



VENABLE

**NVTC HR and Benefits Committee:
Mandatory Paid Sick Leave and
Its Effects on Federal
Contractors**

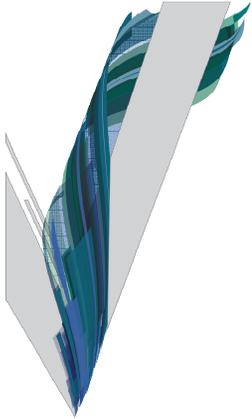
November 10, 2016

Jennifer G. Prozinski

Venable LLP

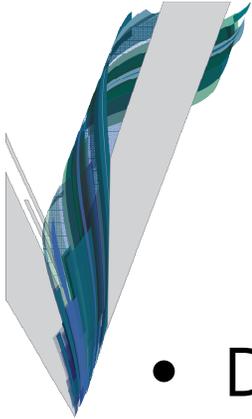
JGProzinski@Venable.com

703.760.1973



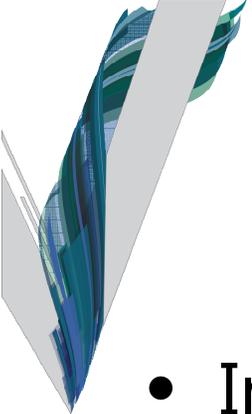
Federal Contractor Mandatory Paid Sick Leave:

Executive Order 13706 (EO)



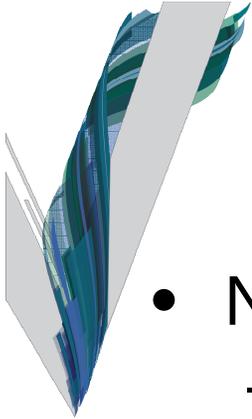
Discussion Points

- Does the EO/Final Rule apply to my organization and/or my employees?
- How does the paid sick leave accrue?
- For what reasons may covered employees use paid sick leave?
- How does the EO/Final Rule apply if other paid sick leave laws apply?
- What are my obligations if the EO/Final Rule applies?
- How will the new overtime regulations effect my organization?



Applicability

- In order for the EO/Final Rule to apply, there must be both:
 - Contract coverage; and
 - Employee coverage



Contract Coverage

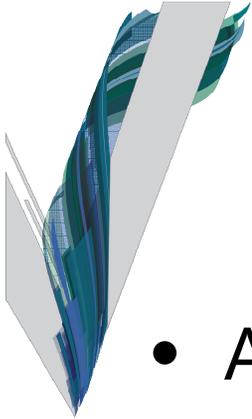
- New Contracts

- Those resulting from solicitations issued on or after January 1, 2017, and
- Contracts awarded outside the solicitation process after January 1, 2017.

- Expiring Contracts

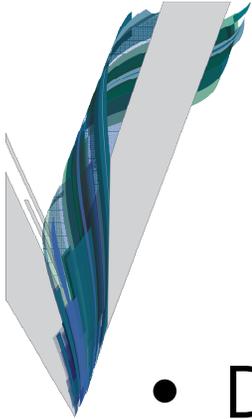
If contract was entered into prior to 2017, covered if;

- 1) Renewed;
- 2) Extended, unless extension was a contract term as of December 31, 2016 and provides for a short-term limited extension; or
- 3) Amended pursuant to a modification that is outside contract scope.



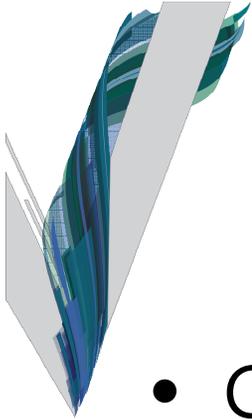
Contract Coverage (cont.)

- Applies to:
 - Procurement contracts under the DBA,
 - Service contracts under the McNamara-O'Hara Service Contract Act (SCA),
 - Concessions contracts, and
 - Contracts regarding Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.



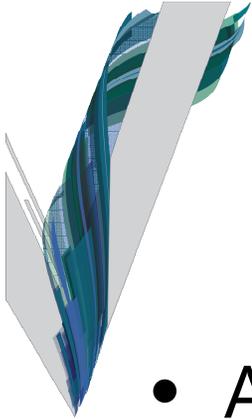
Contract Coverage (cont.)

- Does not apply to contracts pertaining to:
 - Grants (including grants to Indian Tribes);
 - Procurement contracts not subject to the DBA;
 - Contracts for services exempted from coverage under the SCA; or
 - Contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government.



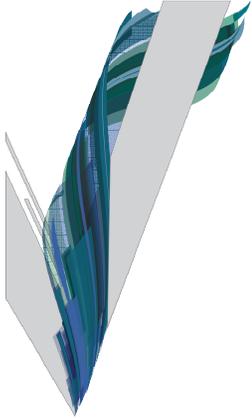
Employee Coverage

- Covers employees who:
 - 1) Perform work “on or in connection with” covered contracts; and
 - 2) Employees whose wages are under contracts governed by the DBA, SCA, or FLSA.



Accrual of Paid Sick Leave

- Accrual Options and Carryover
 - 1 hour of paid sick leave for every 30 hours worked up to minimum of 56 hours (7 days); or
 - Provide at least 56 hours (7 days); of paid sick leave at the beginning of each accrual year.
- FLSA definition of “hours worked” applies
- Accrual for exempt employees
- Accrual increments



Separation and Accrued, Unused Paid Sick Leave

- No entitlement to payment of accrued, unused leave upon separation
- Right of reinstatement



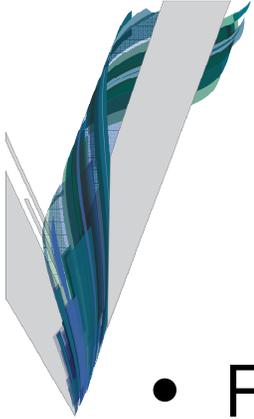
Permissible Uses of Paid Sick Leave

- A physical or mental illness, injury, or medical condition;
- Obtaining diagnosis, care, or preventive care from a health care provider;
- Caring for any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions described in (1) or (2); and
- Domestic violence, sexual assault, or stalking, including:
 - To obtain additional counseling, relocation, assistance from a victim services organization,
 - To take related legal action, including any related civil or criminal legal proceeding, or
 - Assist an individual related to the employee as described in (3) in engaging in any of these activities.



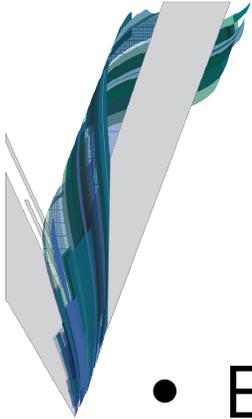
Responding to Paid Sick Leave Request

- May require 7 calendar days advance notice of need for leave if foreseeable, or as soon as practicable.
- Must respond:
 - As soon as practicable, orally, or in writing
 - Denials of use of leave must be in writing



Relationship to Other Laws

- Federal rules are the minimum standard



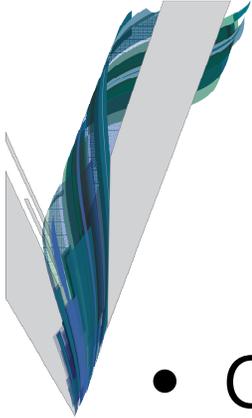
Existing PTO Policies

- Existing paid sick leave/PTO policies must be at least as generous as new rule
- Existing PTO policies that provide:
 - 56 hours of PTO
 - More than 56 hours of PTO



Prohibition Against Interference, Discrimination and Retaliation

- Prohibited from interfering with employees' rights or use of leave, and from retaliation
- May not discharge or discriminate against an employee for reasons including using paid sick leave
- No private cause of action



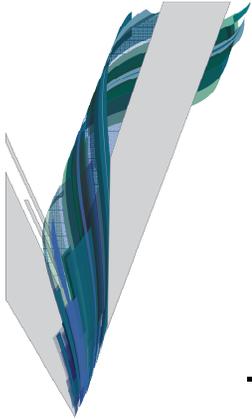
Contractor Obligations

- On or before effective date of Final Rule:
 - Insert a clause addressing requirements into all covered lower-tier contracts;
 - Ensure that lower-tier contractors comply with sick leave requirements;
 - Keep employees' medical and other records, separate and confidential; and
 - Provide notice to employees of new paid sick leave requirements.



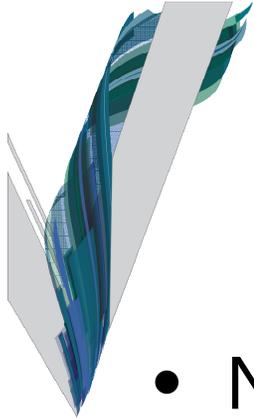
Contractor Record Keeping Obligations

- Records must be kept during the course of covered contract, **and** 3 years thereafter.
- Records must contain:
 - Name, address, and Social Security number,
 - Occupation or classification,
 - Rate(s) of wages paid,
 - Number of daily and weekly hours worked,
 - Deductions from wage,
 - Total wages paid during each pay period,
 - Notifications of the employee's accrued amount of paid sick leave,



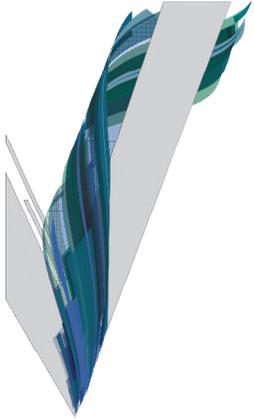
Contractor Record Keeping Obligations (cont.)

- Requests to use paid sick leave,
- Dates and amounts of paid sick leave used,
- Written denials of employee's requests to use paid sick leave, with explanations,
- Records related to certification and documentation,
- Any other records showing any tracking of or calculations related to accrual or use,
- Regular pay and benefits provided to an employee for each use of paid sick leave, and
- Any financial payment made for unused paid sick leave upon an employee's separation.
- Covered contracts



FLSA Regulations (Effective Dec. 1, 2016)

- New overtime regulations to be effective December 1, 2016
- Threshold for salary test will be increased to \$913 per week or \$47,476 per year
- Annual compensation required to meet the HCE exemption will be raised to \$134,004 per year
- Compensation levels for the salary test and the HCE exemption will be pegged to increase automatically
- No changes to the duties tests



QUESTIONS?