

ALERT

Federal Court Preliminarily Enjoins Majority of Fair Pay and Safe Workplaces Requirements Nationwide

October 25, 2016

This News Flash was updated on October 27, 2016.

UPDATE: Just after the injunction's issuance, the Federal Acquisition Regulation Council's members issued a memorandum directing compliance. The memo advised agency chief acquisition officers, agency senior procurement executives, and other government bodies of the Court's decision and "directed" agencies to "take all steps necessary with their workforces to comply with the Court Order and ensure the enjoined sections, provisions, and clauses" of the Fair Pay Final Rule "are not implemented unless and until receiving further direction." The memorandum further detailed specific "minimum" actions and requested that agencies "share this memorandum widely among their workforces to ensure full awareness of and compliance with the Court Order."

WHAT: The U.S. District Court for the Eastern District of Texas has issued a preliminary injunction, on multiple grounds, that enjoined implementation of the majority of Executive Order 13673, Fair Pay and Safe Workplaces—namely the provisions that impose new disclosure/reporting requirements on federal contractors regarding labor law decisions and the provisions that prohibit certain pre-dispute arbitration agreements. According to the Court, the preliminary injunction is effective nationwide.

WHEN: The Court issued the preliminary injunction last night, October 24, 2016. The relevant provisions of the implementing final FAR Rule and U.S. Department of Labor (DoL) Guidance had been set to take effect today, October 25, 2016.

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BACKGROUND READING: See our prior alert on the FAR Rule and DoL Guidance [here](#).

WHAT DOES IT MEAN FOR INDUSTRY: No Fair Pay obligations can take effect today as planned, per the Court's decision to apply the injunction nationwide. The Final Rule had provided for the disclosure/reporting requirements to apply to solicitations (and resulting prime contracts) valued at \$50 million or more that were issued starting today. The Final Rule had also provided for restrictions on arbitration agreements to apply to solicitations valued at \$1 million or more (and resulting contracts) that were issued starting today. Both requirements are enjoined indefinitely while litigation continues.

As a result, contractors should prepare to object to inclusion of any Fair Pay requirements (namely, FAR 52.222-57, -59, or -61) in solicitations issued today, or afterwards, while the injunction is in effect. Note also that the Court declined to enjoin application of the so-called "Paycheck Transparency" requirements, thus allowing application to new solicitations (and resulting contracts) issued January 1, 2017, and afterwards.