Insights: Alerts

Court Enjoins Several Parts of the Fair Pay & Safe Workplaces Final Rule

OCTOBER 26, 2016 Written by Gunjan R. Talati

Over the last few months our Government Contracting and Labor & Employment teams have been breaking down the specifics about the Fair Pay & Safe Workplaces Final Rule and the corresponding Department of Labor guidance. As we explained in our September 9, 2016 Legal Alert, that rule was scheduled to go into effect yesterday, October 25, 2016, for certain contractors. All contractors however can sigh with relief because the United States District Court of the Eastern District of Texas issued a preliminary injunction on October 24, 2016, enjoining the reporting requirements of the rule as well as prohibitions on pre-dispute arbitration agreements concerning Title VII of the Civil Rights Act and sexual assault/harassment torts.

The Court pulled no punches in issuing the injunction on the reporting requirements and the pre-dispute arbitration agreement restrictions:

-- "[T]he public disclosure and disqualification requirements being imposed on federal contractors and subcontractors are nowhere found in or authorized by the statute" relied on by the Executive Order, the FAR rule, or the DOL guidance.

-- "It must also be noted that the FAR Council and the DOL have failed to support the basic premise of the Executive Order and the new Rule, namely that public disclosure of non-adjudicated determinations of labor law violations on private projects correlates in any way to poor performance on government contracts."

-- "The Executive Order's [reporting requirement] compels contractors to engage in public speech on matters of considerable controversy adversely affecting their public reputations and thereby infringing on the contractors' rights under the First Amendment."

-- "The FAR Rule likely violates the due process rights of Plaintiffs' government contractor members by compelling them to report and defend against non-final agency allegations of labor law violations without being entitled to a hearing at which to contest such allegations."

The Court did not take any issue with the paycheck transparency requirement and that is still scheduled to go into effect on January 1, 2017.

So what does this mean for contractors? For now, it means that contractors will not have to comply with the reporting requirements or pre-dispute arbitration agreement restrictions in the Fair Pay & Safe Workplaces rule. Kilpatrick Townsend will continue to keep you updated on developments with this case. If you have questions about the impact of this injunction on your business, please reach out to one of the authors or your usual Kilpatrick Townsend contact.

For more information on this topic, please see the following Legal Alerts:

August 25, 2016

A New Era in Government Contracting Labor Laws: How the Fair Pay and Safe Workplaces Final Rule and Guidance Requires Contractors and Subcontractors to Tell on Themselves and Impact Future Awards

September 9, 2016

Fair Pay & Safe Workplaces Final Rule: Does the Bell Toll for Thee?

Related People



Gunjan R. Talati

t 404.815.6503
gtalati@ktslaw.com