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Labor and Employment Law

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President Obama Signs Fair Pay and Safe Workplaces Executive Order

On July 31, 2014, President Obama signed the [“Fair Pay and Safe Workplaces” Executive Order](#), which requires bidders on federal procurement contracts for goods and services (including construction) in excess of \$500,000 to disclose labor law violations that have occurred within the three-year period immediately preceding the bid. In addition, the Executive Order requires federal contractors to provide individuals who perform work under the federal contract with information regarding hours worked, overtime hours, pay, and any additions made to or deductions made from pay. The Executive Order also prohibits federal contractors with contracts in excess of \$1,000,000 from entering into mandatory pre-dispute arbitration agreements with their employees or independent contractors to resolve complaints under Title VII of the Civil Rights Act (Title VII) or tort claims arising out of alleged sexual assault or harassment.

For procurement contracts for goods and services, including construction, where the estimated value of the supplies acquired and services required exceeds \$500,000, each bidder must disclose whether there has been any administrative merits determination, arbitral award or decision, or civil judgment against the bidder within the preceding three-year period for violations of any of the following labor laws and Executive Orders:

- the Fair Labor Standards Act;
- the Occupational Safety and Health Act;
- the Migrant and Seasonal Agricultural Worker Protection Act;
- the National Labor Relations Act;
- the Davis-Bacon Act;
- the Service Contract Act;
- Executive Order 11246 (Equal Employment Opportunity)
- Section 503 of the Rehabilitation Act;
- the Vietnam Era Veterans’ Readjustment Assistance Act;
- the Family and Medical Leave Act;
- Title VII;
- the Americans with Disabilities Act;
- the Age Discrimination in Employment Act;
- Executive Order 13658 (Minimum Wage for Federal Contractors); and
- equivalent state laws.



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A bidder's disclosure of labor law violations will not necessarily automatically disqualify the bidder from receiving the federal contract, but the information will be considered in determining whether the bidder is a responsible source that has a satisfactory record of integrity and business ethics. Federal contractors are also obligated to require prospective subcontractors to disclose labor law violations within the preceding three-year period, and are required to consider the information obtained in awarding subcontracts. During the performance of a federal contract, each federal contractor subject to the Executive Order is required to update its own labor law violation disclosure and to obtain an updated labor law violation disclosure from each subcontractor every six months.

Federal contractors who are awarded procurement contracts for goods and services (including construction) in excess of \$500,000 are also required to provide each individual performing work under the contract with a document containing information regarding the individual's hours worked, overtime hours, pay, and any additions made to or deductions made from pay. Employees who are exempt from the overtime compensation requirements of the Fair Labor Standards Act need not be given information regarding their hours worked. Compliance with any state or local requirements that the Secretary of Labor has determined are "substantially similar" to the requirements of the Executive Order (such as, presumably, the requirements of the Wage Theft Prevention Act) will be deemed compliance with the terms of the Executive Order. If a federal contractor is treating an individual performing work under the federal contract or subcontract as an independent contractor, the federal contractor must provide the individual with a document informing the individual of this status.

Finally, the Executive Order provides that for all contracts where the estimated value of the supplies acquired and services required exceeds \$1,000,000, federal contractors and subcontractors must agree that the decision to arbitrate claims under Title VII or tort claims arising out of alleged sexual assault or harassment may only be made with the voluntary consent of employees or independent contractors **after** the dispute arises. Thus, federal contractors and subcontractors may not enter into mandatory arbitration agreements with employees or independent contractors to resolve Title VII claims or sexual assault/harassment tort claims before a dispute actually arises. This prohibition does not apply to employees who are covered by a collective bargaining agreement, nor does it apply to employees or independent contractors who entered into a valid arbitration agreement prior to the contractor or subcontractor bidding on a contract covered by the Executive Order.

The Executive Order directs the Federal Acquisition Regulatory (FAR) Council (in consultation with the Department of Labor and the Office of Management and Budget) to amend the Federal Acquisition Regulation to identify considerations for determining whether serious, willful, or pervasive violations of the labor laws demonstrate a lack of integrity or business ethics. In addition, the Secretary of Labor is directed to develop guidance and processes to implement the provisions of the Executive Order. The Executive Order will apply to all solicitations for contracts as set forth in any final rule issued by the FAR Council.

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