Chapter 19

Executive Order 13706
Establishing Paid Sick Leave for Federal Contractors

Source: FOH revision 784, published 01/14/2025.
Substantive revisions made after 01/14/2025 are noted at the end of affected provisions below.

Table of Contents

19f MAXIMUM ACCRUAL AND CARRYOVER OF LEAVE

19f00 Limits on accrual of paid sick leave.
19f01 Carryover of paid sick leave.

19g REINSTATEMENT OF PAID LEAVE AND PAYMENT FOR UNUSED LEAVE

19g00 Paid sick leave reinstatement.
19g01 Payment for unused paid sick leave and effect on reinstatement.

19h PAID TIME OFF POLICIES

19h00 Paid time off policies that can be used to satisfy a contractor's obligations under the EO.
19h01 Paid time off policies and DBA or SCA requirements.
19h02 Paid time off policies that provide more than 56 hours of leave per accrual year.

19i MULTIEMPLOYER PLANS AND OTHER PLANS, FUNDS, OR PROGRAMS

19i00 Definition.
19i01 Contractor responsibility.
19i02 Third-party administrators.

19j USE OF PAID SICK LEAVE

19j00 When paid sick leave can be used.
19j01 Purposes for which paid sick leave can be used.
19j02 Amount of paid sick leave used.
19j03 Pay while using paid sick leave.

19k REQUESTING, GRANTING, AND DENYING PAID SICK LEAVE

19k00 General.
19k01 Requesting paid sick leave.
19k02 Granting or denying the request.
19k03 Certifying or documenting the need for paid sick leave.

19L CONTRACTING AGENCY REQUIREMENTS

19L00 Including the required contract clause.
19L01 Withholding funds from, or suspending payment to, noncompliant contractors.
19L02 Action on complaints.

19m CONTRACTOR REQUIREMENTS

19m00 Contract clause.
19m01 Deductions.
19m02 Anti-kickback.
19m03 Interference and discrimination.
19m04 Records to be kept by contractors.
19m05 Notice to employees.

19n PROHIBITED ACTIONS

19n00 Interference.
19n01 Discrimination.
19n02 Recordkeeping.
19n03 Waiver of rights.
19n04 Anti-kickback.

19o COMPLAINTS AND REMEDIES

19o00 Complaints and investigations.
19o01 Remedies.
19o02 Debarment.
19o03 Civil actions to recover underpayment.
19o04 Retroactive inclusion of contract clauses.

19p ADMINISTRATIVE DISPUTE PROCEEDINGS

19p00 Contractor compliance disputes.
19p01 Debarment proceedings.
19p02 Consent findings.

19a INTRODUCTION

19a00 Purpose and use of FOH chapter 19.

This chapter provides guidance on 29 CFR part 13, which contains the United States (U.S.) Department of Labor's (DOL's) regulations and interpretations with respect to Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors. Additional information about the EO and 29 CFR part 13 is available through the Wage and Hour Division's (WHD's) government contracts, EO 13706 website.

References:
29 CFR part 13
81 FR 67598

19a01 Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors.

(a) Purpose

EO 13706, signed on 09/07/2015, requires certain federal contractors to provide covered employees with at least 7 days (56 hours) of paid sick leave per year. The EO was intended to improve the health and performance of employees of federal contractors and ensure those contractors remain competitive in the search for dedicated and talented employees, leading to improved economy and efficiency in government procurement.

References:
29 CFR 13.1
80 FR 54697

(b) Overview

(1) As described in FOH 19b, EO 13706 generally applies to a "new contract" entered into by the Federal Government on or after 01/01/2017 that falls within one of the following four categories:

a. Procurement contracts for construction covered by the Davis-Bacon Act (DBA)

b. Contracts for services covered by the McNamara-O'Hara Service Contract Act (SCA)

c. Contracts for concessions, including those excluded from coverage of the SCA by the DOL's regulations at 29 CFR 4.133(b)

d. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public

(2) As also described in FOH 19c, any covered employee performing work on or in connection with a contract covered by the EO (including covered subcontracts) is generally entitled to paid sick leave as described in 29 CFR 13.5. Employees must be permitted to accrue at least 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. Employees must be permitted to use paid sick leave during time they would otherwise be working on or in connection with covered contracts for any of the following purposes:

a. Physical or mental illness, injury, or medical condition

b. Obtaining diagnosis, care, or preventive care from a health care provider

c. Caring for a child, a parent, a spouse, a 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 needs for diagnosis, care, or preventive care described in FOH 19a01(b)(2)a. or b., or is otherwise in need of care

d. Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes described in FOH 19a01(b)(2)a. or b., 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 FOH 19a01(b)(2)c. in engaging in any of these activities

References:
29 CFR 13.3–13.5

19a02 Relationship of EO 13706 to other obligations.

(a) General

A brief description of the interaction between EO 13706 and the DBA, the SCA, the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and state, local, or

other paid sick leave laws, as well as EO 13658, Establishing a Minimum Wage for Contractors, and EO 14026, Increasing the Minimum Wage for Federal Contractors, is provided below.

(b) Davis-Bacon Act and McNamara-O'Hara Service Contract Act

Paid sick leave required by EO 13706 is in addition to a contractor's obligations under the DBA and SCA, if applicable. A contractor cannot receive credit toward the prevailing wages required by the DBA for any paid sick leave provided to comply with EO 13706. Similarly, a contractor cannot receive credit toward the prevailing wage and fringe benefits required by the SCA for any paid sick leave provided to comply with EO 13706. However, a contractor can generally count the value of any paid sick leave provided in excess of the requirements of EO 13706 toward its obligations under the DBA or SCA. *See* 29 CFR 13.5(f)(2)(i)–(ii). A contractor that provides paid sick leave in accordance with EO 13706 and 29 CFR part 13 is subject to a lower SCA health and welfare fringe benefit rate than a contractor on an SCA contract that is not subject to EO 13706 or a contractor that failed to provide any paid sick leave on a covered contract in accordance with EO 13706 and 29 CFR part 13]. *See* 29 CFR 13.44(a).

References:
29 CFR 13.5(f)(2)(i)–(ii)

(c) Fair Labor Standards Act

As explained at FOH 19c02, EO 13706 applies to employees performing work on or in connection with covered contracts who are entitled to receive minimum wage and/or overtime compensation under the FLSA. In addition, unlike EOs 13658 and 14026, EO 13706 applies to employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions, such as employees employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541. 29 CFR part 13 also imports the FLSA's hours worked principles set forth at 29 CFR part 785, as well as the principles for determining what constitutes compensation for purposes of determining an employee's regular rate set forth at 29 CFR part 778. *See* FOH 19d01 and FOHj03.

(d) Family and Medical Leave Act

A contractor's obligations under EO 13706 have no effect on its obligations under the FMLA. Paid sick leave may be substituted for, or run concurrently with, unpaid FMLA leave under the same conditions as other paid time off (PTO) under FMLA regulations at 29 CFR 825.207. Time off that is appropriately designated as FMLA leave must comply with all the notices and certifications required by the FMLA at 29 CFR 825.300–.308. The required FMLA notices and certifications will also satisfy relevant requirements for using paid sick leave, such as those regarding employee requests to use paid leave and any employer requests for leave certification. *See* 29 CFR 13.5(f)(3). *See* FOH 39 for more information about the FMLA.

(e) Federal, state, and local paid sick leave laws

(1) A contractor must comply with all applicable laws related to paid sick leave. Specifically, EO 13706 does not excuse noncompliance with any applicable federal, state, or local paid sick leave law, or municipal ordinance, establishing a paid sick

leave requirement that provides more protection to an employee than the paid sick leave required under EO 13706. The same applies to any applicable collective bargaining agreement (CBA). Similarly, a contractor's compliance with a state or local law requiring that an employee be provided with paid sick leave does not excuse the contractor from complying with any of its obligations under the EO or 29 CFR part 13.

(2) A contractor may be able to satisfy its obligations under the EO and other applicable paid sick leave laws concurrently. Specifically, a contractor can satisfy its EO 13706 obligations by providing paid sick leave that complies with the requirements of federal, state, or local law, provided that the time is accrued and may be used in the same manner as required by EO 13706 and 29 CFR part 13. Where the requirements of EO 13706 and a federal, state, or local law are different, to comply with both the EO and the applicable law, a contractor must fully comply with the requirements that provide more protection to employees. *See* 29 CFR 13.5(f)(4).

Scenario 1:

A state law requires that an employee receive 3 days of paid sick leave per year. A contractor subject to both the state law and EO 13706 typically will not need to provide an employee with 10 days of paid sick leave per year (*i.e.*, the 3 days required by the state law and the 7 days (56 hours) called for by the EO), but could satisfy both obligations by providing 7 days (56 hours) of paid sick leave.

Scenario 2:

A county law requires that employees earn at least 1 hour of paid sick leave for every 40 hours worked, while the EO allows employees to earn 1 hour of paid sick leave for every 30 hours worked. A contractor could satisfy both obligations by allowing employees to earn leave pursuant to the EO and 29 CFR part 13.

Scenario 3:

A municipal ordinance does not permit a contractor to require certification of the reason for using paid sick leave under any circumstances. A contractor could satisfy its obligations under both the municipal ordinance and the EO by choosing not to apply the EO's certification requirement and therefore not requiring certification for the use of paid sick leave even if an employee uses such leave for more than 3 consecutive days.

References:
29 CFR 13.5(f)(4)

(f) Executive Order 13658, Establishing a Minimum Wage for Contractors, and Executive Order 14026, Increasing the Minimum Wage for Federal Contractors

EOs 13658 and 14026 directed federal agencies to contract only with entities willing to pay employees performing work on or in connection with covered contracts at least the minimum wage specified under the applicable EO, both of which provide for an increase in their EO minimum wage each year based on inflation. Many of the coverage requirements, definitions, and enforcement procedures in EO 13706 are based on, and often identical to,

those in EO 13658. In particular, the contract coverage requirements are the same in both EOs. (Contract coverage under EO 14026 is broader in certain respects.) The employee coverage requirements under all three EOs are nearly the same; the differences are that EO 13706 covers employees exempt from the FLSA's minimum wage and overtime provisions, and does not cover employees to whom a temporary exemption applies for work performed pursuant to certain CBAs. More information about EOs 13658 and 14026 is available at the WHD's EO 13658 and EO 14026 websites.

References:
79 FR 60633
79 FR 9849

19b CONTRACT COVERAGE

19b00 Covered contracts.

In order for an agreement to be covered by EO 13706, the agreement must satisfy all of the following elements, which are described in more detail in FOH 19b01–08:

(1) It must qualify as a "contract or contract-like instrument" under the definition set forth in 29 CFR 13.2. *See* FOH 19b01(b).

(2) It must be a contract between a federal entity that falls under the definition of "executive departments and agencies" set forth in 29 CFR 13.2 and a "contractor" as defined at 29 CFR 13.2.

(3) It must be one of the four types of contracts named in 29 CFR 13.3, and meet any applicable value threshold requirement listed in that section. It must not be a type of contract that is excluded from coverage as explained in 29 CFR 13.4.

(4) It must be a new contract pursuant to the definition set forth in 29 CFR 13.2.

(5) It must require performance in whole or in part within the U.S.

References:
29 CFR 13.2–13.4

19b01 "Contract or contract-like instrument."

(a) General

EO 13706 specifies that an agreement must qualify as a "contract or contract-like instrument" for the EO to apply. However, there is no relevant distinction between those terms for purposes of EO 13706 and they are defined collectively in 29 CFR part 13. For purposes of simplicity, this chapter generally only refers to "contracts."

References:
29 CFR 13.2

(b) Definition

29 CFR 13.2 defines the term "contract or contract-like instrument" broadly to mean "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." This definition includes:

> all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing… In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; [and] orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance … .

(c) Examples of contracts or contract-like instruments

(1) *Subcontracts*

The definition of a "contract or contract-like instrument" in 29 CFR 13.2 does not distinguish between a prime contract and a subcontract. Instead, it notes that both prime contracts and sub-contracts are covered by EO 13706. As with the SCA and DBA, all of the provisions of the EO that are applicable to a covered prime contract and contractor apply to covered subcontract(s) and subcontractor(s).

(2) *Verbal contracts*

The inclusion of verbal agreements in the definition of the terms "contract or contract-like instrument" ensures that coverage of EO 13706 can extend to situations where contracting parties rely on an oral agreement and/or course of performance rather than a written contract (*e.g.*, where a written contract expires and the parties agree to continue to perform work under the terms and conditions of the expired contract).

(3) *Nonprocurement contracts*

EO 13706's application is not limited to procurement contracts; it can also apply to nonprocurement contracts. Examples of nonprocurement contracts that meet the definition of a "contract or contract-like instrument" covered under EO 13706 and that also fall into one of the enumerated categories addressed in FOH 19b05(e) below include special use permits issued by the Forest Service and commercial use authorizations issued by the National Park Service.

References:
29 CFR 13.2

19b02 Contracts with executive departments and agencies.

EO 13706 applies to certain contracts entered into by executive departments and agencies of the Federal Government. As explained in 29 CFR part 13, these terms refer to any executive agency or instrumentality of the U.S. that enters into a contract pursuant to authority derived from the Constitution or laws of the U.S. The EO, therefore, applies to covered contracts

with "executive departments within the meaning of 5 USC 101, military departments within the meaning of 5 USC 102, and independent establishments within the meaning of 5 USC 104(1)." *See* 29 CFR 13.2. It also applies to nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or other federal agencies.

References:
29 CFR 13.2

19b03 **Agencies not considered to be executive departments and agencies under EO 13706.**

EO 13706 does not cover contracts entered into by the District of Columbia (DC), any territory or possession of the U.S., or any independent regulatory agency within the meaning of 44 USC 3502(5). Below is a list of entities whose contracts are not covered by EO 13706:

(1) Board of Governors of the Federal Reserve System

(2) Bureau of Consumer Financial Protection

(3) Commodity Futures Trading Commission

(4) Consumer Product Safety Commission

(5) Federal Communications Commission

(6) Federal Deposit Insurance Corporation

(7) Federal Energy Regulatory Commission

(8) Federal Housing Finance Agency

(9) Federal Maritime Commission

(10) Federal Trade Commission

(11) Interstate Commerce Commission

(12) Mine Enforcement Safety and Health Review Commission

(13) National Labor Relations Board

(14) Nuclear Regulatory Commission

(15) Occupational Safety and Health Review Commission

(16) Office of Financial Research

(17) Office of the Comptroller of the Currency

(18) Postal Regulatory Commission

(19) Securities and Exchange Commission

(20) Any other similar agency designated by statute as a federal independent regulatory agency or commission

(21) Contrary to a discussion in the preamble of the Final Rule, the EO does not apply to contracts with the U.S. Postal Service (USPS), because the USPS is not subject to the Federal Property and Administrative Services Act.

References:
29 CFR 13.2–13.4

19b04 Definition of contractor.

(a) For purposes of EO 13706, a contractor is any individual or other legal entity that is awarded a Federal Government contract or a subcontract under a Federal Government contract. In other words, the term "contractor" refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. Lessors and lessees can be contractors for purposes of the EO. Employers of employees whose wages are computed pursuant to subminimum wage certificates issued under section 14(c) of the FLSA for performing work on or in connection with covered contracts also fall within the definition of "contractor." The term "employer" is used interchangeably with the terms "contractor" and "subcontractor" throughout 29 CFR part 13, as well as in this chapter.

(b) The U.S. Government, its agencies, and its instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of EO 13706.

References:
29 CFR 13.2

19b05 Four types of contracts covered by EO 13706.

(a) General

In order for a contract to be covered under EO 13706, it must fall within one of the four categories of contracts identified in 29 CFR 13.3(a). *See* FOH 19a01(b)(1). This requirement applies to prime contracts and subcontracts alike. Additionally, some contracts covered by EO 13706 are subject to monetary thresholds for coverage. These coverage requirements are discussed in greater detail below. Note: three of the four categories of contracts (*i.e.*, SCA-covered contracts, contracts for concessions, and contracts in connection with federal property or lands) are to some degree overlapping categories; therefore, a contract may fall within more than one category. For example, some concessions contracts and contracts in connection with federal property or lands are covered by the SCA. *See* *Cradle of Forestry in Am. Interpretive Ass'n*, ARB Case No. 99-035 (ARB March 30, 2001).

References:
29 CFR 13.3(a)

(b) Procurement contracts for construction covered by the DBA

EO 13706 applies to procurement construction contracts that are covered by the DBA. A "procurement contract for construction" means a procurement contract that is in excess of $2,000.00 for the construction, alteration, or repair (including painting and decorating) of

public buildings or public works, and that requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. EO 13706 does *not* apply to contracts entered into by the District of Columbia, or contracts subject only to the Davis-Bacon Related Acts (DBRA). A list of active Davis-Bacon Related Acts is currently available at WHD's Government Contracts Compliance Assistance website.

See FOH 15 for an explanation of the DBA.

References:
29 CFR 5.1(a)(2)–(60)
29 CFR 13.3(a)(1)(i)

(c) Contracts for services covered by the SCA

EO 13706 also applies to service contracts that are covered by the SCA. The SCA generally applies to every contract exceeding $2,500.00 entered into by the Federal Government that "has as its principal purpose the furnishing of services in the United States through the use of service employees," and any subcontract of any tier thereunder. *See* 41 USC 6702(a)(3). The SCA is intended to cover a wide variety of service contracts with the Federal Government, so long as the principal purpose of the contract is to provide services using service employees. *See, e.g.*, 29 CFR 4.130(a).

See FOH 14 for an explanation of the SCA.

References:
29 CFR 4.130(a)
29 CFR 13.3(a)(1)(ii)

(d) Contracts for concessions

(1) EO 13706 also applies to concessions contracts, including concessions contracts with nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or other federal agencies. Concessions contracts that are exempt from the SCA, as explained in 29 CFR 4.133(b), are still covered under EO 13706. *See* 29 CFR 13.3(a)(1)(iii).

(2) *Definition of "concessions contract" or "contract for concessions"*

a. 29 CFR 13.2 defines a "concessions contract" or "contract for concessions" as:

> a contract under which the Federal Government grants a right to use [f]ederal property, including land or facilities, for furnishing services. The term ["]concessions contract["] includes, but is not limited to, a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the [g]overnment, its personnel, or the general public.

b. This definition also generally includes contracts for the provision of noncommercial educational or interpretive services, energy, transportation, communications, or water services to the general public.

References:
29 CFR 4.133(b)
29 CFR 13.2
29 CFR 13.3(a)(1)(iii)

(e) Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public

(1) This final category of contracts covered by EO 13706 generally includes leases of federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services for federal employees, their dependents, or the general public. Although evidence that an agency has retained some measure of control over the terms and conditions of the lease or license to provide services is not necessary for a contractual agreement to fall under this category, such a circumstance strongly indicates that the agreement involved is covered by EO 13706.

Scenario 1:

A private fast food or casual dining restaurant rents space in a federal building and serves food to the general public. This restaurant would be subject to the EO even if the contract does not constitute a concessions contract for purposes of the EO.

Scenario 2:

Delegated leases of space in a federal building from an agency to a contractor, where the contractor may operate a child care center, credit union, gift shop, coffee shop, barber shop, or fitness center in the federal agency building to serve federal employees and/or the general public would generally be covered by EO 13706, under this category and/or another covered category.

(2) Coverage under this category only extends to contracts that are in connection with federal property or lands. The DOL does not interpret EO 13706's reference to "[f]ederal property" to encompass money. Consequently, purely financial transactions with the Federal Government (*i.e.*, contracts that are not in connection with physical property or lands) would not be covered under this category.

(3) Coverage under this category additionally only extends to contracts related to offering services for federal employees, their dependents, or the general public. Thus, if a federal agency contracts with a company solely to supply materials in connection with federal property or lands, the DOL will not consider the contract to be covered by this category because it is not a contract related to offering services. Similarly, because a license or permit to conduct a wedding on federal property or lands generally would not relate to offering services for federal employees, their dependents, or the general public, but rather would only relate to offering services to the specific individual applicants, the DOL would not consider such a contract to be covered by this category.

References:
29 CFR 13.3(a)(1)(iv)

19b06 **Excluded contracts.**

(f) 29 CFR 13.4 expressly excludes the following types of legal instruments from coverage under EO 13706:

(1) *Grants*

EO 13706 does not cover grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 USC 6301 *et seq*., which defines a "grant agreement" as:

> the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." 31 USC 6304.

(2) *Contracts and agreements with and grants to Indian Tribes*

EO 13706 does not cover contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 USC 450 *et seq*.

(3) *Procurement contracts for construction that are not subject to the DBA*

EO 13706 does not cover procurement contracts for construction that are not subject to the DBA. This exclusion, for example, applies to prime contracts for construction below the DBA's $2,000.00 threshold.

(4) *Contracts subject only to the DBRA*

EO 13706 does not apply to contracts that are subject only to the DBRA.

(5) *Contracts for services that are exempt from coverage under the SCA*

Except for contracts that are covered because they are within another of the four enumerated categories (*i.e.*, DBA-covered contracts; concessions contracts, including those exempt from coverage under the SCA as set forth in 29 CFR 4.133(b); and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public), service contracts that are exempt from the SCA pursuant to its statutory language at 41 USC 6702(b) or its implementing regulations, including those at 29 CFR 4.115–.122 and 29 CFR

4.123(d)–(e), are not subject to EO 13706. Additionally, this exclusion applies to prime service contracts that do not meet the $2,500.00 threshold for SCA coverage.

(6) *Supply contracts*

EO 13706 does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those that are subject to the Walsh-Healey Public Contracts Act (PCA), 41 USC 6501 *et seq*. *See* 29 CFR 13.3(d). Because the EO does not apply to prime supply contracts, it also does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment.

Scenario:

While EO 13706 may apply to a fast food establishment operating on a military base because the fast food establishment operates under a covered concession contract, a contract between the fast food establishment and its soft drink supplier for the supply of beverages would not be covered by EO 13706.

(7) *Prime procurement contracts governed by the FLSA below the micro-purchase threshold*

For prime procurement contracts where employees' wages are governed by the FLSA, such as procurement contracts for concessionaire services that are exempt from the SCA as explained in 29 CFR 4.133(b), EO 13706 only applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 USC 1902(a) and 48 CFR 2.101. The micro-purchase threshold currently is $10,000.00.

References:
29 CFR 13.4
29 CFR 4.115–4.122
29 CFR 4.123(d)–(e)
29 CFR 4.133(b)

19b07 New contracts.

(a) Definition

EO 13706 only applies to new contracts. As defined in 29 CFR 13.2, a "new contract" is a contract that results from a solicitation issued on or after 01/01/2017, or a contract that is awarded outside the solicitation process on or after 01/01/2017. This term includes both new contracts and replacements for expiring contracts, but it does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government that resulted from a solicitation issued before 01/01/2017 or that was awarded outside the solicitation process before 01/01/2017 (a "pre-2017" contract). The EO's coverage of new contracts is discussed in greater detail below in FOH 19b07(b)–(e).

References:
29 CFR 13.2

(b) Contracts entered into on or after 01/01/2017

EO 13706 applies to all covered contracts that result from solicitations issued on or after 01/01/2017, as well as covered contracts that are awarded outside the solicitation process on or after 01/01/2017.

References:
29 CFR 13.2

(c) Contracts originally entered into prior to 01/01/2017

(1) For purposes of EO 13706, a contract that was entered into prior to 01/01/2017 will constitute a new contract only if, through bilateral negotiations, on or after 01/01/2017:

a. the contract is renewed;

b. the contract is extended, unless the extension is made pursuant to a term in the contract as of 12/31/2016 providing for a short-term limited extension (*e.g.*, an extension of 6 months or less); or

c. the contract is amended pursuant to a modification that is outside the scope of the contract.

Scenario 1:

An SCA-covered contract for janitorial services at a federal building was originally entered into in 2015 and subsequently modified by bilateral negotiation after 01/01/2017 to also provide for security services at that building. Such modification would likely be regarded as outside the scope of the original contract; thus, this contract would qualify as a new contract subject to the EO.

Scenario 2:

A DBA-covered contract for construction work at Site A was originally entered into in 2016 and modified by bilateral negotiation after 01/01/2017 to also cover construction work at Site B. Such modification would generally be viewed as outside the scope of the original contract; thus, this contract would be covered by the EO.

(2) In the above scenarios in FOH 19b07(c)(1)c., the EO would apply to the contracts going forward from the effective dates of the modifications. However, contract modifications that are within the scope of the contract within the meaning of the Federal Acquisition Regulation (FAR) are not new contracts for purposes of EO 13706. *See* 48 CFR 6.001(c). For example, a small change in the delivery schedule of a large contract for construction would not qualify as a modification outside the scope of the original contract. Whether a modification qualifies as within or outside the scope of the original contract is a fact-specific determination. *See AT & T Communications, Inc. v. Wiltel, Inc.*, 1 F.3d 1201 (Fed. Cir. 1993).

References:
29 CFR 13.2

(d) Options contracts

The unilateral exercise by the Federal Government of a pre-negotiated option to renew an existing "pre-2017" contract by the Federal Government does not create a new contract.

References:
29 CFR 13.2

(e) Indefinite delivery, indefinite quantity contracts and task orders, including contracts awarded under General Services Administration Schedules

(1) In certain situations, an indefinite delivery, indefinite quantity (IDIQ) contract, including a General Services Administration (GSA) Schedule contract, will be considered a new contract.

a. Any IDIQ contract, including a GSA Schedule contract, awarded on or after 01/01/2017, qualifies as a new contract. This includes contracts to add new covered services to an existing IDIQ contract, as well as contracts to replace an expiring IDIQ contract. Similarly, task orders issued under such contracts are also considered new contracts, and thus are covered by EO 13706 if they otherwise meet the criteria for EO coverage discussed in FOH 19b.

b. Task orders issued against an IDIQ contract that was awarded prior to 01/01/2017 would not be covered by EO 13706 unless the contracting agency modified the IDIQ contract to include the paid sick leave requirement. This is so even if the task order itself was issued on or after 01/01/2017.

References:
29 CFR 13.2

(f) Subcontracts under "pre-2017" prime contracts that are not subject to the EO

EO 13706 does not apply to a subcontract unless the prime contract under which the subcontract is awarded qualifies as a new contract subject to the EO.

References:
29 CFR 13.2

19b08 Geographic scope.

(a) EO 13706 only applies to contracts with the Federal Government requiring performance in whole or in part within the U.S. *See* 29 CFR 13.3(c). For purposes of EO 13706, the term "United States" means the 50 states and the District of Columbia when used in a geographic sense. *See* 29 CFR 13.2. EO 13706 does not apply to work performed in a United States territory, such as Guam, the Commonwealth of the Northern Mariana Islands, or Puerto Rico, or to work performed in another country.

(b) If a contract with the Federal Government is to be performed in part within and in part outside the U.S. and is otherwise covered by the EO, the EO would apply with respect to that part of the contract that is performed within the U.S. *See* 29 CFR 13.3(c).

19c COVERED EMPLOYEES

19c00 General.

As described below, 29 CFR part 13 defines the term "employee" and provides that employees performing work on or in connection with covered contracts must generally receive paid sick leave. Note: not all employees whose work relates to a covered contract are necessarily entitled to paid sick leave pursuant to EO 13706. *See* FOH 19c02(d).

References:
29 CFR 13.2

19c01 Definition of employee.

Under 29 CFR 13.2, for purposes of EO 13706, an "employee" is any person:

(1) engaged in performing work on or in connection with a contract covered by the EO; and

(2) whose wages under such contract are governed by the SCA, DBA, or FLSA, including employees who are exempt from the FLSA's minimum wage and overtime provisions, regardless of the contractual relationship alleged to exist between the individual and the employer.

19c02 Performing work on or in connection with a covered contract.

(a) General

EO 13706 applies to employees "engaged in performing work on or in connection with a contract covered by the Executive Order." *See* 29 CFR 13.2.

(b) Performing work on a covered contract

(1) To perform work on a covered contract means to perform the specific functions called for by the contract. Whether an employee is performing work on a covered contract will be determined in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.*, services or construction) to be performed under the contract.

(2) *Performing work on an SCA contract*

All service employees performing the specific services called for by the terms of an SCA-covered contract are performing work on a contract covered by the EO.

(3) *Performing work on a DBA contract*

All laborers and mechanics engaged in the construction of a public building or public work directly on the site of the work are performing work on a DBA-covered contract. Consequently, they are performing work on a contract covered by the EO.

(4) *Performing work on a concessions contract or contract in connection with federal property*

For purposes of concessions contracts and contracts in connection with federal property or land and related to offering services for Federal employees, their dependents, or the general public that are not subject to the SCA, any employee performing the specific services called for by the terms of the contract is performing work on a contract covered by the EO.

References:
29 CFR 13.2

(c) Performing work in connection with a covered contract

(1) An employee performing work in connection with a covered contract includes any employee who is performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific functions called for by the contract. *See* FOH 19d01(d) for more information about how the paid sick leave requirements apply to employees performing work in connection with, but not on, covered contracts.

(2) *Performing work in connection with an SCA contract*

Employees who are not engaged in performing the specific services identified in the contract (*i.e.*, they are not entitled to prevailing wages and fringe benefits required by the SCA) but are performing services necessary to the performance of the SCA contract qualify as employees performing work in connection with an SCA-covered contract. This includes, but is not limited to, any employees who are not entitled to prevailing wages and fringe benefits required by the SCA but are entitled to at least the FLSA minimum wage pursuant to 41 USC 6704(a) and 29 CFR 4.153, performing work in connection with an SCA contract.

Scenario:

A laundry contractor's billing clerk performs billing work with respect to the items laundered on an SCA contract. A job coach supports employees employed under a certificate issued under section 14(c) of the FLSA in performing custodial work on an SCA contract at a federal building. While neither employee actually performs the specific services mentioned in the contracts, both may be performing work in connection with SCA contracts.

(3) *Performing work in connection with a DBA contract*

Employees who are not engaged in performing the specific construction identified in a DBA contract (*i.e.*, they are not DBA-covered laborers or mechanics), but are performing services that are necessary to the performance of the DBA contract, qualify as employees performing work in connection with a covered contract. This includes employees who do not perform the construction work identified in the DBA contract, either due to the nature of their nonphysical duties and/or their lack of presence on the site of the work, but who perform duties that are regarded as necessary for the performance of the contract.

Scenario:

A security guard patrols or monitors a construction worksite where DBA-covered work is being performed. A clerk processes the payroll for DBA contracts either on or off the site of the work. Either employee may be performing work in connection with a DBA contract.

(4) *Performing work in connection with a concessions contract or contract in connection with federal property*

Employees who are not engaged in performing the services identified in a concessions contract or contract in connection with federal property or land may nevertheless qualify as employees performing work in connection with such contracts if their services are necessary to the performance of the contract.

References:
29 CFR 13.2
29 CFR 13.3

(d) Work that is neither on nor in connection with a covered contract

Not all work performed by employees of a contractor with covered contracts is necessarily performed on or in connection with a covered contract. Whether work is on or in connection with a covered contract should be decided on a case-by-case basis depending on the facts.

Scenario 1:

A technician is hired to repair a DBA contractor's electronic time system. A janitor is hired to clean the bathrooms at the same DBA contractor's company headquarters. Neither employee is covered by the EO because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract.

Scenario 2:

A landscaper planting trees at the home office of an SCA contractor is not performing work in connection with a covered contract because the SCA contract does not call for such landscaping services and such services are not necessary to the performance of the contract.

Scenario 3:

EO 13706 would not apply to an employee hired by a covered concessionaire to redesign the storefront sign for a snack shop in a national park unless the redesign of the sign was called for by the SCA contract or otherwise necessary to the performance of the contract.

References:
29 CFR 13.3

19c03 Wages governed by the SCA, DBA, or FLSA.

(a) General

As explained, the paid sick leave requirements of EO 13706 apply only to employees whose wages are governed by the SCA, DBA, or FLSA, including employees who are exempt from the FLSA's minimum wage and overtime provisions.

References:
29 CFR 13.3(a)(2)

(b) Employees whose wages are governed by the SCA

(1) An employee's wages are governed by the SCA for purposes of EO 13706 if the employee is entitled to prevailing wages and fringe benefits required by the SCA. *See* 29 CFR 4.150–.156. Employees whose wages are governed by the SCA include individuals who are employed on an SCA-covered contract and individually registered in a bona fide apprenticeship program registered with the DOL's Employment and Training Administration (ETA), Office of Apprenticeship (OA), or a state apprenticeship agency recognized by the OA.

(2) Note that employees who perform work on or in connection with SCA-covered contracts, but who are not entitled to prevailing wages and fringe benefits required by the SCA, may still be covered by EO 13706. For example, individuals employed in a bona fide executive, administrative, or professional capacity, as defined in 29 CFR part 541, are not service employees under the SCA. *See* 41 USC 6701(3)(C). However, as explained below in FOH 19c03(d), they must receive paid sick leave because their wages are governed by the FLSA.

Scenario:

A manager is exempt from the FLSA's minimum wage and overtime provisions. The manager supervises janitors on an SCA contract for cleaning services at a federal building. The manager would be entitled to paid sick leave as required by the EO even though they do not receive prevailing wages and fringe benefits required by the SCA because they are employed in a bona fide executive capacity. The manager would be entitled to paid sick leave because they perform work on or in connection with a covered contract.

(3) Employees whose wages are governed by the SCA also include individuals whose wages are calculated pursuant to subminimum wage certificates issued under section 14(c) of the FLSA for performing work on an SCA-covered contract. *See* 29 CFR 4.6(o)(1). *See* FOH 64 for more information about section 14(c) of the FLSA.

(c) Employees whose wages are governed by the DBA

(1) An employee's wages are governed by the DBA for purposes of EO 13706 if such employee is entitled to prevailing wages required by the DBA. This includes any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the DOL's ETA, OA, or a state apprenticeship agency recognized by the OA.

(2) Note that as with SCA-covered contracts, employees who perform work on or in connection with a DBA-covered contract but are not entitled to prevailing wages required by the DBA may still be covered by EO 13706. Specifically, the EO's

coverage extends to employees performing work on or in connection with DBA-covered contracts for construction who are not entitled to prevailing wages required by the DBA but whose wages are governed by the FLSA, including those who are exempt from the FLSA's minimum wage and overtime provisions. These employees include, for example, employees supervising or otherwise overseeing the laborers or mechanics performing construction work who are exempt from the FLSA's minimum wage and overtime provisions under section 13(a)(1) of the FLSA and 29 CFR part 541, or accountants providing services that are necessary to the performance of the construction contract. They also include employees who perform work in connection with a DBA-covered contract away from the site of the work because those employees' wages are governed by the FLSA. *See* 29 CFR 5.2 and 29 CFR 5.5(a)(1).

References:
29 CFR 13.3
29 CFR 5.2
29 CFR 5.5(a)(1)

(d) Employees whose wages are governed by the FLSA

(1) For purposes of EO 13706, an employee's wages are governed by the FLSA if the employee qualifies as:

a. an employee who is entitled to the minimum wage and/or overtime under sections 6 and/or 7 of the FLSA, including any tipped employees under section 3(t) of the FLSA;

b. an employee who is covered by the FLSA, even if the employee qualifies for an exemption from the FLSA's minimum wage and/or overtime provisions. This category of employees includes, for example, employees employed in a bona fide executive, administrative, or professional capacity as defined in section 13(a)(1) of the FLSA and 29 CFR part 541; or

c. an employee whose wages are calculated pursuant to subminimum wage certificates issued under section 14 of the FLSA, including a student worker under section 14(b) or a worker with a disability under section 14(c). *See* 29 USC 206, 207, and 214.

References:
29 CFR 13.3
29 CFR part 541

19c04 Coverage of apprentices and trainees.

(a) Individuals who are employed on or in connection with an SCA- or DBA-covered contract and individually registered in a bona fide apprenticeship or training program registered with the DOL's ETA, OA, or a state apprenticeship agency recognized by the OA, are covered by EO 13706 for the time they spend working on or in connection with covered contracts.

(b) Apprentices whose wages are calculated pursuant to subminimum wage certificates issued under section 14(a) of the FLSA are also entitled to paid sick leave.

References:
29 CFR 13.3

19c05 Coverage of seasonal workers, students, and interns.

(a) Seasonal workers, students, and interns are not excluded from the EO's requirements. These types of employees can be covered by EO 13706 if they perform work on or in connection with covered contracts and their wages are governed by the SCA, DBA, or FLSA, including employees who are exempt from the FLSA's minimum wage and/or overtime provisions.

(b) EO 13706 can apply to full-time students whose wages are calculated pursuant to subminimum wage certificates issued under section 14(b) of the FLSA. *See* 29 CFR 13.3(a)(2).

(c) Additionally, the EO can apply to employees employed by certain seasonal and recreational establishments who are exempt from the FLSA's minimum wage and overtime provisions pursuant to section 13(a)(3) of the FLSA.

References:
29 CFR 13.3(a)(2)

19c06 Excluded employees.

(a) "20 percent of hours worked" exclusion

(1) *Employees eligible for the exclusion*

a. As explained in FOH 19d below regarding accrual of paid sick leave and in FOH 19j below regarding use of paid sick leave, employees covered by EO 13706 may generally accrue and use paid sick leave when performing work on or in connection with a covered contract. The "20 percent of hours worked" exclusion is a narrow exception to this general rule. *See* 29 CFR 13.4(e). Specifically, this exclusion provides that in any workweek in which an employee performs work in connection with covered contracts for *less than* 20 percent of their hours, the contractor need not allow the employee to accrue, or count any hours worked towards the accrual of, any paid sick leave during that workweek.

Scenario:

An administrative assistant works for a single employer 40 hours per week and spends 4 hours working in connection with covered contracts. The contractor need not allow the administrative assistant to accrue, or count any hours worked towards the accrual of, any paid sick leave during that workweek.

b. If an employee spends any time performing work on, as opposed to solely in connection with, a covered contract in a given workweek, this exclusion does not apply. For example, the "20 percent of hours worked" exclusion does not apply to any employee who is entitled to be paid prevailing wages under the DBA or SCA for any time in a given workweek. *See* FOH 19c02 for a

description of the differences between performing on or in connection with covered contracts.

(2) *Hours worked in connection with covered contracts must be added together*

When calculating hours worked in connection with covered contracts for purposes of determining whether this exclusion may apply, contractors must determine the total number of hours the employee worked in connection with covered contracts in a given workweek.

Scenario:

If an administrative assistant works for a single employer 40 hours per week and spends 8 hours working in connection with covered contracts, (2 hours each week handling payroll for each of 4 separate SCA contracts), the exclusion would not apply because the employee's hours worked in connection with the SCA contracts are 20 percent of their total hours worked for that workweek. As a result, the 8 hours that the employee spends performing work in connection with the 4 covered contracts each workweek would count toward the accrual of paid sick leave.

(3) *Burden of proof is on the employer claiming the exclusion*

a. This exclusion is only applicable if the contractor maintains accurate records or other proof segregating an employee's hours worked in connection with covered contracts from other noncovered hours worked.

b. A contractor can apply this exclusion on the basis of an estimate of the employee's hours worked in connection with covered contracts, but the estimate must be reasonable and based on verifiable information. *See* 29 CFR 13.5(a)(1)(i). *See* FOH 19d01(d) for a discussion of how to appropriately arrive at such estimate.

c. The amount of proof necessary to adequately segregate an employee's hours worked on or in connection with a covered contract from other noncovered hours worked, or to establish that all of an employee's hours associated with a contract was spent performing work in connection with rather than on the contract, will vary with the circumstances. *See* FOH 19d01.

Scenario:

A contractor is required to maintain considerably less proof to satisfy the requirements under the 20 percent of hours worked exclusion for an accounting clerk who only occasionally processes an SCA-contract-related invoice than for a security guard who works on a DBA-covered site several hours each week.

References:
29 CFR 13.4(e)
29 CFR 13.5(a)(1)(i)

(b) Employees who perform work on or in connection with a contract governed by a CBA ratified before 09/30/2016 that provides paid sick leave

(1) *CBA provides at least 56 hours (or 7 days) of paid sick leave or other PTO*

If a CBA ratified before 09/30/2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with at least 56 hours (or 7 days, if the CBA refers to days rather than hours) of paid sick leave (or other PTO that may be used for reasons related to sickness or health care) each year, the requirements of EO 13706 do not apply to the employee until *the earlier of* the date the CBA terminates or 01/01/2020. *See* 29 CFR 13.4(f).

(2) *CBA provides some, but less than 56 hours (or 7 days) of paid sick leave or other PTO*

A partial exclusion applies if a CBA ratified before 09/30/2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with paid sick leave (or other PTO that may be used for reasons related to sickness or health care) each year, but the amount of such leave provided under the CBA is less than 56 hours (or 7 days, if the CBA refers to days rather than hours). In this case, the requirements of the EO do not apply to the employee until the earlier of the date the CBA terminates or 01/01/2020, provided that each year the contractor provides covered employees with additional paid sick leave or other PTO in an amount at least equal to the difference between 56 hours (or 7 days) and the amount provided under the CBA. The additional paid sick leave or other PTO must be provided in a manner consistent with either the EO's requirements or the terms and conditions of the CBA. *See* 29 CFR 13.4(f).

Scenario:

If a CBA ratified before 09/30/2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with 20 hours of paid sick leave each year, the contractor, in order to comply with the requirements of this exclusion, would be required to allow the employee to accrue and use an additional 36 hours of paid sick leave in the year, for a total of 56 hours.

(3) *CBA provides no paid sick leave or other PTO*

If a CBA does not provide any paid sick leave (or other PTO that could be used for reasons related to sickness or health care), a contractor will be responsible for full compliance with the EO with respect to any covered employees performing work on or in connection with covered contracts to whom the CBA applies.

(4) *Exclusion applies to employees, rather than contracts*

This temporary exclusion applies to employees rather than contracts because on any covered contract, some employees' work might be governed by a CBA while others' work may not. For example, laborers and mechanics performing work on a DBA contract might be members of a union that has negotiated a CBA with the contractor, but the administrative staff performing work in connection with the contract might not be covered by the CBA. Similarly, a CBA could apply to janitors performing

work on an SCA contract but not their supervisor. As to employees to whom a CBA does not apply, a contractor must provide paid sick leave without reliance on this exclusion.

(5) *Scope of paid sick leave or other PTO*

This temporary exclusion applies to any paid sick leave policy or other PTO policy under a CBA that allows employees to take leave for reasons related to sickness or health care. Such policies do not need to permit employees to be absent for all of the reasons required under the EO. *See* FOH 19j01. For example, as stated in the preamble to the Final Rule, if a paid sick leave policy under a CBA allows an employee to use leave if they are sick but not to care for family members, or if a paid sick leave policy does not permit leave for reasons related to domestic violence, sexual assault, or stalking other than seeking health care, the exclusion can still apply.

References:
29 CFR 13.4(f)

19d ACCRUAL OF PAID SICK LEAVE

19d00 Paid sick leave accrual.

Contractors must permit employees to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract.

References:
29 CFR 13.5(a)

19d01 Hours worked.

(a) Definition of hours worked

Hours worked for purposes of EO 13706 is defined the same as the FLSA, as explained in 29 CFR part 785. In other words, an employee's hours worked generally include all periods in which the employee is suffered or permitted to work, whether or not required to do so, and all time during which the employee is required to be on duty, to be on the employer's premises, or to be at a prescribed workplace. *See* FOH 31 for information regarding hours worked and FOH 64 for hours worked under subminimum wage certificates issued under section 14(c) of the FLSA.

References:
29 CFR 13.5(a)(1)
29 CFR part 785

(b) Totaling hours worked on or in connection with all covered contracts

A contractor must total an employee's hours worked on or in connection with all covered contracts for that contractor for purposes of accrual of paid sick leave. All the time the employee spends performing work on the contracts (*e.g.*, time spent working as a laborer or mechanic on any DBA worksites and time spent by the employee working in connection with

the contracts, which might include time that is not spent on the site of the work) must be added together to determine how much paid sick leave the employee has accrued.

Scenario:

A subcontractor that installs windows in building construction projects assigns a single employee to work on three separate DBA-covered projects. Consequently, if in one pay period or workweek this employee spends 20 hours installing windows at Worksite A and 10 hours preparing windows for installation at Worksite B away from the site of work, they would accrue 1 hour of paid sick leave at the end of that pay period, because they have worked a total of 30 hours on covered contracts. If in the next pay period the employee spends 30 hours at Worksite C, they would then accrue an additional 1 hour of paid sick leave for that pay period, for a total accrual of 2 hours of paid sick leave for both pay periods.

References:
29 CFR 13.5(a)(1)

(c) Hours worked on covered and noncovered contracts

(1) In situations where an employee is not exclusively engaged in performing work covered by EO 13706, only hours worked on or in connection with a covered contract, rather than hours worked on or in connection with a noncovered contract, must be counted toward paid sick leave accrual.

Scenario:

If an employee works on an SCA-covered contract for security services for 30 hours each pay period and works for the same contractor on a private contract for security services for an additional 30 hours each pay period, the contractor would only be required to allow the employee to accrue 1 hour, rather than 2 hours, of paid sick leave each pay period. Similarly, if an employee works for a contractor on a DBA-covered contract for construction for 2 months and then on a private contract for construction for 2 months, the contractor would only be required to allow the employee to accrue paid sick leave during the first 2 months.

(2) To exclude an employee's hours worked on or in connection with a noncovered contract, a contractor must accurately identify in its records the employee's hours worked on or in connection with covered and noncovered contracts. *See* 29 CFR 13.5(a)(1). In the absence of records or other proof adequately segregating the hours, the employee will be presumed to have spent all paid hours performing work on or in connection with a covered contract.

References:
29 CFR 13.5(a)(1)

(d) Estimating hours worked in connection with covered contracts

(1) If an employee performs work in connection with covered contracts, but not on covered contracts, a contractor can estimate the portion of the employee's hours worked in connection with covered contracts if the estimate is reasonable and based on verifiable information. The estimate could be based on the portion of the

contractor's total revenue that derives from covered contracts (if it is reasonable to assume that the employee's hours worked is roughly evenly divided across all of the contractor's work), although revenue is not the only appropriate basis for estimating hours worked.

Scenario 1:

If a contractor derives half of its revenue from covered contracts, the contractor would likely have a reasonable basis for estimating that employees in the mail room of the contractor's corporate headquarters spend half of their hours worked in connection with covered contracts. In contrast, if the contractor has offices in two locations, and all of its work at one of those locations pertains to covered contracts, the contractor could not reasonably assume that the employees in the mail room at that location worked in connection with covered contracts only 50 percent of the time.

Scenario 2:

A contractor could estimate that a receptionist who handles incoming calls for a group of other employees who perform work on covered contracts during, on average, one third of their work time also spends one third of their hours worked in connection with covered contracts.

(2) The period of time for which an estimate could appropriately be used varies depending upon the circumstances.

Scenario:

A contractor that claims the "20 percent of hours worked" exclusion described in FOH 19c06(a) for its receptionist because at the time, only 5 percent of its revenue derived from covered contracts, would not be able to continue to claim such exclusion if the contractor is awarded a new covered contract that will account for 40 percent of its revenue in the following year.

References:
29 CFR 13.5(a)(1)

(e) Hours worked for FLSA-exempt employees

(1) If a contractor is not required to keep records of an employee's hours worked under the SCA, DBA, or FLSA because, for example, the employee is an executive, administrative, or professional employee as defined by 29 CFR part 541, the contractor can calculate paid sick leave accrual by tracking the employee's actual hours worked, or by using the assumption that the employee works 40 hours on or in connection with a covered contract each workweek. *See* 29 CFR 13.5(a)(1)(iii).

(2) If an employee regularly works fewer than 40 hours per week on or in connection with covered contracts, a contractor can allow the employee to accrue paid sick leave based on the employee's typical number of hours worked on or in connection with covered contracts per workweek. In this case, the contractor must have probative evidence (*e.g.*, payroll records showing that an employee was paid for 20 hours per

week for performing work on or in connection with covered contracts) of the employee's typical number of hours worked on or in connection with covered contracts. If the employee performs work in connection with rather than on covered contracts, a contractor may estimate the employee's typical number of hours worked in connection with covered contracts per workweek, provided the estimate is reasonable and based on verifiable information.

References:
29 CFR 13.5(a)(1)(iii)
29 CFR part 541

19d02 Calculation of paid sick leave.

(a) Accrued paid sick leave must be calculated at the end of each pay period or each month, whichever interval is shorter. *See* 29 CFR 13.5(a)(1)(ii).

(b) Contractors do not need to allow employees to accrue paid sick leave in increments smaller than 1 hour. They may, however, choose to do so. Any remaining fraction of 30 hours worked after an employee accrues leave for the pay period or month is added to hours worked for the same contractor in following pay periods or months in the same accrual year, as explained below, to reach 30 hours worked. *See* 29 CFR 13.5(a)(1)(ii).

Scenario:

A contractor with a 2-week pay period has an employee who works on a covered concessions contract for 80 hours in pay period 1 and 35 hours in pay period 2. At the end of pay period 1, the employee will have accrued 2 hours of paid sick leave based on their first 60 hours worked and, unless the employer chooses to allow accrual in increments smaller than 1 hour, will not have accrued any more paid sick leave based on the additional 20 hours they worked in that pay period. At the end of pay period 2, the employee will have accrued 1 more hour of paid sick leave based on the remaining 20 hours from pay period 1 plus their first 10 hours worked in pay period 2. They do not accrue any paid sick leave based on the remaining 25 hours worked in pay period 2. If the employee spends several subsequent weeks working for the contractor on a private contract and then returns to working on the covered concessions contract, under this provision, those remaining 25 hours would be added to their subsequent hours worked on the concessions contract for purposes of reaching their next accrued hour of paid sick leave, provided their return to the covered concessions contract occurred within the same accrual year as pay period 2.

References:
29 CFR 13.5(a)(1)(ii)

19d03 Providing paid sick leave in advance (frontloading).

(a) A contractor may choose to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time. If a contractor does so, it does not need to comply with the accrual requirements outlined in FOH 19d00–02. However, the contractor must allow carryover of paid sick leave of no fewer than 56 hours in each accrual year. The carryover requirements that apply where an employer does not choose to frontload paid sick leave are addressed at FOH 19f01.

Scenario:

A contractor chooses the frontloading option, providing employees with 56 hours of paid sick leave at the beginning of each accrual year. An employee carries over 16 hours of paid sick leave from one accrual year to the next. The contractor must permit the employee to have 72 hours (*i.e.,* 16 hours plus 56 hours) of paid sick leave available for use at the beginning of the second accrual year. If the employee did not use any paid sick leave in the second accrual year, the contractor could limit the amount of paid sick leave the employee can carry over in the third accrual year to 56 hours. *See* 29 CFR 13.5(b).

(b) If a contractor using this option hires an employee or newly assigns an employee to work on or in connection with a covered contract after the beginning of the accrual year, the contractor can provide the employee with a prorated amount of paid sick leave based on the number of pay periods remaining in the accrual year. *See* 29 CFR 13.5(a)(3).

Scenario:

An employee could be hired by a contractor to work full-time on a covered contract after one-third of the pay periods in the current accrual year have passed. If the contractor chooses the frontloading option, the employee would be entitled to begin their employment with at least 37 hours (*i.e.*, two-thirds of 56 hours, rounded to the nearest hour) of paid sick leave.

(c) A contractor may choose to frontload leave for any or all of its employees in any or all accrual years. A contractor is not permitted to change its accrual system in the middle of an accrual year. In addition, a contractor may not decide to frontload leave in an effort to avoid its obligations under the EO.

References:
29 CFR 13.5(a)(3)
29 CFR 13.5(b)

19e NOTIFICATION TO EMPLOYEES OF ACCRUED LEAVE

19e00 Notification of amount of paid sick leave.

(a) A contractor must inform each employee, in writing, of the amount of paid sick leave the employee has accrued but not used no less than once per pay period or per month, whichever interval is shorter. *See* 29 CFR 13.5(a)(2).

(b) A contractor must also inform employees in writing of the amount of paid sick leave they have upon a separation from employment and upon any required reinstatement of paid sick leave described in FOH 19g. *See* 29 CFR 13.5(a)(2).

References:
29 CFR 13.5(a)(2)

19e01 Method of notification.

(a) A contractor's existing procedure for informing employees of their available PTO (*e.g.*, notification accompanying each paycheck or an online system that an employee can use to check at any time) could be used to satisfy or partially satisfy these accrual notification

requirements, provided it is written and it clearly indicates the amount of paid sick leave an employee has accrued separately from other types of PTO (unless the employer complies with the EO's requirements with a PTO policy as described at FOH 19h).

(b) If a contractor customarily corresponds with or makes information available to its employees by electronic means, this requirement can be fulfilled with electronic transmissions.

References:
29 CFR 13.5(a)(2)

19f MAXIMUM ACCRUAL AND CARRYOVER OF LEAVE

19f00 Limits on accrual of paid sick leave.

(a) A contractor may limit the amount of paid sick leave an employee is permitted to accrue to no fewer than 56 hours in each accrual year.

(b) An accrual year is a 12-month period beginning on the date of an employee's work on or in connection with a covered contract or any other fixed date chosen by the contractor. A contractor may choose its accrual year but is required to use a consistent option for all employees, or across similarly situated groups of employees. *See* 29 CFR 13.5(b). A contractor may not select or change its accrual year in order to avoid the requirements of the EO. Similar to the FMLA, if a contractor does not select an accrual year, the Wage and Hour Division (WHD) will use the option that provides the most beneficial outcome to the employee.

References:
29 CFR 13.5(b)

19f01 Carryover of paid sick leave.

(a) A contractor must allow carryover of EO 13706 paid sick leave an employee has accrued but not used from one accrual year to the next. Paid sick leave carried over from the previous accrual year does not count toward any limit the contractor sets on annual accrual.

Scenario:

If an employee carries over 30 unused hours of paid sick leave from accrual year 1 to accrual year 2, they must still be permitted to accrue up to 56 additional hours of paid sick leave in accrual year 2 rather than only 26 (56 minus the 30 carried over). However, the contractor can limit them to have 56 hours of paid sick leave at any one time, as explained below in FOH 19f01(b).

(b) A contractor may limit the amount of paid sick leave available for an employee to use at any point to no fewer than 56 hours. Even if the employee has accrued fewer than 56 hours of paid sick leave since the beginning of the accrual year, the contractor does not need to permit the employee to accrue additional paid sick leave so long as the employee has at least 56 hours of paid sick leave available for use. If the employee uses paid sick leave and no longer has at least 56 hours available for use, the employee must once more be permitted to accrue leave until they either have 56 hours available for use or has accrued at least 56 hours in that accrual year.

Scenario 1:

If an employee accrues 56 hours of paid sick leave in accrual year 1 and uses no paid sick leave in years 1 or 2, they could begin accrual year 3 with only 56 hours of leave, because their employer does not need to allow them to accrue any additional hours in accrual year 2.

Scenario 2:

If an employee carries over 16 hours of unused paid sick leave into a new accrual year, they must be permitted to accrue 40 additional hours of paid sick leave even if they do not use any paid sick leave while the accrual occurs. Once they have 56 hours of paid sick leave accrued, the contractor may prohibit them from accruing any additional leave, unless they use some portion of the 56 hours. If they use, for example, 24 hours of paid sick leave in the same accrual year (*i.e.*, them has 32 hours available for use), they must be permitted to accrue up to at least 16 more hours, in addition to the 40 hours they have already accrued during the accrual year, in order to accrue a total of 56 hours in that accrual year.

References:
29 CFR 13.5(a)(2)

19g REINSTATEMENT OF PAID LEAVE AND PAYMENT FOR UNUSED LEAVE

19g00 Paid sick leave reinstatement.

Previously accrued, unused paid sick leave must be reinstated for an employee rehired by the same contractor within 12 months after a job separation from the contractor. This obligation applies whether the employee leaves and returns to work on or in connection with a single covered contract, or works on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor in between periods of performing work on or in connection with covered contracts. *See* 29 CFR 13.5(b)(4).

Scenario:

An employee accrued but did not use 12 hours of paid sick leave while working for a contractor on an SCA contract. They left the contract to perform work on a noncovered contract for the same contractor, but returned to work on the SCA contract 6 months later. The employee would start back to work on the contract with 12 hours of paid sick leave available for use. Note that if the employee's first week back on the SCA job is within the same accrual year during which they accrued the 12 hours, the contractor would be required to count any fraction of 30 hours worked in their previous time on the contract toward the accrual of their next hour of paid sick leave, but the contractor may also limit their additional accrual in that accrual year to 44 hours such that they can only accrue a total of 56 hours in the accrual year.

References:
29 CFR 13.5(b)(4)

19g01 Payment for unused paid sick leave and effect on reinstatement.

(a) A contractor is not required to pay an employee for unused accrued paid sick leave when the employee leaves employment.

(b) If a contractor makes a payment in an amount equal to or greater than the value of the pay and benefits, as described in FOH 19j03(c), that an employee would have received had the employee used their accrued paid sick leave, the contractor is not required to reinstate the employee's accrued paid sick leave upon rehiring the employee within 12 months of separation. *See* 29 CFR 13.5(b)(5).

References:
29 CFR 13.5(b)(5)

19h PAID TIME OFF POLICIES

19h00 Paid time off policies that can be used to satisfy a contractor's obligations under the EO.

(a) Under certain circumstances, a contractor's policy that provides PTO, which an employee can use for any purpose, including but not limited to as paid sick leave, can satisfy the contractor's obligations under the EO. Specifically, a contractor's existing PTO policy will satisfy the requirements of EO 13706 if the PTO:

(1) is available to all the employees covered by the EO;

(2) may be used for at least all of the purposes described in FOH 19j01;

(3) is provided in a method and amount that gives employees as much PTO they would receive as paid sick leave under the accrual, carryover, and other rules described in FOH 19d and FOH 19f;

(4) is provided in a way that is compliant with the rules and restrictions regarding the use of paid sick leave, requests for leave, and certification and documentation described in FOH 19j and FOH 19k, when used for purposes described in FOH 19j; and

(5) is protected by the prohibitions against interference, discrimination, recordkeeping violations, and waiver of rights described in FOH 19n00–03, when used for the purposes described in FOH 19j. *See* 29 CFR 13.5(f)(5).

References:
29 CFR 13.5(f)(5)

19h01 Paid time off policies and DBA or SCA requirements.

PTO used to satisfy the EO requirements cannot also count toward satisfying any applicable DBA or SCA requirements. However, if a contractor's PTO policy provides more PTO than is necessary to comply with the EO, the contractor could count that additional PTO toward fulfilling DBA or SCA requirements.

References:
29 CFR 13.5(f)(2)

19h02 Paid time off policies that provide more than 56 hours of leave per accrual year.

(a) A contractor with a PTO policy that provides more than 56 hours of leave per accrual year has two options:

(1) The contractor can choose to provide all PTO as described in FOH 19j.

(2) The contractor can choose to track, make, and maintain records reflecting the amount of PTO an employee uses for the purposes described in FOH 19j. If the contractor chooses this option, the contractor is only required to provide, for each accrual year, up to 56 hours of PTO the employee requests to use for such purposes to comply with the EO and 29 CFR part 13.

Scenario 1:

A contractor provides its employees with 120 hours of PTO per accrual year. The contractor maintains a record of the amount of PTO used by each employee and distinguishes between leave used for the purposes described in FOH 19j and all other leave. The contractor also maintains its records in such a way that each employee has access to a record of how much PTO they have used for the purposes described in FOH 19j. Therefore, the contractor provides each employee with information on how many hours of paid sick leave, subject to the protections of the EO, the employee has remaining for use out of at least 56 hours per accrual year. An employee who uses 56 hours for the purposes described in FOH 19j early in the accrual year would not be entitled to the EO's protections for their remaining 64 hours of PTO, regardless of the purposes for which they request to use them. In contrast, an employee who uses 64 hours of PTO for vacation early in the accrual year would still be entitled to use any or all of their remaining 56 hours of leave for such purposes subject to the protections required by the EO.

Scenario 2:

A contractor provides its employees with 120 hours of PTO per accrual year. An employee who uses 80 hours of PTO for vacation early in the year would only be entitled to use up to 40 remaining hours of leave for the purposes described in FOH 19j subject to the protections required by the EO, and if they use those 40 hours for another vacation, they would have no paid leave remaining that their contractor would be obligated to provide for the purposes described in FOH 19j.

Scenario 3:

A contractor that provides 120 hours of PTO chooses not to track and record the amount of PTO employees use for the purposes described in FOH 19j. This contractor would not have information to demonstrate that an employee has in fact used their full entitlement of up to 56 hours of paid sick leave for the purposes described in FOH 19j. If one of the contractor's employees uses 56 hours of leave early in the accrual year for reasons that the contractor did not document, even if the contractor was informally aware of those reasons, the employee would still be entitled to use any or all of their 64 remaining hours of PTO for the purposes described in FOH 19j subject to the protections of the EO.

(b) Regardless of whether a contractor distinguishes between PTO used for the purposes described in FOH 19j and other purposes, if a contractor's policy meets the requirements described in FOH 19h, the contractor is not required to provide any additional paid sick leave or PTO beyond the amount provided by the contractor's PTO policy. If a contractor's PTO policy does not meet the requirements described in FOH 19h, however, the contractor must

provide up to 56 hours of paid sick leave in compliance with the EO separately from any PTO it provides.

References:
29 CFR 13.5(f)(5)

19i MULTIEMPLOYER PLANS AND OTHER PLANS, FUNDS, OR PROGRAMS

19i00 Definition.

(a) For purposes of the EO, a multiemployer plan is a plan to which more than one employer is required to contribute and is maintained pursuant to one or more CBAs between one or more employee organizations and more than one employer. This is a broader definition than the one used for purposes of the Employee Retirement Income Security Act of 1974. *See* 29 USC 1002(37).

References:
29 CFR 13.8

19i01 Contractor responsibility.

(a) A contractor can comply with EO 13706 jointly with other contractors (*i.e.*, as though all of the contractors are a single contractor) through a multiemployer plan that provides paid sick leave in compliance with the EO. Each contractor participating in the multiemployer plan remains responsible for any violation of the EO or 29 CFR part 13 that occurs during its employment of employees. *See* 29 CFR 13.8(a).

Scenario:

An employee is a member of a union that has a CBA with Contractors A and B that requires that the employers will contribute to a multiemployer plan to provide paid sick leave that complies with the requirements of the EO. If the employee works for Contractor A on a DBA contract for a single pay period and accrues 2 hours of paid sick leave, and they subsequently work for Contractor B on a different DBA contract for several pay periods, the employee would begin the job for Contractor B with 2 hours of paid sick leave available for use and would accrue additional paid sick leave that would be added to those 2 hours for purposes of the accrual cap of no fewer than 56 hours for which the CBA provides.

(b) In the scenario in FOH 19i01(a) above, Contractors A and B are each separately responsible for complying with the EO as to the employee's accrual and use of paid sick leave while working for each respective employer.

Scenario:

If Contractor B denied an employee's valid request to use paid sick leave the employee accrued while working for Contractor A, Contractor B would have violated the prohibition on interference with the use of paid sick leave described at FOH 19n00, and Contractor A would not be responsible for that violation.

(c) Contractors can provide paid sick leave through any fund, plan, or program. However, regardless of the manner in which a contractor provides paid sick leave or what functions any

fund, plan, or program performs, the contractor remains responsible for any violation of the EO or 29 CFR part 13 with respect to any of its employees. *See* 29 CFR 13.8(b).

References:
29 CFR 13.8

19i02 Third-party administrators.

To the extent the plan or any third party that administers the plan plays a role in administering paid sick leave (*e.g.*, by tracking accrual, notifying employees of the amounts of paid sick leave they have accrued but not used, responding to employee requests to use paid sick leave, or providing employees with the pay and benefits to which they are entitled while using paid sick leave), the contractor for which the employee is working at the time such actions are taken is responsible for ensuring that the plan performs those functions in compliance with the requirements of the EO.

References:
29 CFR 13.8(a)

19j USE OF PAID SICK LEAVE

19j00 When paid sick leave can be used.

(a) A contractor must permit an employee to use their available paid sick leave during time the employee would have been performing work on or in connection with a covered contract. However, if the contractor estimates the employee's hours worked in connection with such contract for purposes of accrual pursuant to FOH 19d01(d), it must permit the employee to use available paid sick leave during any work time.

(b) Use of paid sick leave is specific to a contractor, rather than a contract. Consequently, an employee who has accrued paid sick leave working on or in connection with one covered contract could use the leave for time they would otherwise have been working on or in connection with another covered contract for the same contractor.

Scenario:

An employee accrues 4 hours of paid sick leave over the course of several pay periods during which they work for a single contractor in connection with 1 covered contract for 60 hours and another 2 covered contracts for 30 hours each. They may use their accrued paid sick leave during the time they are scheduled to perform work in connection with any of the 3 contracts, or any other covered contract, on behalf of the same contractor.

References:
29 CFR 13.5(c)

19j01 Purposes for which paid sick leave can be used.

(a) A contractor must permit an employee to use paid sick leave to be absent because of:

(1) a physical or mental illness, injury, or medical condition of the employee;

(2) obtaining diagnosis, care, or preventive care from a health care provider by the employee;

(3) 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 needs for diagnosis, care, or preventive care referred to in FOH 19j01(a)(1) or FOH 19j01(a)(2) or is otherwise in need of care; or

(4) domestic violence, sexual assault, or stalking, if the absence from work is for the purposes otherwise described in FOH 19j01(a)(1) or FOH 19j01(a)(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 FOH 19j01(a)(3) in engaging in any of these activities.

References:
29 CFR 13.5(c)(1)

(b) Physical or mental illness, injury, or medical condition

This term is meant to broadly include any illness, injury, or medical condition, regardless of whether it requires attention from a health care provider or whether it would be a "serious health condition" that qualifies for use of leave under the FMLA. Examples of conditions included are a common cold, ear infection, upset stomach, ulcer, flu, headache, migraine, sprained ankle, broken arm, or depressive episode.

References:
29 CFR 13.5(c)(1)(i)

(c) Obtaining diagnosis, care, or preventive care from a health care provider

This term means receiving services from a health care provider, whether to identify, treat, or otherwise address an existing condition or to prevent potential conditions from arising. Examples include obtaining a prescription for antibiotics at a health clinic, attending an appointment with a psychologist, having an annual physical or gynecological exam, or receiving a teeth cleaning from a dentist's assistant. Time spent traveling to and from the location at which such services are provided, or recovering from receiving such services is also included.

References:
29 CFR 13.5(c)(1)(ii)

(d) Caring for a 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 needs for diagnosis, care, or preventive care referred to in FOH 19j01(a) or FOH 19j01(b) or is otherwise in need of care

(1) This category is meant to include a wide range of family members and individuals who are like family to the employee. In addition to children, parents, spouses, and domestic partners, it includes grandparents, grandchildren, siblings, siblings-in-law,

fiancées, fiancés, cousins, uncles, and aunts. It also includes any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

(2) This category includes when an individual for whom an employee is caring has any of the broadly understood conditions or needs referred to in FOH 19j01(a)(1)–(2). For example, an employee may use paid sick leave to be with a child home from school with a cold, or to accompany their spouse to an appointment at a fertility clinic.

(3) This category's reference to individuals "otherwise in need of care" refers to non-medical caregiving for an individual who has a general need for assistance related to the individual's underlying health condition. For example, an employee may use paid sick leave to provide their grandfather, who has dementia, unpaid assistance with bathing, dressing, and eating if the grandfather's usual paid personal care attendant is unable to keep their regular schedule.

References:
29 CFR 13.5(c)(1)(iii)

(e) Reasons related to domestic violence, sexual assault, or stalking

This purpose of this category of leave is to ensure that victims of domestic violence, sexual assault, or stalking are able to obtain the care, safety, and legal protections they need without losing wages or their jobs, and that employees can assist such victims who are family members or like family in doing so. Assisting another individual who is a victim of domestic violence, sexual assault, or stalking includes, but is not limited to, accompanying the victim to see a health care provider, attorney, social worker, victim advocate, or other individual who provides services the victim needs as a result of the domestic violence, sexual assault, or stalking.

Scenario 1:

An employee who is a victim of domestic violence could use a day of paid sick leave to prepare for a meeting with an attorney, travel to the attorney's office, have the meeting to discuss their legal options, and travel home.

Scenario 2:

An employee who is a victim of sexual assault or stalking could use a day of paid sick leave to go to a courthouse to determine the process for filing a petition for a civil protection order, complete any necessary paperwork, and file the paperwork with the court, and use another full day to attend proceedings at the court in support of the application, including mandatory mediation.

Scenario 3:

An employee could use a day of paid sick leave to seek legal protections for a minor victim of domestic violence or child sexual abuse, including filing a police report and/or seeking a civil protection order, medical treatment for the victim, or emergency relocation services.

References:
29 CFR 13.5(c)(1)(iv)

19j02 **Amount of paid sick leave used.**

(a) A contractor must account for an employee's use of paid sick leave in increments of no more than 1 hour. *See* 29 CFR 13.5(c)(2).

Scenario:

If an employee needs to be an hour late for work because they accompanied their sister to a chemotherapy appointment that morning, their employer must permit them to use 1 hour of paid sick leave (rather than, for instance, requiring them to take a full day off or use a full day's leave).

(b) A contractor may not reduce an employee's accrued paid sick leave by more than the amount of time the employee is actually absent from work, and may not require an employee to use more leave than is necessary to address the circumstances that caused the need for leave. Therefore, if a contractor chooses to waive its increment of leave policy in order to return an employee to work, the contractor would be required to treat the employee as having used no more than the amount of leave the employee actually used. Under no circumstances could a contractor treat an employee as having used paid sick leave for any time the employee was working.

Scenario:

If an employee arrives half an hour late to work because they were at an appointment with a psychologist, and the contractor waives its normal 1-hour increment of leave and puts the employee to work immediately, the contractor may deduct half an hour from the employee's accrued paid sick leave.

(c) The amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen. Similarly, if an employee is using paid sick leave at a time when they could have worked beyond their scheduled hours but would not have been required to do so, the contractor could not treat the employee as having used paid sick leave for those optional hours.

Scenario 1:

An employee is scheduled to work from 9 a.m. to 3 p.m., and they are absent from work from 10:30 a.m. to 12:30 p.m. to take their father to a doctor's appointment. A contractor may deduct no more than 2 hours of paid sick leave from their accrued paid sick leave.

Scenario 2:

An employee is scheduled to work from 9 a.m. to 3 p.m. and they are absent from work for the entire day to care for their sick child. A contractor may deduct no more than 6 hours of paid sick leave from their accrued paid sick leave.

Scenario 3:

An employee is scheduled to work from 9 a.m. to 3 p.m. They could have chosen to stay until 7 p.m. that night to earn overtime, but they were absent for the entire day. A contractor may not deduct more than 6 hours of paid sick leave from the employee's accrued paid sick leave.

(d) If it is not physically possible for an employee to begin or end work mid-way through a shift, such as a flight attendant or a railroad engineer scheduled to work aboard an airplane or train, or a laboratory employee unable to enter or leave a sealed clean room during a certain period of time, and no equivalent position is available, the entire period of time the employee is absent will be paid sick leave. The period of the physical impossibility is limited to the period during which the contractor is unable to permit the employee to work prior to the use of paid sick leave or return the employee to the same or an equivalent position due to the physical impossibility after the use of paid sick leave. *See* 29 CFR 13.5(c)(2)(iii).

(e) A contractor may not limit the amount of paid sick leave an employee may use per accrual year or at once on any basis other than the amount of paid sick leave the employee has available. *See* 29 CFR 13.5(c)(4). For example, an employer may not establish a policy prohibiting an employee from using any particular number of hours of paid sick leave in a single workweek, or deny an employee's request to use paid sick leave based on the length of time requested (as long as the employee has accrued sufficient paid sick leave to cover the time).

Scenario:

An employee carries over 16 hours of paid sick leave from accrual year 1 into accrual year 2. The employee gets the flu and uses all 16 hours to be absent from work for 2 days. They then accrues 56 hours of paid sick leave in the remainder of accrual year 2. Their employer may not prohibit them from using all 56 hours at the end of accrual year 2 to care for their father while during recovery from surgery, even though the employee will have used more than a total of 56 hours of paid sick leave in accrual year 2.

(f) Under 29 CFR part 13, an employee is encouraged to make a reasonable effort to schedule preventive care or another foreseeable need to use paid sick leave to suit the needs of both the contractor and employee, and a contractor may ask an employee to make a reasonable effort to schedule foreseeable absences for paid sick leave so as to not disrupt unduly the contractor's operations. A contractor may not, however, make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or on the fulfillment of the contractor's operational needs. *See* 29 CFR 13.5(c)(5).

References:
29 CFR 13.5(c)(2)–(5)

19j03 Pay while using paid sick leave.

(a) A contractor must provide an employee using paid sick leave the same pay and benefits the employee would have received had the employee not been absent from work.

(b) Regular pay

(1) While using paid sick leave, employees paid on a salary basis may not face any deduction in pay, and employees paid hourly must receive the same hourly rate of pay they would have earned had they been present at work.

(2) Regular pay means only payments that would be included in the calculation of the employee's regular rate for hours worked under the FLSA (or basic rate for purposes of the Contract Work Hours and Safety Standards Act (CWHSSA), 40 USC 3701 *et seq*.). This must be provided to an employee using paid sick leave to fulfill the obligation to provide the same pay to that employee. The relevant FLSA principles (adopted under the CWHSSA, *see* 29 CFR 5.15(c)) are set forth at 29 CFR part 778.

(3) Note that the regular pay for an employee paid under subminimum wage certificates under section 14(c) of the FLSA is calculated at a rate equal to the employee's average hourly earnings during the most representative period, not to exceed a quarter. *See* FOH 64 for more information about section 14(c) of the FLSA.

References:
29 CFR 13.5(c)(3)

(c) Same benefits

(1) An employee must receive the same benefits that they would have received were they present at work while using paid sick leave. For example, a contractor must continue to make contributions to any fringe benefit plan (*e.g.*, a health insurance plan or retirement account) for the time an employee is using paid sick leave and count such time toward the earning of other benefits (*e.g.*, the accrual of vacation time), although the time the employee is using paid sick leave does not constitute hours worked for purposes of paid sick leave accrual.

(2) Any benefits should generally be provided in the same manner in which an employee receives them when they are present at work rather than using paid sick leave. For example, if a contractor provides its employees with health insurance coverage by making monthly payments to a third-party insurer on behalf of each employee, the contractor must not make any reduction in such payments to account for time an employee used paid sick leave. Similarly, if a contractor satisfies its requirements under the DBA by making contributions to a benefit fund of a certain amount per hour that an employee works on DBA-covered contracts, it must continue to make the same payments when the employee is using paid sick leave.

(3) Contractors may make contributions to benefit plans that will not accept contributions for nonwork time and an amendment to such a plan may not feasible. Therefore, the contractor is unable to provide the same benefits to an employee during the time the employee is using paid sick leave. The contractor may instead provide cash or another benefit of the same or greater value as the benefits it cannot provide.

References:
29 CFR 13.5(c)(3)

(d) Regular pay and benefits under the DBA and SCA

Employees whose wages are governed by the SCA or DBA would receive the same wages and benefits required under those statutes, including health and welfare and other fringe benefits or the cash equivalent thereof, as they would have earned had they been present at work instead of using paid sick leave.

(e) Varying wage rates

For an employee who receives different pay and benefits for different portions of their work (*e.g.*, an employee who works as a carpenter on one DBA-covered contract and a skilled laborer on another DBA-covered contract on which they work for the same contractor), the pay and benefits due while the employee uses paid sick leave is to be determined based on which work they would have been performing at the time they use the leave. The employee's pay rate at the time they accrued the paid sick leave is not relevant.

References:
29 CFR 13.5(c)(3)

(f) Timing of pay

The contractor shall compensate an employee for time during which the employee used paid sick leave no later than one pay period following the end of the regular pay period in which the paid sick leave was used.

References:
29 CFR 13.27

19k REQUESTING, GRANTING, AND DENYING PAID SICK LEAVE

19k00 General.

A contractor must permit an employee to use any or all of the employee's available paid sick leave upon an oral or written request, made at least 7 days in advance or as soon as practicable, that includes enough information to inform the contractor that the employee is seeking to be absent from work for a purpose outlined in FOH 19j and, to the extent possible, the anticipated duration of the leave.

References:
29 CFR 13.5(d)

19k01 Requesting paid sick leave.

(a) Contents of request

(1) *Need for leave*

An employee's request to use leave does not need to specifically refer to the EO, "sick leave," or "paid sick leave," and a contractor may not require an employee to specify all the symptoms or details of the need for leave. *See* 29 CFR 13.5(d). An employee could simply state, for example, that the employee has a cold, a dentist appointment, or an appointment with an attorney regarding a domestic violence matter. In such cases, the employer could not ask, for the purposes of approving or

denying the paid sick leave, when the cold began or how severe it is, which dentist the employee is seeing or for what purpose, or for any detail regarding the domestic violence.

(2) *Family or family-like relationship*

Similarly, a contractor may not require an employee to include in their request extensive details regarding the employee's relationship with an individual for whom the employee wishes to care in the time absent from work. The employee only needs to inform the contractor that they have a family or family-like relationship with the individual. For example, it is sufficient for an employee to say that the employee's son has a stomach bug, the employee's husband or wife was injured in a car accident, the employee's ill grandmother needs care, or a man who is like a brother to the employee needs to be accompanied to a doctor's appointment.

(3) *Duration of leave*

An employee should make a good faith effort to provide a reasonable estimate of the amount of time they will need to be absent from work. A contractor must, however, permit an employee to return to work earlier, or continue to use available paid sick leave for longer, than the employee anticipated.

References:
29 CFR 13.5(d)

(b) Timing of request

If the need for the leave is foreseeable, an employee's request for leave must be made at least 7 days in advance. If the request cannot be made in advance, it must be made as soon as practicable, usually either on the day the employee becomes aware of the need or the next business day. In all cases, the determination of when an employee could practicably make a request must take into account the individual facts and circumstances. *See* 29 CFR 13.5(d)(2).

Scenario 1:

An employee makes an appointment for their daughter to have an annual exam with their doctor 2 weeks in the future. The employee should ask to use paid sick leave to take their daughter to the appointment at least 7 days before the date on which it is scheduled.

Scenario 2:

The nurse at an employee's daughter's school calls one afternoon to say the daughter has a high fever and they need to take their daughter out of school right away. The employee plainly could not have requested leave 7 days in advance, and they should instead request leave as soon as practicable. Depending on the circumstances, as soon as practicable could be as the employee is preparing to leave work to get their daughter, when they get home with their daughter later that evening (perhaps after their daughter falls asleep), or the next morning (assuming the following day was a business day).

Scenario 3:

An employee is in a serious car accident, is taken to the hospital, and has surgery the next day. They could not practicably have requested leave the day of the accident or the surgery (*i.e.*, the day they become aware of the need for leave or the following day).

References:
29 CFR 13.5(d)(2)

(c) Manner of request

The request should be submitted to the appropriate personnel in compliance with a contractor's policy or, in the absence of a formal policy, to any personnel who typically receive requests for other types of leave or who are responsible for scheduling matters. The policy may include particular procedures to use to contact the specified personnel, such as a designated phone number or email address, as long as an employee may communicate the request by at least one oral and one written method. If the employee directs a request to someone who is not the individual or individuals identified in the contractor's policy, the recipient may formally reject the request or explain that they are without authority to respond to it. In either case, the recipient may inform the employee of the correct personnel to whom to direct a new request, or may forward the request to the correct personnel himself or herself.

References:
29 CFR 13.5(d)(1)(iii)

19k02 Granting or denying the request.

(a) A contractor must respond to any request to use paid sick leave as soon as practicable (*i.e.*, as promptly as reasonable under the circumstances).

(b) A contractor can communicate its grant of a request to use paid sick leave orally or in writing, including electronically if the contractor customarily corresponds with or makes information available to its employees by such means.

(c) A denial of a request must be in writing, including electronically if the contractor customarily corresponds with or makes information available to its employees by such means. Appropriate reasons for denial include, but are not limited to, the following:

(1) The employee did not provide sufficient information about the need for paid sick leave.

(2) The employee's reason for the need for paid sick leave is not consistent with the use of paid sick leave described in FOH 19j01.

(3) The employee did not indicate when the need would arise.

(4) The employee has not accrued, and will not accrue, a sufficient amount of paid sick leave by the time the leave is to be taken. In such case, unless the employee has no accrued leave, only a partial denial is appropriate.

(5) The leave is to be taken during the time the employee is scheduled to be performing noncovered work. A denial for this reason must be supported by records segregating the employee's time on covered and noncovered contracts. If a contractor estimates

the amount of time an employee spends performing work in connection with covered contracts, the employee must be permitted to use paid sick leave during any work time for the contractor, not just while the employee is working on or in connection with covered contracts. *See* FOH 19d01(d).

(d) If a denial is based on insufficient information, a contractor must permit an employee to submit a corrected request, as discussed in FOH 19k03(e).

References:
29 CFR 13.5(d)(3)

19k03 Certifying or documenting the need for paid sick leave.

(a) A contractor may require that a health care provider certify the need for paid sick leave used for the purposes described in FOH 19j01(a)(1)–(3) only if an employee is absent for 3 or more consecutive full workdays. A certification by a health care provider can be any type of written document created or signed by a health care provider, or representative of the health care provider, that contains information verifying that the reason for using paid sick leave exists. The health care provider or representative need not have seen the employee or the individual for whom the employee is caring in person to create a valid certification.

(b) A contractor may require documentation from an appropriate individual to verify the need for paid sick leave used for the purposes described in FOH 19j01(a)(4) (*i.e.*, absences related to domestic violence, sexual assault, or stalking) only if an employee is absent for 3 or more consecutive full workdays. The source of this documentation can be any person involved in providing or assisting with care, counseling, relocation, or related legal action such as, but not limited to, a health care provider, counselor, victim services organization, victim services representative, attorney, clergy member, family member, or close friend. Self-certification is also permitted. Only the minimum documentation necessary to establish a need for the employee to be absent from work may be required.

Scenario 1:

Documentation could include a note from a social worker at a victim services organization stating that an employee received services from the organization related to being a victim of domestic violence, and moved to a new home for reasons related to the domestic violence, as well as a receipt from a moving company or a note from a landlord that indicates the date(s) of the move. This information need not name the perpetrator of the domestic violence, the nature of the acts that constitute domestic violence, the addresses of the old or new home, or any other details beyond those sufficient to make clear that the time was used for a purpose that justifies the use of paid sick leave.

Scenario 2:

A letter from a legal services attorney or sexual assault victim advocate, assisting an employee who is a victim of sexual assault in completing the paperwork related to and filing for a civil protection order or restraining order, could provide documentation explaining that the employee spent 3 or more consecutive full workdays with the attorney or advocate preparing for the hearing, including completing the petition for the court's order, obtaining a time for the hearing, and attending the hearing, including waiting at the courthouse and attending the proceedings. The letter would not need to explain the circumstances of the

sexual assault, name the person(s) accused of the sexual assault, or otherwise provide any details beyond those sufficient to justify the need to use paid sick leave.

Scenario 3:

An employee uses 3 or more consecutive full workdays of paid sick leave to fly across the country to be with their daughter who is a victim of sexual assault to provide support related to an administrative hearing at the university the daughter attends. Documentation could consist of the boarding passes from the employee's flights and emails from a university official to the daughter setting the date of the hearing, without providing details about the specific subject matter of the hearing.

(c) If the certification or documentation is to verify the illness, injury, condition, or need for care for an individual who is an employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity, a contractor may also require the employee to provide reasonable documentation of the family or family-like relationship. The documentation provided by the employee could be a legal or other document proving the relationship, such as a birth certificate or court order, or could be a simple written statement by the employee.

References:
29 CFR 13.5(e)

(d) Requesting certification or documentation

(1) Certification or documentation may be required only if a contractor informs an employee before the employee returns to work that such certification or documentation will be required if the employee is absent for 3 or more consecutive workdays.

(2) A contractor may inform an employee of this requirement each time the employee requests to use or uses paid sick leave, or the contractor may inform employees of a general policy to require certification or documentation for absences of 3 or more consecutive full workdays if it does so in a manner reasonably calculated to provide actual notice of the requirement to employees.

(3) Certification or documentation may be required within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave. A contractor may not establish a shorter deadline for the submission.

References:
29 CFR 13.5(e)(3)(i)–(ii)

(e) Reviewing certification or documentation

(1) While a contractor is waiting for or reviewing certification or documentation, it must treat an employee's otherwise proper request as valid.

(2) If an employee provides certification or documentation that is not sufficient to verify the need for paid sick leave, a contractor must allow the employee at least 5 days to provide new or supplemental certification or documentation.

(3) If an employee has not provided the requested certification within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave, has not provided new or supplemental certification or documentation within the required time period of no fewer than 5 days, or has submitted new or supplemental certification or documentation that is still insufficient, a contractor may retroactively deny the request for paid sick leave within 10 calendar days of the employee's deadline for resubmission.

(4) A contractor may recover the value of the pay and benefits an employee received through deductions from any money due to the employee (*e.g.*, unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not violate any applicable federal, state, or local laws.

References:
29 CFR 13.5(e)(3)(iii)

(f) Authentication or clarification

(1) A contractor may contact the health care provider or other individual who created or signed the certification or documentation only for purposes of authenticating the document or clarifying its contents.

a. Authentication means verifying that the health care provider or other individual did in fact create or sign the certification or documentation.

b. Clarification means contacting the health care provider or other individual to understand the illegible handwriting or other unreadable text or ask for an explanation of the meaning of words used or information contained in the certification.

(2) A contractor may not request additional details about the medical or other condition, seek a second opinion, or otherwise question the certification or documentation.

(3) If made, this contact must be by a human resource professional, leave administrator, or management official. An employee's direct supervisor cannot contact the employee's healthcare provider or other individual unless there is no other appropriate person who can do so.

References:
29 CFR 13.5(e)(4)

19L CONTRACTING AGENCY REQUIREMENTS

19L00 Including the required contract clause.

(a) Contract clause

A contracting agency must include the EO paid sick leave contract clause set forth in Appendix A of 29 CFR part 13 in all covered contracts and solicitations for such contracts, as described in 29 CFR 13.3, except for procurement contracts subject to 48 CFR 52.222-62. The clause at 48 CFR 52.222-62 must be inserted into any procurement contract subject to

EO 13706 and the FAR. The required contract clause directs, as a condition of payment, that all employees performing work on or in connection with covered contracts must be provided with paid sick leave as required by EO 13706 and 29 CFR part 13.

References:
29 CFR 13.11(a)

(b) Failure to include the contract clause

Where the DOL or contracting agency discovers or determines, whether before or after contract award, that the contracting agency made an erroneous determination that EO 13706 and 29 CFR part 13 did not apply to a particular contract, and/or failed to include the applicable contract clause in a contract to which EO 13706 applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the DOL, must incorporate the contract clause in the contract, retroactive to the beginning of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

References:
29 CFR 13.11(a)

19L01 Withholding funds from, or suspending payment to, noncompliant contractors.

(a) A contracting officer must, upon their own action or upon written request of an authorized representative of the DOL, withhold or cause to be withheld from a prime contractor under a covered contract, or any other federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the EO or 29 CFR part 13. *See* 29 CFR 13.11(c).

(b) In the event of any such violation, a contracting agency may, upon authorization or upon the direction of the Administrator of the WHD (Administrator) and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until the violations have ceased. Additionally, any failure to comply with the requirements of EO 13706 or 29 CFR part 13 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(c) A contracting officer must, upon their own action or upon the direction of the WHD and written notification of the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds to a contractor that has failed to make available for inspection, copying, and transcription any of the records identified in 29 CFR 13.25 (and also listed at FOH 19m03). *See* 29 CFR 13.11(d).

References:
29 CFR 13.11(c)–(d)
29 CFR 13.25

19L02 Action on complaints.

(a) Reporting time frame

A contracting agency must forward all information specified at 29 CFR 13.11(e)(2) to the local office of the WHD within 14 calendar days of receipt of a complaint alleging a contractor's noncompliance with EO 13706, or within 14 calendar days of being contacted by the WHD regarding any such complaint. *See* 29 CFR 13.11(e).

References:
29 CFR 13.11(e)

(b) Report contents

(1) A contracting agency must forward to the local offices of the WHD any:

a. complaint of contractor's noncompliance with EO 13706 or 29 CFR part 13;

b. available statements by an employee, contractor, or any other person regarding the alleged violation;

c. evidence that the EO 13706 contract clause was included in the contract;

d. information concerning known settlement negotiations between the parties, if applicable; and

e. any other relevant facts known to the contracting agency or other information requested by the WHD.

References:
29 CFR 13.11(e)

19m CONTRACTOR REQUIREMENTS

19m00 Contract clause.

(a) As required by 29 CFR 13.11(a), executive departments and agencies must include the applicable EO paid sick leave contract clause, either the contract clause set forth in Appendix A of 29 CFR part 13 or the contract clause set forth in 48 CFR 52.222-62 depending on the type of contract, in any new contracts and solicitations for contracts covered by EO 13706. This contract clause and the regulations require that contractors allow employees performing work on or in connection with covered contracts to accrue and use paid sick leave as required by the EO and 29 CFR part 13. *See* 29 CFR 13.21–.22.

(b) A contractor, as a condition of payment, must abide by the terms of the applicable EO paid sick leave contract clause referred to in 29 CFR 13.11(a).

(c) Prime contractors and upper-tier subcontractors must insert the EO paid sick leave contract clause in any covered subcontracts and must require, as a condition of payment, that subcontractors include the clause in all lower-tier subcontracts.

(d) It is the responsibility of the prime contractor and upper-tier contractor(s) to ensure compliance by any covered subcontractor(s) or lower-tier subcontractor(s) with the EO paid sick leave contract clause. *See* 29 CFR 13.21(b).

References:
29 CFR 13.21–.22
29 CFR 13.11(a)

19m01 Deductions.

(a) A contractor may make deductions from the pay and benefits of an employee who is using paid sick leave only if the deductions qualify as:

(1) deductions required by federal, state, or local law, including federal or state withholding of income taxes;

(2) deductions for payments made to third parties pursuant to court orders, such as those made for child support;

(3) deductions directed by a voluntary assignment of the employee or their authorized representative, including deductions for U.S. savings bonds, union dues, and payments to charitable organizations;

(4) deductions made for the reasonable cost or fair value, as determined by the Administrator, of furnishing such employee with board, lodging, or other facilities. Deductions for these items must be in compliance with 29 CFR part 531; or

(5) deductions, to the extent permitted by law, for the purpose of recouping pay and benefits provided for paid sick leave that was retroactively denied pursuant to 29 CFR 13.5(e)(3)(iii), or because the contractor approved the use of paid sick leave based on a request that was determined to be fraudulent.

References:
29 CFR 13.23
29 CFR 13.5(e)(3)(iii)
29 CFR part 531

19m02 Anti-kickback.

All paid sick leave used by an employee performing work on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in 29 CFR 13.23), rebate, or kickback on any account. Kickbacks directly or indirectly to a contractor or another person for the contractor's benefit for the whole or part of the paid sick leave are prohibited. *See* FOH 19n04.

References:
29 CFR 13.24

19m03 Interference and Discrimination.

Contractors are prohibited from interfering with an employee's accrual or use of EO 13706 paid sick leave and from discharging or in any other way discriminating against an employee for using or attempting to use EO 13706 paid sick leave, filing a complaint, cooperating in any investigation or proceeding under the EO, or informing any other person about their rights under the EO. *See* FOH 19n00 and 19n01.

References:
29 CFR 13.6

19m04 Records to be kept by contractors.

(a) As provided under 29 CFR 13.25(a), a covered contractor and subcontractor must make and maintain, during the course of the covered contract, and preserve for no fewer than 3 years thereafter, the following required records:

(1) Name, address, and social security number of each employee;

(2) Employee's occupation(s) or classification(s);

(3) Rate or rates of wages paid, including all pay and benefits provided;

(4) Number of daily and weekly hours worked by each employee;

(5) Any deductions made;

(6) Total wages paid, including all pay and benefits provided each pay period;

(7) A copy of notifications to employees of the amount of paid sick leave the employees have accrued as required by 29 CFR 13.5(a)(2) and described in FOH 19e00;

(8) A copy of all employee requests to use paid sick leave if in writing or, if not in writing, any other records reflecting such employee requests;

(9) Dates and amounts of paid sick leave used by employees (unless a contractor's PTO policy satisfies the requirements of EO 13706 and 29 CFR part 13 as described in 29 CFR 13.5(f)(5) and FOH 19h, the leave must be designated in records as paid sick leave pursuant to EO 13706);

(10) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required by 29 CFR 13.5(d)(3) and described in FOH 19k02;

(11) Any records relating to the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;

(12) Any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;

(13) Relevant covered contract;

(14) Regular pay and benefits provided to an employee for each use of paid sick leave; and

(15) Any financial payment made for unused paid sick leave upon a separation from employment pursuant to 29 CFR 13.5(b)(5) intended to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(b) If a contractor wishes to distinguish between an employee's covered and noncovered work, such as performing work on or in connection with covered contracts versus time spent performing work on or in connection with noncovered contracts, or to establish that time spent performing work in connection with covered contracts was less than 20 percent of the employee's hours worked in a particular week, the contractor must keep records or other proof reflecting these distinctions.

(c) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts as permitted by 29 CFR 13.5(a)(1)(i) or (iii), the contractor must keep records or proof of the verifiable information on which the estimates are based.

(d) If a contractor is not obligated by the SCA, DBA, or FLSA to keep records of an employee's hours worked because, for example, the employee is employed in a bona fide executive, administrative, or professional capacity as defined by 29 CFR part 541, and the contractor uses the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is not required to keep records of daily and weekly hours worked.

(e) Records relating to medical histories or domestic violence, sexual assault, or stalking created by or provided to a contractor for purposes of EO 13706 must be maintained as confidential records separately from the usual personnel files and records. If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008, section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act apply to medical information contained in records or documents that the contractor created or received in connection with compliance with the recordkeeping or other requirements of this part, the records and documents must be maintained in compliance with these requirements as well. The contractor must not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(d)(2)) and must maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(f) A contractor must make the above records available for inspection and transcription by the WHD. A contractor is also required to permit authorized representatives of the WHD to conduct interviews of employees at the worksite during normal working hours.

(g) The general recordkeeping and related requirements for a contractor under EO 13706 are partially derived from the FLSA, SCA, and DBA. EO 13706 does not limit or otherwise modify the contractor's recordkeeping obligations, if any, under the DBA, SCA, FLSA, FMLA, EO 13658, or their implementing regulations, or any other applicable law.

References:
29 CFR 13.25

19m05 Notice to employees.

A contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of EO 13706 by posting a notice provided by the DOL in a prominent and accessible place at the worksite. The poster is available at the WHD's government contracts, EO 13706 website. A contractor that customarily posts notices to employees electronically may post the EO 13706 notice electronically as well.

References:
29 CFR 13.26

19n PROHIBITED ACTIONS

19n00 Interference.

(a) A contractor is prohibited from interfering with an employee's accrual or use of EO 13706 paid sick leave by, for example:

(1) miscalculating the amount of paid sick leave accrued by the employee;

(2) denying or unreasonably delaying a response to a proper request to use paid sick leave;

(3) discouraging the employee from using paid sick leave;

(4) reducing the employee's accrued paid sick leave by more than the amount of such leave used;

(5) transferring the employee to noncovered contracts for the purpose of preventing the employee from accruing or using paid sick leave;

(6) disclosing confidential information received to certify or document the need to use paid sick leave; or

(7) making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs. *See* 29 CFR 13.6(a).

Scenario 1:

A contractor denies a request to use paid sick leave for an appointment with a clinical social worker because the contractor mistakenly believes a clinical social worker is not a health care provider.

Scenario 2:

A contractor denies a request to use paid sick leave to accompany an employee's sister to a court proceeding regarding stalking because the contractor does not believe the employee can use paid sick leave for a family member's legal proceeding related to stalking.

References:
29 CFR 13.44(a)

19n01 **Discrimination.**

(a) A contractor is prohibited from discharging or in any other way discriminating against an employee for:

(1) using, or attempting to use, EO 13706 paid sick leave;

(2) filing a complaint;

(3) cooperating in any investigation or proceeding under the EO; or

(4) informing any other person about their rights under the EO. *See* 29 CFR 13.6(a).

(b) Examples of discriminatory acts include, but are not limited to, reassigning an employee to fewer or less preferable shifts, to a less well-paid position, or to noncovered contracts, or using a request for or use of leave as a negative factor in a hiring, promotion, or disciplinary decision. *See* 29 CFR 13.6(b).

(c) To the extent it is supported by case law in the jurisdiction, the prohibition against discrimination applies even in situations where there is no current employment relationship between the parties so that it protects against discrimination by a prospective or former employer.

Scenario:

A contractor could not refuse to hire an employee to perform work on or in connection with a covered contract because the contractor would then be required to reinstate the employee's unused paid sick leave from prior covered work.

References:
29 CFR 13.44(b)
29 CFR 13.6
Field Assistance Bulletin No. 2022-02

(d) **Employees who engage in fraud**

(1) An employee who engages in fraud is not entitled to the benefits or protections afforded by the EO.

(2) A contractor may investigate situations in which it believes an employee has committed fraud.

(3) If a contractor determines, based on a reasonable investigation of the circumstances, that an employee has abused paid sick leave, it may respond appropriately, such as by recouping (to the extent permitted by law) pay and benefits provided when the employee used paid sick leave based on a request premised on false information or by imposing discipline on the employee.

(4) In the absence of verification of abuse, however, a contractor must permit an employee to accrue and use paid sick leave as required by the EO.

19n02 **Recordkeeping.**

Failure to make and maintain the records required by 29 CFR 13.25, or make them available to representatives of the WHD, constitutes a violation of EO 13706, 29 CFR part 13, and the underlying contract. *See* 29 CFR 13.6(c).

References:
29 CFR 13.6(c)

19n03 Waiver of rights.

An employee cannot waive, nor may a contractor induce an employee to waive, their rights under EO 13706 or 29 CFR part 13. *See* 29 CFR 13.7. This is consistent with the longstanding principle that an employee's rights and remedies under the FLSA, including payment of minimum wage and back wages, cannot be waived or abridged by a contract.

References:
29 CFR 13.7
Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 302 (1985)
Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 740 (1981)

19n04 Anti-kickback.

All paid sick leave used by an employee performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as permitted by 29 CFR 13.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or another person for the contractor's benefit for the whole or part of paid sick leave are prohibited, and may subject violating contractors to civil penalties under the Anti-Kickback Act, 41 USC 8701-07.

References:
29 CFR 13.24

19o COMPLAINTS AND REMEDIES

19o00 Complaints and investigations.

Any employee, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of EO 13706 has occurred can file a complaint with any office of the WHD. The identity of any individual making an oral or written complaint will be kept confidential and will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosures of such statements will be governed by the provisions of the Freedom of Information Act, 5 U.S.C. 552, 29 CFR part 70 and the Privacy Act of 1974, 5 U.S.C. 552a. The WHD may investigate possible violations of EO 13706 or 29 CFR part 13 in response to a complaint or at any time on its own initiative. Investigations may include interviews with contractors and employees and inspection of records, as well as require the production of documents or other evidence necessary to determine whether a violation has occurred.

References:
29 CFR 13.41–.43

19o01 Remedies.

(a) Interference and discrimination violations

(1) When the Administrator determines that a contractor fails to comply with the prohibition against interference and discrimination at 29 CFR 13.6(a) and (b), the Administrator will notify the contractor and contracting agency and request that the contractor remedy the violations. The Administrator will direct the contractor to provide any appropriate relief to the affected employee(s).

(2) If the violation is interference with an employee's accrual or use of paid sick leave, relief may include any pay and/or benefits denied or lost because of the violation, actual monetary losses caused by the violation, or other appropriate equitable or other relief.

(3) If the violation is discrimination against an employee, relief may include employment, reinstatement, promotion, restoration of leave, or lost pay and/or benefits.

(4) For either type of violation, the Administrator can direct payment of liquidated damages equal to any monetary relief unless the amount is reduced because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the EO. The Administrator can also direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as necessary to provide appropriate monetary relief.

References:
29 CFR 13.44(a)–(b)

(b) Recordkeeping violations

When a contractor fails to comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator will request that the contractor remedy the violation. If the contractor fails to produce the required records upon request, the contracting officer, at the direction of the DOL or under its own direction, will take such action as necessary to cause suspension of any further payment or guarantee of funds on the contract until the violations cease. *See* 29 CFR 13.44(c).

References:
29 CFR 13.6(c)
29 CFR 13.25
29 CFR 13.44(c)

19o02 Debarment.

When a contractor is found to have disregarded its obligations under EO 13706 or 29 CFR part 13, the contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or its responsible officers have an interest, will be ineligible to be awarded any contract or subcontract subject to EO 13706 for up to 3 years from the date of publication of the name of the contractor or its responsible officers on the excluded parties list currently at www.SAM.gov. *See* 29 CFR 13.44(d).

References:

29 CFR 13.44(d)

19o03 Civil actions to recover underpayments.

If payments withheld under 29 CFR 13.11(c) are not sufficient to reimburse all the monetary relief due, or if there are no payments to withhold, the DOL, following a final order of the Secretary, can bring an action against a contractor to recover the remaining amount. *See* 29 CFR 13.44(e).

References:
29 CFR 13.11(c)
29 CFR 13.44(e)

19o04 Retroactive inclusion of contract clauses.

If a contracting agency fails to include the applicable contract clause in a contract to which EO 13706 applies, the contracting agency, on its own initiative or within 15 calendar days of notification by the DOL, must incorporate the clause in the contract retroactive to the beginning of performance through the exercise of any and all authority that may be needed. *See* 29 CFR 13.44(f).

References:
29 CFR 13.44(f)

19p ADMINISTRATIVE DISPUTE PROCEEDINGS

19p00 Contractor compliance disputes.

(a) Disputes where it appears relevant facts are at issue

(1) If there is a dispute in which it appears that relevant facts are at issue concerning a contractor's compliance with 29 CFR part 13, the Administrator on their own motion, or upon the request of the contractor, will notify the affected contractor(s) of the investigative findings by certified mail.

(2) If the contractor wants a hearing regarding the findings, it must request a hearing within 30 days of the date of the Administrator's letter.

(3) Upon receiving a timely request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge (ALJ) to conduct a hearing as may be necessary.

References:
29 CFR 13.51

(b) Disputes where it appears no relevant facts are at issue

(1) If there is a dispute in which it appears that no relevant facts are at issue, and no reasonable cause to initiate debarment proceedings, the Administrator will notify the contractor(s) and issue a ruling letter.

(2) If the contractor disagrees with the factual findings of the Administrator, the contractor must advise the Administrator within 30 days of the date of the Administrator's letter.

(3) If the Administrator determines that relevant facts are at issue, the Administrator will refer the case to the Chief ALJ for a hearing.

(4) If a contractor wants a review of the ruling of the Administrator, it must file a petition for review with the Administrative Review Board (ARB) within 30 days of the ruling.

(c) If a timely response to the Administrator's investigative findings letter or ruling letter is not made, or a timely petition for review is not filed, the Administrator's letter becomes the final order of the Secretary. However, if a timely response or petition for review is filed, the Administrator's letter is inoperative unless and until the decision is upheld by an ALJ, the ARB, or otherwise becomes a final order. *See* 29 CFR 13.51(d).

References:
29 CFR 13.51(d)

19p01 **Debarment proceedings.**

When the Administrator finds reasonable cause to believe that a contractor has disregarded its obligations to employees or subcontractors, the Administrator must notify the contractor and its responsible officers by certified mail of the findings. The contractor and any other parties will be notified of the opportunity for a hearing as to whether they should be debarred, and be furnished with a summary of the investigative findings. A request for a hearing must be made within 30 days of the Administrator's letter advising of the investigative findings and must set forth any findings that are in dispute. Upon receiving a timely request, the Administrator will refer the case to the Chief ALJ for a hearing. *See* 29 CFR 13.52.

References:
29 CFR 13.52

19p02 **Consent findings.**

Any time before the receipt of evidence, or at the discretion of the ALJ before a decision is issued, the parties can enter into consent findings and an order disposing of the proceeding in whole or in part. *See* 29 CFR 13.54.

References:
29 CFR 13.54