

FINAL RULE SUMMARY

EXECUTIVE ORDER 13673: FAIR PAY AND SAFE WORKPLACES

On [August 25, 2016](#), the Department of Labor published its [final guidance](#) and the Federal Acquisition Regulatory (“FAR”) Council published its [final regulations](#) for Executive Order 13673 – Fair Pay and Safe Workplaces. The Executive Order covers federal procurement contracts or subcontracts (except COTS) valued at more than \$500,000. The effective date of the regulations is **October 25, 2016**.

In order for the government to identify whether a government contractor is a “responsible” employer, the government will collect information on an employer’s workplace law compliance record to determine if the employer should be awarded (or retain) the contract. The Executive Order also subjects contractors to paycheck transparency requirements and prohibits employers with contracts worth more than \$1 million from arbitrating Title VII or sexual assault/harassment claims.

Who is subject to these rules?

Employers bidding on new contract solicitations with an estimated value greater than \$500,000 after the effective date of the regulations, must report violations of 14 federal labor laws as part of the competitive bid process and, if awarded the contract, at six-month intervals thereafter for the duration of the contract.

What federal labor laws are included?

The regulations identify 14 federal labor laws (the “Labor Laws”), which, if “violated,” must be reported during the bidding process and after a contract has been awarded. They include:

- **FLSA**
- **OSHA (and state law equivalents)**
- **NLRA**
- **Davis-Bacon Act**
- **Service Contract Act**
- **EO 11246 (affirmative action)**
- **EO 13658 (minimum wage)**
- **Section 503**
- **VEVRAA**
- **FMLA**
- **Title VII**
- **ADA**
- **ADEA**
- **Migrant and Seasonal Agricultural Worker Protection Act**

What about those federal Labor Laws must be reported?

Administrative Merits Determinations (AMDs) are certain enumerated notices or findings “issued following an investigation by the relevant enforcement agency” enumerated under the Labor Laws

Civil judgments include any judgment or order of a state or federal court determining there has been a labor violation or enjoining a violation, regardless of whether the order or judgment is final

Arbitral awards and decisions are Labor Law violation determinations or injunctions, even if the proceedings were private or confidential, or are subject to further review

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When does a contractor have to report a Labor Law violation?

Beginning October 25, 2016, any employer bidding on a covered contract must disclose all Labor Law violation decisions “rendered” against them within the first year preceding the start of a contract bid (which will be phased in to a 3-year look back period by October 25, 2018). *Contractors bidding on contracts valued at less than \$50 million have a “no reporting” grace period ending on or about April 25, 2017.* Subcontractor reporting begins on October 25, 2017.

How will Labor Law violations be assessed?

Contracting Officers (“COs”) must make the responsibility determination with the assistance of Agency Labor Compliance Advisors (“ALCAs”). The recommendation must include the ALCA’s determination of whether any violations are **serious, repeated, willful, or pervasive** (see the [DOL Guidance](#) for definitions of these terms).

What happens next?

DOL’s Guidance provides COs and ALCAs with terminology and methodology for assessing violations and mitigating factors to identify non-responsible contractors. All facts and circumstances must be considered, including remediation efforts, such as:

- **Whether the bidder has initiated its own remedial measures.**
- **The need for, existence of, or whether the bidder is adequately adhering to labor compliance agreements or other appropriate remedial measures.**
- **Whether the bidder is *negotiating* in good faith a labor compliance agreement**

Responsibility determinations may result in actions ranging from a responsible bidder finding to a referral for suspension or debarment, with several outcomes in between. DOL’s Guidance states its primary objective is labor law education and compliance, not disqualification of prospective contractors.

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