  - Contributions must be paid irrevocably to a trustee or third party
  - Not otherwise required by law



# VACATION

- Vesting System
- No vacation until the anniversary date of employment
- Vests on anniversary date (the date the employee began working on the contract or with the employer)
- Amount depends on years of service
  - 1 week after 1 year
  - 2 weeks after 3 years
  - 3 weeks after 7 years
- Part-time: Prorate hours worked in the last year



## RECOGNIZING CONTINUOUS SERVICE

- Continuous service is employment on same or similar contract with a contractor or successor
- Break in service occurs when the break is intended to be permanent (not a temporary layoff)
- Getting the information
- Example: Government takes certain services in house for a period of time



## PAYOUT OF VACATION TIME

- Must be used or paid out by next anniversary date when the employee gets their next “bucket”
- Pay out anything in the “bucket” or vested at termination or contract end
- The non-compliant predecessor
- State Law



# ACCRUAL

- Essentially advancing vacation time
- Responsible for ensuring SCA compliance
- State laws requiring payout (CA, LA)
- Mitigation strategies



# COMPLYING WITH STATE LAW VACATION REQUIREMENTS

- Be mindful of state law requirements to ensure the payment, or nonpayment, of vacation complies with state law
- For example, in California, an accrual vacation system is required
- Things to consider



# STATE AND LOCAL LAWS



## INCREASING REGULATIONS

- Many states and localities have passed laws requiring employers to provide sick leave or family leave to employees
- Examples: Washington, D.C., New York, New Jersey, Montgomery County
- Expanding reasons employees can use paid sick leave





## INTERACTION WITH SCA

- Employers often develop paid-time-off policies that combine sick leave and vacation into one “bank”
- State/local laws are likely more expansive than SCA
- DoL has generally not required employers to provide additional leave to service employees in spite of these legal requirements



# SICK LEAVE



# SICK LEAVE FOR GOVERNMENT CONTRACT EMPLOYEES

- No sick leave required under SCA
- EO 13706 applies to contracts covered by SCA
- Requires employers to provide up to seven days of paid sick leave annually
- Covered Employees:
  - Any person engaged in performing work on or in connection with a contract covered by the Executive Order whose wages under such contract are governed by the SCA, DBA, or Fair Labor Standards Act
  - If CBA provides employee less than 7 days of sick leave, contractor must provide covered employees with the difference
- In connection with



## REASONS FOR SICK LEAVE

- 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 a family member who has any of the conditions or needs for diagnosis, care, or preventive care described above.
- 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.



## DOCUMENTATION

- Inform employees in writing each pay period
- Record approvals and denials of sick leave
- Only request a doctor's note for absences of 3 days or more
- Only ask questions that are narrowly tailored
- Foreseeable leave 7 days in advance but otherwise reasonable



# SICK LEAVE FOR GOVERNMENT CONTRACT EMPLOYEES

## Accrual

- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with covered contract
- Employees for whom contractors are not required to keep records of hours worked – assume 40 hours worked each week is on or in connection with a covered contract
- Contractors permitted to provide 7 days of paid sick leave at the beginning of each accrual year rather than based upon hours worked
- At the end of each pay period, employees to be notified of amount of time accrued
- Rehired by same contractor within 12 months – contractor must reinstate employees unused accrued sick leave



# SICK LEAVE FOR GOVERNMENT CONTRACT EMPLOYEES

## **Carry over**

- Must permit employees to carry over accrued, unused sick leave
- May limit the accrual of paid sick leave accrued to 7 days
- Not required to pay out accrued unused sick leave at the time of job separation



# SICK LEAVE FOR GOVERNMENT CONTRACT EMPLOYEES

## **Other Limitations**

- Cannot deny sick leave for approved reasons
- Allow use up to amount accrued
- Respond promptly to requests
- Give 30 days to provide documentation and deny within 10

## **Contractors may**

- Contact health providers for verification
- Take back any unverified leave





# **SICK LEAVE FOR GOVERNMENT CONTRACT EMPLOYEES**

## **Legally Enforceable Obligation**

- Cannot count against SCA H&W benefits (unlike before)
- May impact SCA H&W rates in the future
- Use of PTO policies
- Implementation challenges



# COMPLIANCE STRATEGIES



# COMPLIANCE STRATEGIES

- Phase in of Sick Leave
- State by state, or contract by contract strategy
- Uniform policy strategy
- Segregate sick from vacation
- Use of H&W



# QUESTIONS?

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