

CORPORATE COMPLIANCE ALERT

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Obama's Fair Pay and Safe Workplaces Executive Order Severely Increases Compliance and Obligations for Federal Contractors

President Obama warned during his State of the Union speech in January that this would be the "Year of Action" where he unilaterally implements laws on behalf of workers. The creation of new laws is a power generally reserved for Congress, and Republican members of Congress have threatened to sue the President for repeatedly overstepping his authority and creating new laws by way of issuing executive orders. Nonetheless, President Obama recently signed the Fair Pay and Safe Workplaces executive order that severely increases the compliance obligations and reporting duties of federal contractors.

Under the Fair Pay and Safe Workplace order, prospective federal contractors seeking contracts of more than \$500,000 must disclose violations of several different state and federal workplace laws, like wage and hour, discrimination, health and safety, family and medical and leave, labor, etc. over the past three years before becoming eligible for a contract.

Employers with contracts over \$1 million are also prohibited from requiring employees to arbitrate claims of discrimination or harassment unless covered by a union's collective bargaining agreement. According to the President, these employees "need their day in court." Further, the onus is on federal contractors to ensure their subcontractors also comply with these laws and to file notices every six months with the federal government, verifying the subcontractors' compliance.

Lastly, contractors must provide their employees with information regarding that employee's hours worked, overtime hours, pay, and additions or deductions to that employee's paycheck. Contractors must also include in their contracts with subcontractors a requirement that the subcontractor make the same paycheck disclosures.

The Fair Pay and Safe Workplace law applies to all contracts for goods and services in all areas, including healthcare, construction, maintenance, food and beverage, IT, transportation, and others. The three-year look back period seeks violations for the following labor laws:

- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health Act (OSHA)
- Migrant and Seasonal Agricultural Worker Protection Act
- National Labor Relations Act (NLRA)
- Davis-Bacon Act
- Service Contract Act
- EO 11,246 on Equal Employment Opportunity

- Section 503 of the Rehabilitation Act
- Vietnam Era Veteran's Readjustment Assistance Act
- Family and Medical Leave Act (FMLA)
- Title VII of the 1964 Civil Rights Act
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- EO 13,658, the Feb. 2 executive order on minimum wage for contractors' employees
- Equivalent state laws as defined by the Department of Labor

In the weeks leading up to this new Executive Order, a coalition of worker advocates known as Good Jobs Nation, backed by the labor union federation Change to Win, staged a series of nine separate one-day walkouts by workers employed by contractors at federal buildings demanding that Obama act to improve their wages and working conditions. Consistent with the President's tenure in office, he responded favorably to the unions' demands.

Obama signed the Fair Pay and Safe Workplace Order just weeks after he signed an order making it illegal for federal contractors to discriminate based on sexual orientation or gender identity and another order raising the minimum wage that federal contractors must pay employees to \$10.10 per hour.

Undoubtedly, this new order will raise compliance costs for contractors and could drive some companies to abandon government contract work altogether. Despite assurances by the White House that this order would make the procurement process more efficient and make life easier for contractors, I disagree. In fact, I believe that many law-abiding small and mid-sized businesses may choose to abandon federal contract work altogether.

To efficiently comply with this law, federal contractors, or companies trying to become federal contractors, must fully understand the nuances of this law and prepare to adjust their internal practices and processes to comply with it. For example, the obligation placed on contractors to update labor law violations, if any, of their subcontractors every six months will require the implementation of procedures to safeguard that the information gleaned from subcontractors is timely and accurate.

The Fair Pay and Safe Workplace law takes effect in 2016. Between now and then the Department of Labor will issue additional rules, procedures, and compliance guidelines. We will keep you updated each step of the way and encourage companies to proactively review current labor-related compliance practices, and, if necessary, start implementing new compliance programs now to ensure full compliance by the time these laws and their penalties for noncompliance take effect.

Roetzel's corporate compliance and labor law attorneys are available to assist you with any questions regarding the implementation of a compliance program to comply with the Fair Pay and Safe Workplace Order. Please contact the following Roetzel attorneys for further information:

Karen D. Adinolfi330.849.6773 | kadinolfi@ralaw.com**Matthew D. Austin**614.723.2010 | maustin@ralaw.com**Robert E. Blackham**216.615.4839 | rblackham@ralaw.com**Anthony J. Calamunci**419.254.5247 | acalamunci@ralaw.com**Brian E. Dickerson**202.570.0248 | bdickerson@ralaw.com**James L. Ervin, Jr.**614.723.2081 | jervin@ralaw.com**Robert B. Graziano**239.649.2728 | rgraziano@ralaw.com**Denise M. Hasbrook**419.254.5243 | dhasbrook@ralaw.com**Saqib Ishaq**407.839.2749 | sishaq@ralaw.com**Paul L. Jackson**330.849.6657 | pjackson@ralaw.com**Amanda M. Knapp**216.615.7416 | aknapp@ralaw.com**Thomas M. Larned**202.697.4892 | tlarned@ralaw.com**Donald S. Scherzer**216.615.7418 | dscherzer@ralaw.com**Jonathan R. Secrest**614.723.2029 | jsecrest@ralaw.com**Douglas E. Spiker**216.696.7125 | dspiker@ralaw.com**Nicole Hughes Waid**202.906.9572 | nwaid@ralaw.com