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Hello, my name is Desmond Pitt, a Senior Analyst with the Wage and Hour Division of Government Contract Enforcement.

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This presentation will cover Executive Order 13658, an executive order made effective in 2014, but updated yearly, and indexed to inflation. It establishes a minimum wage for federal contractors. There is a lot to cover in this presentation and since our slide structure compresses a lot of information into it, I won't be reading every word on the slide, rather, I will cover the main points and add insights that may not be on the slides themselves.

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What is EO 13658?

This Executive Order establishes a minimum wage for federal contractors. Under the Executive Order, effective January 1, 2020, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Service Contract Act or the Davis Bacon Act for which the solicitations was issued on or after January 1, 2015. The EO minimum wage rate will be adjusted annually.

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The EO and its implementing regulations establish a minimum wage requirement for covered federal contractors and sub-contractors. The order provides that executive departments and agencies, shall to the extent permitted by law, insure that new covered contracts, contract-like instruments, and solicitations, collectively referred to as contracts, include a clause which the contractor and any sub-contractors shall incorporate into lower tier sub-contracts, specifying as a condition of payment the minimum wage paid to workers in the performance of the contract.

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The DOL and FAR regulations implementing EO 13658 and the respective DOL and Far contract clauses can be found at these locations. The DOL contract clause at 29 CFR Part 10, Appendix A, applies to all EO covered contracts not subject to the FAR regulations. The FAR contract clause at 48 CFR 52.222-55 applies to all EO-covered contracts that are subject to the FAR.

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EO 13658 Coverage and Basic Requirements

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What federal entities are covered?

EO 13658 applies to all executive departments and federal agencies. The Order strongly encourages but does not require independent agencies to comply with its requirements. The

Department's final rule interpreted independent agencies to mean any independent regulatory agency within the meaning of 44 USC 3502(5).

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Such independent regulatory agencies, including those identified below, are not subject to the Executive Order. For example, the Board of Governors of the Federal Reserve System, the Consumer Products Safety Commission, Federal Communications Commission, and the FDIC.

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The EO only applies to contracts with the federal government requiring performance in whole or in part within the United States. Defined in DOL regulations to mean the 50 states and the District of Columbia. If only a portion of the contract is performed in the US, then that portion of the contract is covered.

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In order for an agreement to be covered by EO 13658, the agreement must satisfy all of the following:

- it must qualify as a contract or contract-like instrument under the definition set forth in 29 C.F.R. 10.2;
- it must fall within one of the four enumerated kinds of contracts set forth in 29 C.F.R. 10.3;
- it must be a "new contract" pursuant to the definition provided in the regulation 29 C.F.R. 10.2;
- it must meet the value threshold requirements provided by 29 C.F.R. 10.3(b); and
- workers' wages under the contract must be governed by the FLSA, SCA or DBA.

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The Department has defined the terms "contract" and "contract-like instrument" collectively for purposes of the Order to mean an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term "contract" broadly 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, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing.

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An agreement that qualifies as a "contract" under the definition set forth above is only covered by E.O. 13658 if it falls within one of the following specifically enumerated types of contracts set forth in section 7(d) of the Order and 29 CFR 10.3 of DOL's final rule.

- Procurement contracts for construction covered by the DBA;
- Service contracts covered by the SCA;

- Concessions contracts, including any concessions contract excluded from the SCA by the Department of Labor's regulations at 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.

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Any contract covered by the DBA and its implementing regulations is subject to the E.O. minimum wage requirement. The E.O. does not apply, however, to contracts that are subject only to the Davis-Bacon Related Acts. For example, the E.O. would not be applicable to HUD financed construction of low income housing or DOE loan guarantee programs.

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Procurement and non-procurement contracts that are subject to the SCA and its implementing regulations are subject to the Order's minimum wage requirements.

Note that procurements through the Ability One program will be covered in the same manner as any other contract.

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The E.O. defines the term *concessions contract* to mean a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services.

The term *concessions contract* includes, but is not limited to, a contract whose principal purpose is to furnish food, lodging, automobile fuel, souvenirs, or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

The Order covers all concession contracts with the Federal Government, including those excluded from SCA coverage by 29 CFR § 4.133(b). Examples of concessions contracts covered by the E.O. include concession contracts with the Federal Government to operate souvenir shops or to provide food or lodging in national parks.

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This category broadly covers a variety of contractual instruments, including leases of Federal property and licenses to use such property entered into by the Federal Government for the purpose of offering services to Federal employees, their dependents, or the general public.

Examples of such agreements include delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, barbershop, or coffee shop.

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The monetary threshold for coverage is unchanged from what the threshold would traditionally be under these statutes. There is no monetary threshold for subcontracts, non-procurement concessions contracts, or contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

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In addition, the EO only applies to new contracts. A new contract is a contract that results from a solicitation issued on or after January 1, 2015 or a contract that is awarded outside the solicitation process on or after January 1, 2015.

This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

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For purposes of the Order, a contract entered into prior to January 1, 2015 will constitute a new contract if, through bilateral negotiation, on or after January 1, 2015:

- The contract is renewed;
- The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014 providing for a short-term limited extension; or
- The contract is amended pursuant to a modification that is outside the scope of the contract.

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Any covered contracts added to the GSA Schedule in response to GSA Schedule solicitations issued on or after January 1, 2015, qualify as “new contracts.”

E.O. 13658 only covers a subcontract if the prime contract it serves also qualifies as “new.”

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“New contract” as defined by the E. O. does not include a short-term contract extension made pursuant to a pre-negotiated term in the contract as of December 31, 2014. A “short term” extension generally may not be longer than 6 months in duration.

Contract modifications that are within the scope of the contract within the meaning of the FAR are not “new contracts” subject to the Executive Order.

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The following types of contractual agreements are excluded from coverage:

- Grants, within the meaning of the Federal Grant and Cooperative Agreement Act;
- Contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act;

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- Procurement contracts for construction that are not subject to the DBA;
- Contracts for services, except for those expressly covered by the E.O. and the final rule, that are exempted from coverage of the SCA pursuant to its statutory language or its implementing regulations.

For example, the SCA exempts contracts for public utility services, including electric light and power, water, steam, and gas, from its coverage. It additionally exempts employment contracts providing for direct services to a Federal agency by an individual.

Such contracts would also be exempt from coverage of the Executive Order and these regulations.

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The Department's final rule defines the term "worker" as any person engaged in performing work on or in connection with a contract covered by the E.O., and whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the contractor, the employment relationship.

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The Order generally applies to the following categories of workers performing "on" or "in connection with" covered Federal contracts.

- Workers who are entitled to the minimum wage under FLSA section 6(a)(1), employees whose wages are calculated pursuant to special certificates issued under FLSA section 14(c), and tipped employees under FLSA section 3(t);
- Workers who are entitled to prevailing wages under the SCA, this includes individuals who are working on or in connection with an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship;
- Laborers and mechanics who are entitled to prevailing wages under the DBA, including individuals who are working on or in connection with a DBA contract and individually registered in a bona fide apprenticeship program registered with DOL's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

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The E.O. minimum wage generally applies to workers performing "on" covered contracts, as well as workers performing "in connection with" covered contracts. For purposes of the Order, a worker performing "on" a covered contract is any worker who directly performs the specific services called for by the contract's terms.

Any workers who are entitled to DBA and SCA prevailing wages are performing “on” a covered contract.

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A worker performing work “in connection with” a covered contract is any worker who performs work activities that, although not the specific services called for by the contract itself, are necessary to the performance of the contract. For example, a payroll clerk responsible for maintaining payroll records for service employees on an SCA contract for janitor services may be performing work in connection with a covered contract.

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The Order’s minimum wage requirements only apply to workers performing “in connection with” covered contracts if such workers spend at least 20% of their hours worked in a particular workweek working in connection with covered contracts.

The Executive Order specifically provides that workers whose wages are calculated pursuant to special certificates issued under 29 U.S. Code 214(c) are entitled to receive at least the full Executive Order minimum wage for all time spent working on or in connection with contracts covered by the Order.

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The Executive Order does not apply to employees who are not entitled to the FLSA minimum wage pursuant to 29 U.S. Code 213(a) and 214(a)-(b), such as:

- Individuals employed in a bona fide executive, administrative, or professional capacity
- Learners, apprentices, and messengers whose wage are governed by FLSA Section 14(a)
- Students whose wages are governed by FLSA Section 14(b)

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Workers covered by the FLSA performing “in connection with” covered contracts are excluded from coverage of the E.O. if they spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.

Please bear in mind that if a worker spends weekly hours performing work in connection with multiple contracts covered by the E.O., they must be aggregated for purposes of determining their actual hours spent working in connection with a covered contract.

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This exclusion does not apply to any workers who are entitled to DBA or SCA prevailing wages. So if an employee works “on” a covered contract, then the 20% rule is not in effect. It’s for employees who work in connection with a covered contract.

Employees working on a covered contract are entitled to the full E.O. minimum wage for all hours worked on or in connection with covered contracts in that workweek.

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The applicable minimum wage currently under the Executive Order is \$10.80. It was made effective January 1, 2020.

Future annual increases will depend on increases in inflation.

Future annual increases will apply each 1st of the year to workers performing on or in connection with covered multi-year contracts.

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The Department of Labor will publish the applicable E. O. minimum wage rate in the following places:

- It will be made available in the Federal Register at least 90 days prior to any increase;
- It will also be on WDOL.GOV or any successor site – possibly currently beta.SAM.gov;
- on SCA & DBA wage determinations;
- as well as on a notice poster made available for contractors;
- and by “other means as appropriate.”

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Nothing in the executive order or its implementing regulations excuses noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under E.O. 13658. The E.O. minimum wage is merely a wage floor, not a ceiling.

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Contractors may not discharge their requirement to pay the minimum wage obligation by furnishing fringe benefits.

For example, DBA laborer earns \$9.00 in wages and \$3.00 in fringe benefits as listed into a health insurance plan to satisfy a \$12.00 prevailing wage. The contractor must increase that worker’s cash wage to at least the E.O. minimum wage (\$10.80 in 2020) if the DBA contract is subject to the E.O.

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Contracting agencies must include the appropriate contract clause implementing the executive order in any new contracts or solicitations for contracts covered by the executive order.

The FAR Contract Clause must be inserted in any procurement contract covered by the FAR that is subject to the E.O. and the DOL Contract Clause must be inserted in all other contracts subject to the E.O.

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If the contract clause is improperly omitted from a prime contract covered by the Executive Order, the contracting agency must incorporate the appropriate contract clause retroactive to the commencement of the performance under the contract. Contracting agencies may be responsible for reimbursing contractors for any necessary additional costs under these circumstances.

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Contracting agencies must also ensure that contractors are compensated for any increase in labor costs resulting from an annual increase in the E.O. minimum wage rate.

Prices may only be adjusted “if appropriate” for increased labor costs associated with an increase in the minimum wage.

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Finally, contracting agencies are responsible for withholding funds when a contractor or subcontractor fails to pay the required E.O. minimum wage, and also for forwarding any complaints alleging a contractor’s non-compliance with the E.O. to the Wage and Hour Division.

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All of the executive order requirements for contractors apply with equal force to all covered subcontractors. Contractors must include the E.O. contract clause in any covered subcontracts, and also require that their subcontractors include the clause in any lower-tier subcontract.

Contractors must notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the E.O. For DBA and SCA covered workers, contractor must post the applicable DBA or SCA wage determination. For FLSA covered workers, contractor must display the poster provided by Department of Labor.

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Contractors generally must pay workers the Executive Order minimum wage for all hours worked, as we stated before, that’s on or in connection with covered contracts.

Contractors must also comply with pay frequency requirements as listed in the applicable statutes.

Pay periods may be no longer than semi-monthly.

Contractors must comply with the recordkeeping obligations provided at 29 CFR 10.26.

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Additional contractor requirements:

Contractors must limit deductions that reduce a worker's wages below the E.O. minimum wage to those permitted by the Department's regulations, and that will include:

- any deductions required by Federal, State or local law;
- Any deductions for payments to third parties pursuant to court orders;
- deductions directed by a voluntary assignment of the worker (for example, union dues, charitable contributions); and
- deductions for the reasonable cost or fair value of board, lodging, or other facilities as those terms are used in FLSA section 3(m).

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Obligations to tipped employees.

Under the Order, a "tipped employee" means any employee in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips. An employee who does not customarily and regularly receive more than \$30 a month in tips is not a tipped employee for purposes of the executive order. For purposes of the E.O., a worker performing on or in connection with a contract covered by the Order who meets this definition is a tipped employee. Additionally, an employee may be a "tipped employee" regardless of whether the employee is employed full time or part time so long as the employee customarily and regularly receives more than \$30 a month in tips.

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Under the E.O., the wage paid to a tipped employee may be composed of a cash wage and a credit based on tips. This credit based on tips is called a "tip credit." The tip credit is an amount equal to the difference between the hourly cash wage paid to a tipped employee and the wage in effect under section 2 of the executive order.

Beginning January 1, 2015, tipped employees to whom the Order applies must be paid an hourly cash wage of at least \$4.90 an hour in accordance with the E.O. This minimum hourly cash wage will steadily increase in subsequent years, and will do so until it equals 70 percent of the E.O. minimum wage.

Where tipped employees do not receive a sufficient amount of tips in the workweek to equal the amount of the tip credit, the employer must increase the cash wage paid for the workweek so that the amount of the cash wage paid and the tips received by the employee equal the full E.O. minimum wage.

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An employer may pay a higher cash wage than required by 29 CFR 10.28(a)(1) and take a lower tip credit. The employer may not, however, pay a lower cash wage and take a higher tip credit.

For tipped employees working “dual jobs,” and that’s employed in a tipped occupation and a non-tipped occupation, no tip credit may be claimed for an employee’s hours of work in a non-tipped occupation.

In some situations, for example, a maintenance person in a hotel may also work as a server. In this situation, if the employee will customarily and regularly receive at least \$30 a month in tips for the work as a server, the employee is a tipped employee only when working as a server.

The tip credit can only be taken for the hours spent in the occupation and no tip credit can be taken for hours of employment in non-tipped occupations. Such a situation is distinguishable from that of a tipped employees performing incidental duties.

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Obligations to 14c workers

Workers with disabilities whose wages are calculated pursuant to certificates issued under section 14(c) of the FLSA qualify as workers covered by the Executive Order and are generally due at least the full E.O. minimum wage for all time spent performing work on or in connection with a covered contract.

14(c) certificate holders may continue to pay commensurate wages to workers with disabilities, but only if the commensurate wage rate is higher than the E.O. minimum wage.

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Examples for calculating 14(c) worker wages:

SCA prevailing wage rate, for example, for a janitor employed on a contract covered by the SCA and E.O. is \$14.00 as listed in the wage determination. If a worker with a disability is determined to complete the job at 50% productivity through the process defined by Section 14(c), the commensurate wage rate would be \$7.00. The Executive Order, however, would raise the rate due to that worker to the current Executive Order. So instead of the \$7.00 commensurate rate, you’d currently be required to pay \$10.80.

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Another Example:

The SCA prevailing wage rate for a window washer employed on that same contract is \$20.00/hr. If the worker with a disability is determined to complete the job at 60% productivity,

the commensurate wage rate would be \$12.00/hr. Because this commensurate wage rate is higher than the applicable E.O. minimum wage rate, the employee would be due the higher amount of \$12.00 per hour.

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FLSA-covered job coaches and other workers employed by 14(c) certificate holders solely “in connection with” a contract covered by the E.O. may be subject to the “20 percent of hours worked” exclusion.

If those workers spend at least 20% of their hours in a given workweek performing in connection with covered contracts, or any time performing “on” a covered contract, they are due the full Executive Order minimum wage.

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Segregating covered and non-covered work

The Executive Order minimum wage requirements only extend to the hours worked by covered workers performing on or in connection with covered contracts.

Effective segregation requires that the contractor identify accurately in its records, or by other means, the periods in each workweek when an employee performs work on covered contracts, they have to segregate the hours.

An arbitrary assignment of time on the basis of a formula to segregate time spent on covered and non-covered contracts is not sufficient. The employer must segregate the specific hours worked on or in connection with the covered contract during that workweek to assess and determine whether the employee is due the Executive Order minimum wage.

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If the contractor does not keep detailed records segregating the hours worked, the contractor may segregate on the basis of work shifts, workdays, or workweeks.

For example, if an employer only does E.O. covered work during the second shift each day, he or she may apply the E.O. minimum wage requirement to all workers performing work during the second shift and not apply the minimum wage to workers performing non-covered work during the other shifts.

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In the absence of records adequately segregating non-covered work from the work performed on or in connection with a covered contract, all workers working in the establishment or department where the covered work is performed will be presumed to have worked on or in connection with the contract during the period of its performance, unless there is proof establishing the contrary.

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Prohibited acts:

All wages must be paid “free and clear.”

Contractors may not discharge or discriminate in any way against a worker because that worker has filed a complaint, testified, or participated in any proceeding under or related to the Executive Order.

And workers cannot waive these rights, and contractors also cannot induce workers to waive their rights under Executive Order 13658 or its implementing regulations.

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The Department of Labor’s Wage and Hour Division has exclusive authority to investigate and enforce E.O. 13658.

Contracting agencies may still unilaterally withhold funds or take other steps to ensure contractor compliance.

Any person or entity that suspects a violation of the E.O. has occurred may file a complaint with the Wage and Hour Division. The complaint may be filed orally or in writing and the Wage and Hour Division will accept it in any language.

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WHD will not disclose the identity of any individual who makes a complaint or statement in the course of an investigation to anyone other than Federal officials without the prior consent of the complainant. The WHD may also initiate an investigation as the result of the complaint and may also seek to resolve the complaint through conciliation.

Some possible remedies DOL may initiate instructions to withhold funds from the contractor, a civil action against the contractor, or possibly even debarment.

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Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under the Executive Order, the contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the E.O. for a period of up to three years from the date of publication of the name of the contractor or persons on the ineligible list.

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Here are the locations of some helpful reference materials. Department of Labor's regulations are at 29 CFR Part 10, FAR implementing regulations are at 48 CFR 22.19, and DOL's website for the Executive Order is available at the link provided.

Thank you for your time. We'll be going to William Brooks, who will be giving a presentation on Paid Sick Leave, that Executive Order.

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Hello everyone, my name is William Brooks, Senior Policy Advisor with the Division of Government Contracts Enforcement of the Wage and Hour Division and I'm going to be going over Executive Order 13706 "Establishing Paid Sick Leave for Federal Contractors".

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During this presentation, I'm going to be referring to this Executive Order as the Paid Sick Leave EO or just simply EO.

The Paid Sick Leave EO requires certain parties that contract with the Federal Government to provide their employees with up to seven days of paid sick leave annually, including paid leave allowing for family care.

You will notice that the Paid Sick Leave EO has a lot of similarities to the Minimum Wage EO which Desmond Pitt, my colleague, just went over. Actually, the Paid Sick Leave EO has the exact same coverage requirements of the Minimum Wage EO but also extends coverage to additional workers, which we will highlight later.

During this presentation, we will go over the following topics:

First, covered contracts and employees. We will discuss what contracts are covered and what employees are subject to the EO. Then we will go over accrual and use of paid sick leave. We will discuss in detail the accrual process and the different uses of paid sick leave. Finally, we will discuss contractor obligations, interactions with other laws and how we enforce the EO.

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The paid sick leave EO was signed on September 7, 2015. The EO requires that covered contractors to allow employees to accrue one hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to 56 hours (7 days) a year, and to use accrued leave for certain purposes.

We published the regulations for the EO on September 30, 2016. The regulations provide pertinent information on coverage, exclusions, the accrual and use of paid sick leave, requirements for contractors and contracting agencies, and enforcement.

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The EO went into effect on January 1, 2017, but applies only to new contracts which we will go more into detail later.

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Now, we're going to get into coverage. We are going to go over what contracts are subject to the EO and what employees are covered by the EO.

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Similar to the Minimum Wage EO, the Paid Sick Leave EO applies to four types of contracts entered into by the Federal Government. This will pretty much be a recap of what Desmond Pitt went over with Minimum Wage EO because again it has the same coverage requirements as the Minimum Wage EO. First, it applies to construction contracts subject to the Davis Bacon Act. It also applies to contracts subject to the Service Contract Act.

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Next, the EO applies to concession contracts, under the EO, all concession contracts including concession contracts excluded by the SCA. If you're familiar with the SCA, you know that there are certain types of concession contracts that are excluded from SCA coverage, but the paid sick leave EO covers all concession contracts.

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The final type of contract that is covered by the EO is contracts in connection with Federal property or lands and relating to offering services for Federal employees, their dependents, or the general public.

These types of contracts include leases of space in a Federal building to operate a barber shop, day care center, credit union, etc.

Now these types of contracts may fall into the categories of coverage with the SCA or it may be a concession contract. However, if it doesn't fall under these type of contracts, then it would fit here.

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As I stated earlier, the EO went into effect on January 1, 2017 but only applies to new contracts. A new contract is a contract that results from a solicitation issued on or after January 1, 2017 or awarded outside of the solicitation process on or after January 1, 2017.

Therefore, the contract would have to go out for bid on or after January 1, 2017 and then awarded to be applicable unless it was awarded outside of the bid process on or after January 1, 2017. Also, pre-negotiated unilateral exercise of options is not considered a new contract. So if you have a contract that began on January 1, 2016 and had four one year options that were pre-negotiated and ran until 2020, the EO would not apply until after then.

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This slide focuses on contracts that are not subject to the EO. The EO does not apply to contracts subject to the Walsh Healey Public Contracts Act, better known as PCA. It also does not apply to contracts

subject to the Davis Bacon Related Act. Remember, similar to the minimum wage executive order, the EO only applies to direct Davis Bacon contracts. Additionally, the EO does not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act and contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act.

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Now let's discuss what employees are subject to the EO. The EO applies to employees working "on" or "in connection with" a covered contract whose wages are governed by DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA minimum wage and overtime provisions.

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Now let's go over the difference between when an employee is working on the contract versus someone working in connection with a covered contract. An employee works "on" a contract if he or she directly performs the specific services called for by the contract. Examples include:

Laborers or mechanics performing on a DBA contract;

Service employees performing on a SCA contract; or

Tellers in a credit union that leases space in a federal building.

An employee works "in connection with" a contract if he or she performs work activities that are necessary to the performance of a covered contract. Examples include:

A security guard patrolling a DBA contract site; or

A clerk processing payroll records for an SCA or DBA contract.

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When we speak of employees whose wages are governed by the Davis Bacon Act, it includes your laborers and mechanics who are covered by the DBA. All laborers and mechanics who are working at the site of work.

Under the SCA, all employees whose wages are governed by the SCA, which includes your service employees who are providing the service called for in the contract.

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Employees whose wages are governed by the FLSA include those entitled to minimum wage and/or overtime compensation under that law.

It includes employees working on or in connection with DBA- or SCA-covered contracts who aren't entitled to prevailing wages but must be paid in accordance with the FLSA. For example, employees who assist with a DBA construction project but don't work at the site of the work.

It also includes employees whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214. Unlike the minimum wage EO, The Paid Sick Leave EO also applies to employees exempt from the FLSA's minimum wage and overtime requirements. Includes employees employed in a bona fide executive, administrative, or professional capacity. So, although the Davis Bacon Act or the SCA does not cover 541 employees, the paid sick leave EO does, so as you can see the paid sick leave EO is extended to a lot of employees.

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The EO also applies to any individual working on a covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration.

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As with the minimum wage executive order, an employee who works only "in connection with" covered contracts and spends less than 20% of his or her time in any workweek doing so does not accrue paid sick leave in that workweek.

This exemption does not apply to employees who perform "on" a covered contract at any point in a workweek. Such employees are entitled to accrue sick leave for all hours worked on or in connection with covered contracts in that workweek.

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Now we're going to go over how do Employees Accrue and Use Paid Sick Leave.

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Employers have to establish a 12 month accrual year. Now it can start at the beginning of the leave year, calendar year, or start of the contract, whichever is applicable.

During those 12 months, employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. Hours worked are determined using the FLSA standard. So if employees are suffered or permitted to work, then that would be hours worked. Since most employers don't keep track of FLSA exempt employees, contractors can assume FLSA-exempt employees work 40 hours each workweek.

Contractors must inform employees, in writing, of how much paid sick leave they have available each pay period. Also, instead of tracking time on covered contracts week by week, contractors can "frontload" leave at the beginning of the accrual year by giving employees 56 hours of paid sick leave in a lump sum.

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Employees can be limited to earning 56 hours of paid sick leave per accrual year, and to having 56 hours of paid sick leave available at any point in time. Unused sick leave can be carried over into the next accrual year. Carryover does not count toward the new year's accrual limit.

Now under the accrual method, the most an employee can have at one time is 56 hours. However, if you front load, the most you can have at one time is 112 hours. If you front load, you must frontload 56 hours at the beginning of the leave year. That means the employees have immediate access to that leave. If you frontload 56 and they don't use any of that leave in that year, then they are allowed to carryover the 56 hours, because that's the most you can carryover, and the employer would be required to frontload an additional 56 hours at the beginning of that accrual year, which brings you to 112 hours.

However, if the employee still does not use any leave during that leave year, the most they can carryover would be 56 hours.

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Contractors are not required to cash out unused leave, but contractors must reinstate an employee's unused paid sick leave if the employee is rehired within 12 months of a job separation. If an employee chooses to cash out leave, that relieves them of the obligation to reinstate unused leave.

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Here's an example of how carryover works:

An employee carries over 16 hours of paid sick leave into a new accrual year. She must be permitted to accrue 40 additional hours of paid sick leave even if she does not use any paid sick leave while that accrual occurs. Once she has 56 hours of paid sick leave accrued, the contractor may prohibit her from accruing any additional leave—unless she uses some portion of the 56 hours.

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Let's say she uses 24 hours of paid sick leave in the same accrual year. She will have 32 hours remaining available for use. At that point, she must be permitted to accrue up to at least 16 more hours. Because those 16 are in addition to the 40 hours she has already accrued during the accrual year, she has accrued a total of 56 hours in that year.

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Employees may use paid sick leave if they are absent because of:

A physical or mental illness, injury, or medical condition. Examples of this would be your common colds, if you catch the flu, physically hurt yourself or get hurt such as a sprained ankle, broken arm, etc. This is broader than the "serious health condition" required under the FMLA.

Next, employees may use paid sick leave for obtaining diagnosis, care, or preventive care from a health care provider. So these would be your annual physicals, 6 month checkups with the dentist, if you needed physical therapy for any reasons, etc.

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Next, employees may use paid sick leave if they are absent because of caring for a family member, or someone who is the equivalent of family, who has a physical or mental illness, injury, or medical condition, as well if they need to obtain diagnosis, care, or preventive care from a health care provider.

So this EO not only covers employees, but employees can use leave for caring for a family member or someone who is considered a family member, which includes care for a child, parent, spouse, domestic partner, sibling, aunt/uncle, grandparent, or grandchild. It also includes any other person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

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The last use of sick leave would be for an issue related to domestic violence, sexual assault, or stalking of the employee or the employee's family member, or someone who is the equivalent of family member. This would include additional counseling, seeking relocation, seek assistance from a victim services organization, or taking related legal action, including preparation for or participation in any related civil or criminal legal proceeding.

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Now employees can only use sick leave for situations that they would otherwise be working on or in connection with a covered contract. Employees must be permitted to use paid sick leave in increments of no greater than one hour. The employee can only use the sick leave they have available at that time.

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Employees have to request leave. It can either be orally or in writing and should indicate that the leave is for one of the proper purposes; and if possible should indicate the duration of the leave. The request should be made seven days in advance if the need for leave is foreseeable. Certainly, if the leave is for an annual physical or six month dental cleaning, then that is foreseeable and should be made in advance. Other situations, such as your child getting sick in the middle of the night or medical emergencies, are not foreseeable. Therefore, the request should be made as soon as practicable. The contractor must respond to a request as soon as practicable. If the contractor denies the request, it must be explained in writing.

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Contractors may require that employees provide verification of the need for paid sick leave only if the employee is absent for 3 or more consecutive, full workdays and the employee is informed of this requirement before returning from leave. If the absence is because of a health-related issue, the contractor can require certification from a health care provider. If the absence is because of domestic violence, sexual assault, or stalking, documentation can be from any person with knowledge of the need for leave.

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Thirty days must be given to the employees to provide the certification or documentation and at least five days to correct any deficiencies in it. While waiting for the information, the contractor must treat the paid sick leave as properly used. If the certification or documentation is not adequate and not supplemented, the contractor may retroactively deny the leave and recover the value of the pay and benefits received by the employee.

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Now we are going to transition to Contractor Obligations, Interactions with Other Laws, and Enforcement.

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Contractors subject to the EO must comply with the EO contract clause by allowing employees to accrue and use paid sick leave as provided in the EO and regulations. They have to include the EO contract clause in covered subcontracts and provide employees with their regular pay and benefits while they are using paid sick leave. So when an employee is on paid sick leave under the EO, they should receive their regular pay and benefits for that day as if they were working on or in connection with a covered contract.

The contractor must post a notice at the worksite informing employees of the paid sick leave requirements. Employees should be aware that the paid sick leave EO applies to their contracts and they are allowed to accrue paid sick leave.

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Just like under the SCA and Davis Bacon Act, contractors are required to keep records. Some of the type of records they are required to keep include: copies of notifications to employees about the amount of paid sick leave they have accrued; copies of employee requests to use paid sick leave; dates and amounts of paid sick leave used by employees; copies of written response to employee requests to use paid sick leave; records relating to certification or documentation of need for paid sick leave.

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In addition, any records showing tracking or calculation of accrual or use of paid sick leave; records of pay and benefits paid for use of paid sick leave and/or financial payments for unused paid sick leave; records distinguishing between an employee's covered and non-covered work time. Employers also must maintain confidentiality of medical records or records related to domestic violence, sexual assault, or stalking.

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Now we are going to transition to how paid sick leave interacts with other laws. The EO does not excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than established under the EO. We certainly understand now that a lot of states and local counties have their own sick leave requirements and the paid sick leave EO does not excuse non-compliance with those state or local requirements.

In regards to the Davis-Bacon Act or the SCA: Paid sick leave is in addition to a contractor's obligations under the SCA and DBA. A contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of the EO. Remember, the EO is a separate requirement from the SCA or DBA; therefore, a contractor cannot take credit under the SCA or DBA for complying with the paid sick leave EO.

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Because of the paid sick leave EO, the 2017 All-Agency Memorandum announced the SCA nationwide health and welfare rate that also included a rate for service employees performing on contracts covered by the EO. So there are now two SCA health and welfare rates. One for which contracts are subject to the paid sick leave EO, and another one for contracts that are not subject to the EO.

The only time a contractor can take credit for sick leave under the SCA or DBA is if a contractor chooses to provide more paid sick leave than is required by the EO. That additional paid sick leave time could count toward SCA or DBA obligations, if it complies with the requirements under those statutes.

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In regards to the FMLA, the EO does not affect rights and obligations under the Family and Medical Leave Act. Paid sick leave may be substituted for unpaid FMLA leave under the same conditions as other paid time off pursuant to FMLA regulations. In addition, contractors can comply with the EO, state and/or local paid sick leave laws simultaneously if they comply with the more generous requirements of each.

Finally, we know that a lot of employers have their own Paid Time Off Policies, also known as PTO. A contractor's existing PTO policy can fulfill the EO's requirements as long as it provides employees with at least the same rights and benefits that the EO requires if the employee chooses to use that PTO for the purposes covered by the EO.

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A contractor can comply with the EO jointly with other contractors through a multiemployer plan that provides paid sick leave on the same terms as the EO and the regulations.

For this purpose, a multiemployer plan is a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more CBAs between one or more employee organizations and more than one employer.

In other words, through a multiemployer plan, two or more contractors can act as though they are a single contractor for purposes of the EO.

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Regardless of what functions the plan performs, each contractor remains responsible for any violation of the EO that occurs during its employment of the employee.

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Are there prohibitions against retaliations or discriminations? A contractor may not interfere with the accrual or use of paid sick leave. Examples of interference include: miscalculating the amount of paid sick leave; denying a proper request to use paid sick leave; discouraging an employee from using paid sick leave; or transferring an employee to non-covered contracts to prevent the accrual of paid sick leave.

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A contractor may not discriminate against an employee for activities related to paid sick leave for using, or attempting to use, paid sick leave as provided under the EO; filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under the EO.

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As well as cooperating in any investigation or testifying in any proceeding under the EO; or informing any other person about his or her rights under the EO.

While we speak of discrimination, that includes a contractor's considering any of these activities as a negative factor in employment actions, such as hiring, promotions, disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy.

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In regards to investigations, we have sole enforcement authority under the EO, meaning no one else can do an investigation under the EO.

We will accept complaints of EO violations from any interested party. Contracting agencies have no obligation to investigate compliance, but must notify Wage and Hour Division of complaints received.

The investigation process for these investigations will be similar to those for other government contracts cases: obtaining information from the contractor, interviews with employees at the worksite, inspection of contractor records, production of documents and other evidence.

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Now let's go over the administrative process. Challenges to our findings of violations will be considered by Administrative Law Judge. Any appeals go to the Administrative Review Board.

Questions about the EO may be sent to the Administrator for a ruling.

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Now let's discuss remedies for violations.

If a contractor improperly denied a request to use paid sick leave such that an employee came to work and hired a babysitter to care for a sick child with whom the employee wished to stay home, the remedy would be the amount the employee spent on the child care, and the award would include an equal amount of liquidated damages, unless the violation was made in good faith and the contractor had reasonable grounds for believing it had not violated the EO.

Equitable relief could include, but is not limited to, requiring the contractor to allow for accrual and use of paid sick leave by an employee it erroneously treated as not covered by the EO, or requiring the contractor to restore paid sick leave it improperly deducted from an employee's accrued paid sick leave. An employee who was sick and missed a day or more of work as a result, and who wasn't paid for that absence, would be entitled to lost pay and/or benefits.

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If there are monetary damages, we can request withholding similar to that under the SCA or DBA. In addition, contractors can be debarred for violations of the EO.

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This slides provide links to additional guidance materials, including FAQs, a fact sheet, and the implementing regulations.

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Our regulations can be found at 29 CFR Part 13. The FAR Implementing Regulations is at 48 CFR Subpart 22.21. We also have a dedicated site for this EO, which can be found on this slide.

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We also wanted to highlight the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act which were signed into law March 18, 2020. They both went into effect on April 1, 2020 and expires on December 31, 2020. They require certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. There is a dedicated site for this law and you can email any questions to the email address on this slide.

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On behalf of my colleague, Desmond Pitt, this concludes our presentation on the minimum wage executive order and the paid sick leave EO. We hope you enjoyed this presentation and gained some insight on both EOs. We hope you enjoy the other recordings. Thank you.