

# **AFFIRMATIVE ACTION UPDATE**

## **\*\* NEWS FLASH \*\***

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Douglas B. Brown, LLC

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### **FEDERAL COURT ISSUES PRELIMINARY INJUNCTION AGAINST IMPLEMENTATION OF DISCLOSURE OF LABOR LAW VIOLATIONS AND ANTI-ARBITRATION PROVISIONS OF THE FAIR PAY AND WORKPLACE SAFETY REGULATIONS TO BE EFFECTIVE OCTOBER 25, 2016**

In a significant “win” for federal contractors and subcontractors, a federal district court in Texas has issued a nationwide preliminary injunction against the implementation of the requirements to disclose labor law violations as well as the anti-arbitration provisions contained in the Fair Pay and Safe Workplaces regulations and guidance that were to be effective October 25, 2016. The FAR Council and the U.S. Department of Labor issued the regulations and guidance on August 25, 2016.

The Court held that the Plaintiffs challenging the rule had demonstrated: 1) a substantial likelihood of success on the merits; 2) a substantial threat of irreparable injury; 3) that the threatened injury outweighs any damage the injunction would cause the Defendants; and 4) that the order will not be adverse to the public interest.

Specifically, the Court held:

1. That the Executive Order, FAR Rules, and DOL Guidance, separately and together, exceeded the President’s, FAR Council’s, and DOL’s authority and are otherwise preempted by other federal labor laws.
2. That the Executive Order, the FAR Rules, and the DOL Guidance violate the First Amendment in that they “compel speech.”
3. That the Executive Order, the FAR Rules, and the DOL Guidance violate the Due Process Rights of Government Contractors and Offerors.
4. That the New Rule and Guidance are arbitrary and capricious and entitled to no deference.
5. That the Executive Order and FAR Council Rule violates the Federal Arbitration Act.

What this means is that for the time being, and pending further legal actions, federal contractors and subcontractors do not have to comply with the provisions of the regulations or guidance that were to be effective October 25, 2016. These provisions and guidance relate to disclosing labor law violations or amending ADR programs as connected to Title VII, Sexual Harassment or Assault claims.

However, the Court did not enjoin the implementation of the Paycheck Transparency requirements that will still be effective January 1, 2017. Contractors and subcontractors must continue to prepare to comply with this section, if applicable.

We will continue to monitor developments with this action and will notify you of any updates.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to [dbb@dbbrown.com](mailto:dbb@dbbrown.com). The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.