




# PREVAILLING WAGE SEMINARS



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR



Executive Order 13658 (“E.O.” or  
“the Order”),  
Establishing a Minimum Wage For  
Contractors

# What is E.O. 13658?

- On February 12, 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors,” to raise the minimum wage for workers on covered Federal construction and service contracts. Under the EO, 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.

# What is the Purpose of the E.O.?

- “[T]o increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing . . . the hourly minimum wage paid by those contractors. Raising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs. These savings and quality improvements will lead to improved economy and efficiency in Government procurement.”

# Implementing Regulations

- The DOL and FAR regulations implementing E.O. 13658 each took effect in December 2014, and apply to all new contracts that result from a solicitation issued on or after 1/1/15 and to all new contracts awarded outside the solicitation process on or after 1/1/15 that are covered by the E.O.
- DOL Regulations – 29 C.F.R. Part 10
- DOL Contract Clause – 29 C.F. R. Part 10, Appendix A
- FAR Regulations – 48 C.F.R. Subpart 22.19
- FAR Contract Clause – 48 C.F.R. 52.222-55
- The FAR Contract Clause must be inserted in any procurement contract covered by the FAR and the E.O. The DOL Contract Clause must be inserted in all other contracts covered by the E.O.



# Coverage and Basic Requirements of Executive Order 13658

# Covered Federal Entities

- E.O. 13658 applies to contracts entered into by the “Federal Government,” defined in the regulations as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States.
- E.O. 13658 does not cover contracts entered into by the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 USC 3502(5).

# Independent Regulatory Agencies Not Subject to the E.O.

- Important examples
  - Federal Communications Commission (FCC), Federal Deposit Insurance Corporation (FDIC), Federal Energy Regulatory Commission (FERC), the Federal Reserve System, Federal Trade Commission (FTC), National Labor Relations Board (NLRB), Security and Exchange Commission (SEC), etc.
- Note that Section 7(g) of the E.O. “strongly encourage[s]” independent agencies to voluntarily comply with the requirements of the E.O.



# Geographic Scope of the E.O.

- E.O. 13658 only applies to contracts with the Federal Government requiring performance in whole or in part within the United States, defined in DOL's implementing regulations to mean the 50 States and the District of Columbia.
- If a covered contract is to be performed in part within and in part outside the United States, the EO and its implementing regulations would apply to that part of the contract that is performed within the United States.

# Covered Contracts

- For a legal instrument to be covered by the E.O., it must:
  - (1) qualify as a “contract or contract-like instrument”;
  - (2) fall within one of the four enumerated categories of covered contracts provided by the E.O.; and
  - (3) qualify as a “new” contract.

# “Contract or contract-like instrument”

- Broadly defined as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.
- Verbal contracts, subcontracts, and non-procurement contracts (e.g., property leasing agreements) may all qualify as a “contract or contract-like instrument.”
- Remember, a “contract or contract-like instrument” must still satisfy the other coverage criteria for the E.O. to apply.
- The term “contract” is used throughout the regulations and this presentation to refer to both contracts and contract-like instruments.

# The Four Categories of Covered Contracts

- 1) Procurement contracts for construction covered by the Davis-Bacon Act (DBA);
- 2) Service contracts covered by the Service Contract Act (SCA);
- 3) Concessions contracts, including any concessions contract excluded from the SCA by the Department of Labor's regulations at 29 CFR 4.133(b); and
- 4) Contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

# 1) Contracts Covered by the DBA

- Any new procurement contract for construction covered by the Davis-Bacon Act and its implementing regulations is also covered by the E.O.
- The E.O. does not cover contracts that are subject only to the Davis-Bacon Related Acts. For example, the E.O. does not cover:
  - HUD-financed construction of low income housing projects
  - Grants provided by the Federal Highway Administration to states for reconstruction of roads and bridges on Federal-aid highways

## 2) Contracts Covered by the SCA

- Any new contract for services covered by the Service Contract Act (SCA) and its implementing regulations is also covered by the E.O. The SCA generally covers any contract that has as its principal purpose the furnishing of services in the United States through the use of service employees.
- Neither the SCA nor the E.O. cover contracts for services to be performed exclusively or predominantly by persons who are not service employees (e.g., persons who qualify as bona fide executive, administrative, or professional employees).

# 3) Concessions Contracts

- The E.O. also applies to any new contract for concessions. A “concessions contract or contract for concessions” means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services.
- This includes concessions contracts excluded from coverage under the SCA by DOL’s regulations at 29 CFR 4.133(b).
  - Concession contracts principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public are excluded from SCA coverage but are covered by the E.O.

## 4) Contracts in Connection with Federal Property or Land

- Finally, the E.O. covers “contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.”
- The category of covered contracts includes delegated leases of space in a Federal building to operate a child care center, credit union, gift shop, barber shop, coffee shop, or fitness center in the Federal building to serve Federal employees and/or the general public.



# Monetary Threshold for Prime Contracts

- Prime DBA contracts must exceed \$2,000.
- Prime SCA contracts must exceed \$2,500.
- Prime procurement contracts governed by the FLSA must exceed \$3,000 (the “micro-purchase threshold”)
- 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.

# “New” Contracts

- A “new contract” is a contract with the Federal Government 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.
- The 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 (pre-2015) contract by the Federal Government.

# “New” Contracts - Continued

- The E.O. also applies to contracts that were entered into prior to January 1, 2015 if, through bilateral negotiation, on or after January 1, 2015:
  - (1) the contract is renewed;
  - (2) the contract is extended unless the extension is made pursuant to a term in the contract as of 12/31/14 providing for a short-term limited extension (e.g., six months duration or less); or
  - (3) the contract is amended pursuant to a modification that is outside the scope of the contract.

# “New” Contracts Under GSA Schedules

- 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” subject to the E.O.
  - Any covered task orders issued pursuant to those contracts also would be subject to the E.O.
  - This includes contracts to add new covered services as well as contracts to replace expiring contracts
- E.O. 13658 only covers a subcontract if the prime contract it serves also qualifies as “new.”

# Contracts That Do Not Qualify as “New Contracts” Under the E.O.

- The term “new contract” 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 E.O. 13658.

# Contracts Excluded from Coverage Under the E.O.

- Grants within the meaning of the Federal Grant and Cooperative Agreement Act;
- Contracts and agreements with and grants to Indian Tribes under Public Law 93-638, as amended;
- Contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government (i.e., those subject to the Walsh-Healey Public Contracts Act);

# Additional Contracts Excluded from Coverage

- Any procurement contracts for construction that are not subject to the DBA (i.e., prime procurement contracts for construction under \$2,000);
- Contracts for services, except for those otherwise expressly covered by the final rule (i.e., concessions contracts and contracts in connection with Federal property or lands and related to offering services), that are exempt from coverage under the SCA pursuant to the statute itself or its implementing regulations; and
- Contracts that are subject only to the Davis-Bacon Related Acts.

# Workers Covered by the E.O.

- Workers are generally entitled to the Executive Order minimum wage for all hours they spend performing work on or in connection with a covered contract.
- The worker's wages under the contract must be governed by the FLSA, the SCA, or the DBA.
- The term "worker" includes individuals whose wages are governed under FLSA Section 14(c), and individuals in a bona fide apprenticeship or training program (i.e., DBA and SCA-covered apprentices).



# Workers Covered by the E.O.

- The following categories of workers are covered by the E.O. and generally entitled to the E.O. minimum wage for all time spent performing on or in connection with covered contracts:
  - employees who are entitled to the FLSA minimum wage, employees whose wages are calculated pursuant to special certificates issued under FLSA section 14(c), or tipped employees under FLSA section 3(t);
  - Service employees who are entitled to SCA prevailing wages; or
  - laborers and mechanics who are entitled to DBA prevailing wages.

# “On” vs. “In Connection With”

- Covered workers are generally entitled to the E.O. minimum wage for all time they spend performing “on” or “in connection with” covered contracts
- Performing work “on” a covered contract means to directly perform the specific services called for by the contract.
- Examples
  - laborers or mechanics performing “on” a DBA contract
  - service employees performing “on” an SCA contract
  - barbers cutting hair in a barbershop that leases space on Federal property

# Performing Work “In Connection With” a Covered Contract

- Performing work “in connection with” a covered contract means performing work that is necessary to the performance of a covered contract but is not directly called for by the contract itself. Examples:
  - a security guard patrolling the site of a DBA contract
  - a clerk processing payroll records for an SCA contract

# “On” vs. “In Connection With”

- The distinction between work performed “on” versus “in connection with” matters because:
  - (1) The E.O. may apply to FLSA-covered workers performing “in connection with” covered SCA or DBA contracts (e.g., payroll clerks, security guards, janitors, etc.)
  - (2) Workers performing solely “in connection with” a covered contract may be eligible for the “20 percent of hours worked” exclusion

# Workers Not Covered by the E.O.

Except for workers who are otherwise covered by the DBA or SCA, the E.O. does not apply to employees who are not entitled to the FLSA minimum wage pursuant to 29 USC 213(a) and 214(a)-(b), such as:

- Individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541
- Learners, apprentices, and messengers whose wage are governed by FLSA Section 14(a)
- Students whose wages are governed by FLSA Section 14(b)

# The “20% of Hours Worked” Exclusion

- FLSA-covered workers 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.
  - Note: a worker’s weekly hours spent performing work in connection with multiple contracts covered by the E.O. must be aggregated for purposes of determining whether this exclusion applies.

# The “20% of Hours Worked” Exclusion

- The “20 percent of hours worked” exclusion does not apply to workers who perform “on” a covered contract at any point in the given workweek (i.e., by performing the specific work called for by the contract)
  - Such workers are entitled to the full E.O. minimum wage for all hours worked on or in connection with covered contracts in that workweek.

# Determining the E.O. Min. Wage

- The applicable minimum wage under E.O. 13658 is:
  - \$10.80 effective January 1, 2020
  - Future annual increases will depend on increases in inflation as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)
- Future annual increases will apply each January 1st to workers performing on or in connection with covered multi-year contracts.



# Finding the E.O. Min. Wage

DOL will publish the applicable Executive Order minimum wage rate in the following places:

- the Federal Register (at least 90 days prior to any increase);
- on [WDOL.GOV](http://WDOL.GOV) (or any successor site);
- on SCA & DBA wage determinations;
- on a notice poster made available for contractors; and by “other means as appropriate.”

# Effect on Other Wage Obligations

- Nothing in E.O. 13658 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 wage ceiling

# Effect on Other Wage Obligations

- Contractors may not discharge their E.O. minimum wage obligation by furnishing fringe benefits
- Example
  - A laborer on a DBA contract earns \$9.00 in wages and \$3.00 in fringe benefits into a health insurance plan to satisfy a \$12.00 prevailing wage. The contractor must increase that worker's wages to at least the E.O. minimum wage (\$10.80 in 2020) if the DBA contract is subject to the E.O. (e.g., if it is renewed on or after 1/1/15).

# Contracting Agency Requirements

- DOL's implementing regulations at 29 CFR 10.11 set forth the responsibilities of contracting agencies under the E.O.
- Contracting agencies must include the appropriate contract clause implementing the E.O. minimum wage in any new contracts or solicitations for contracts covered by the E.O.
  - The FAR Contract Clause at 48 CFR 52.222-55 must be inserted in any procurement contract covered by the FAR that is subject to the E.O.
  - The DOL Contract Clause at 29 CFR Part 10 Appendix A must be inserted in all other contracts subject to the E.O.

# Contracting Agency Requirements

- If the E.O. contract clause is improperly omitted from a prime contract covered by the E.O., 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

# Contracting Agency Requirements

- Contracting agencies must 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 E.O. minimum wage.

# Contracting Agency Requirements

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

# Contractor Requirements

- All of the E.O. requirements for contractors apply with equal force to all covered subcontractors.
- Contractors must include the E.O. contract clause in any covered subcontracts, and 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 applicable DBA or SCA wage determination.
- For FLSA covered workers, contractor must display poster provided by DOL.



# Contractor Requirements

- Contractors generally must pay covered workers the E.O. minimum wage for all hours worked on or in connection with covered contracts.
- Contractors must comply with pay frequency requirements.
  - Pay periods may be no longer than semi-monthly
- Contractors must comply with the recordkeeping obligations provided at 29 CFR 10.26.

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

# Obligations to Tipped Employees

- A “tipped employee” is an employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips.
- For calendar year 2020, the minimum cash wage due to a tipped employee covered by the E.O. is \$7.55 an hour. As provided in Section 3 of the E.O., this minimum hourly cash wage will steadily increase in subsequent years until it is at least 70 percent of the full E.O. minimum wage.

# Obligations to Tipped Employees

- Employers may claim a “tip credit” equal to the difference between the tipped employee’s hourly cash wage and the full 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.

# Obligations to Tipped Employees

- For tipped employees working “dual jobs,” (i.e., 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
  - For example, a maintenance person in a hotel may also work as a server. In such a situation, if the employee customarily and regularly receives 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. 29 C.F.R. § 10.28(b)(2)

# Obligations to 14(c) 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 E.O. 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. The E.O. minimum wage is a wage floor, not a ceiling.

# Obligations to 14(c) Workers

- Examples for calculating 14(c) worker wages
  - The SCA prevailing wage rate for a janitor employed on a contract covered by the SCA and E.O. is \$14.00. 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 E.O., however, would raise the rate due to that worker to the current E.O. minimum wage rate (\$10.80 in 2020).

# Obligations to 14(c) Workers

- Examples for calculating 14(c) worker wages
  - 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 (\$10.80 in 2020), the employee would be due the higher amount of \$12.00 per hour.



# Obligations to 14(c) Workers

- 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, however, 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 E.O. minimum wage.

# Segregating Covered and Non-Covered Work

- The E.O. 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 affirmative means, the periods in each workweek when an employee performs work on covered contracts.
  - An arbitrary assignment of time on the basis of a formula to segregate time spent on covered and non-covered contracts is not sufficient.

# Segregating Covered and Non-Covered Work

- If the contractor does not keep detailed records segregating 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 E.O. minimum wage to workers performing non-covered work during the other shifts.

# Segregating Covered and Non-Covered Work

- 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 such covered work is performed will be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented.

# Prohibited Acts

- **Kickbacks**: All wages must be paid “free and clear.”
- **Retaliation**: 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 Executive Order 13658.
- **Waiver of rights**: Workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 13658 or its implementing regulations.

# E.O. Investigations

- The DOL's Wage and Hour Division (WHD) 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. or its implementing regulations has occurred may file a complaint with the WHD
  - The complaint may be filed orally or in writing and the WHD will accept a complaint in any language.

# E.O. Investigations

- 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 individual.
- The WHD may initiate an investigation as the result of the complaint and may also seek to resolve the complaint through conciliation.
- Possible remedies DOL may initiate:
  - an instruction to withhold funds from the contractor, a civil action against the contractor, debarment

# Debarment under the E.O.

- Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under the E.O. or its regulations 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.



# Reference Materials

- DOL Implementing Regulations at 29 CFR Part 10
- FAR Implementing Regulations at 48 CFR Subpart 22.19
- DOL's website for Executive Order 13658, available at <http://www.dol.gov/whd/flsa/eo13658/>

# **Executive Order 13706 Establishing Paid Sick Leave for Federal Contractors**



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Welcome

**Executive Order (EO) 13706** requires certain Federal contractors to allow their employees to earn and use up to 7 days of paid sick leave each year.

EO 13706 has many similarities to EO 13658, which establishes a minimum wage that certain Federal contractors must pay.

This presentation will look at the following topics:

1. Covered Contracts and Employees
2. Accrual and Use of Paid Sick Leave
3. Contractor Obligations, Interactions with Other Laws, and Enforcement



# Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- EO 13706 was signed on September 7, 2015.
  - It requires covered contractors to allow employees to accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to 56 hours (7 days) per year, and to use accrued leave for certain purposes.
- Regulations for the EO were published on September 30, 2016 ([29 CFR Part 13](#)).
  - The regulations provide details about coverage, exclusions, the accrual and use of paid sick leave, requirements for contractors and contracting agencies, and enforcement.

# Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- Requirements are effective as of January 1, 2017.
  - The requirements of the EO and regulations are effective as of January 1, 2017, though they only apply to “new contracts” on or after that date.



# Coverage

**Which Contracts and Employees are Covered by EO 13706?**



# Coverage:

## Which contracts are covered by EO 13706?

EO 13706 applies to **four types of contracts** entered into by the federal government (29 CFR 13.3(a)(1):

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA).
  - This includes prime contracts at the \$2,000 threshold and DBA-covered lower-tier contracts of any monetary value.
- Service contracts covered by the Service Contract Act (SCA).
  - This includes prime contracts at the \$2,500 threshold and SCA-covered lower-tier contracts of any monetary value.

# Coverage:

## Which contracts are covered by EO 13706?

- Concessions contracts, including concessions contracts excluded from the SCA by 29 CFR 4.133(b).
  - These include contracts principally for furnishing food, lodging, auto fuel, souvenirs, newspaper stands and recreational equipment to the general public. 23 CFR 13.2.



# Coverage:

## Which contracts are covered by EO 13706?

- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.
  - These include leases of space in a federal building to operate a child care center, credit union, gift shop, barber shop, coffee shop or fitness center to serve federal employees and/or the general public.
  - Contracts in this category may also fit into the second and/or third covered categories.

# Coverage:

## Which contracts are covered by EO 13706?

EO 13706 applies to “new contracts” beginning January 1, 2017.  
29 CFR 13.3(a)(1).

A “new contract” is (29 CFR 13.2):

- A contract solicited or awarded without solicitation on or after January 1, 2017.
- The term also includes a contract that existed before January 1, 2017 but that is renewed, extended (other than short-term limited extensions), or subject to a modification that is outside the scope of the contract after that date.
- It does not include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.

# Coverage:

## Which contracts are not covered by the EO?

EO 13706 **does not** apply to:

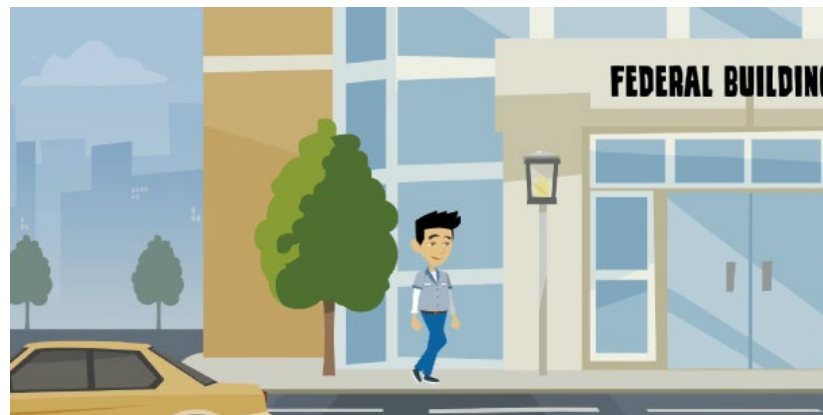
- Contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those subject to the Walsh-Healey Public Contracts Act (29 CFR 13.3(d));
- Contracts that are subject only to the Davis-Bacon Related Acts (81 FR 67613);
- Grants within the meaning of the Federal Grant and Cooperative Agreement Act. (29 CFR 13.4(a))
- Contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (29 CFR 13.4(b));  
or

# Coverage:

## Which employees does EO 13706 apply to?

EO 13706 covers employees (29 CFR 13.3(a)(2)):

1. Working “on” or “in connection with” a covered contract
2. Whose wages are governed by the DBA, SCA, or FLSA, including employees who qualify for an exemption from the FLSA’s minimum wage and overtime provisions.



# Coverage:

## Which employees does EO 13706 apply to?

- 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 (but that are not the specific services called for by the contract). Examples include:
  - A security guard patrolling a DBA contract site; or
  - A clerk processing payroll records for an SCA or DBA contract.

# Coverage:

## Which employees does EO 13706 apply to?

- Employees whose wages are governed by the DBA include laborers and mechanics who are covered by the DBA. 29 CFR 13.2 and 13.3(a)(2).
- Employees whose wages are governed by the SCA include those who are “service employees” under the SCA. 29 CFR 13.2 and 13.3(a)(2).



# Coverage:

## Which employees does EO 13706 apply to? (continued)

- Employees whose wages are governed by the FLSA include those entitled to minimum wage and/or overtime compensation under that law.
  - 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 (e.g., employees who assist with a DBA construction project but don't work at the site of the work).
  - Includes employees whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214.
- Unlike the minimum wage EO (EO 13658), EO 13706 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 as provided in 29 U.S.C. 213(a)(1).

# Coverage:

## Which employees does EO 13706 apply to? (continued)

- The EO 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, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. 29 CFR 13.2.





# Coverage:

## Which employees are excluded from EO 13706?

- 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. 29 CFR 13.4(e).
  - 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.

# Coverage:

## Which employees are excluded from EO 13706? (continued)

Additionally, the EO does not apply to an employee who works on or in connection with a covered contract under a collective bargaining agreement ratified before September 30, 2016 that provides the employee with paid sick time, or paid time off that can be used as sick time, until the CBA terminates or January 1, 2020, whichever occurs first. 29 CFR 13.4(f).

- If the CBA provides 56 hours (or 7 days) per year of such time, this temporary exemption is complete.
- If the CBA provides less than 56 hours (or 7 days) per year, the contractor must provide the difference between 56 hours and the amount provided consistent with either the EO's requirements or the CBA's terms and conditions.

# Paid Sick Leave

## How do Employees Accrue and Use Paid Sick Leave?



# How does an employee accrue paid sick leave?

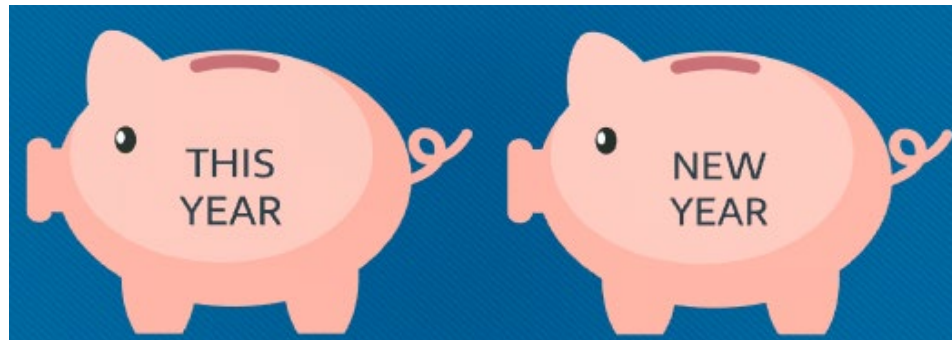
- Employees accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. 29 CFR 13.5(a)(1).
  - Hours worked are determined using the FLSA standard. 29 CFR 13.5(a)(1)(i).
  - Contractors can assume FLSA-exempt employees work 40 hours each workweek. 29 CFR 13.5(a)(1)(iii).
- Contractors must inform employees, in writing, of how much paid sick leave they have available each pay period. 29 CFR 13.5(a)(2).
- 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. 29 CFR 13.5(a)(3).

# How does an employee accrue paid sick leave?



# What are the limits on accrual of paid sick leave?

- 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. 29 CFR 13.5(b)(1),(3).
- Unused sick leave can be carried over into the next accrual year. 29 CFR 13.5(b)(2).
  - Carryover does not count toward the new year's accrual limit.



# What are the limits on accrual of paid sick leave? (continued)

- Contractors must reinstate an employee's unused paid sick leave if the employee is rehired within 12 months of a job separation. 29 CFR 13.5(b)(4).
- Contractors are not obligated to cash out unused leave, but choosing to cash out relieves them of the obligation to reinstate unused leave. 29 CFR 13.5(b)(5).

# What are the limits on accrual of paid sick leave? (continued)

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.



# What are the limits on accrual of paid sick leave? (continued)

- 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.

# What can an employee use paid sick leave for?

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

1. **A physical or mental illness, injury, or medical condition.**
  - This is broader than the “serious health condition” required under the FMLA.
  - Examples include a common cold, ear infection, ulcer, flu, migraine, sprained ankle, broken arm, or depressive episode.
2. **Obtaining diagnosis, care, or preventive care from a health care provider.**
  - A “health care provider” is any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer’s group health plan.
  - Examples include medical doctors, nurse practitioners, physical therapists, and dentists.

# What can an employee use paid sick leave for? (continued)

Employees may use paid sick leave if they are absent because of [29 CFR 13.5(c)(1)]:

3. Caring for a family member, or someone who is the equivalent of family, who has any of the conditions or needs for diagnosis, care, or preventive care described in (1) or (2) or is otherwise in need of care.
  - This 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.

# What can an employee use paid sick leave for? (continued)

4. 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.
  - The time absent from work can be for the purposes described in (1) or (2).
  - It can also be to obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action, including preparation for or participation in any related civil or criminal legal proceeding.

# How does an employee request and use Paid Sick Leave?

- Contractors must permit an employee to use available paid sick leave for time the employee would be working on or in connection with a covered contract. 29 CFR 13.5(c)(1).
- Employees must be permitted to use paid sick leave in increments of no greater than 1 hour. 29 CFR 13.5(c)(2).
- The only limit on the proper use of paid sick leave (at a time or per year) is the amount of paid sick leave the employee has available, not the employer's operational needs. 29 CFR 13.5(c)(4), (5).

# How does an employee request and use Paid Sick Leave? (continued)

- An employee's request to use paid sick leave may be a oral or written; should indicate that the leave is for one of the proper purposes; and if possible should indicate the duration of the leave. 29 CFR 13.5(d)(1).
- The request should be made 7 days in advance if the need for leave is foreseeable. If not, the request should be made as soon as practicable. 29 CFR 13.5(d)(2).
- The contractor must respond to a request as soon as practicable. A denial, with an explanation, must be in writing. 29 CFR 13.5(d)(3).

# How does an employee request and use Paid Sick Leave? (continued)

- 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. 29 CFR 13.5(e)(1), (3).
  - 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.

# How does an employee request and use Paid Sick Leave? (continued)

- The contractor must give the employee 30 days to provide the certification or documentation and at least 5 days to correct any deficiencies in it. While waiting for the information, the contractor must treat the paid sick leave as properly used. 29 CFR 13.5(e)(3).
- 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. 29 CFR 13.5(e)(3).



# Paid Sick Leave

## Contractor Obligations, Interactions with Other Laws, and Enforcement



# What are the contractor's obligations under EO 13706?

- Comply with the EO 13706 contract clause by allowing employees to accrue and use paid sick leave as provided in the EO and regulations (29 CFR 13.21(a), 13.22);
- Include the EO 13706 contract clause in covered subcontracts (29 CFR 13.21(b));
- Provide employees with their regular pay and benefits (without illegal deduction or kickback) while they are using paid sick leave (29 CFR 13.5(c)(3) and 13.23);
- Post a notice at the worksite informing employees of the paid sick leave requirements (29 CFR 13.26);

# What are the contractor's obligations under EO 13706? (continued)

- Keep records (29 CFR 13.25(a)). These 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;

# What are the contractor's obligations under EO 13706? (continued)

- 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.
- **Maintain confidentiality of medical records or records related to domestic violence, sexual assault, or stalking (including compliance with the ADA and GINA) (29 CFR 13.25(d));**

# How does Paid Sick Leave interact with other laws and rules that apply?

- **General:** 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 those established under the EO. 29 CFR 13.5(f)(1), (4).
- **DBA/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. 29 CFR 13.5(f)(2)(i).

## How does Paid Sick Leave interact with other laws and rules that apply? (continued)

- The 2017 All-Agency Memorandum announcing the SCA nationwide health and welfare rate also includes a rate for service employees performing on contractors covered by EO 13706.
- If a contractor chooses to provide more paid sick leave than is required by the EO, that additional paid sick time could count toward SCA or DBA obligations if it complies with the requirements under those statutes. 29 CFR 13.5(f)(2)(ii).

# How does Paid Sick Leave interact with other laws and rules that apply? (continued)

- FMLA: EO 13706 does not affect rights and obligations under the Family and Medical Leave Act. Paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to FMLA regulations. 29 CFR 13.5(f)(3).
- State & Local Paid Sick Time Laws: Contractors can comply with EO 13706, state and/or local paid sick leave laws simultaneously if they comply with the more generous requirements of each. 29 CFR 13.5(f)(4).
- Employers' Paid Time Off Policies: A contractor's existing paid time off (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. 29 CFR 13.5(f)(5).

# Multi Employer Plans

A contractor can comply with EO 13706 jointly with other contractors through a multiemployer plan that provides paid sick leave on the same terms as the EO and the regulations. 29 CFR 13.8.

- 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. (This is broader than the ERISA definition.) 29 CFR 13.2.
- In other words, through a multiemployer plan, two or more contractors can act as though they are a single contractor for purposes of Executive Order 13706 and its implementing regulations.



# Multi Employer Plans

- Regardless of what functions the plan performs, each contractor remains responsible for any violation of the Order or part 13 that occurs during its employment of the employee.



# Are there prohibitions against retaliation or discrimination included in the Final Rule?

A contractor may not interfere (29 CFR 13.6(a)) 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.

# Are there prohibitions against retaliation or discrimination included in the Final Rule?

A contractor may not discriminate against (29 CFR 13.6(b)) an employee for activities related to paid sick leave for:

- (1) using, or attempting to use, paid sick leave as provided for under the EO;
- (2) filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under the EO;

# Are there prohibitions against retaliation or discrimination included in the Final Rule? (continued)

- (3) cooperating in any investigation or testifying in any proceeding under the EO; or
- (4) informing any other person about his or her rights under the EO.

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

# How will the EO be enforced?

## Investigations (29 CFR 13.41, 43)

- The U.S. Department of Labor Wage and Hour Division (WHD) has exclusive authority to investigate and enforce EO 13706.
- WHD will accept complaints of EO violations from any party. Contracting agencies have no obligation to investigate compliance, but must notify WHD 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 or other evidence.

# How will the EO be enforced?

## Administrative Process (29 CFR 13.51-.58)

- Challenges to WHD findings of violations will be considered by Administrative Law Judges; any appeals go to the Administrative Review Board
- Questions about EO 13706 may be sent to the Administrator for a ruling

# How will the EO be enforced? (continued)

## Remedies for Violations (29 CFR 13.44)

- For interference: lost pay/benefits; other actual monetary losses; appropriate equitable or other relief; liquidated damages.
- For discrimination: employment; reinstatement; promotion; restoration leave; lost pay/benefits; liquidated damages.
- For recordkeeping violations: suspension of funds.

# How will the EO be enforced? (continued)

- If there are monetary damages, withholding (or if necessary, civil action to recover underpayments).
- 3-year debarment if a contractor disregards its obligations to employees or subcontractors under the EO or regulations.
- Retroactive inclusion of contract clause.



# Guidance Materials

- Additional guidance materials, including FAQs, a fact sheet, and the implementing regulations are available at:  
[www.dol.gov/whd/govcontracts/eo13706](http://www.dol.gov/whd/govcontracts/eo13706).
- Fact Sheet  
<https://www.dol.gov/whd/govcontracts/eo13706/PaidLeaveFS.htm>
- Frequently Asked Questions  
<https://www.dol.gov/whd/govcontracts/eo13706/faq.htm>
- Poster  
<https://www.dol.gov/whd/regs/compliance/wh1090.pdf>

# References

- DOL Implementing Regulations at 29 CFR Part 13
- FAR Implementing Regulations at 48 CFR Subpart 22.21
- DOL's website for Executive Order 13706:  
<https://www.dol.gov/whd/govcontracts/eo13706/>

# Family First Coronavirus Response Act (FFCRA)

- \* Signed into law March 18, 2020
  - - Emergency Paid Sick Leave Act (EPSLA)
  - - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- \* Effective April 1, 2020
- \* Expires December 31, 2020
- \* Enforced by the U.S. Department of Labor Wage and Hour Division (WHD)
- [WWW.DOL.GOV.AGENCIES/WHD/PANDEMIC](http://WWW.DOL.GOV.AGENCIES/WHD/PANDEMIC)
- [WHD-COVID19@DOL.GOV](mailto:WHD-COVID19@DOL.GOV) Email address for questions

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