

Hiring Former Government Employees: Legal Risks + Other Considerations for Contractors

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July 8, 2025

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Takeaways

- Hiring former federal workers provides strong benefits, as well as presents challenges, to the private sector.
- Contractors must navigate strict ethical and legal boundaries when hiring former government employees.
- Implementing robust compliance programs, screening for conflicts of interest, and seeking legal guidance are essential steps to ensure a smooth and lawful hiring process.

Article

For government contractors, one consequence of the Trump Administration's efforts to reduce the size of the federal workforce is the availability of recently departed (or actively looking to depart) government employees. This is creating a unique opportunity in the private sector to recruit well-connected, highly skilled workers, many of whom are security-cleared and compliance-trained.

Departing government employees' valuable skills include:

- *Deep industry knowledge:* Familiarity with government operations, procurement processes, and agency priorities.
- *Established networks:* Connections within federal agencies that can facilitate communication and opportunities.
- *Technical expertise:* Specialized knowledge from roles in acquisition, program management, or policy development.

Contractors must navigate strict ethical and legal boundaries when hiring former government employees. Understanding these legal requirements is critical to avoid penalties, contract disputes, or reputational harm.

Key Laws, Regulations

Federal laws and regulations govern the employment of former government employees by contractors, including:

1. *Post-government employment restrictions (18 U.S.C. § 207)*

The federal post-employment statute imposes restrictions on former government employees to prevent conflicts of interest. Key restrictions include:

- *Lifetime ban (18 U.S.C. § 207(a)(1)):* Former employees are permanently prohibited from representing a contractor at their former agency on specific matters (e.g., contracts, grants, licenses, permits, applications, or litigation) they worked on

while in government service.

- *Two-year ban (18 U.S.C. § 207(a)(2))*: For two years after leaving government service, former employees cannot represent a contractor to any part of the federal government on matters that were pending under their official responsibility during their final year of service.
- *One-year cooling-off period for senior employees*: Senior government officials (e.g., those at GS-15 or higher or military officers above O-6) are barred for one year from communicating with or appearing before their former agency on behalf of a contractor with the intent to influence.

2. Procurement Integrity Act (41 U.S.C. § 2101-2107) (PIA)

The PIA regulates interactions between contractors and government employees, including their post-employment activities. Key provisions include:

- *One-year ban on certain activities*: Former government employees, such as contracting officers, involved in procurement decisions (e.g., source selection or contract administration) for contracts or awards exceeding \$10 million cannot accept compensation from the contractor for one year after their involvement.
- *Disclosure requirements*: Contractors must ensure former employees disclose any procurement-related roles they held, as violations can lead to contract cancellation or penalties.

3. Federal Acquisition Regulation (FAR)

The FAR, particularly Subpart 3.1, addresses ethical conduct and conflicts of interest. Key requirements include:

- *Pre-employment restrictions (48 CFR § 3.104-4(c))*: Current government employees participating personally and substantially in a pending procurement exceeding the simplified acquisition threshold (\$100,000) on which a contractor is bidding must:
 - Report any employment contact with the contractor to their supervisor and ethics official in writing.
 - Either reject the employment offer or disqualify themselves in writing to the head of the contracting activity until the contractor is no longer a bidder or employment discussions have terminated without an agreement.
- *Reporting for highly compensated officials*: As of Jan. 3, 2021, government employees earning more than \$132,552 annually must report any negotiation for post-government employment within three days to the deputy designated agency ethics official.
- *Contractor obligations (48 CFR § 3.1003)*: Contractors, regardless of size, may face suspension or debarment for knowingly failing to timely report evidence of violations of post-employment restrictions.

- *Ethics and compliance for large contracts (48 CFR § 3.1004)*: Contractors with contracts over \$6 million must:
 - Maintain a written code of ethics and business conduct prohibiting violations of post-employment restrictions.
 - Implement an ongoing business ethics and compliance program with reporting mechanisms and training.
 - Display posters in offices where contract work is performed, informing employees of the federal whistleblower hotline (FAR 52.203-14).

4. Agency-specific regulations

Many federal agencies, such as the Department of Defense (DoD) or Department of Homeland Security, impose additional ethics rules. For example, DoD 5500.07-R (Joint Ethics Regulation) governs DoD personnel and includes restrictions on post-government employment, particularly for those involved in defense contracts. Other agencies extend the one-year cooling-off period or impose stricter rules for certain roles.

Considerations for Government Contractors

To ensure compliance when hiring former government employees, contractors should consider adopting the following practices:

1. Implement a robust recruiting policy

- Establish a written policy prohibiting recruiting discussions with current or former government employees who participated personally and substantially in procurements or matters benefiting the contractor until the HR or legal departments approve a post-government employment questionnaire.
- Require immediate cessation of discussions and notify the HR and legal departments if a government employee submits an unsolicited resume or initiates contact before compliance is verified.

2. Screen for conflicts of interest

- Require potential employees to complete a conflict-of-interest form listing all current or prior government employment before employment discussions begin.
- Ensure the employee recuses themselves from matters involving the contractor and their former agency.
- If the contractor has active contracts or bids with the employee's former agency, both the employee and contractor must notify the relevant contracting officer of the potential employment relationship.

3. Conduct due diligence

- Request the former employee's ethics opinion from their agency, which outlines

applicable restrictions.

- Verify the employee's role in procurement or contract-related activities to assess PIA and FAR restrictions.

4. Maintain a compliance program

- Train HR and management teams on relevant requirements.
- Monitor compliance through regular audits and employee disclosures.
- Structure roles to avoid violations, such as limiting former employees to non-representational tasks.
- Consult with counsel to navigate complex regulations and agency-specific rules.

5. Ensure transparency

- Document compliance efforts and communications with the former government employees.
- Report any potential violations promptly to avoid penalties.

Risks of Non-Compliance

Failing to adhere to these regulations can result in severe consequences, including civil and criminal penalties, contract termination, contracting suspension or debarment, reputational damage, and award disputes.

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Contractors can and should take advantage of access to a wealth of talented individuals exiting or considering exiting public service, but they must understand the legal restrictions involved in hiring former government employees. Implementing robust compliance programs, screening for conflicts of interest, and seeking legal guidance are essential steps to ensure a smooth and lawful hiring process.

Please contact a Jackson Lewis attorney with any questions about hiring former government employees.

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