

## Disclose All Labor And Employment Complaints – Big Changes For Federal Contractors Coming October 2016

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A few weeks ago, we [reported](#) on pending regulations implementing an executive order issued by President Barack Obama in 2014. The [Fair Pay and Safe Workplaces Executive Order](#), which some are deeming the “blacklisting” order, imposes additional reporting requirements on federal contractors whereby they must submit extensive data on various types of labor law violations. Under the order, prospective federal contractors must disclose labor law violations under 14 covered federal statutes, including those addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections. Last week, federal agencies issued a [final rule](#) to implement the order along with official guidance from the Department of Labor. The final rule addresses issues raised during the public comment period, including how the new rules will be phased in to allow contractors to familiarize themselves with the requirements and to develop databases to track the necessary information. Thus, when the rule goes into effect on October 25, 2016, contractors will be required to report data spanning a one-year period, which will gradually increase to three years. In addition, subcontractors will not be required to report until one year after the rule becomes effective. The rule requires contractors publicly disclose certain information about covered violations – the law violated, the case identification number, the date of the decision finding a violation, and the name of the body that made the decision. The rule applies not only to civil judgments and administrative decisions, but also to arbitral awards, **including awards that are not final or still subject to court review**. The intent behind the order is to require federal agencies to do business only with contractors who abide by the law, including labor laws such as the Fair Labor Standards Act, the National Labor Relations Act, and Title VII of the Civil Rights Act. However, critics are wondering how a contractor can be evaluated properly if the rule requires the disclosure of data on **pending** complaints or allegations. **Subcontractor Data** The final rule also addresses the issue of subcontracting. Under the final rule, subcontractors will now be required to disclose details regarding their labor law violations directly to the Department of Labor for review and assessment, as opposed to submitting their data to the prime contractor. The subcontractor then would notify the prime contractor of the department’s response to its disclosure, and the prime contractor would then be expected to evaluate the “integrity and business ethics” of the subcontractor. The order and the implementing rules will markedly impact federal contractors’ already onerous reporting requirements. Disclosure of such extensive data is significant, but the biggest concern for contractors will be how the agencies use the data to make contracting decisions. While the rule indicates that other remedies will be used before terminating a contract, it will be some time before contractors see the actual impact of this change.

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