



# The New Final Old Rule on Paid Sick Leave

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In September 2015, President Obama issued Executive Order 13706 requiring government contractors to provide paid sick leave to certain employees who are covered by the Service Contract Act (now called the “Service Contract Labor Standards Act”), the Fair Labor Standards Act, and other laws. The Department of Labor issued a final rule on Sept. 30, 2016 and a Federal Acquisition Regulation (FAR) interim rule was published on Dec. 16, 2016. These requirements applied to new contracts and replacements for existing contracts that result from solicitations issued after Jan. 1, 2017; the paid sick leave requirement must also be flowed down to covered subcontracts under those contracts. This Executive Order (and its implementing rules) was one of the few Obama-issued labor policy Executive Orders that was not rescinded by President Trump nor nullified by Congress pursuant to the Congressional Review Act.

Twenty-one months after the FAR interim rule was issued, and twenty months after the FAR interim rule took effect for new solicitations, on Aug. 22, 2018, the FAR Council issued a final rule implementing that Executive Order and the Department of Labor (DoL) rules and converted the 2016 interim FAR rule to a final rule without change. Regrettably, the government provided no answers to the myriad questions PSC and others raised about the implementation of the rules or the intersection of these FAR and DoL rules and the Service Contract Act requirements.

In PSC’s April 12, 2016 comments to the Department of Labor, we noted that DoL was pursuing a reasonable initiative but with an unreasonable implementation. We said then, and still believe today, that the rule is overly broad in its application, overly prescriptive in its implementation, and overly punitive in its enforcement. For example, both the proposed and final rules require a complex system of monthly communications about leave accruals, benefits, requests and denials, with the risk of severe consequences to the contractor for failure to comply. We also commented on the challenge companies will have in managing paid sick leave under this rule and under the rules for the Service Contract Act. We made four specific recommendations for changes to the DoL proposed rule.

Now that the rules are final, as a reminder, they require that every person performing work on, or in connection



with, a covered contract or subcontract, or performing more than 20 percent of the hours worked during a workweek on such contract or subcontract, as defined in the rules, must be provided paid sick leave. Employees accrue one hour of paid sick leave for every 30 hours worked on that covered contract or subcontract. Contractors must provide such employee up to at least 56 hours of paid sick leave. There are also specific constraints on how an employee can use such paid sick leave.

However, a contractor cannot use this paid sick leave mandate to fulfill its mandatory obligations under the Service Contract Act or under the Family and Medical Leave Act, and it is up to the contractor to reconcile their potentially conflicting requirements. But PSC will help.

In addition to the presentations that we have provided to member companies on this rule, addressing these requirements is part of the regular Service Contract Act training sessions that PSC conducts. Our next SCA training session is Nov. 6-7, 2018 in Arlington, Va. Additional sessions will be scheduled for 2019. Watch the PSC calendar of events for those SCA training dates, and read more on other SCA-related topics by CBIZ on page 21 and The Boon Group on page 23. ■