

Insights: Alerts

Trump Administration's DOL Pauses Litigation of Biden-Era Rule Expanding Davis-Bacon Act Coverage

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On February 19, 2025, Judge James Wesley Hendrix for the United States District Court for the Northern District of Texas granted a 90-day stay of ongoing litigation, challenging a Biden-era rule implementing significant amendments to the Davis-Bacon Act (“DBA”) regulations. The stay was sought by both the Department of Labor (“DOL”) and trade groups challenging the rule after the Trump administration stated that new DOL leadership needed “time to review this litigation, including the claims that plaintiffs have asserted challenging the Rule.”

As background, the Biden-era DOL issued a [final rule](#) effecting significant amendments to the Davis-Bacon Act (“DBA”) regulations in a final rule that became effective in October 2023 (the “Rule”). Among other things, the amendments revised the method used to calculate prevailing wages, expanded the scope of covered work, including an expansion of covered “site(s) of work” as well as workers deemed “laborers or mechanics” under DBA and thus subject to the prevailing wage requirements. Perhaps the most significant update imposed by the Rule was that the DBA labor standards would be deemed “effective by operation of law,” regardless of whether the responsible contracting officer included the relevant provisions in the solicitation or contract award.

Several lawsuits challenging the Rule were filed, which included a lawsuit commenced by the Associated General Contractors of America (“AGC”) in the Northern District of Texas. The AGC sought to enjoin enforcement of the rule, arguing that the DOL exceeded its authority by expanding the scope of DBA beyond what Congress intended. In June 2024, Judge Hendrix issued a preliminary injunction [blocking the DOL](#) from enforcing several provisions of the Rule, reasoning that the AGC was likely to succeed on the merits of its claims that the DOL lacked statutory authority to adopt provisions (i) narrowing the rule’s “material supplier” exemption; (ii) reading the prevailing wage requirements into covered contracts by operation of law; and (iii) applying the prevailing wage requirements to workers not employed at the worksite, including truck drivers.

Consistent with proposed policies and past actions of his first administration, President Trump’s re-election teed up another round of volleys in the ongoing ping-pong game over federal labor and employment policy. Shortly after his inauguration, President Trump appointed William Cowen as Acting General Counsel of the National Labor Relations Board, who subsequently issued [a memo rescinding](#) many of the policy positions expressed by his predecessor, Jennifer Abruzzo. Additionally, the DOL sought a 60-day stay of litigation challenging the Biden-era independent contractor rule. It therefore came as no surprise when the DOL sought to stay the AGC’s lawsuit challenging the Rule.

Key Takeaways

The Trump administration's request for a stay in the ongoing litigation challenging the Rule updating the DBA did not clarify whether it plans to scrap the rule altogether. The order staying the litigation requires the DOL and AGC to file a joint status report updating the court on how the parties plan to proceed in the case on or before May 20, 2025, which should further clarify whether the new administration will abandon the DOL's defense of the Rule. Many expect the DOL will ultimately engage in further rulemaking rescinding the Rule. The administration may then undertake new rulemaking to introduce modified amendments to the DBA or simply leave the pre-Rule DBA regulations undisturbed.

In the meantime, the bulk of the Rule expanding the DBA remains effective, including its increased flow-down responsibilities for upper-tier contractors, increased recordkeeping responsibilities, and the expanded scope of covered "construction" to include the installation of "green" equipment. Contractors should continue taking steps to ensure compliance with the effective aspects of the Rule unless and until further guidance is issued by the DOL.

We will continue to monitor these developments and their impact on government contractors. In the meantime, should you have any questions about this Alert or the status of the DBA regulations, please contact one of the authors or attorneys in our firm with whom you are regularly in contact.

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