

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT

OMB CONTROL NUMBER: 1235-0NEW

The Department of Labor (the Department or DOL), Wage and Hour Division (WHD) is proposing a new ICR in coordination with a Notice of Proposed Rulemaking to implement the requirements of Executive Order 13706, signed by President Obama on September 7, 2015.

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

On September 7, 2015, President Barack Obama signed Executive Order 13706 (80 FR 54697, September 10, 2015). The Executive Order establishes paid sick leave for Federal Contractors. Executive Order 13706 states that the Federal Government's procurement interests in efficiency and cost savings are promoted when the Federal Government contracts with sources that ensure workers on those contracts can earn paid sick leave. The Executive Order therefore requires parties who contract with the Federal Government to provide their employees with up to seven days of paid sick time annually, including paid time allowing for family care. The Executive Order directs the Secretary to issue regulations by September 30, 2016, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, to implement the Order's requirements. The proposed rule establishes standards and procedures for implementing and enforcing the paid sick leave requirements of Executive Order 13706. As required by the Order, the proposed rule incorporates to the extent practicable existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Violence Against Women Act, and Executive Order 13658, Establishing a Minimum Wage for Contractors.

Among other requirements, the proposed regulations will require employers subject to the Order to track accrued leave, leave usage, n instances where the employee uses at least three consecutive days of paid sick leave, provide notice to employees of the amount of accrued paid leave, and maintain records for the new leave requirements and allow employers subject to the Order to obtain a certification. This new information collection is proposed and submitted along with the Notice of Proposed Rulemaking (NPRM).

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

Section 1 of Executive Order 13706 sets forth a general position of the Federal Government that ensuring employees on Federal contracts can earn up to seven days or more of paid sick leave annually, including paid leave allowing for family care. The Order seeks to increase efficiency and cost savings for the Federal Government. 80 FR 54697. Section 2 of the Executive Order sets out requirements and restrictions regarding the accrual and use of the required paid sick time. Section 3 of EO 13706 provides that the Secretary shall issue regulations by September 30, 2016, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, to implement the requirements of the Order, including providing exclusions from the requirements set forth in the Order where appropriate and requiring employers to make, keep, and preserve such employee records as the Secretary shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of the Order to the regulations thereunder. 80 FR 54698, Section 4 of Executive Order 13706 grants authority to the Secretary to investigate potential violations of and obtaining compliance with the Order, including the prohibitions on interference and discrimination in section 2(k) of the Order. 80 FR 54699.

Section 6 of Executive Order 13706 further establishes that the Order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 3(a) of the Order, if: (i) (A) it is a procurement contract for construction covered by the Davis-Bacon Act ; (B) it is a contract or contract-like instrument for services covered by the Service Contract Act; (C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or (D) it is a contract or contract-like instrument 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; and (ii) the wages of employees under such contract or contract-like instrument are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from its minimum wage and overtime provisions. 80 FR 54699. Section 6 of the Order also states that, for contracts or contract-like instruments covered by the SCA or the DBA, the Order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. 80 FR 54699-54700.

Additionally, for procurement contracts in which employees' wages are governed by the FLSA, the Order specifies that it shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the Order pursuant to regulations or actions taken under section 3 of the Order. 80 FR 54700. The Executive Order specifies that it shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended; or any contracts or contract-like instruments expressly excluded by the

1235-0NEW

November 2015

regulations issued pursuant to section 3(a) of the Order. Id. The Order also strongly encourages independent agencies to comply with its requirements. Id.

Section 7 of Executive Order 13706 provides that the Order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued, or the contract has been awarded outside the solicitation process, on or after: (i) January 1, 2017, consistent with the effective date for the action taken by the FARC pursuant to section 3 paragraph (a) of section 3 of the Order; or (ii) January 1, 2017, for contracts where an agency action is taken pursuant to section 3(b) for contracts where an agency action is taken pursuant to paragraph (b) of section 3 of the Order, January 1, 2017, consistent with the effective date for such action. 80 FR 54700. It also specifies that the Order shall not apply to contracts or contract-like instruments entered into pursuant to solicitations issued on or before the effective date for the relevant action taken pursuant to section 3 of the Order.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. For revisions, extensions, and reinstatements of a currently approved collection, indicate the actual use the agency has made of the information received from the current collection.

According to Executive Order 13706 and the proposed regulations, no particular form of certification is required. Indeed, the proposed regulations indicate that the certification may take the form of a simple statement. However, the proposed regulations require employers and employees to make the third-party disclosures in order to fulfill the certification requirement. The third-party disclosures ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under the Executive Order. The recordkeeping requirements are necessary in order for the Department to carry out its obligation under Section 4 of the Executive Order to investigate potential violations and ensure compliance with the Order. The WHD will use these records to determine employer compliance

3. Information Technology.

The proposed regulations prescribe no particular order or form of records. The preservation of records in such forms as microfilm or automated word or data processing memory is acceptable, provided the employer maintains the information and provides adequate facilities to the Department for inspection, copying, and transcription of the records. In addition, photocopies of records are also acceptable under the regulations. Aside from the general requirement that all third-party notifications be in writing, there are no restrictions on the method of transmission. In the case of an overlap with FMLA certification requirements, respondents may meet many of their notification obligations by using Department-prepared publications available on the WHD website, www.dol.gov/whd. These forms are in PDF, fillable format for downloading and

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

printing. Employers may maintain records in any format, including electronic, when adhering to the recordkeeping requirements covered by this information collection. However, note that for qualifying absences of more than three days the respondents, responses and burdens for the certification are already captured in ICR 1235-0003.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.

The Department has carefully reviewed the proposed NPRM and notes that in the case of an overlay with requirements under the Family and Medical Leave Act (29 U.S.C. 2601 *et seq*), employers may require a medical certification for qualifying leave reasons to eligible employees of covered employers for absences of MORE than three days. Section 2(i) of the Executive Order allows an employer to require certification for an absence of three days or more. In the circumstance in which an employee is using FMLA leave, the FMLA certification will substitute for the EO 13706 certification and therefore duplication will not be an issue. No similar information is available from any other source.

5. If the collection of information has a significant impact on a substantial number of small businesses or other small entities describe the methods used to minimize burden.

While these information collections may involve a number of small businesses, the collections do not have a significant impact on the small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Department is assigned a responsibility to ensure employer compliance with the Executive Order. The Department uses records covered by this information collection to determine compliance, as required of the agency by Executive Order 13706 (80 FR 54697, September 10, 2015). Without the certifications, employers and employees would have difficulty knowing whether the leave meets a qualifying leave reason under the Executive Order and employers and employees would have difficulty carrying out their rights and obligations under the Order.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**

1235-0NEW

November 2015

- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special conditions associated with these information collections.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record-keeping, disclosure, or reporting format (of any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

A Federal Register notice (Notice of Proposed Rulemaking) inviting public comments, including comments on the Paperwork Reduction Act and Department burden estimates was published February 25, 2016 (81 FR 9592).

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-0NEW

November 2015

The Department held listening sessions regarding the Order with worker advocates and business representatives in October and November 2015.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

DOL offers no payments or gifts to respondents in connection with this proposed information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

DOL makes no assurances of confidentiality to respondents. As a practical matter, DOL would only disclose information collected under these requests in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552; the Privacy Act (PA), 5 U.S.C. § 552a; and related regulations, 29 C.F.R. Parts 70-71.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The proposed regulations authorize employers to require their employees to submit a certification for absences of three or more consecutive days, to substantiate the need for paid leave. These records may contain sensitive information because of the personal and delicate nature of a request for leave that may address either the health condition of the employee or for providing family care, as well as for victims to address domestic violence, sexual assault, or stalking. However, the proposed regulations indicate that a simple statement may suffice in order to limit access to such information.

12. Provide estimates of hour burden of the collection. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-0NEW

November 2015

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**

The clearance period for an ICR is three years. The Department has estimated the number of affected workers as part of this NPRM in the economic analysis (section titled “Executive Order 12866 and 13563”). The number of affected workers increases progressively as Executive Order 13706 applies to new contracts, contract-like instruments, and solicitations. 80 FR 54697. The Department calculated the average annual geometric growth rate in employment based on a ten year employment projection. The estimated affected workers in Years 1-10 are reported in Table 7 of the economic analysis included in the NPRM. For purposes of the 3-year clearance period, the Department has added the total affected workers in Years 1-3 and divided by 3 ($153,800 + 322,000 + 490,400 = 966,200 / 3 = 322,067$ (rounded)). The Department will use this figure for burden estimates over the three year clearance period.

A. Certification

The proposed regulations allow a contractor to require certification issued by a health care provider for use of paid sick leave if the employee uses paid sick leave of 3 or more consecutive workdays. (29 CFR 13.5(e)). The contractor may require that certification be provided no later than 30 days from the first day of leave. Id.

DOL estimates 322,067 workers will gain paid sick leave benefits as a result of Executive Order 13706. The National Compensation Survey (NCS) indicates that workers in industries such as financial activities industry, information industry, trade, transportation, and utilities industry, and professional and business services industry, on average use 4 days of sick leave per year. <http://www.bls.gov/opub/mlr/cwc/paid-sick-leave-prevalence-provision-and -usage-among-full-time-workers-in-private-industry.pdf>.

Additionally, NCS indicates that the leisure and hospitality industry and those in the construction industry use 2 days of sick leave per year. The Department proposes to use the 4 days of leave estimate for 2 reasons: (1) Executive Order 13706 allows the use of leave for more than just sick leave. An employee may use the leave for family care, or an absence resulting from domestic violence, sexual assault, or stalking. EO 13706, section 2. The Department notes that because the EO is specific to government contracts which are more often applicable to Davis-Bacon Act and Service Contract Act employees, such employees are more likely to fall in the leisure and hospitality industry and construction industry which suggests use of the lower number of days (2 per employee) used from the NCS data. However, because the EO allows use of the paid leave for more than just sick leave, the Department believes the higher estimated number is appropriate; and (2) certification is not needed until at least 3 days of consecutive leave have been used and therefore use of the lower number would preclude the Department from estimating any burden associated with the certification. The Department does not believe such an analysis would be accurate. As a result, the Department has used the average of 4 days per worker but notes that the estimate will also be somewhat offset by the fact that FMLA-eligible employees (of which some are included in the 322,067 employees who the Department estimates will be newly eligible for paid sick leave) will be required to follow the FMLA certification requirements for qualifying

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-0NEW

November 2015

leave reasons of MORE than 3 consecutive days. Some of these employees discussed in this information collection are already captured and the burdens accounted for in a separate ICR (1235-0003). Note also that the certification for leave taken under EO 13706 may only be required by the employer in the instance when an employee takes 3 or more consecutive days of paid sick leave. While the Department is using the 4 days per worker average in proposing its estimates for this collection, most employees will not take the 4 days consecutively. Rather, most employees will use paid sick leave intermittently throughout the year.

The Department estimates 322,067 newly covered employees will gain sick leave as a result of the Executive Order (See Table 16, Column C and Table for number of employees). As indicated above, most of these employees will likely use 4 instances of qualifying leave each year although most will also use such leave intermittently. The Department estimates that 15 percent of these employees will use leave in a block of 3 consecutive days or more.

Therefore, 48,310 employees ($322,067 \times .15$ (rounded)) will use leave in blocks of 3 days or more. The Department further estimates that 5 percent of these employees ($48,310 \text{ employees} \times .05 = 2,416$ (rounded)) using block leave will be covered eligible employees under the FMLA and be subject to those certification requirements rather than the certification requirements of these proposed regulations. The Department estimates the low percentage due to the high ratio of employers to employees listed above and contained in the economic analysis. Note that a covered employer for FMLA leave must have at least 50 employees and an employee must have worked for at least one year and 1,250 hours in the prior year in order to be eligible for FMLA leave. Therefore, 45,894 employees ($48,310 \text{ total employees} - 2,416 \text{ FMLA-covered employees}$) will be subject to the certification requirements of these proposed regulations.

The proposed regulations indicate that the certification may be a simple statement (as opposed to the FMLA certification optional-use forms which allow an employer to require substantially more information to be collected). The Department estimates respondent burden at 5 minutes to obtain the certification for the proposed regulations.

$45,894 \text{ employees} \times 5 \text{ minutes per certification} = 229,470 \text{ minutes} / 60 \text{ minutes per hour} = 3,825 \text{ hours (rounded)}$.

Respondents:	45,894
Responses:	45,894

Burden hours: 3,825

Burden cost for this requirement is calculated using the May 2014 BLS/OES data. For the employer respondent, the wage data is calculated using HR Specialist 13-1017 category of \$27.57 per hour. $3,825 \text{ hours} \times \38.60 ($\$27.57 + \$11.03 \text{ benefits cost}$) = \$147,645 (rounded).

Burden cost = \$147,645

The Department further estimates burden for a third party (e.g. health care provider) to complete the simple statement certification in item 13.

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

TOTAL BURDEN HOURS = 3,825 BURDEN HOURS

TOTAL BURDEN COST = \$147,645

B. Recordkeeping

The proposed regulations identify records to be kept by employers. (29 CFR 13.25). These include: (1) name, address and social security number of each employee; (2) the employee's occupation or classification; (3) the rate or rates of wages paid; (4) the number of daily or weekly hours worked; (5) any deductions made; (6) the total wages paid each pay period; (7) dates and hours of paid sick leave taken by employees- leave must be designated in records as paid sick leave pursuant to Executive Order 13706; (8) copies of employees' notices of paid sick leave furnished under Executive Order 13706, if in writing; (9) Copies of all written notices under Executive Order 13706; (10) any documents (including written and electronic records) describing employees' paid sick leave benefits or employer policies and practices relating to the taking of paid and unpaid sick leave; (11) premium payments of employees' paid sick leave benefits; (12) records of any dispute between the contractor and an employee regarding designation of leave as paid sick leave, including any written statement from the contractor or employee of the reasons for the designation or disagreement; (13) any records related to the certification and documentation a contractor may require an employee to provide under Executive Order 13706, including copies of any certification or documentation provided by an employee. Items 1-6 are already required under the Fair Labor Standards Act, Service Contract Act, and Davis-Bacon Act and their governing regulations. These burdens are captured in ICR 1235-0018. Note that the Department will submit as part of this rulemaking an amendment to the ICR 1235-0018 to add the citations to these proposed rules to incorporate into the ICR.

While maintaining records of leave is a customary and normal business practice, the Department believes the added requirement that leave must be designated in records as paid sick leave pursuant to Executive Order 13706 adds an additional burden to employers. However, once systems are adjusted, the overall burden to actually record the leave as paid sick leave pursuant to the EO will be minimal beyond the normal course of recording leave. The Department therefore estimates one (1) minute per employee. **322,067 employees x 1 minute / 60 minutes x 4 times annually = 21,471 hours (rounded).**

Respondents: 322,067

Responses: 1,288,268

Burden Hours: 21,471

The proposed regulations indicate that an employee should provide notice of at least 7 calendar days if the need for leave is foreseeable. The proposed regulations require a contractor to inform an employee in writing of the amount of paid sick leave that employee has available for use no less

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-0NEW

November 2015

than quarterly, at any time when the employee requests to use paid sick leave, and upon the employee's request for such information. 29 CFR 13.5(a)(2). As a result, employers will need to track leave requests and leave use. Generally, estimates should not include burden hours for customary and usual business practices. Tracking of hours and leave use is a customary and usual business practice and therefore no burden is estimated for these requirements. However, the Department estimates a burden for notice requirements below.

Paid sick time shall be reinstated for employees rehired by a contractor or hired by a successor contractor within 12 months after job separation. The Department notes that this may not be a customary and usual business practice. Employers normally have wide latitude in determining whether to reinstate accrued leave for a returning employee. As a result, the Department estimates that all affected employers will incur a burden in this recordkeeping requirement. As noted above, the Department estimates 322,067 newly covered employees as a result of the Executive Order. While most employees who leave employment will not subsequently return within 12 months, employers have no way of knowing which employees will leave employment and return within a 12-month period and thus will need to maintain the records for all employees who are affected by the EO. Many employers will already have such capability in their current benefits recordkeeping systems. Some employers will elect to maintain such records in paper form. However, the Department notes that once the leave has been recorded (accounted for above), maintaining the records does not add additional burden.

Certified List

Proposed § 13.26 provides that upon completion of a covered contract, a predecessor prime contractor shall provide to the contracting officer a certified list of the names of all employees entitled to paid sick leave under Executive Order 13706 and this part who worked on or in connection with the covered contract or any covered subcontract(s) at any point during the 12 months preceding the date of completion of the contract, the date the employee separated from the contract or any covered subcontract(s) if prior to the date of the completion of the contract, and the amount of unused paid sick leave accrued by each such employee as of the date of completion of the contract or the date the employee separated from the contract or subcontract. This requirement would (in conjunction with proposed § 13.11(f)) facilitate compliance by successor contractors with § 13.5(b)(3), which requires that paid sick leave be reinstated for employees hired by a successor contractor within 12 months of the job separation from the predecessor contractor. The terms predecessor contract and successor contract are defined in proposed § 13.2.

The Department estimates that the creation of the certified list will take approximately 5 minutes per employee.

322,067 employees x 5 minutes per employee / 60 minutes per hour = 26,839 burden hours (rounded).

322,067 Respondents (the Department notes this is likely an overestimate).

322,067 Responses (the Department notes this is likely an overestimate).

TOTAL BURDEN HOURS RECORDKEEPING: 48,310 BURDEN HOURS (21,471 +

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

26,839)

In order to calculate employer burden costs, the Department used the median hourly wage for a non-supervisory Human Resources Specialist for May 2014. The median hourly wage is \$27.57. To this amount, the Department added 40 percent to adjust for benefits costs. $\$27.57 \times .40 = \11.03 . This totals \$38.60 ($\$27.57 + \11.03) per hour.

http://www.bls.gov/oes/current/oes_nat.htm#00-0000

TOTAL BURDEN COSTS

48,310 hours x \$38.60 per hour = \$1,864,766 (rounded).

C. Notice Requirements

- i. The proposed rule requires a contractor to provide notice of amount of paid sick leave an employee has accrued but not used no less than monthly, anytime an employee makes a request for paid sick leave, upon request by an employee but no more frequently than weekly, upon separation from employment, and upon reinstatement. See 29 CFR 13.5(a)(2) of the proposed rule.

The Department returns to the number of workers requesting paid leave for this estimate (322,067). The Department estimates that for purposes of providing the monthly notice to employees, payroll will likely be the common format used. As a result, the Department estimates one (1) minute per employee. This is an annual burden of 64,413 burden hours ($322,067 \text{ employees} \times 1 \text{ minute per employee} / 60 \text{ minutes} \times 12 \text{ months} / 1 \text{ year (rounded)}$) and 3,864,804 responses ($322,067 \text{ employees} \times 12 \text{ responses per year}$).

The Department estimates that for the notice required anytime an employee requests paid sick leave employees will take one (1) single day of paid sick leave and one additional instance of leave of at least 3 days. This is two instances of leave for a total of 4 days.

$322,067 \text{ employees} \times 2 \text{ instances of leave} = 644,134 \text{ responses.}$

$644,134 \text{ instances of leave} \times 1 \text{ minute per instance} / 60 \text{ minutes} = 10,736 \text{ burden hours (rounded).}$

For the requirement that notice be provided upon request, the Department estimates that an additional 10 percent of employees will ask for leave notice beyond the monthly notice and the per instance notice. $322,067 \text{ employees} \times .10 = 32,206 \text{ notices.}$ $32,206 \times 1 \text{ minute} / 60 \text{ minutes} = 537 \text{ burden hours (rounded).}$

For the requirement that notice be provided upon separation from employment:

The Department estimates that 10 percent of employees will separate from employment annually and be entitled to notice. $322,067 \text{ employees} \times .10 = 32,206 \text{ notices.}$ $32,206 \times 1 \text{ minute} / 60 \text{ minutes} = 537 \text{ burden hours (rounded).}$

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

For the requirement that notice be provided upon reinstatement:

The Department estimates that 10 percent of employees will be reinstated annually and be provided notice. $322,067 \text{ employees} \times .10 = 32,206 \text{ notices}$. $32,206 \times 1 \text{ minute} / 60 \text{ minutes} = 537 \text{ burden hours (rounded)}$.

Total responses: $3,864,804 + 644,134 + 32,206 + 32,206 + 32,206 = 4,605,556 \text{ responses}$

TOTAL BURDEN HOURS: $64,413 + 10,736 + 537 + 537 + 537 = 76,760 \text{ BURDEN HOURS}$

- ii. The proposed rule notes that a contractor may communicate its grant of a request for leave orally or in writing. However, denials must be in writing with an explanation of the denial. *See* 29 CFR 13.5(d)(3) of the proposed rule.

As noted above, the Department estimates 322,067 employees will request 4 days per year. $322,067 \times 4 = 1,288,268 \text{ total days requested}$. The Department estimates 5 percent will be denied (either because the leave is not accrued or a non-qualifying reason for the leave is provided). $1,288,268 \times .05 = 64,413 \text{ denials (rounded)}$. Each denial must be in writing with an explanation. The Department estimates such a written notice will take 5 minutes to complete.

$64,413 \text{ denials (responses)} \times 5 \text{ minutes} / 60 \text{ minutes} = 5,368 \text{ BURDEN HOURS (rounded)}$

- iii. Proposed § 13.27(a) requires that contractors notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706 by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. The proposed regulation requires all covered contractors, including those whose contracts are DBA- or SCA-covered, to display the poster rather than allowing DBA and SCA contractors to provide notice solely on wage determinations. The Department believes that because the paid sick leave requirements, in particular the method of accrual and permissible reasons for use, require lengthier explanation than the minimum wage requirements of Executive Order 13658, and because those requirements are sufficiently detailed that the Department is not proposing under § 13.12(a) to describe them in full on wage determinations, employees working on or in connection with DBA- and SCA-covered contracts will be more adequately informed about the paid sick leave requirements by a poster. The Department will make the poster, which it will model on the Minimum Wage Executive Order poster, available on the WHD Web site.

Since the poster is created and provided by the Department and the employer is merely required to post the poster (either physically or electronically), there is essentially no significant burden for this requirement.

TOTAL RESPONSES NOTICE REQUIREMENTS: $4,605,556 + 64,413 + 0 = 4,669,969 \text{ RESPONSES}$

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

TOTAL BURDEN HOURS NOTICE REQUIREMENTS: 82,128 HOURS (76,760 + 5,368)

Total burden cost is calculated using BLS/OES data using the HR specialist wage of \$27.57 plus the 40 percent added benefits cost (27.57 + 11.03). This is a total of \$38.60 per hour.

82,128 hours x \$38.60 = \$3,170,141 burden cost (rounded)

The total Respondents for certification, recordkeeping and notice are: 322,067
The total Responses for certification, recordkeeping and notice are: 6,326,198
(45,894 certification responses + 1,288,268 recordkeeping responses + 4,669,969 notice responses + 322,067 certified list)

The total burden hours for certification, recordkeeping and notice are:

3,825 + 48,310 + 82,128 = 134,263 BURDEN HOURS.

The total burden cost for certification, recordkeeping and notice is:

\$147,645 + \$1,864,766 + \$3,170,141 = \$5,182,552

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
Recordkeeping	322067	4 x annually	1288268	1 minute	21471	38.60	828781
Certified list	322067	once	322067	5 minutes	26839	38.60	1035985
Certification	45894	Once	45894	5 minutes	3825	38.60	147645
Monthly notice	322067	12 times annually	3864804	1 minute	64413	38.60	2486342
Per use notice	322067	2 x annually	644134	1 minute	10736	38.60	414410
Requested notice	32206	1 x annually	32206	1 minute	537	38.60	20728
Separation notice	32206	1 x annually	32206	1 minute	537	38.60	20728
Reinstatement	32206	1 x	32206	1 minute	537	38.60	20728

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

notice		annually					
Denial notice	64413	1 x annually	64413	5 minutes	5368	38.60	207205
Unduplicated Totals	322,067	various	6,326,198	various	134,263	38.60	5,182,552

13. **Provide an estimate for the total annual cost burden to respondents or record-keepers resulting from the collection of information (Do not include the cost of any hour burden shown in Items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The proposed regulations allow an employer to require a certification for absences covered by the Executive Order of 3 days or more. The proposal allows the certification to be a simple statement giving enough information to establish the employee’s need to be absent from work. The Department has estimated the number of respondents to be 45,894 (see analysis above under 12.A. Certification) and the number of responses to be the same number. The Department accounts for

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

the third party disclosures involved in the certification here. Often the certification will be the health care provider's office staff. To account for that burden the Department estimates five minutes per response. $45,894 \times 5 \text{ minutes} / 60 \text{ minutes} = 3,825$ burden hours (rounded). Burden cost for this requirement is calculated using BLS/OES data from the May 2014 survey for a Physician Assistant. (Note that the certification does not have to be completed by a medical doctor –although it may be). The wage data for the Physician Assistant is \$46.07 per hour. The Department has added 40% to cover benefit costs ($\$46.07 \times .40 = \18.43 (rounded)). $\$46.07 + \$18.43 = \$64.50$

$3,825 \text{ hours} \times \$64.50 \text{ per hour} = \$246,713$ (rounded)

TOTAL BURDEN COSTS = \$246,713 (maintenance and operations).

- 14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The DOL notes as indicated above that proposed § 13.26 provides that upon completion of a covered contract, a predecessor prime contractor shall provide to the contracting officer a certified list of the names of all employees entitled to paid sick leave under Executive Order 13706 and this part who worked on or in connection with the covered contract or any covered subcontract(s) at any point during the 12 months preceding the date of completion of the contract, the date the employee separated from the contract or any covered subcontract(s) if prior to the date of the completion of the contract, and the amount of unused paid sick leave accrued by each such employee as of the date of completion of the contract or the date the employee separated from the contract or subcontract. This requirement would (in conjunction with proposed § 13.11(f)) facilitate compliance by successor contractors with § 13.5(b)(3), which requires that paid sick leave be reinstated for employees hired by a successor contractor within 12 months of the job separation from the predecessor contractor. The terms predecessor contract and successor contract are defined in proposed § 13.2.

The Department estimates there will be a small burden cost to the federal government to receive and maintain the certified list. The number of solicitations posted on FedBizOpps, the government's central opportunities site, for FY2014 was 79,985.¹ The Department estimates

¹ <http://www.ncmahq.org/docs/default-source/default-document-library/pdfs/exec15---ncma-annual-review-of-government-contracting-2015-edition>, page 18

Information Collections: Establishing Paid Sick Leave for Federal Contractors

1235-ONEW

November 2015

approximately 50% of that number will be completed annually. (39,992). The Department estimates it will take approximately five minutes to receive and file each certified list received. $39,992 \times 5 = 199,960$ min/60 min per hour = 3,333 hours (rounded) annually. The Department estimates cost using the Federal employee salary table (rest of US for 2016) for a grade 11, step 4 to receive and file the document.

$3,333 \text{ hours} \times \$31.23 = \$104,090$ (rounded).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.

This is a new proposed information collection.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The Department does not plan to publish results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

DOL is not requesting an exception to the requirement to display the expiration date on this information collection. This request complies with 5 C.F.R. § 1320.9.

18. Explain each exception to the certification statement requirements.

DOL is not requesting an exception to the certification requirements for these information collections.

B. EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.