

THE NEW ERA OF EXECUTIVE ACTION

PROMOTING FAIR PAY AND SAFE WORKPLACES

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Background

Contractors who work with the federal government are an important part of the U.S. economy. They serve as a critical adjunct to the federal workforce, staffing government departments in Washington, D.C., doing work in the field, or providing goods and services directly to agencies and departments. Some of the biggest corporations in America—Lockheed Martin, GE, Xerox—are federal government contractors. With the federal government being such a large consumer of contractor services, it holds a lot of power—through the procurement and contracting process—to ensure these businesses play by the rules, especially in how they treat their own employees.

Many federal contractors, however, have a poor track record in enforcing labor laws. While acts of Congress such as the Occupational Safety and Health Act and the Family and Medical Leave Act include enforcement provisions, and victims of violations have the right to seek redress in court, executive action can send a strong message in preventing violations and rewarding companies that have not participated in abuses.

Action

On July 31, 2014, President Barack Obama issued Executive Order 13673: Fair Pay and Safe Workplaces.

What It Does

Executive Order 13673 seeks to promote compliance with all relevant U.S. labor laws by companies that are federal contractors. President Obama cited his authority as Chief Executive, as well as 40 U.S. Code 121: “The President may prescribe policies and directives that the President considers necessary” to administer Cabinet departments and agencies, as the legal foundation for the order.

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The order's reach rests on numerous acts of Congress and previous executive orders dealing with workplace pay, safety, and anti-discrimination acts.

The executive order allows agencies and departments to take several specific actions in pursuit of encouraging fair and legally-compliant workplaces. The specific provisions of the order will apply to new contracts, beginning in stages in 2016:

- For contracts exceeding \$500,000, the government agency can require the contracting party to disclose, as part of the pre-award contracting process, any Department of Labor judgements against it for the previous three years.
- The government agency will provide the contracting party with an opportunity to disclose steps to improve compliance or redress any previous judgement.
- After a contract has been awarded, the government agency counterparty can require the contracting party to provide updates every six months about information pertaining the additional violations or judgements. Government agency representatives in charge of the contracting process will be available to consult with contracting parties on strategies to improve compliance or redress specific grievances.
- Each agency involved in contracting will appoint a labor compliance adviser to coordinate with his or her individual department on the specific provisions of this order, sharing information and supporting contracting officers in their determination of compliance.
- Federal contractors cannot require employees who wish to use the courts to appear instead in front of an arbitrator in disputes involving the Civil Rights Act or sexual harassment or assault. If a contracting party is found to be a willful and repeat violator of any of the labor laws covered by the order, government agencies are empowered to use that as a basis for denying future contracts.
- To ensure maximum transparency and communication about rights under relevant federal statutes, paychecks for employees of contracting parties must disclose hours worked, overtime hours worked, and spell out all deduction.
- To streamline the contracting process, the General Services Administration will develop a single integrated website for contracting parties to submit relevant compliance information.

Status

The executive order was issued on July 31, 2014, and its provisions went into effect immediately, although specific provisions are still in the planning phase and, per the order text, are not expected to be fully implemented until the end of 2016.

Impact

As the order will not be fully implemented, the current impact is not apparent, though it is likely contracting firms are updating their internal compliance procedures to ensure they can respond to the appropriate questions from the Department of Labor or the labor compliance adviser at the relevant department(s) with which they contract.

Response

- The Campaign for America's Future's Dave Johnson celebrated the signing of the order, saying that measures will save taxpayers millions of dollars and protect tens of thousands of employees from discrimination and unfair or unsafe employer practices. He tied the order to a larger critique of the federal government's propensity to contract out employment that would have, in the past, gone to full-time federal employees: "President Obama's efforts to at least stop wage theft and other illegal actions are a step in the right direction. Recognizing and explaining how privatization is impoverishing so many of us while greatly enriching a very few of us might lead to further actions to alleviate the problem."
- Center for American Progress president Neera Tanden was also laudatory, citing how federal contractors often rank among the worst violators of wage, safety, and non-discrimination laws. According to CAP's own research, "one in four government contractors . . . commit egregious workplace violations."
- A coalition of twenty trade and professional associations criticized the order, citing their belief that "current federal acquisition regulations already have a process in place screening contractors' integrity and business ethics. It challenged President Obama's legal authority to make changes to the enforcement mechanisms inherent in previous congressionally passed laws. It called the enforcement requirements "highly subjective" and predicted the compliance requirements would cause an overall delay in contracting procedure.