

Publications

Labor and Employment Alert: Federal Contractor Blacklisting Rules Are Officially Dead

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On March 27, 2017, President Trump signed the congressional resolution disapproving the so-called federal contractor “blacklisting” rules that require federal contractors to disclose labor law violations. Both the Senate and House of Representatives had earlier passed a Joint Resolution of Disapproval under the little-used Congressional Review Act. The Joint Resolution of Disapproval revokes the regulations the Department of Labor and other federal agencies were implementing under President Obama’s “Fair Pay and Safe Workplaces” Executive Order. Because the resolution was passed under the Congressional Review Act, federal agencies are now prohibited from reissuing similar regulations without congressional approval.

The “Fair Pay and Safe Workplaces” Executive Order would have required most federal contractors to disclose three years’ worth of federal and state labor law violations and “administrative merits determinations.” Federal agencies would then review and assess those violations when determining whether to award or extend federal contracts valued at more than \$500,000 to a particular contractor or subcontractor. The order also would have prohibited mandatory arbitration of sexual assault and sexual harassment claims. Finally, contractors would have been required to provide their employees with information concerning their hours worked, overtime hours, pay, and deductions from pay (referred to as the “paycheck transparency” provision). A U.S. District Court in Texas preliminarily enjoined the order’s labor law violation reporting requirements and the prohibition on pre-dispute arbitration. However, the court did not enjoin the paycheck transparency provision, and so this requirement became effective for new federal contracts on January 17, 2017.

The Joint Resolution of Disapproval does not actually repeal the executive order itself. Instead, it disapproves of the regulations adopted to implement the order. The resolution, however, essentially renders the order ineffective. The executive order is expected to be separately revoked.

Contact your Vorys lawyer if you have questions about federal contractor obligations and compliance.

