

## Fair Pay and Safe Workplaces Rules ‘Misguided,’ ‘Unlawful’ and Must be Blocked, Says Texas Lawsuit – TRO Hearing Scheduled for October 21

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Several large construction and security industry groups have [filed a lawsuit](#) in the U.S. District Court for the Eastern District of Texas to block the heavily criticized Fair Pay and Safe Workplaces Executive Order 13673 and related rules. The court has scheduled a temporary restraining order (TRO) hearing for October 21, 2016, just four days before the Executive Order’s requirements begin to go into effect on October 25.

The Order and Rules, often referred to as the “blacklisting” rules, were finalized in August (see our [fact sheet](#), [article](#), and [webinar](#) on the final rules).

In the lawsuit, the industry group plaintiffs requested a TRO and nationwide injunction. Associated Builders and Contractors and the National Association of Security Companies alleged that their members will be irreparably harmed if the court allows federal agencies to begin enforcing the rules.

One of the most contentious provisions of the Fair Pay and Safe Workplaces Executive Order and final rules is that, during the procurement contract bidding process and post award, certain preliminary labor law decisions must be reported as “violations,” despite the fact they are not final and may be appealed or reversed.

The lawsuit alleges the “unprecedented” Order and Rules:

1. exceed the Executive Branch’s authority,
2. are preempted by the National Labor Relations Act and other federal labor and employment laws, and
3. violate the constitutional rights of government contractors.

In particular, the suit argues that compelling contractors to disclose such preliminary decisions, for which they risk losing contracts, violates their “due process” and First Amendment rights.

The blacklisting rules have drawn broad criticism from federal contractors, industry groups, and Congress. Jackson Lewis will continue to follow developments in this and other cases. In the meantime, however, the requirements of the Executive Order and final rules are in effect beginning on October 25, 2016.

Contractors should continue to prepare for compliance and strategic planning. For information or questions about the executive order and rules, please contact us or the Jackson Lewis attorney with whom you regularly work.

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