

DFARS 231.205-79 - CARES Act Section 3610 - Implementation

(a) Applicability.

(1) This cost principle applies only to a contractor:

(i) that the cognizant contracting officer has established in writing to be an affected contractor;

(ii) whose employees or subcontractor employees:

(A) Cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the federal government

for contract performance due to closures or other restrictions, and

(B) Are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020, for Coronavirus (COVID-19).

(2) The maximum reimbursement authorized by section 3610 shall be reduced by the amount of credit a contractor is allowed pursuant to division G of the Families First Coronavirus Response Act (Pub. L. 116-127) and any applicable credits a contractor is allowed under the CARES Act (Pub. L. 116-136) or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020 for COVID-19.

(b) Allowability.

(1) Notwithstanding any contrary provisions of FAR subparts 31.2, 31.3, 31.6, 31.7 and DFARS 231.2, 231.3, 231.6, and 231.7, costs of paid leave (including sick leave), are allowable at the appropriate rates under the contract for up to an average of 40 hours per week, and may be charged as direct charges, if appropriate, if incurred for the purpose of:

(i) Keeping contractor employees and subcontractor employees in a ready state, including to protect the life and safety of Government and contractor personnel, notwithstanding the risks of the public health emergency declared on January 31, 2020, for COVID-19, or

(ii) Protecting the life and safety of Government and contractor personnel against risks arising from the COVID-19 public health emergency.

(2) Costs covered by this section are limited to those that are incurred as a consequence of granting paid leave as a result of the COVID-19 national emergency and that would not be incurred in the normal course of the contractor's business. Costs of paid leave that would be incurred without regard to the existence of the COVID-19 national emergency remain subject to all other applicable provisions of FAR subparts 31.2, 31.3, 31.6, 31.7 and DFARS 231.2, 231.3, 231.6, and 231.7. In order to be allowable under this section, costs must be segregated and identifiable in the contractor's records so that compliance with all terms of this section can be reasonably ascertained. Segregation and identification of costs can be performed by any reasonable method as long as the results provide a sufficient audit trail.

(3) Covered paid leave is limited to leave taken by employees who otherwise would be performing work on a site that has been approved for work by the Federal Government,

including on a government-owned, government-leased, contractor-owned, or contractorleased facility approved by the federal government for contract performance; but

- (i) The work cannot be performed because such facilities have been closed or made practically inaccessible or inoperable, or other restrictions prevent performance of work at the facility or site as a result of the COVID-19 national emergency; and
- (ii) Paid leave is granted because the employee is unable to telework because their job duties cannot be performed remotely during public health emergency declared on January 31, 2020, for COVID-19.

(4) The facility at which work would otherwise be performed is deemed inaccessible for purposes of paragraph (b)(3) of this subpart to the extent that travel to the facility is prohibited or made impracticable by applicable Federal, State, or local law, including temporary orders having the effect of law.

(5) The paid leave made allowable by this section must be taken during the period of the public health emergency declared on January 31, 2020, for COVID-19, up to and including September 30, 2020.

(6) Costs made allowable by this section are reduced by the amount the contractor is eligible to receive under any other Federal payment, allowance, or tax or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID-19, such as the tax credit allowed by division G of Public Law 116-127.