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A Quicker Death for the Proposed Fair Pay and Safe Workplaces Regulations?

by Lawrence M. Prosen

Since they were announced, the Fair Pay and Safe Workplaces Executive Order and following regulations have elicited strong feelings from contractors resulting in an ongoing battle between Government and industry. Initiated in 2014 when the Obama Administration issued Executive Order 13673 (the "E.O."), Fair Pay and Safe Workplaces imposes requirements that government contractors, among other things, self-report certain labor law violations. Last summer, the Federal Regulatory Council and the Department of Labor issued a final rule and guidance implementing the E.O. which was scheduled go into effect towards the end of 2017. We provided specifics in a series of alerts beginning with this one. As contractors were wading through the hundreds of pages of regulations and trying to learn their obligations, a federal court enjoined substantial parts of the final rule including those pertaining to self-reporting labor law violations. Already dealt a heavy blow by the injunction, Congress under the new Trump Administration, is now poised to kill it.

On February 2, 2017, the U.S. House of Representatives passed and submitted to the Senate a proposed joint resolution which disapproves of the Rule and seeks to rescind it. H.J. Res. 37. This joint resolution, which passed in the Senate on March 6, states that "…Congress disapproves the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation…, and such rule shall have no force or effect." In summary, if the President signs the resolution, Congress and President will effectively kill the Fair Pay and Safe Workplaces final rule and the underlying E.O.

This Senate vote received significant attention from businesses across the United States. Perhaps their concerns were best summarized in a March 2, 2017 U.S. Chamber of Commerce issued a "Key Vote Alert!", in which the Chamber supports the Resolution and rejection of the Rule. Utilizing the "blacklisting" badge, the Chamber points out the problems, burdens and lack of sufficient need for the Rule, including the Rule creating a "guilty until proven innocent" posture; overly broad definition of the term "violations" and the perception that this Rule places not only an undue burden on businesses but also as pro-Organized Labor.

At this point in time, it appears almost certain that the President will sign the Joint Resolution and the days of the labor Blacklisting Rule will end. Only time will tell for sure.