

COSTTREND CONSULTING, INC.



Government Contracting Alert

3rd Quarter 2015

Mandatory Paid Sick Leave for Federal Contractors

Executive Order (EO) 13706 requires contractors to provide their employees sick leave and it shall be earned at a minimum rate of 1 hour for every 30 hours worked, with a minimum limit on the accrual of 56 hours a year. The EO also states that sick leave “shall carry over from 1 year to the next”. The EO does not require the accrued sick leave to be paid out at end of employment.

The EO makes no distinction between full time and part time employees and a contractor's current paid time off (PTO) policy may be used to satisfy the new EO requirements if the current PTO policy is available to all covered employees, meets the EO minimum requirements, and can be used in the same way and for the same reasons as listed in the EO.

Based on CostTrend’s reading of the EO, it will apply to most service or construction type contracts and subcontracts performed in the US. In addition the EO applies to concession, Federal property, or land contracts. It will not apply to grants and the EO will be applicable to contracts issued on or after January 1, 2017.

For Service Contract Act (SCA) and/or Davis-Bacon Act (DBA) contracts/subcontracts, the required sick leave is in addition to the leave requirements in these two acts. The EO clearly states that “contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those two Acts for any paid sick leave provided in satisfaction of the requirements of this order.” But, both acts classify sick leave as a fringe benefit that meet the fringe benefit obligations. Obviously, these statements are confusing and contradictory and many industry organizations are urging the Secretary of Labor and the FAR council to provide clarification statements *before the EO goes into effect*.

Proposed “Overtime” Federal Contracting Rule

The Department of labor (DOL) has issued a proposed rule to expand the requirement for overtime under the Fair Labor Standards Act (FLSA) (see Federal Register Vol 80 Page 42819). The FLSA exempts certain employees from the requirement to be paid overtime based on certain primary job duties and a minimum salary. The DOL proposed rule will increase the minimum salary from the 2004 threshold of \$23,660 to about \$50,440. This minimum salary threshold will automatically adjust going forward but to

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date, DOL has not selected the exact “index” mechanism. With regard to the “primary job duties” test under the FLSA exemption, the DOL proposed rule makes no changes.

In order to avoid compliance issues with this DOL proposed rule, contractors should reevaluate their exempt and non-exempt classifications to ensure that existing Indefinite Quantity Contracts (IQC), Government-wide Agency Contracts (GWACs), GSA Schedules, etc., remain compliant with the FLSA.

Another recent DOL item deals with the change in the *minimum federal wage*. Effective January 1, 2016, the minimum wage for workers on federal contracts covered by Executive Order 13658 will be increased to \$10.15 per hour (see Federal Register Vol 80 Page 55646).

Increases to Some Monetary Acquisition Thresholds

A final rule has been published to the FAR increasing some Acquisition Thresholds (see Federal Register Vol 80 Page 38293) as of October 1, 2015. Below are the major threshold adjustments:

- The micro-purchase base threshold of \$3,000 (FAR 2.101) is increased to \$3,500.
- The cost or pricing data threshold (FAR 15.403-4) and the statutorily equivalent Cost Accounting Standard threshold are raised from \$700,000 to \$750,000.
- The prime contractor subcontracting plan (FAR 19.702) floor is raised from \$650,000 to \$700,000, and the construction threshold of \$1,500,000 stays the same.
- The threshold for reporting first-tier subcontract information including executive compensation will increase from \$25,000 to \$30,000 (FAR subpart 4.14 and section 52.204-10).
- The threshold for use of simplified acquisition procedures for acquisition of commercial items (FAR 13.500) is raised from \$6.5 million to \$7 million.