

March 8, 2016

## **DOL Issues Proposed Rule Requiring Paid Sick Time for Federal Contractors**

The U.S. Department of Labor (“DOL”) has published a Notice of Proposed Rulemaking (“NPR”) that would require federal contractors to grant paid sick leave to their employees. The NPR begins the process of implementing Executive Order 13706, signed on September 7, 2015, which requires the DOL to publish paid sick leave regulations on or before September 30, 2016.

The new paid sick leave requirements will apply to new contracts or replacements for expiring contracts resulting from solicitations issued (or awarded outside the solicitations process) on or after January 1, 2017. The NPR applies to four general categories of contractual agreements:

1. procurement contracts for construction covered by the Davis-Bacon Act (DBA) (the NPR does not apply to contracts that are subject only to the Davis-Bacon Related Acts);
2. service contracts covered by the McNamara-O’Hara Service Contract Act (SCA);
3. concessions contracts, including any concessions contracts excluded from the SCA by DOL regulations; and
4. contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Individual federal agencies will have responsibility for including an appropriate clause into all covered contracts once the proposed rule becomes final.

The NPR would require that employees accrue at least one (1) hour of paid sick leave for every thirty (30) hours of paid time on or in connection with a covered contract, to be calculated at the end of each workweek. A contractor can avoid the accrual calculation by granting an employee at least fifty-six (56) hours of paid sick leave at the beginning of each accrual year. Contractors must put a mechanism in place to regularly inform employees of the amount of sick leave accrued (no less than one a month).

Contractors will have to allow employees to accrue up to 56 hours of leave per year, and must permit employees to carry over accrued, unused paid sick leave from one year to the next. Significantly, paid sick leave carried over from a previous accrual year “shall not count toward any limit the contractor sets on annual accrual.” The NPR allows a contractor to limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours. Although the NPR does not require that accrued, unused sick time be paid out upon

termination, it would require contractors to reinstate unused sick time to employees rehired within twelve (12) months of separation.

An employee may use paid sick leave for an absence resulting from: (i) physical or mental illness, injury, or medical condition of the employee; (ii) obtaining diagnosis, care, or preventive care from a health care provider by the employee; (iii) caring for the employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or need for diagnosis, care, or preventive care described in (i) or (ii); or (iv) domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in (i) or (ii) or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, or assist an individual related to the employee as described in (iii) in engaging in any of these activities.

Interested parties may comment on the NPR until March 28, 2016. Once the comment period expires, the DOL will review the comments and issue a final rule (which we expect to take effect prior to the September 30, 2016 deadline identified in Executive Order 13706). We will continue to keep you updated on this important topic.

*This Client Alert provides a general summary of new legal developments, and is not meant to provide legal advice. If you have any questions or concerns about this Client Alert, please do not hesitate to contact us at (570)341-8800.*