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President Trump Blocks Federal Contractor Blacklisting Rule

Last week, President Trump signed four bills passed by Congress under the Congressional Review Act. The effect of each bill is to roll back regulatory actions adopted in the late days of the Obama administration. Of particular interest to employers who are federal contractors, one of the bills permanently blocks implementation of the Blacklisting Rule, otherwise known as the Fair Pay and Safe Workplaces Order, which was designed to bar companies with serious or repeated employment and labor law violations from receiving federal contracts and to address wage theft and other pay violations, including gender pay equity issues. We have previously written about the Blacklisting Executive Order ([EO 13673](#)) and its implementation rules [here](#) and [here](#).

The Blacklisting Rule originated with the Executive Order signed by President Obama in 2014. The [final rule](#) and [guidance](#) implementing the Order were published in the Federal Register last August. The rule would have required federal contractors to self-report to various federal agencies recent violations — and alleged (non-final and non-adjudicated) violations — of labor and employment laws under fourteen federal employment and labor-related statutes and executive orders when bidding on a new or renewed federal contract worth at least \$500,000. In addition, the Rule provided that employers with reported violations could face being barred from federal contracting or being required to enter into labor compliance agreements based on their violations and alleged violations.

The Rule also restricted the use of arbitration provisions related to sexual harassment, sexual assault or discrimination claims. In addition, contractors would have been required to provide information to employees about their pay, including pay amount, specific hours worked, specific over-time hours worked, and all deductions to a paycheck, among other things. The intent behind this provision was apparently to require submission of wage details to the government that could show wage gaps based on gender or other discriminatory criteria. According to one [commentator](#), The Fair Pay order Trump overturned was one of the few ways to ensure companies were paying women workers equally to their male colleagues.

In October, 2016, a federal judge in Texas issued an order temporarily prohibiting implementation of most parts of the rule. In announcing the bill blocking the Blacklisting Rule, President Trump said last week:

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When I met with manufacturers earlier this year — and they were having a hard time, believe me — they said this blacklisting rule was one of the greatest threats to growing American business and hiring more American workers. It was a disaster they said. This rule made it too easy for trial lawyers to get rich by going after American companies and American workers who contract with the federal government — making it very difficult. You all know what I'm talking about, right?

If you are interested in other employment and labor developments under the new Trump administration, check out our 100 Day alert series on the Gray Plant website at: [The First 100 Days Part One](#) and at [The First 100 Days Part Two](#).