

# Morgan Lewis

## FAIR PAY AND SAFE WORKPLACES EXECUTIVE ORDER CHECKLIST FOR PRIME CONTRACTORS AND SUBCONTRACTORS

### Prime Contractors

Labor Violation Reporting (FAR 52.222-57, -58, and -59)				
Covered Contractors	Applicability	Effective Date	Obligations	Status
<p>All prime contractors with contracts valued in excess of \$50M</p> <p style="text-align: center;">and</p> <p>All prime contractors with contracts valued in excess of \$500K</p>	<p>The entity that submits the offer and is awarded the contract is required to report labor violations companywide when bidding for and while performing any covered prime contract</p>	<p>October 25, 2016, for all prime contractors with contracts valued in excess of \$50M</p> <p>April 25, 2017, for prime contractors with contracts valued in excess of \$500K</p>	<ul style="list-style-type: none"> <li>When solicitation contains contract clause FAR 52.222-57, Representation Regarding Compliance with Labor Laws (Executive Order 13673), indicate in the offer whether there has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) of the 15 laws<sup>1</sup> identified in contract clause FAR 52.222-59, Compliance with Labor Laws (Executive Order 13673), rendered against the offeror during the period beginning October 25, 2015, to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter</li> <li>If requested by the contracting officer, disclose information regarding the violations in the government System for Award Management (SAM) with mitigating</li> </ul>	<p>Enjoined</p> <p>No current or future obligation without further judicial action</p>

<sup>1</sup> "Labor laws" means the following labor laws and executive orders (E.O.s) : (1) the Fair Labor Standards Act; (2) the Occupational Safety and Health Act (OSHA) of 1970; (3) the Migrant and Seasonal Agricultural Worker Protection Act; (4) the National Labor Relations Act; (5) 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act; (6) 41 U.S.C. chapter 67, formerly known as the Service Contract Act; (7) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity); (8) Section 503 of the Rehabilitation Act of 1973; (9) the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974; (10) the Family and Medical Leave Act; (11) Title VII of the Civil Rights Act of 1964; (12) the Americans with Disabilities Act of 1990; (13) the Age Discrimination in Employment Act of 1967; (14) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors); and (15) equivalent state laws as defined in the US Department of Labor (DOL) Guidance. (The only equivalent state laws implemented in the FAR are [OSHA-approved state plans](#).)

			<p>information, if any</p> <ul style="list-style-type: none"> <li>• Semiannually disclose new labor law decisions and/or updates to previously disclosed labor law decisions in SAM</li> <li>• When a contract contains contract clause FAR 52.222-58, Subcontractor Responsibility Matters Regarding Compliance with Labor Laws (Executive Order 13673), require subcontractors with contracts &gt;\$500K for other than Commercially Available Off-the-Shelf (COTS) Items to provide the DOL this same required labor law data</li> <li>• Consider a prospective subcontractor's compliance with labor laws, in accordance with FAR 52.222-59, in determining subcontractor responsibility prior to awarding a subcontract</li> <li>• Insert FAR 52.222-59 in subcontracts that are both &gt;\$500K and for other than COTS Items as defined in FAR 2.101 under prime contracts containing the clause</li> </ul>	
Prime contractors with no contracts >\$500K	Not applicable			
<b>Pay Check Transparency (FAR 52.222-60)</b>				
<b>Covered Contractors</b>	<b>Applicability</b>	<b>Effective Date</b>	<b>Obligations</b>	<b>Status</b>
All prime contractors with contracts valued in excess of \$500K	Only to individuals who perform work under the specific government contracts that contain the contract clause/requirement	January 1, 2017	<ul style="list-style-type: none"> <li>• Provide a wage statement every pay period to all employees who perform work subject to the Fair Labor Standards Act, 40 U.S.C. 31 (formerly the Davis Bacon Act), and 41 U.S.C. 67 Service Contract Labor Standards (formerly the Service Contract Act), including specified elements (e.g., total hours, total overtime hours, rate of pay, gross pay, and additions made/deductions taken)</li> <li>• Provide written notice to exempt employees of their exempt status if</li> </ul>	<p>Not enjoined</p> <p>Obligations effective January 1, 2017</p>

			<p>their wage statements do not contain hours worked</p> <ul style="list-style-type: none"> <li>• Provide written notice to individuals who perform work under contract as independent contractors of their independent contractor status</li> <li>• Insert contract clause FAR 52.222-60, Paycheck Transparency (Executive Order 13673), in subcontracts that are both &gt;\$500K and for other than COTS Items under prime contracts and higher-tier subcontracts containing the clause</li> </ul>	
Prime contractors with no contracts >\$500K	Not applicable			
<b>Prohibition on Predispute Arbitration Agreements (FAR 52.222-61)</b>				
<b>Covered Contractors</b>	<b>Applicability</b>	<b>Effective Date</b>	<b>Obligations</b>	<b>Status</b>
Prime contractors with a government contract >\$1M for other than Commercial Items as defined in FAR 2.101	Applicable companywide for the entity holding the contract, not just to employees who work on covered government contracts	October 25, 2016	<ul style="list-style-type: none"> <li>• Not to enter into predispute agreements to arbitrate claims under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of sexual assault or harassment; exceptions apply for collective bargaining agreements and preexisting agreements unless the contractor is permitted to change terms or the agreement is renegotiated/replaced</li> <li>• Insert FAR contract clause 52.222-61, Arbitration of Contractor Employee Claims (Executive Order 13673), in subcontracts that are both &gt;\$1M and for other than Commercial Items under prime contracts containing the clause</li> </ul>	<p>Enjoined</p> <p>No current or future obligation without further judicial action</p>
Prime contractors with no contract >\$1M	Not Applicable			
Prime contractors with only Commercial Item contracts	Not Applicable			

## Subcontractors

Labor Violation Reporting (FAR 52.222-59)				
Covered Contractors	Applicability	Effective Date	Obligations	Status
<p>All subcontractors with subcontracts valued in excess of \$500K for other than Commercially Available Off-The-Shelf (COTS) Items under prime contracts/higher-tier subcontracts containing the referenced clauses</p>	<p>The entity that submits the offer and is awarded the contract is required to report labor violations companywide when bidding for and while performing any covered subcontract</p>	<p>October 25, 2017</p>	<ul style="list-style-type: none"> <li>• Indicate in the offer to the prime contractor whether there has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) of the 15 laws<sup>2</sup> identified in contract clause FAR 52.222-59, Compliance with Labor Laws (Executive Order 13673), rendered against the offeror during the period beginning October 25, 2015, to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter</li> <li>• Disclose information regarding the violations to the DOL through its website at <a href="http://www.dol.gov/fairpayandsafeworkplaces">www.dol.gov/fairpayandsafeworkplaces</a>, with mitigating information, if any</li> <li>• Disclose new labor law decisions and/or updates to previously disclosed labor law decisions to the DOL semiannually if prior information is not current accurate and complete, and notify the prime contractor</li> <li>• When the subcontract contains FAR 52.222-59, require lower-tier subcontractors with contracts &gt;\$500K for other than COTS Items to provide the DOL with this same required data</li> <li>• Consider a prospective lower-tier subcontractor's compliance with labor laws, in accordance with FAR 52.222-59, in</li> </ul>	<p>Enjoined</p> <p>No current or future obligation without further judicial action</p>

<sup>2</sup> See n.1.

			determining subcontractor responsibility prior to awarding a subcontract <ul style="list-style-type: none"> <li>• Insert FAR 52.222-59 in lower-tier subcontracts that are both &gt;\$500K and for other than COTS Items under subcontracts containing the clause</li> </ul>	
Subcontractors with no subcontracts >\$500K	Not applicable			
Subcontractors with only COTS subcontracts	Not applicable			
<b>Pay Check Transparency (FAR 52.222-60)</b>				
<b>Covered Contractors</b>	<b>Applicability</b>	<b>Effective Date</b>	<b>Obligations</b>	<b>Status</b>
All subcontractors with subcontracts valued in excess of \$500K containing the referenced clause except subcontracts for COTS items	Only to individuals who perform work under the specific government contracts that contain the contract clause/requirement	January 1, 2017	<ul style="list-style-type: none"> <li>• Provide a wage statement every pay period to all employees who perform work subject to the Fair Labor Standards Act, 40 U.S.C. 31 (formerly the Davis Bacon Act), and 41 U.S.C. 67 Service Contract Labor Standards (formerly the Service Contract Act), including specified elements (e.g., total hours, total overtime hours, rate of pay, gross pay, and additions made/deductions taken)</li> <li>• Provide notice to exempt employees if their wage statements do not contain hours worked</li> <li>• Provide notice to individuals who perform work under contract as independent contractors</li> <li>• Insert contract clause FAR 52.222-60, Paycheck Transparency (Executive Order 13673), in lower-tier subcontracts that are both &gt;\$500K and for other than COTS Items under subcontracts containing the clause</li> </ul>	Not enjoined  Obligations effective January 1, 2017
Subcontractors with no subcontracts >\$500K	Not applicable			

Subcontractors with only COTS subcontracts	Not applicable			
<b>Prohibition on Predispute Arbitration Agreements (FAR 52.222-61)</b>				
<b>Covered Contractors</b>	<b>Applicability</b>	<b>Effective Date</b>	<b>Obligations</b>	<b>Status</b>
Subcontractors with a subcontract >\$1M for other than Commercial Items	Applicable companywide for the entity that holds the subcontract, not just to employees who work on covered government contracts	October 25, 2016	<ul style="list-style-type: none"> <li>Not to enter into predispute agreements to arbitrate claims under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of sexual assault or harassment; exceptions apply for collective bargaining agreements and preexisting agreements unless the contractor is permitted to change terms or the agreement is renegotiated/replaced</li> <li>Insert contract clause 52.222-61, Arbitration of Contractor Employee Claims (Executive Order 13673), in lower-tier subcontracts that are both &gt;\$1M and for other than commercial items under subcontracts containing the clause</li> </ul>	Enjoined  No current or future obligation without further judicial action
Subcontractors with no contract >\$1M	Not Applicable			
Subcontractors with only Commercial Item contracts	Not Applicable			