

Insights: Alerts

Fair Pay & Safe Workplaces: What Are Contractors Required to Disclose?

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Continuing our series of Alerts on the Fair Pay and Safe Workplaces Final Rule, this Alert address what form of violations must be disclosed.

The Final Rule provides three broad categories of decisions for violations of 14 identified Labor Laws that need to be disclosed by contractors and subcontractors: *administrative merits determinations*, *civil judgments*, and *arbitral awards or decisions*. The 14 Labor Laws covered by the Final Rule are: Fair Labor Standards Act, Occupational Safety & Health Act, Migrant & Seasonal Agricultural Worker Protection Act, National Labor Relations Act, Service Contract Act, Davis-Bacon Act, Family & Medical Leave Act, Title VII of the Civil Rights Act, Americans with Disabilities Act, Age Discrimination in Employment Act, Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act, Executive Order 11246 concerning affirmative action and equal employment opportunity, and Executive Order 13658 concerning federal contractor minimum wage.

Administrative Merits Determination

Administrative merits determination is defined as "a notice or finding – whether final or subject to appeal or further review – issued by an enforcement agency following an investigation that indicates that contractor or subcontractor violated any provision of Labor Laws."

Enforcement agencies include: the Department of Labor and its agencies – OSHA, Wage and Hour Division, and the Office of Federal Contract Compliance Programs (OFCCP); the Occupational Safety and Health Review Commission (OSHRC); the Equal Employment Opportunity Commission (EEOC); National Labor Relations Board (NLRB); and State agencies designated to administer an OSHA-approved State Plan.

Examples of Required Disclosures:

- Wage and Hour Division "Summary of Unpaid Wages" (Form WH-56)
- OSHA citations
- OFCCP "Show Cause Notice for Failure to Comply"
- EEOC Reasonable Cause Determination letter
- NLRB Complaint issued by Regional Director
- Wage and Hour Division determination letter finding any FLSA violation.
- Administrative merits determination being challenged by a contractor

Not Required to Disclose:

- Settlement agreements with enforcement agencies

Civil Judgment

Civil judgment is defined as “any judgment or order entered by any Federal or State court in which the court determined that the contractor or subcontractor violated any provision of the Labor Laws, or enjoined or restrained the contractor or subcontractors from violating any provision of the Labor Laws.” Civil judgments include judgments or orders that are not final or are subject to appeal.

Examples of Required Disclosures:

- Final orders by Federal or State court in action brought by enforcement agency or private party
- Judgments as a result of a bench or jury trial
- Preliminary injunction that enjoins or restrains a violation of one of the 14 enumerated Labor Laws
- Consent judgments
- Default judgments

Not Required to Disclose:

- Temporary restraining orders
- Accepted offers of judgment under Federal Rule of Civil Procedure 68
- Private settlements where lawsuit dismissed without any judgment being entered

Arbitral Award or Decision

Arbitral award or decision is defined as “any award or order by an arbitrator or arbitral panel in which the arbitration or arbitral panel determine that the contractor or subcontractor violated any provision of the Labor Laws, or enjoined or restrained the contractor or subcontract from violating any provision of the Labor Laws.”

Examples of Required Disclosures:

- Public, confidential and private awards and decisions
- Non-final and final awards and decisions
- Decisions by one arbitrator or multi-member arbitration panel

Not Required to Disclose:

- Awards or decisions finding only a violation of a collective bargaining agreement

What Information Regarding the Violation Must be Disclosed?

- Labor Law that was violated
- Case number, inspection number, charge number, docket number, or other unique identification number
- Date of the determination, judgment, award, or decision; and
- Name of the court, arbitrator(s), agency, board, or commission that rendered decision

Contractors and subcontractors may, but are not required to, provide additional information that it believes will demonstrate its responsibility. The additional information may include mitigating factors and remedial measures, such as steps taken to correct violations at issue, the negotiation or execution of a settlement agreement or

labor compliance agreement or other steps taken to achieve compliance with Labor Laws, and any other information that they believe may be relevant.

As always, feel free to contact the authors or any other Kilpatrick Townsend attorneys with questions regarding this Alert. For additional information on the Fair Pay and Safe Workplaces Final Rule, please see our [August 25, 2016](#) and [September 9, 2016](#) Legal Alerts.

Related People



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