

President Trump Signs Executive Order Aligning Federal Government Hiring Practices

Litigation Alert

08.06.2020

On August 3, 2020, President Trump [signed](#) another executive order emphasizing American-focused purchasing and hiring. The latest order, titled "Aligning Federal Contracting and Hiring Practices with the Interests of American Workers," focuses on enforcing current immigration laws and understanding how federal government contractors' use of foreign labor impacts the U.S. labor market and national security. According to the [administration](#), this order is a crucial step in "finalizing H1-B regulations so that no American worker is replaced ever again." White House, [Remarks, Remarks by President Trump in a Meeting with U.S. Tech Workers and Signing of an Executive Order on Hiring American](#) (Aug. 3, 2020).

Background

The August 3rd order is the latest in a series of executive orders meant to further the White House's "America First" initiatives. In April of 2017, the administration issued [Executive Order 13788](#), mandating immediate enforcement of existing domestic preference purchasing laws and promoting new policies to protect U.S. workers and the proper functioning of the H-1B visa program. Executive Order No. 13788, 82 Fed. Reg. 18837 (Apr. 18, 2017). [Executive Order 13858](#) was issued in January of 2019 to strengthen the "Buy American" preferences for infrastructure projects with a specific focus on encouraging the use of U.S.-produced iron, aluminum, steel, cement, and other manufactured products. Executive Order No. 13858, 84 Fed. Reg. 2039 (Jan. 31, 2019). And in July 2019, [Executive Order 13881](#) directed the Federal Acquisition Regulatory Council to consider significantly increasing the preference (and resulting penalty) for domestic end products under the Buy American Act's "domestic end product" test. Executive Order No. 13881, 84 Fed. Reg. 34257 (July 15, 2019). The resulting [proposed rule](#) has been drafted and was sent to the Office of Information and Regulatory Affairs for review in July, but has not yet been published or implemented.

The stated policy behind the August 3rd order is to "create opportunities for United States workers to compete for jobs, including jobs created through Federal contracts," especially in areas where "the Federal Government remains the largest employer" and those that have been impacted by the "economic dislocation" caused by COVID-19. *See* Sec 1.

The August 3rd order requires agency heads to collect and analyze data related to foreign labor provided under federal contracts. Specifically, the Order requires agency heads to review, "to the extent practicable," the following for fiscal years 2018 and 2019: (1) whether temporary foreign labor in the United States was used to perform federal contracts (by both prime and subcontractors) and, if so, determine the nature of the labor; and (2) whether federal contractors (prime and subcontractors) performed services in foreign countries that previously were performed in the United States. The agency heads will then be required to assess if the identified hiring practices negatively impacted U.S. workers' employment opportunities, the economy, the efficiency of the federal procurement system, or national security. A final report of the findings is required to be delivered to the Office of Management and Budget within 120 days.

Finally, the August 3rd order requires that, by September 17, 2020, the Secretaries of Labor and Homeland Security must act to "protect United States workers from any adverse effects on wages . . . caused by the employment of H-1B visa holders." *See* Sec. 3. This section does not provide any indication of how to identify when "adverse effects on wages and working conditions" are caused by the employment of H1-B visa holders but does state that measures should be taken to ensure that all employers of H-1B visa holders, including secondary employers, are complying with the Immigration and Nationality Act. After receiving information from agency heads, the President may seek to expand restrictions on immigration as he did in April and June of 2020. *Id.*

Key Takeaways

The August 3rd order does not require immediate action by contractors, but it does foreshadow possible federal government inquiries, including from auditors or inspector generals. Contractors (primes and subcontractors) should be prepared to provide detailed information about any foreign labor that supports federal contracts in both the United States (CONUS and OCONUS) and abroad, particularly those that are H-1B visa holders. Contractors should also be prepared to provide an explanation about their need to hire foreign labor. This explanation might include details such as whether the requirement could have been fulfilled by U.S. labor and what impacts, if any, the use of foreign labor has on the U.S. labor market, the federal procurement system, and national security.

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