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President Trump Nails Coffin Shut on Federal Contractor “Blacklisting” Under Fair Pay and Safe Workplaces Rule

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On March 27, 2017, President Trump signed a Congressional Review Act resolution, H.J. Res. 37, and issued his own Executive Order, which together nullified President Obama’s Fair Pay and Safe Workplaces Executive Order and its implementing regulations that would have required employers seeking federal contracts or subcontracts valued at more than $500,000 to disclose labor and employment law violations to contracting agencies. In addition to this controversial provision, labeled by some the “blacklisting” provision because it was feared that federal agencies would use reported violations to deny contracts to offending employers, the now-defunct rule also would have required contractors to give workers detailed paycheck information, including the number of hours they worked, their rates of pay, and their gross pay, and would have prohibited contractors from entering into mandatory pre-dispute arbitration agreements with employees covering Title VII claims and torts related to sexual assault or harassment.

After President Obama signed the Fair Pay and Safe Workplaces Executive Order on July 31, 2014, the Federal Acquisition Regulatory Council and the Department of Labor issued regulations implementing that Executive Order on August 24, 2016, with a planned effective date of October 25, 2016. Before the effective date, however, a federal judge in Texas blocked parts of the rule—including the “blacklisting” provision requiring self-disclosure of labor and employment law violations—from taking effect, finding that, among other things, the rule likely exceeded executive authority and was preempted by other federal labor laws.

President Trump’s action in signing legislation disapproving of the Fair Pay and Safe Workplaces Executive Order and issuing a separate Executive Order officially revoking President Obama’s original Executive Order went further than the Texas court ruling and nullified the Fair Pay and Safe Workplaces Executive Order and its regulations in their entirety.

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