



441 G St. N.W.
Washington, DC 20548

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October 13, 2016

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John Kline
Chairman
The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Office of the Secretary: Establishing Paid Sick Leave for Federal Contractors*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Office of the Secretary (Labor) entitled "Establishing Paid Sick Leave for Federal Contractors" (RIN: 1235-AA13). We received the rule on September 30, 2016. It was published in the *Federal Register* as a final rule on September 30, 2016. 81 Fed. Reg. 67,598. The final rule is effective on November 29, 2016.

The final rule issues regulations to implement Executive Order 13,706, Establishing Paid Sick Leave for Federal Contractors, signed by the President on September 7, 2015. Executive Order 13,706 requires certain parties that contract with the federal government to provide their employees with up to 7 days (56 hours) of paid sick leave annually, including paid leave allowing for family care; it explains that providing access to paid sick leave will improve the health and performance of employees of federal contractors and bring their benefits packages in line with model employers, ensuring that federal contractors remain competitive employers and generating savings and quality improvements that will lead to improved economy and efficiency in government procurement. The Order directs the Secretary of Labor to issue regulations to implement its requirements by September 30, 2016. The final rule defines terms used in the regulatory text, describes the categories of contracts and employees the Order covers and excludes from coverage, sets forth requirements and restrictions governing the accrual and use of paid sick leave, and prohibits interference with or discrimination for the exercise of rights under the Executive Order. It also describes the obligations of contracting agencies, Labor, and contractors under the Executive Order, and it establishes the standards and procedures for complaints, investigations, remedies, and administrative enforcement proceedings related to alleged violations of the Order. As required by the Order and to the extent practicable, according to Labor, the final rule incorporates existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the Service Contract Act, the

Davis-Bacon Act, the Family and Medical Leave Act, the Violence Against Women Act, and Executive Order 13,658, Establishing a Minimum Wage for Contractors.

Enclosed is our assessment of Labor's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that Labor complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Melissa Smith
Director, Division of Regulations, Legislation,
and Interpretation
Wage and Hour Division
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY
ENTITLED
“ESTABLISHING PAID SICK LEAVE
FOR FEDERAL CONTRACTORS”
(RIN: 1235-AA13)

(i) Cost-benefit analysis

The Department of Labor performed a cost benefit analysis on the final rule. During the first 10 years the rule is in effect, average annualized direct employer costs are estimated to be \$27.3 million. Labor noted that this estimate assumes a 7 percent real discount rate. Labor states that the estimated annualized cost includes \$10.7 million for regulatory familiarization, \$4.9 million for initial implementation costs, \$3.7 million for recurring implementation costs, and \$8.0 million for administrative costs. Transfer payments are transfers of income from employers to employees. Labor estimated average annualized transfer payments are \$349.6 million per year over 10 years. Some of these payments may be in terms of increased time away from work rather than increased income if workers take more days of sick leave after the rulemaking. All such gains are referred to as transfers in the final rule. Labor also estimated deadweight loss (DWL). DWL occurs when a market operates at less than optimal equilibrium output, which happens anytime the conditions for a perfectly competitive market are not met, including but not limited to a labor market intervention. Labor estimated that average annualized DWL will be \$734,000 per year during the first 10 years of the rule, and Labor stated that this will be primarily due to a possible small decrease in employment that may be a consequence of the final rule. This DWL analysis assumes the market is currently in equilibrium. Labor included tables in the final rule that summarize costs and transfers as a result of the final rule.

According to Labor, there are a variety of benefits associated with this rule; however, due to data limitations these were not monetized. Labor estimated the number of employees who would, as a result of the Executive Order and the final rule, receive some additional amount of paid sick leave, i.e., affected employees. There are two categories of affected employees: those covered employees who currently receive no paid sick leave and those covered employees who currently receive paid sick leave in an amount less than they would be entitled to receive under the Executive Order (up to 7 days annually). Because the final rule only applies to new contracts, and Labor has assumed it will take 5 years for the universe of possibly covered contracts to become new, the full impact of the rulemaking will not likely occur before year 5. In year 5, Labor estimates there will be 1.2 million affected employees. This includes approximately 593,800 employees who currently receive no paid sick leave and 556,800 employees who receive some paid sick leave but would be entitled to receive additional paid sick leave under the final rule. The following benefits were discussed qualitatively in the Notice of Proposed Rulemaking (NPRM): improved employee health, improved health of dependents, increased productivity, reduced hiring costs, decreased healthcare expenditures, improved firm profits and decreased government expenditures relative to what would be expected if the rule's costs and transfer impacts were considered in isolation, and job growth. In addition, based on comments to the NPRM, Labor mentioned increased morale, financial stability, and job

retention, and decreased stress among workers, along with promoting fair competition, help for disadvantaged groups and victims of domestic violence.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

Labor states that the final rule is expected to have a significant economic impact, and thus prepared a Final Regulatory Flexibility Analysis (FRFA). Labor states that it calculated the number of small businesses to which the final rule would apply and specifically asked for comments on the impacts of the proposed rule on small businesses, particularly whether alternatives exist that will reduce burdens on small entities and still meet the rule's objectives. These calculations result in 489,400 potentially affected contractors. Of these, an estimated 320,000 are considered small contracting firms. With additional calculations, Labor estimated that 66,800 employees employed by small contractors in year 1 would be affected by the rule. Further, Labor estimated that the total direct costs (i.e., excluding transfers) to small contractors in year 1 were estimated to be \$78.9 million, which is 63 percent of total direct costs in year 1 (compared with 30 percent of affected employees in small contracting firms). Labor estimated that the share of transfers occurring in small federal contracting firms is \$26.1 million in year 1, which is 31 percent of total transfers for all contracting firms in year 1. To estimate whether these costs and transfers would have a substantial impact on small entities they were compared to total revenues for these firms. Based on Statistics of U.S. Businesses data, small federal contractors had total annual revenues of \$566.6 billion in 2015 from all sources. According to Labor, transfers from small contractors and costs to small contractors in year 1 (\$105.0 million) are less than 0.02 percent of revenues on average and are no more than 0.17 percent in any industry. Therefore, Labor believes this final rule will not have a significant impact on small businesses. Labor also concluded that there were no differing compliance and reporting requirements for small entities and stated that it believes it has chosen the most effective option that limits burdens to the extent reasonably possible. Finally, Labor states that it is not aware of any federal rules that duplicate, overlap, or conflict with the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Labor concluded that this rulemaking applies almost entirely to private employees on federal contracts and is not expected to affect state, local, or tribal governments. According to Labor, a few commenters discussed the cost of the proposed rule to tribes, and Labor stated that it believes that because costs are a small share of revenues, impacts to governments and tribes should be small.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On February 25, 2016, Labor published an NPRM in the *Federal Register*, inviting public comments on a proposal to implement the provisions of Executive Order 13,706, which were to be submitted by March 28, 2016. 81 Fed. Reg. 9592. On March 14, 2016, Labor extended the period for submitting written comments until April 12, 2016. 81 Fed. Reg. 13,306. More than 35,000 individuals and entities commented on Labor's NPRM. Comments were received from a variety of stakeholders, such as labor organizations; contractors and contractor associations; worker advocates; advocacy groups focused on issues affecting women, children, seniors, and

the LGBT community; Members of Congress; local government agencies; small businesses; and workers. Labor summarized and responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

In accordance with PRA, Labor submitted two information collection requests (ICRs) to the Office of Management and Budget (OMB) when the NPRM was published, under Control numbers 1235-0018, and 1235-0021 (mainly revisions to existing information collections). Labor submitted a new information collection request in the proposed rule as 1235-0NEW, to which OMB subsequently assigned control number 1235-0029. For OMB Control Number 1235-0029, the new information collection request by the Wage and Hour Division entitled Government Contractor Paid Sick Leave, Labor states that the affected public will be businesses or other for-profit; farms; not-for-profit institutions; state, local, and tribal governments; and individuals or households. Labor estimates that the total respondents will be 617,200, and the estimated number of responses will be 13,577,407. Labor estimated that the burden hours for occasional responses will be 590,478, and the estimated time per response will vary. Labor states that there will be an additional burden cost of \$347,784 (for maintenance and operations).

Statutory authorization for the rule

According to Labor, the final rule was promulgated under the authority of “the Constitution and the laws of the United States of America,” expressly including 40 U.S.C. §§ 121 and 101, 5 U.S.C. § 301, and Executive Order 13,706.

Executive Order No. 12,866 (Regulatory Planning and Review)

According to Labor, OMB has determined that the final rule is a “significant regulatory action” under the Order because it is economically significant. As a result, Labor has prepared a Final Regulatory Impact Analysis (FRIA) as required under section 6(a)(3) of the Order, and OMB has reviewed the final rule.

Executive Order No. 13,132 (Federalism)

Labor has determined that that the final rule does not have federalism implications. According to Labor, the final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.