

FEDERAL CONTRACTING IN 2023

Recent Must-Know Legal Updates for Government Contractors

Wednesday, March 8, 2023



TODAY'S HOSTS



Lynn Clements

Moderator

Berkshire

Director of Audit & HR
Services



Stephanie Wilson

Presenter

Berenzweig Leonard

Partner & Director of GovCon



Declan Leonard

Presenter

Berenzweig Leonard

Managing Partner

TOPICS TO COVER

- Increased Minimum Wage Requirements
- Expansion of Paid Leave Requirements
- FTC's Proposed Ban on Non-Compete Agreements
- NLRB's Recent Ruling on Confidentiality and Non-Disparagement Agreements
- Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts
- Establishment of SBA's Certification Program for VOSBs and SDVOSBs
- Accelerated Payments to Small Businesses
- NDAA FY23 Inflation Relief
- Q&A Session



Increased Minimum Wage Requirements

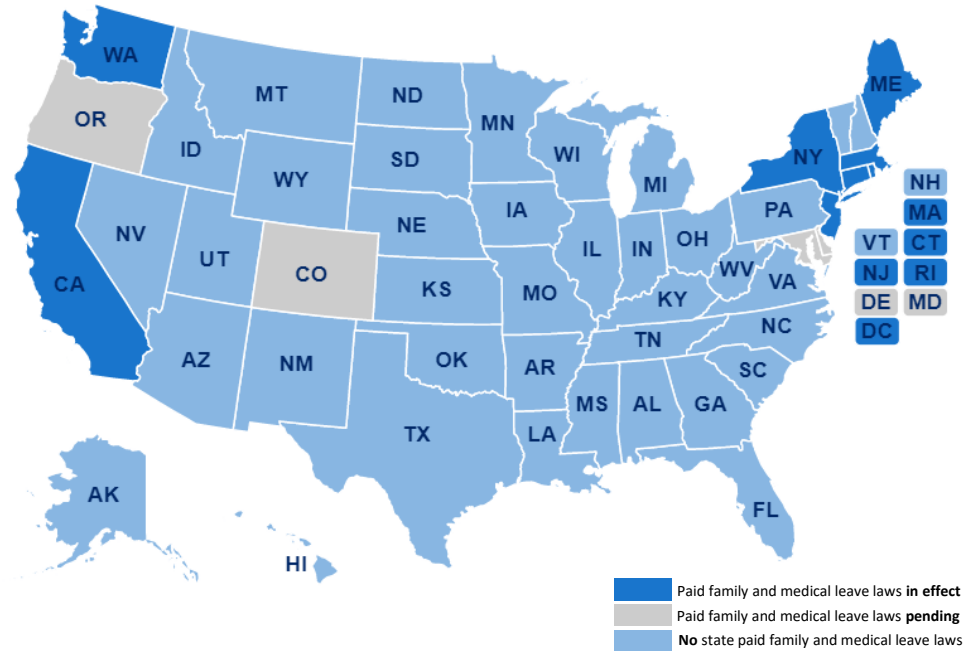
- 3 main categories of minimum wage requirements:
 - State
 - Federal Contractor minimum wages
 - *Service Contract Act* or *Davis Bacon Act* in DOL wage determination
- EO 13658 vs. EO 14026
 - Effective Dates
 - Coverage of “New Contracts”
- Determining minimum wage standards for remote workers



Expansion of Paid Leave Requirements

- Paid Sick Leave for Federal Contractors
 - Which contracts are impacted?
 - DBA or SCA qualifying contract as general rule
 - Minimum requirements for yearly paid sick leave: 56 hours
 - Accrued hours vs. Frontloaded
 - Year-end carry over
- State & Local paid leave laws
 - Must comply with requirement “more generous” to employees

Paid family and medical leave requirements by state

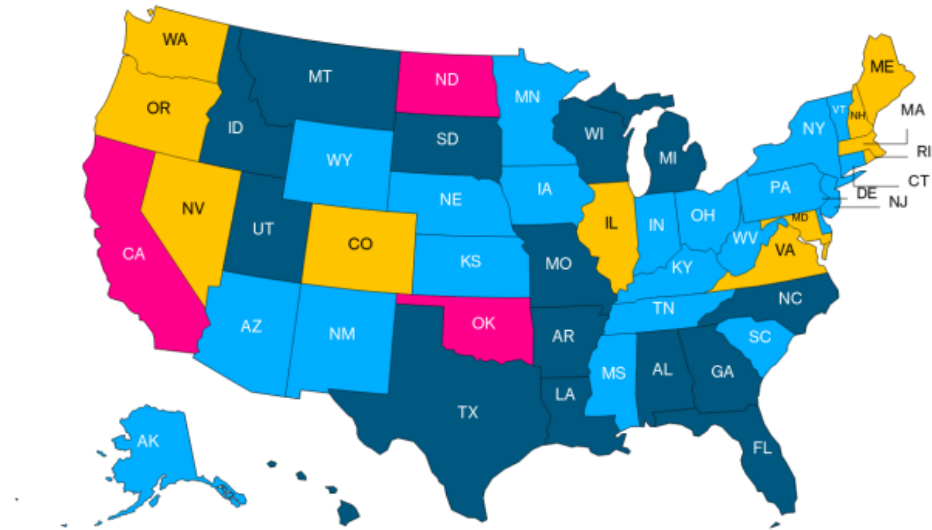


FTC's Proposed Ban on Non-Compete Agreements

- How would the proposed rule impact Government Contractors?
 - Retroactive for existing agreements
 - Exceptions for senior executives and highly paid workers
- Existing state-bans on non-competes
 - How does this effect remote employees?
- Other ways to protect trade secrets and intellectual property

State Limits on Employee Noncompetes

■ Allowed if not overly broad ■ No statute on noncompetes*
■ Largely banned ■ Banned for low-wage/hourly workers



Source: Bloomberg Law analysis
*Case law allows noncompetes if not overly broad



NLRB's Recent Ruling on Confidentiality and Non-Disparagement Agreements

- Severance agreements may no longer include “overbroad” provisions
 - Only applies to nonsupervisory roles
- Split-decision ruling
 - NLRB precedents tend to change with political administrations
- How to structure severance agreements considering shifting rulings?



Executive Order 14055 – Nondisplacement of Qualified Workers Under Service Contracts

- Applicable to prime and subcontractors
- Expanded to include hybrid and remote workforces
 - Increases efforts required by successor contractors to comply
 - Relocation reimbursement not required
- Raised the bar to not offer employment to predecessor employee
 - “Reliable evidence” for “just cause to discharge” is new standard



NOVEMBER 18, 2021

Executive Order on Nondisplacement of Qualified Workers Under Service Contracts



▶ BRIEFING ROOM

▶ PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in procurement, it is hereby ordered as follows:



SBA's Certification Program for VOSBs & SDVOSBs

- Existing VA certifications valid for remainder of three-year term, **plus one additional year**
- Self-Certified SDVOSBs have one year grace period to apply for SBA certification (January 1, 2024)
 - No grace period for VA procurements
- Less restrictive eligibility requirements
 - “Good character” requirement removed
 - Right of first refusal changes
 - Less restrictive veteran control requirements



U.S. Small Business Administration

Veteran Small Business Certification (VetCert)

Veteran-owned small businesses can use this application to be certified by SBA to compete for federal contracts. Certified veteran-owned small businesses (VOSBs) will have the opportunity to pursue sole-source and set-aside contracts at the Department of Veterans Affairs under the VA's Vets First program. Certified service-disabled veteran-owned small businesses (SDVOSBs) will have the opportunity to compete for federal sole-source and set-aside contracts across the federal government.



Accelerated Payments to Small Businesses

- Effective March 16, 2023
- Requires federal agencies to:
 - Establish accelerated payment date to **small business prime contractors** with goal of 15 days after receipt of proper invoice
 - Establish accelerated payment date to **prime contractors that subcontract with small businesses** with goal of 15 days after receipt of proper invoice if
 - No specific payment date is set by contract
 - The prime agrees to accelerate payments to sub

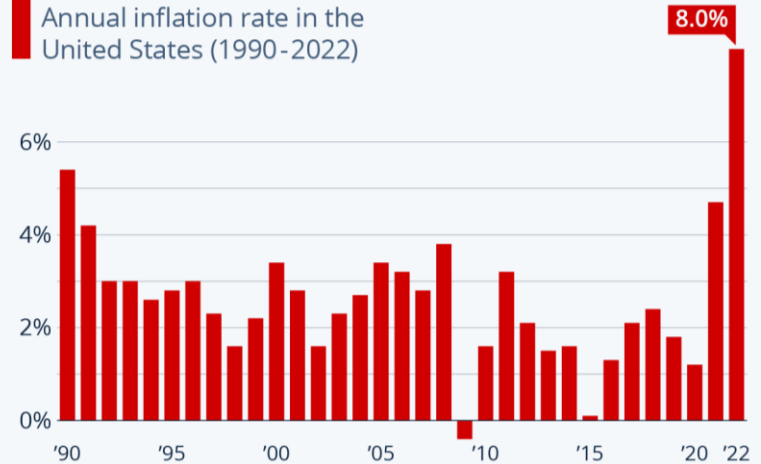


NDAA FY23 Inflation Relief

- Contractors can apply for modifications for fixed-price contracts **impacted by inflation**
 - Covers primes and subs
- Additional DOD guidance on application process expected in coming weeks
 - Approval contingent on acceptable contract performance
- How to prepare to apply
 - Track and document cost impacts due to inflation
 - Inform contracting officer of impact and intent to apply for relief

2022 Inflation Tops Previous Decades

Annual inflation rate in the United States (1990-2022)



Urban consumers, average of monthly, year-over-year rates
Source: Bureau of Labor Statistics



Q&A Time



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Thank you for joining!

Stephanie Wilson - Swilson@berenzweiglaw.com

Declan Leonard - dleonard@berenzweiglaw.com

Lynn Clements – lynn.clements@berkshireassociates.com

