

April 11, 2016

Robert Waterman, Compliance Specialist  
Attention: RIN 1235-AA13  
Division of Regulations, Legislation and Interpretation  
Wage and Hour Division, U.S. Department of Labor  
Room S—3510  
200 Constitution Avenue NW  
Washington, D.C. 20210

**RE: Notice of Proposed Rulemaking Regarding Establishing Paid Sick Leave for Federal Contractors, RIN 1235-AA13**

Dear Mr. Waterman:

We are grateful for the opportunity to provide comments on the Notice of Proposed Rulemaking regarding Establishing Paid Sick Leave for Federal Contractors (“Proposed Rule”). The Proposed Rule implements Executive Order 13706, signed by President Barack Obama on September 2015, requiring federal contractors to provide paid sick leave to their employees. We commend the Department of Labor for its thoughtful development of the Proposed Rule.

The undersigned are scholars of law and public policy with substantial expertise related to discrimination based on sexual orientation and gender identity, and demographics of the lesbian, gay, bisexual, and transgender (“LGBT”) community. The undersigned are affiliated with the Williams Institute at the UCLA School of Law. The Williams Institute is a research center dedicated to conducting rigorous and independent academic research on sexual orientation and gender identity and LGBT people.

Our comments address the impact of the proposed rule on LGBT employees of federal contractors and their families. We conclude that the proposed rule will protect tens of thousands of LGBT employees by ensuring that they have paid leave to meet the health care needs of themselves and their families. We support the Proposed Rule because it will provide important protections to LGBT employees and their families.

**INTRODUCTION**

An estimated 4% of the U.S. workforce identifies as LGBT,<sup>1</sup> including over 1 million LGBT employees of federal contractors.<sup>2</sup> Many LGBT employees have spouses or partners, and a significant portion of those couples are raising children. The Proposed Rule<sup>3</sup> implementing Executive Order 13706<sup>4</sup> will protect LGBT employees of federal contractors by ensuring that they have paid leave to meet the health care needs of themselves and their families. First, the Proposed Rule would provide paid sick leave to an estimated 33,200 LGBT employees of federal contractors who currently receive no or minimal paid sick leave. Second, the Proposed Rule could protect many more LGBT employees who may not currently be able to use their paid sick leave to care for their families. Finally, the Proposed Rule will protect LGBT employees who experience intimate partner violence by allowing them to take paid leave to meet their own health, safety, and legal needs.

## **IMPACT ON LGBT EMPLOYEES WHO CURRENTLY RECEIVE NO OR MINIMAL SICK LEAVE**

The Proposed Rule will impact many LGBT employees who currently receive no or minimal paid sick leave. Under the Proposed Rule, the Department of Labor estimates that 828,200 employees of federal contractors would gain access to sick leave or be provided more sick leave than they are provided currently.<sup>5</sup> We estimate that approximately 33,200 LGBT workers are among those impacted: 17,500 who do not currently have access to any paid sick leave, and 15,700 who currently have access to minimal paid sick leave. We reached this estimate by applying the percentage of the U.S. workforce that identifies as LGBT (4%) to the Department of Labor's estimate of those impacted. Because we do not have data specifically on the sexual orientation and gender identity of federal contractor employees, we assume that LGBT workers are employed by federal contractors at the same rate they are employed by all employers, and that LGBT employees of federal contractors are proportionally represented among those who will gain paid sick leave under the Proposed Rule.

## **IMPACT ON LGBT EMPLOYEES WHO CANNOT CURRENTLY USE AVAILABLE SICK LEAVE TO CARE FOR FAMILY MEMBERS**

The Proposed Rule would also impact other LGBT employees who currently have access to paid sick leave, but are not permitted to use sick leave to care for family members. Executive Order 13706 and the Proposed Rule appropriately adopt a definition of those who the employee may care for under qualified sick leave that includes an employee's children, parents, spouse or domestic partner, and other individuals related by blood or affinity who have a close, family-like relationship with the employee.<sup>6</sup> Under this inclusive definition, an employee would be permitted to use sick leave to care for a same-sex spouse or domestic partner, whether or not that relationship is legally recognized. The definition would also allow employees to care for the children of a same-sex spouse or partner, even when the employee has not been able to form a legal relationship with the child, for example, because of obstacles to adoption, parental status, or custody.

While it is not possible to estimate from available data how many LGBT employees of federal contractors currently have access to sick leave, but are not permitted to use leave to care for a partner or partner's child, available data suggest that many LGBT employees of federal contractors have partners and a significant portion of these couples are raising children. These employees' and their families' ability to utilize paid sick leave would be safeguarded by the Proposed Rule.

According to data from the Gallup Daily Tracking Poll, there are an estimated 1,980,000 individuals in same-sex couples (married or unmarried but cohabiting) in the United States.<sup>7</sup> Data from the Census Bureau indicate that 81% of individuals in same-sex couples are employed,<sup>8</sup> which implies that an estimated 1,603,800 employees in the United States are in a same-sex marriage or living with their unmarried same-sex partner. This number represents 1% of the currently employed workforce in the United States.<sup>9</sup> The Department of Labor estimated that 22% of the American workforce is employed by federal contractors (34,736,000 workers). Applying our estimate of the percentage of the workforce with a same-sex partner (1%) to the number of workers employed by federal contractors indicates that an estimated 347,400 employees of federal contractors have a same-sex partner.

Some of these employees may not currently have access to paid sick leave to care for a same-sex partner, particularly if the employee is not married to his or her partner. We estimate that 212,000 federal contractor employees with same-sex partners are not married. To reach this estimate, we applied the percentage of same-sex couples who are in unmarried partnerships from Gallup Daily Tracking Survey data (61%)<sup>10</sup> to our estimate of the number of federal contractor employees with same-sex partners. The Proposed Rule would ensure that all employees can use paid sick leave to care for their partners, whether or not they are legally married.

The Proposed Rule would also allow employees to use paid sick leave to care for a partner's children, even when the employee has no legally recognized relationship to the children. This policy is particularly important for LGBT people, who continue to experience unique barriers to establishing parental status or legal custody of a partner's children.<sup>11</sup>

According to data from the 2013 American Community Survey, 18% of same-sex couples are raising children under the age of 18.<sup>12</sup> Applying this figure to our estimate of the number of employees of federal contractors who have a same-sex partner (347,400 employees) implies that an estimated 62,500 employees of federal contractors are raising children with a same-sex partner. It is not possible to estimate what portion of the 62,500 employees of federal contractors with a same-sex partner do not currently have access to paid sick leave that would allow them to care for the children they are raising. However, due to barriers that often make it difficult for same-sex couples to establish legal relationships with children they are raising, it is likely that at least some of these 62,500 employees would gain the ability to take leave to care for these children under the order and proposed rule.

#### **IMPACT ON LGBT EMPLOYEES WHO ARE VICTIMS OF INTIMATE PARTNER VIOLENCE**

Executive Order 13706 allows employees who are victims of intimate partner violence to take paid leave “to obtain counseling, to seek relocation, to seek assistance from a victim services organization, [or] to take related legal action.”<sup>13</sup> Research shows that many LGBT individuals have experienced intimate partner violence.<sup>14</sup> Studies based on samples representative of the United States population have found that 25% to 40% of lesbian women have experienced intimate partner violence in their lifetimes and 10% experienced intimate partner violence in the past year.<sup>15</sup> Similarly, representative studies have found that 25% to 33% of gay men, and 13% to 37% of bisexual men, have experienced intimate partner violence in their lifetimes.<sup>16</sup> Twelve percent of gay men and 9% of bisexual men experienced intimate partner violence in the past year.<sup>17</sup> Other studies have found that transgender people experience similar, if not higher, rates of intimate partner violence, with 31% to 50% of transgender individuals reporting that they had experienced intimate partner violence in their lifetimes.<sup>18</sup>

The Proposed Rule would protect victims of intimate partner violence, including LGBT people, by allowing them to seek the assistance and resources they need without losing employment income or putting their jobs at risk. The policy may even encourage some victims to seek assistance by listing specific actions and resources that are available to them, such as seeking assistance from a victim services organization and taking legal action. This could be particularly important for LGBT individuals who may be hesitant to seek assistance because of barriers related to their sexual orientation or gender identity.<sup>19</sup> For example, studies have found that LGBT individuals who are not open about their sexual orientation or gender identity may fear that reporting intimate partner violence will “out” them to family, friends, and others.<sup>20</sup>

Additionally, some LGBT individuals may be hesitant to report their experiences if they believe that resources are only directed to and available for women who have experienced intimate partner violence perpetrated by a male partner.<sup>21</sup>

## CONCLUSION

We support the Proposed Rule because it will provide important protections to LGBT employees and their families. The Proposed Rule will protect LGBT employees of federal contractors by ensuring that they have paid time off to meet the health care needs of themselves and their families. The policy would impact an estimated 33,200 LGBT employees of federal contractors who currently receive no or minimal paid sick leave. In addition, the policy would safeguard the estimated 347,400 employees of federal contractors who have a same-sex partner – including the estimated 62,500 employees of federal contractors who are raising children with a same-sex partner – to use sick leave to care for family members. Finally, the policy would also protect LGBT people who have experienced intimate partner violence by ensuring that they have paid leave to seek assistance and resources.

We thank you for the opportunity to comment on the Proposed Rule.

Respectfully submitted,

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## Endnotes

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<sup>1</sup> Special analysis of Gallup Daily Tracking data by Gary Gates.

<sup>2</sup> The Department of Labor estimates that 22% of the American workforce is employed by federal contractors. U.S. Dep't of Labor, Spring Regulatory Agenda 2010, <http://www.dol.gov/regulations/factsheets/ofccp-fs-construction-contractor.htm> (last visited Mar. 16, 2016). There are no data available that would allow us to precisely estimate the percentage of LGBT people who work for federal contractors, so we assume that LGBT people are employed by federal contractors at the same rate they are employed writ large. Applying the estimated percentage of LGBT workers in the U.S. (4%) to the number of U.S. workers employed by federal contractors indicates that close to 1.4 million LGBT people work for federal contractors. See Bureau of Labor Stats., U.S. Dep't of Labor, Labor Force Statistics from the Current Population Survey, [http://data.bls.gov/pdq/SurveyOutputServlet?request\\_action=wh&graph\\_name=LN\\_cpsbref1](http://data.bls.gov/pdq/SurveyOutputServlet?request_action=wh&graph_name=LN_cpsbref1) (last visited Mar. 16, 2016) (providing labor force data).

<sup>3</sup> Establishing Paid Sick Leave for Federal Contractors, Reg. Info. No. 1235-AA13, 29 C.F.R. pt. 13 (Feb. 26, 2015).

<sup>4</sup> Exec. Order No. 13,706, 80 Fed. Reg. 54,697 (Sept. 10, 2015).

<sup>5</sup> 29 C.F.R. pt. 13.

<sup>6</sup> Exec. Order No. 13,706, *supra* note 4.

<sup>7</sup> Gary J. Gates & Frank Newport, *An Estimated 780,000 Americans in Same-Sex Marriages*, GALLUP.COM, Apr. 24, 2015, <http://www.gallup.com/poll/182837/estimated-780-000-americans-sex-marriages.aspx>.

<sup>8</sup> M.V. LEE BADGETT, THE WILLIAMS INSTITUTE, THE IMPACT OF EXPANDING LEAVE RIGHTS TO CARE FOR CHILDREN OF SAME-SEX PARTNERS 1 (2010), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-FMLA-Jun-2010.pdf>.

<sup>9</sup> There are an estimated 157,889,000 currently employed individuals in the United States workforce. U.S. Census Bureau, American Fact Finder, Table DP03: Selected Economic Characteristics, 2014 American Community Survey 1-Year Estimates (last visited Mar. 15, 2016).

<sup>10</sup> Gary J. Gates & Frank Newport, *supra* note 7.

<sup>11</sup> See ABBIE E. GOLDBERG, NANETTE K. GARTRELL & GARY J. GATES, THE WILLIAMS INSTITUTE, RESEARCH REPORT ON LGB-PARENT FAMILIES (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-parent-families-july-2014.pdf>.

<sup>12</sup> GARY J. GATES, THE WILLIAMS INSTITUTE, DEMOGRAPHICS OF MARRIED AND UNMARRIED SAME-SEX COUPLES: ANALYSES OF THE 2013 AMERICAN COMMUNITY SURVEY 5 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf>.

<sup>13</sup> Exec. Order No. 13,706, *supra* note 4.

<sup>14</sup> TAYLOR N.T. BROWN & JODY L. HERMAN, THE WILLIAMS INSTITUTE, INTIMATE PARTNER VIOLENCE AND SEXUAL ABUSE AMONG LGBT PEOPLE: A REVIEW OF EXISTING RESEARCH (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Intimate-Partner-Violence-and-Sexual-Abuse-among-LGBT-People.pdf>.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 11-12.

<sup>17</sup> *Id.*

<sup>18</sup> The studies of transgender individuals' experiences were not based on representative samples. *Id.* at 14.

<sup>19</sup> BROWN & HERMAN, *supra* note 14 at 16-17.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*