

NEW EXECUTIVE ORDER WILL REQUIRE CONTRACTORS TO REPORT LABOR VIOLATIONS

President Obama's latest **Executive Order** ("EO") is entitled "Fair Pay and Safe Workplaces," but its requirements on federal contractors go beyond compensation and safety. The good news is that implementation of these new requirements is not expected to begin until 2016. By then, we hope to have new regulations that better explain the EO's specific requirements. In the meantime, a brief summary of each of the main components is provided below.

DISCLOSURE OF LABOR AND EMPLOYMENT VIOLATIONS

Section 2 of the new EO is entitled "Compliance with Labor Laws." In short, it will require companies that bid on federal contracts worth at least \$500,000 to report to government contracting agencies violations of labor and employment laws over the previous three years. This includes administrative merits determinations, arbitral awards or decisions or civil judgments rendered against the company related to specifically designated laws and executive orders, including: FLSA, OSHA, Migrant and Seasonal Agricultural Worker Protection Act, NLRA, Davis-Bacon Act, Service Contract Act, EO 11246, Section 503 of the Rehabilitation Act, VEVRAA, FMLA, Title VII, ADA, ADEA and EO 13658, as well as "equivalent state laws" (as defined by DOL guidance).

Reporting will be through a single website to be developed later by the General Services Administration. Contracting agencies will then be instructed to consider this information when awarding federal contracts and will focus on only the "most egregious violations." According to a White House Fact Sheet, this portion of the EO will allow the government to "crack down on federal contractors who break the law" and ensure that the "worst actors" are not awarded federal contracts.

REPORTING INFORMATION ABOUT EMPLOYEE PAYCHECKS

Section 5 of the new EO is entitled "Paycheck Transparency." This section will require companies that are awarded federal contracts of at least \$500,000 to furnish employees who perform work under the contract with specific information about their paychecks for each pay period. This information includes: the individual's hours worked (unless the employee is exempt from overtime under FLSA), overtime hours, pay and any additions made to or deductions from pay. The impact of this requirement may be less significant as many companies already provide this information pursuant to state or local requirements or their existing payroll policies and procedures.

PROHIBITION AGAINST ARBITRATION CLAUSES

Finally, Section 6 of the EO is entitled "Complaint and Dispute Transparency." This section will prohibit companies that are awarded federal contracts worth at least \$1 million from requiring employees or independent contractors to enter into pre-dispute arbitration of Title VII claims or tort claims arising out of or related to sexual assault or harassment. Exceptions will be granted with respect to employees covered by a collective bargaining agreement and employees or independent contractors who have entered into valid arbitration agreements that pre-date the company's bid on the applicable federal contract.

It's getting more and more burdensome to be a federal contractor as these new requirements demonstrate. More are expected soon, so stay tuned for further updates.

If you have questions regarding this topic, please contact Jon Bumgarner at 317.977.1474 or jbumgarner@hallrender.com or your regular Hall Render attorney.