



March 30, 2016

Robert Waterman, Compliance Specialist
Wage and Hour Division, U.S. Department of Labor
Room S-3510, 200 Constitution Avenue NW.
Washington, DC 20210

Re: Proposed Department of Labor (Wage and Hour Division) Rule on Establishing Paid Sick Leave for Federal Contractors (RIN 1235-AA13)

Dear Mr. Waterman,

Demos is a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We were proud to be among the advocates who called for an executive order establishing paid sick leave for federal contractors. **We write today in strong support of Executive Order 13706 and the U.S. Department of Labor's proposed rule implementing it.**

Demos research has quantified how the federal contracting system fuels inequality by funding low-wage jobs that lack critical benefits such as leave.¹ Enabling workers employed through federal contracts to accrue paid sick leave, combined with prior executive actions to raise wages for contract employees, is an important step toward reversing this process, rebuilding the country's middle class and reaffirming the nation's long-standing commitment to protecting workers working on behalf of America. At the same time, the Executive Order and proposed rule will contribute to improved quality, economy, and efficiency in government procurement at little cost to contractors.

The proposed rule will directly benefit an estimated 828,000 employees of federal contractors, including an estimated 437,000 employees who currently receive no paid sick days. The proposed rule requires contractors to allow employees working on or in connection with a covered contract to accrue up to 56 hours of paid sick time annually to care for their own medical needs, a family member's medical needs, or for purposes related to domestic violence, sexual assault or stalking. These employees will join the approximately 10 million or more workers across the country who have or will soon have access to paid sick days as a result of laws that have been enacted in five states, the District of Columbia and more than 20 localities across the country.²

I. Paid sick days will improve the economy and efficiency of federal contracting.

Evidence from the private sector and the states and cities with paid sick days laws demonstrates that paid sick days improve employee retention, reduce workplace contagion and injury and increase productivity. The cost savings associated with paid sick days serve the purpose of the Order to promote economy and efficiency in federal contracting.

Paid sick days help reduce the high costs of employee turnover. Research shows that an employee is at least 25 percent less likely to voluntarily leave a job when the employee has access to paid sick days.³ Across all occupations, median turnover costs are estimated to be 21 percent of workers' annual wages. For workers in high-wage jobs and senior or executive positions, turnover costs can amount to 213 percent of workers' salaries,⁴ and even in middle- and lower-wage jobs, turnover costs are estimated to be 16 to 20 percent of workers' annual wages.⁵ Direct costs associated with turnover include separation costs, costs associated with temporary staffing, costs associated with searching for and interviewing new workers, and training costs for new workers.⁶ Indirect costs associated with turnover can arise from lost productivity leading up to and after employee separations, diminished output as new workers ramp up, reduced morale and lost institutional knowledge.⁷

Paid sick days help reduce the risk of workplace contagion and injury. Many workers without paid sick days report to work sick rather than sacrificing critical income, resulting in co-workers' and customers' exposure to contagious infections. In a national survey, 87 percent of employers reported that employees had come to work with short-term, easily spread illnesses such as a cold or the flu.⁸ Paid sick days reduce the risk that employees will spread illness at work. Overall, people without paid sick time are 1.5 times more likely than people with paid sick time to go to work with a contagious illness like the flu.⁹ In a recent paper examining Google flu data from 2003 to 2015, researchers found that when workers gained access to paid sick days, the number of workers going to work with contagious illnesses decreased, causing infection rates to decrease by up to 20 percent.¹⁰

Paid sick days may also reduce the risk of workplace injuries. A study by researchers from the National Institute for Occupational Safety and Health at the Centers for Disease Control and Prevention found that workers with access to paid sick time were 28 percent less likely than workers without access to paid sick time to be injured on the job.¹¹ Paid sick days will therefore improve the economy and efficiency of federal contracting by decreasing the amount of worker time lost to contagious illness and workplace injuries.

Paid sick days can lead to improvements in productivity. Paid sick days can reduce the risk of “presenteeism” – workers coming to work with illnesses and health conditions that reduce their productivity – a problem that costs the national economy \$160 billion annually (\$206.6 billion after adjusting for inflation).¹² In one survey of human resources executives, 38 percent reported presenteeism being a problem in their organizations, and 69 percent reported having paid sick time or other paid time off policies in place as measures to prevent this problem.¹³ Another survey showed that 26 percent of workers without paid time off to see a doctor reported having six or more days in which they were unable to concentrate at work, compared to 17 percent of workers who had such paid time off.¹⁴ Paid sick days help workers recover and return to work more quickly: nationally, workers without paid sick days spent more days bedridden due to illness than workers with paid sick days.¹⁵

Compliance with the EO will not unduly burden contractors. Experience shows that most employers do not face challenges when paid sick days requirements go into effect. In particular, under the proposed rule, contractors with an existing policy that provides paid time off and meets certain conditions will satisfy the requirements of the EO. This means that contractors that already provide this time will not have to provide additional time.

Even for contractors who do not already provide paid time off, evidence from the cities and states with paid sick days laws demonstrates that compliance burdens for contractors are minimal and are far outweighed by the benefits of the law. In San Francisco, home to the country's first paid sick days standard, the Vice President of the local Chamber of Commerce – which led the fight against the law with dire predictions about its impact on employers and job growth – told the *New York Times* that the law's impact was “minimal” and that “[b]y and large, [paid sick days] has not been an employer issue.”¹⁶ In Connecticut, which passed a paid sick days law in 2011, a 2013 survey of employers found that the law had a minimal impact on costs. Employers identified several positive effects of paid sick days, including improved employee productivity and morale, and more than three-quarters expressed support for the law.¹⁷ Nearly three years after Seattle's 2011 adoption of its paid sick days law, nearly 70 percent of employers said they experienced no administrative difficulties with implementation and 70 percent of employers said they support the law.¹⁸ Finally, in Jersey City, where paid sick days passed in 2013, businesses that changed their policies to comply with the law reported significant benefits, including a reduction in the number of sick employees coming to work, an increase in productivity, an improvement in the quality of job applicants and a reduction in employee turnover.¹⁹

II. The proposed rule will benefit workers, public health and the economy and aligns with existing state and local paid sick days laws.

The proposed rule contains important provisions on accrual and purposes of leave, covered family members, reinstatement of leave, and notice, retaliation and enforcement that will further the goal of improving economy and efficiency in federal contracting.

The proposed rule's accrual rate and maximum accrual amount will enable workers and contractors to realize the benefits of paid sick days and are in line with state and local laws. The proposed rule requires contractors to allow workers to accrue one hour of paid sick time for every 30 hours worked on or in connection with a covered contract, and permits the contractor to limit an employee's accrual to 56 hours (the equivalent of seven days for a full-time worker) annually. We are pleased that “hours worked” encompasses all time for which an employee is or should be paid, including when the employee is using paid sick days or other paid time off provided by the contractor.

Enabling workers to accrue an adequate amount of time is essential to realizing the health benefits of paid sick days. An uncomplicated case of influenza can take between three and seven days to resolve, and most healthy adults may be contagious for five to seven days after becoming sick.²⁰ In addition, allowing accrual up to 56 hours is in line with typical private sector employers' practices: the majority of private

sector workers with paid sick days receive five to nine days per year.²¹ Offering comparable benefits may help federal contractors compete for talented employees. The proposed accrual rate is also consistent with existing paid sick days laws; the vast majority – more than two thirds – allow workers to accrue sick time at this exact rate.

The purposes for which paid sick time can be taken under the proposed rule will lead to a more productive workforce and will improve the health and safety of workers. The proposed rule requires that workers must be allowed to use their paid sick time for absences from work due to the employee’s or a family member’s physical or mental illness or need for medical care, or for purposes related to the employee or employee’s family member being a victim of domestic violence, sexual assault or stalking. These purposes are consistent with paid sick days laws across the country.

Providing workers time off to attend to their own and their family members’ health care needs will ensure a healthier and more productive federal contracting workforce. Paid sick time reduces recovery time, promotes the use of regular medical providers rather than hospital emergency departments, and reduces the likelihood of people spreading illness.²² Access to paid sick time can also help decrease the likelihood that a worker will put off needed care, and can increase the rates of preventive care among workers and their children.²³ Allowing workers time off to care for their children makes recovery faster and can prevent future health problems.²⁴

The proposed rule’s inclusion of time off related to domestic violence, sexual assault or stalking is also critical to the safety and economic security of workers. Survivors of domestic and sexual violence are often forced to lose days of paid employment because of the violence they face. According to surveys from the Bureau of Justice Statistics, 36 percent of rape and sexual assault victims lost more than 10 days of work following victimization, and more than half of stalking victims lost five or more days of work.²⁵ Each year, victims of domestic violence are forced to miss nearly eight million days of paid work, costing more than \$700 million annually due to lost productivity.²⁶

We fully support DOL’s proposed definition of “[i]ndividual related by blood or affinity whose close association with the employee is the equivalent of a family relationship” to mean “any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.” In response to DOL’s request for input, we do not believe specific limitations are necessary. In fact, any attempt to enumerate and limit the types of relationships covered by the “blood or affinity” standard could undermine its purpose and exclude important family relationships. DOL’s emphasis on a significant personal bond, regardless of a biological or legal relationship, captures the essence of this standard and reflects the reality of today’s families. In particular, DOL’s example of a worker who has provided, for five years, unpaid care to an elderly neighbor captures the important relationships covered by a flexible definition.

We strongly support reinstatement of accrued unused paid sick time for employees rehired by the same contractor or a successor contractor within 12 months after a job separation. Reinstatement of

paid sick time means that an employee will not lose her accrued time if she leaves and returns to the same job on one contract or while she remains employed by an employer in between work on covered contracts. Additionally, we fully support DOL's interpretation of the EO to mean that an employee does not forfeit her accrued paid sick time when she takes a job working on a successor contract. Reinstating unused paid sick time may encourage employees to continue working for the same contractor on new contracts and on successor contracts, which will improve efficiency for the contractor and for the government by improving continuity and reducing training costs.

The proposed rule contains important provisions on notice, interference and discrimination, and enforcement. The proposed rule requires contractors to notify employees performing work on or in connection with a covered contract of the paid sick time requirements by posting a notice to be provided by DOL in a prominent and accessible location. Contractors are familiar with posting requirements under federal employment laws and executive orders.²⁷ Additionally, the proposed rule requires contractors to inform employees in writing of the amount of paid sick time the employee has accrued but not used at various times. This important step will ensure that employees have the information they need to use their sick time appropriately.

The proposed rule prohibits a contractor's interference with an employee's accrual or use of paid sick time, as well as discrimination against an employee for using or attempting to use paid sick time, filing a complaint, cooperating in an investigation, or informing another of her rights. State and local paid sick days laws have similar protections. Such protections are fundamental, because without them, a worker's right to earn paid sick time would be illusory. In the United States, nearly half of private sector workers (49 percent) who have paid sick time say their employers have progressive disciplinary policies that punish workers for using paid sick time; more than one-third report that they fear retaliation or abuse for using paid sick time.²⁸

Finally, the proposed rule contains reasonable enforcement provisions, allowing employees to file complaints with DOL's Wage and Hour Division, and contains appropriate remedies including recovery of liquidated damages and the possibility of debarment for contractors who are found to have disregarded their obligations under the EO. Strong enforcement provisions are critical to protecting workers' rights and discouraging contractors from violating the law.

III. Certain provisions of the proposed rule should be improved to further effectuate the purpose of the proposed rule and promote clarity.

The proposed rule unnecessarily limits the scope of service contracts it covers. Sections 6(d)(i)(A)-(B) of the EO indicate that the Order applies to, among other contracts, two types of service contracts. Section 6(d)(i)(A) refers to a "procurement contract for services or construction," and Section (6)(d)(i)(B) refers to a "contract or contract-like instrument for services covered by the Service Contract Act" (SCA). We believe that the proposed rule unnecessarily limits the Order's applicability, defining all service contracts covered by the EO as those covered by the SCA and thereby carving out "procurement

contract[s] for services” that are not covered by the SCA.²⁹ These include service contracts performed exclusively by Fair Labor Standards Act-exempt employees, certain public utilities contracts, certain contracts for carriage by common carriers, and certain contracts with the U.S. Postal Service.³⁰ This narrower interpretation is not necessary, and the proposed rule could – and should – apply to procurement contracts for services beyond the scope of the SCA. The plain language of the Order does not require service contract coverage to be coextensive with the SCA. Sections 6(d)(i)(A) and (B) are drafted as separate provisions, with no indication that section 6(d)(i)(B) was intended to limit the scope of 6(d)(i)(A) to only those procurement contracts for services subject to the SCA.

The Order’s stated purpose of “[improving] the health and performance of employees of Federal contractors” and thus serving the Government’s twin goals of efficiency and economy is better served by extending coverage to the broadest possible set of employees covered by the Order. Limiting coverage to employees on SCA-covered service contracts removes several groups of employees from the Order’s important protections.

Contractors should not be able to limit employees to using accrued paid sick time when they otherwise would have been working on a covered contract, as this reduces worker flexibility and adds administrative complexity. The discussion of the proposed rule indicates that federal contractors are only obligated to allow employees to use accrued sick time during times when they would have been working on a federal contract. In practice, this means that employees who work on covered contracts as well as non-covered contracts, or who perform other work for their employer, could only use their accrued paid sick days at specific times. Illness doesn’t tell time or appear on a schedule, yet this interpretation requires the contractor – and the employee – to know ahead of time when the employee will be doing work on a covered contract so that the employee knows whether she can use a sick day and so the contractor can know whether to permit use of the day. For employees who work on a covered contract and perform other work on the same days or on an undefined schedule, tracking or predicting this will be difficult and imposes an administrative burden on contractors while also leaving workers uncertain as to whether they can use their paid sick time. If employees are unable to use their time when they are sick, the benefits of the rule – reduced workplace contagion and injury and improved productivity overall for the contractor – will also be lessened.

The provisions limiting accrual, available hours, use and carryover should be simplified for clarity and consistency. Currently, the proposed rule provides that:

- A contractor may limit an employee’s annual accrual to 56 hours (“annual limit”);³¹
- An employee can carry over any unused time from one year to the next, and the amount carried over does not count toward the employee’s 56-hour annual accrual limit;³²
- A contractor may limit the number of hours an employee can have *available for use* at any point to 56 hours (“availability limit”);³³ and
- A contractor may not limit the amount of sick time an employee may *use* per year or at once.³⁴



Allowing contractors to limit the total amount an employee can have available to use at any point will be confusing for contractors and employees alike. For example, an employee who carries over 16 hours of unused time would still be allowed to accrue up to 56 additional hours the following year, because the carried over hours do not count towards the employee's total annual accrual limit. In effect, however, the employee would only accrue 40 more hours before hitting the 56-hour *availability* limit, and would not accrue additional hours until they used some of their available time. We suggest that DOL remove the availability limit, and instead permit contractors to cap the amount an employee can carry over from one year to the next at 56 hours. This would provide workers with the same maximum number of annual hours, but would eliminate the confusion of having two separate limits – one for annual accrual and one for availability for use.

DOL should further identify the ways in which a contractor must satisfy the requirements of the EO while also complying with a state or local paid sick days law. Section 13.5(f)(4) of the proposed rule states that a contractor does not satisfy their EO obligations merely by complying with a state or local paid sick days law. DOL should specify that a contractor subject to both the EO and a state or local law must provide time that meets or exceeds the requirements of the Order as to accrual, conditions and purposes for use, and other essential aspects of the Order. Greater clarity on this issue would help both contractors and employees know their responsibilities and rights.

IV. Conclusion

We strongly support the proposed rule, which will guarantee more workers the job and economic security that paid sick days provide, reduce workplace contagion and increase productivity and retention, leading to greater economy and efficiency in federal contracting and cost savings to the government, taxpayers and employers. When implemented, this rule will also add to the growing body of evidence that demonstrates the clear benefits of paid sick days and the need for a national standard. We applaud the administration for leading the way on this issue and urge swift implementation of a final rule.

Respectfully,

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- ²⁹ The discussion of the rule explains that DOL reads these two phrases together to apply the Order to “all procurement and non-procurement contracts covered by the SCA.” Accordingly, Section 13.3(a)(1)(ii) of the proposed rule provides that only those contracts for services covered by the Service Contract Act (SCA) are within the scope of the Order’s coverage. In addition, Section 13.2 of the proposed rule defines “procurement contract for services” as one that is covered by the SCA.
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- ³² *Ibid.* (proposed § 13.5(b)(2)).
- ³³ *Ibid.* (proposed § 13.5(b)(3)).
- ³⁴ *Ibid.* (proposed § 13.5(c)(4)).