

Labor Violation Reporting Requirement Suspended – For Now

Just hours before taking effect on October 25, 2016, a federal district court in Texas halted the enforcement of new rules requiring many potential federal contractors to disclose recent violations of federal labor law before securing a government contract. Although the decision marks a victory for potential federal contractors, the victory may only afford them a temporary reprieve.

The 2014 "Fair Pay and Safe Workplaces" Executive Order requires many potential federal contractors and subcontractors bidding on contracts worth more than \$500,000 to publically disclose any violations of federal labor law committed over the past three years. Notably, the Executive Order considers all nonfinal administrative merits determinations as "violations" regardless of the severity of the alleged violation, whether a government contract was involved, and regardless of whether a hearing had been held or an enforceable decision issued. Based on these disclosures, contracting officers may deny government contracts to potential federal contractors.

On October 24, 2016, Judge Marcia Crone of the U.S. District Court of the Eastern District of Texas issued a nationwide preliminary injunction temporarily halting the Executive Order's enforcement because it oversteps Congress's instructions regarding how federal labor law violations should be addressed. Additionally, Judge Crone found that forcing potential federal contractors to "publically condemn" themselves for alleged violations of federal labor laws is tantamount to compelled speech, which is a direct violation of the First Amendment. The government is expected to immediately appeal.

Despite Judge Crone's ruling, federal contractors should continue to monitor and record their federal labor law "violations." It is possible that the Fifth Circuit Court of Appeals, or even the U.S. Supreme Court, could reinstate the Executive Order's requirements and force potential federal contractors to disclose labor law violations sometime in the not so distant future.

Reinhart is monitoring the matter closely and will publish future e-Alerts should anything develop. Please feel free to contact [Rob Driscoll](#) or [Christopher Schuele](#) for further guidance or analysis.

POSTED:

Nov 1, 2016

RELATED PRACTICES:

[Labor and Employment](#)

<https://www.reinhartlaw.com/practices/labor-and-employment>

RELATED PEOPLE:

[Robert S. Driscoll](#)

<https://www.reinhartlaw.com/people/robert-driscoll>



These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.