



Column: Untangling Service Contract Act vacation and sick leave requirements

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Complying with Service Contract Act ("SCA") leave requirements is challenging, even more so if service employees live in a state or county with local sick leave laws or if the contract is subject to Executive Order 13706, Sick Leave for Federal Contractors. Each of these laws and regulations has unique requirements that must be woven together to develop a compliant leave policy.

However, once contractors understand the nuances, strategic policy decisions can be made that minimize costs and liability.

SCA requirements

The SCA requires that a service employee be provided a certain amount of vacation time commensurate with the employee's years of service on the same or similar contract. The employee is not due any vacation until his or her anniversary date, or the date the employee began work on the same or similar contract, whether as an employee of the current or a predecessor contractor.

On the employee's anniversary date, the employee is eligible to receive the full amount of vacation time due for the year. The vacation time must be used by or paid out to the employee on or before the next anniversary date, or one year later.

Sick leave

The SCA does not require that any sick leave be provided to employees. However, an employer may choose to provide sick leave as a bona fide benefit and count the value of the sick leave against the health and welfare benefits due, so long as providing sick leave is not otherwise required by law.

In recent years, many states and localities have passed laws requiring employers to provide sick leave to employees, including service employees who work in those jurisdictions. To name a few, California, Washington, D.C., New Jersey, and Montgomery County, Maryland, all require employers to pro-

vide sick leave. The laws have many similarities, but also challenge employers with slight differences. Most of these laws contain a designated amount of sick leave to be provided per year and require that employees be eligible to carry over sick leave from one year to the next.

SCA, state & local compliance

To comply with the SCA and state and local leave laws, employers often develop paid-time-off policies that combine sick leave and vacation into one leave bank. A properly drafted paid-time-off policy may solve the problem of having to provide additional sick leave to employees outside of the vacation leave already required by the SCA.

However, employers must ensure that all of the other requirements of the SCA and local law are met, including allowable reasons for sick leave and carry over requirements which may not be allowed under the SCA vacation requirements.

The Department of Labor generally has not required employers to provide additional leave to service employees under most of these laws, often because the requirements of the SCA may be met if the policy and leave accounting procedures are well managed.

However, an employer may still be liable for additional leave if it is unclear whether the policy was administered to satisfy both laws.

Sick leave executive order

Executive order 13706, Sick Leave for Federal Contractors, adds another dimension to leave policy administration. The executive order applies to solicitations issued on or after Jan. 1, 2017.

Although many contractors expected this executive order to be revoked by the Trump Administration, it has not, and may not be, pulled back.

The executive order does not allow contractors to satisfy their sick leave obligations by "double dipping" into the vacation leave al-

ready provided by the applicable SCA wage determination. This benefit must be provided in addition to SCA vacation time and any sick leave provided to employees through the health and welfare benefit.

Additionally, because the executive order is phased in by contract, an employer may be required to comply on one contract but not another. Unlike SCA leave, but like many state laws, executive order sick leave must be carried over from one year to the next, up to 56 hours a year, and does not have to be paid out to employees at the end of the contract.

Conclusion

Providing leave to employees can be a significant cost for employers. Contractors who spend the time to analyze their leave requirements and make strategic policy decisions are much better positioned to bid competitively, maximize profit, and maintain compliance.

Although combining sick and vacation time into one paid time off policy has become popular in recent years, contractors should examine whether separating vacation and sick leave into separate leave banks is the best option to comply with all leave requirements. Any policy developed should take into account legal obligations as well as your corporate culture and operational needs.

If you are interested in learning more about compliance obligations and leave laws, please join us in June for a webinar that will explore this topic in more depth. More information can be found at www.pilieromazza.com/events.

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