National Center for Simulation

Round Table

February 5, 2013

Employment Issues and New Developments

Presented by

Edward J. Kinberg

INDEX

2012 Trends in Government Contracts Likely to Continue

Law360

by

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2012 Trends In Government Contracts Likely To Continue

Law360, New York (January 31, 2013, 12:30 PM ET) -- The news at 2012's end and the start of 2013 reveals stressful forces at work in the field of government contracting, causing enforcement and disputes to rise at a time when the acquisition workforce, agencies, and government contractors are strained by ongoing spending reductions and preparing for additional budget cuts looming in the near future.

And while some level of budget cuts are inevitable, government contracts remain the government's most essential way to get things done, and are indispensable to the goals of the Obama administration during the second term, just as they were when President Obama signed the American Recovery and Reinvestment Act at the beginning of his first term.

Government contracts remain indispensable to the needs of economic recovery and progress, the domestic workforce and industrial base, national defense, homeland security, domestic infrastructure development, energy independence, disaster relief and environmental protection, and health care reform.

President Obama said during the final 2012 debate that sequestration will not happen, and hopefully that will prove true, but, as a Washington Post headline recently reported, there is "no deal in sight to stop sequester." Even without sequestration, challenges will remain for government contractors, agencies and the acquisition workforce alike. At the end of 2012, spending on contracts was decreasing, acquisition reform efforts were continuing, and enforcement and disputes were on the rise. These trends are likely to continue, with or without the unnecessary havoc to government contracting and damage to the economy now posed by sequestration.

Historic Savings in Contracting and Reduction in Contract Spending

On Dec. 6, 2012, the administrator of the White House Office of Federal Procurement Policy, Joe Jordan, announced on the blog of the Office of Management and Budget that the Obama administration had reduced contract spending by more than $20 billion in fiscal year 2012 compared to the previous year. According to Jordan, this reduction was the "largest single year dollar decrease in Federal contract spending on record," and establishes a three-year downward trend from 2009 to 2012. Fiscal year 2012's total spending on contracts was $35 billion less than the amount spent in fiscal year 2009. Jordan stated this decline represents "a dramatic reversal" of the 12-percent contract spending growth rate experienced from 2000 through 2008.

Jordan stated that since the beginning of the administration, President Obama "has challenged Federal agencies to strengthen their acquisition and contracting practices by eliminating inefficiencies and buying smarter. In response, agencies have cut unnecessary contracts and launched new efforts to pool the government's buying power to deliver a better value for the American people." According to the blog post, one major area where

the Post, the federal government terminated 13,579 contracts in the previous fiscal year, which was more than double the 5,692 it terminated in fiscal year 2006. The Post reported that the value of canceled contracts was $2.15 billion in fiscal year 2011, compared with $416 million five years earlier.

Last April, CRS issued a report on options for government procurement planners in response to potential budget cuts. These included options, among others, to "(1) unilaterally change certain terms of the contract, such as the specifications or the method and manner of performing the work; (2) delay, suspend, or 'stop work' on the contract; and (3) terminate the contract for the government's convenience." While these options may be forced by budget cuts, they also may result in contractual disputes, depending on how they are implemented. Thus, even while spending declines, and especially in the event of sequestration or other severe cuts, disputes can be expected to increase.

Acquisition Reform Efforts Continue

On Jan. 2, 2013, President Obama signed the 2013 National Defense Authorization Act, passed by Congress in late December with significant new acquisition reforms, more than forty separate sections covering diverse topics, including the majority of provisions that were part of the Comprehensive Contingency Contracting Reform Act of 2012.

That bill, addressing primarily overseas contingency operations, was introduced by Sen. Claire McCaskill, D-Mo., after the final report of the Commission on Wartime Contracting, the bipartisan committee created in 2007, modeled after the 1940s Truman Committee that investigated contracting problems during World War II. The provisions adopted by the National Defense Authorization Act are intended to improve oversight, management and planning requirements, increase transparency, competition and accountability, and create responsibilities for Inspectors General to oversee all aspects of contingency operations. McCaskill's news release called the Reform Act provisions the "most expansive overhaul of wartime contracting in generations."

The McCaskill bill included provisions adopted in the NDAA with broad application, on subjects such as the independence of suspension and debarment officials at the DOD, the U.S. Department of State and the U.S. Agency for International Development; uniform contract writing system requirements for federal agencies; and an expansion of the Federal Awardee Performance and Integrity System.

But they are part of even broader, ongoing legislative and regulatory reforms, including many other provisions of the 2013 NDAA that address, among other diverse subjects, requirements for combating trafficking in persons; pass-through contracts; cybersecurity by contractors; Defense Contract Audit Agency access to internal audit reports; new limitations on major DOD cost reimbursement contracts; and expansion of contractor whistleblower protections. These and other ongoing reform efforts will continue to impose new requirements on both contractors and the government, while budget cuts are impacting both.

Debarment and Suspension Reach New Highs

While reform efforts continue, enforcement activities have increased. In a Sept. 18, 2012, blog post on the OMB website, OFPP Administrator Jordan announced a new report from the Interagency Suspension and Debarment Committee on the administration's "stepped up" accountability measures. The report stated that in the past three years, agencies have collectively increased suspensions and debarments from just over 1,900 in fiscal year 2009 to more than 3,000 in fiscal year 2011. According to the report, including proposed debarments, there were a total of 5,838 suspension and debarment actions in fiscal year 2011, compared to 2,668 in fiscal year 2009.

According to Jordan, the report "shows the Obama administration has made significant

tam suits were filed in fiscal year 2012, and DOJ recovered a record $3.3 billion in suits initiated by whistleblowers.

The DOJ's 2012 recoveries included record recoveries for allegations of health care fraud, topping $3 billion for the first time in a single fiscal year, and allegations of housing and mortgage fraud, accounting for a record $1.4 billion. The DOJ recovered $427 million in procurement cases, bringing total recoveries in procurement cases since January 2009 to $1.7 billion.

The DOJ announced that of the nearly 8,500 qui tam suits filed since the 1986 amendments, nearly 2,200 were filed since January 2009. The DOJ stated that there were qui tam recoveries totaling $24.2 billion since 1986, with almost $10.5 billion of that amount recovered from January 2009 through fiscal year 2012. Since 1986, whistleblowers have been awarded nearly $4 billion, with $439 million in awards in fiscal year 2012.

Pressure Continues on Government Contractors as FCA Defendants

The statistics show that since spending on government contracts peaked in 2009, government contractors have been subject to an increasing number of FCA lawsuits. Record-breaking recoveries have been associated not only with increased enforcement activities, but record-breaking filings by qui tam relators. When the DOJ does not intervene, there is little check on the allegations that may be brought by private plaintiffs. Even when the DOJ does intervene, it is not always correct about the allegations, and the recovery statistics include settlements where defendants deny wrongdoing.

While spending on government contracts remains near the historically high levels reached under the Bush administration, additional factors will keep the pressure on government contractors defending FCA cases. The FCA statute of limitations is ordinarily six years from the submission of a claim for payment, which means that the historic highs in spending on government contracts reached in 2009 may continue to be subject to FCA investigations and lawsuits throughout the Obama administration's second term. Plaintiffs have also sought to suspend the statute of limitations through the 2008 Wartime Suspension of Limitations Act, with limited success outside the criminal context (since the statute is part of the criminal code). Nevertheless, these efforts have brought some uncertainty to the application of the FCA statute of limitations.

Another trend that will increase pressure on defendants to settle is the more active agency debarment and suspension programs under the Obama administration. Potential implications of an adverse jury verdict in an FCA case include potential debarment or suspension, which in turn raises the stakes for all FCA defendants, and the pressure to settle.

The May 2009 Fraud Enforcement and Recovery Act (FERA) will also keep the pressure on FCA defendants. In a decision in November 2012 in Sanders v. Allison Engine Co., the Sixth Circuit held that the FERA amendments to the FCA's liability provisions applied retroactively to "cases" and not just to "claims for payment" pending as of June 7, 2008, just prior to the U.S. Supreme Court decision in the same case imposing certain limits on liability, which Congress sought to overrule in FERA. One impetus for FERA was the February 2009 Recovery Act, which appropriated more than $250 billion in funding for federal contracts, grants and loans.

FERA lowered the standard for FCA liability by eliminating the statutory basis for the Supreme Court's decision, and increased potential liability for subcontractors and subgrantees, including recipients of Recovery Act and other federal funding. The Sixth Circuit's decision enhanced a circuit split on the issue of retroactivity, but regardless of that issue, the FERA amendments will apply to the majority of spending that has occurred under the current administration, including spending under the Recovery Act. FERA's potential application increases the risks to government contractors, potential liability of defendants,

GDP Decline Highlights US Military Budget Squeeze

Law 360

by

Dietrich Knauth

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GDP Decline Highlights US Military Budget Squeeze

By **Dietrich Knauth**

Law360, New York (January 30, 2013, 8:59 PM ET) -- Trepidation over automatic federal budget cuts and a short-term decline in military spending drove a contraction in the U.S. economy in the fourth quarter of 2012, according to government contracts experts who expect spending to remain sluggish while sequestration looms.

The Bureau for Economic Analysis reported Wednesday that real U.S. gross domestic product declined by 0.1 percent, the first drop since the recession in 2009. While some signs pointed to continuing recovery in the private sector, including increased spending on personal consumption and housing, declines in government spending were partially responsible for the overall decrease. Government spending declined 15 percent overall in the fourth quarter, driven by a sharp 22.2 percent drop in national defense spending.

Alan B. Krueger, chairman of the President's Council of Economic Advisers said Wednesday that uncertainty around sequestration, a series of across-the-board spending cuts set to kick in March 1, led to the largest quarterly decline in military spending in 40 years.

"A likely explanation for the sharp decline in federal defense spending is uncertainty concerning the automatic spending cuts ...," Krueger wrote in the White House blog Wednesday. "The decline in government spending across all levels reduced real GDP by 1.33 percentage points in the quarter."

Experts said the government has been cautious about committing to new contracts in the face of budget uncertainty. Sequestration, which would cut about $52 billion from both defense and nondefense spending in 2013, was initially set to take effect on Jan. 1, and the U.S. Department of Defense had slowed its contracts for goods and services before that deadline.

"The government tends to contract for the long term, especially for major weapons programs, and agencies are understandably reluctant to enter into long-term commitments when they're faced with this kind of budget uncertainty," Thomas McGovern of Hogan Lovells said.

While the 22.2 percent quarterly drop is eye-catching, it is likely driven by short-term DOD contract delays, McGovern said. The longer-term decline in defense spending, a result of both the budget squeeze and the drawdown after the wars in Iraq and Afghanistan, is likely to be less dramatic.

"The sharp decline in the GDP number has to be looked at with some caution, and it is too soon to know how much of it reflects deferred spending — temporary delays in awarding new contracts — versus a more lasting reduction in spending," McGovern said. "I suspect that there is some pent up demand. If contract awards have been delayed pending greater clarity on available budget, it wouldn't surprise me to see some upward bounce in DOD spending after the uncertainty surrounding sequestration is resolved."

"The government contractor sector is not monolithic," Chvotkin said. "If you're in the information technology or cybersecurity business, your market is up a little bit."

--Editing by John Quinn and Chris Yates.

Contractors Brace For DOD Access to Audit Records

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by

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Contractors Brace For DOD Access To Audit Records

By **Dietrich Knauth**

Law360, New York (January 18, 2013, 8:15 PM ET) -- While the 2013 defense bill removed draft language that would have allowed the U.S. Department of Defense to financially penalize contractors who refused to turn over internal audit reports, the law's focus on internal audits still causes contractors to worry about potential fishing expeditions that could impose new audit liabilities on companies.

Under the 2013 National Defense Authorization Act, the Defense Contract Audit Agency is required to document its requests for access and contractors' responses to its requests, which will likely make requests for access more routine, attorneys say. The law instructs the DCAA to use internal audit reports to help evaluate contractors' business systems and includes protections to prevent the DCAA from releasing the information or using it for other purposes.

While the Senate's earlier version of the NDAA had said a contractor's refusal to turn over internal audit reports could be grounds for finding its business systems deficient, the law says that a refusal, on its own, is not grounds for finding a deficiency. That was a serious concern for contractors, because recent DCAA regulations allow the agency to withhold payments from contractors if it finds material weaknesses in the company's business and accounting systems.

"The Senate version would have been much more significant, because contractors would have been bound by regulatory obligations," said Paul Pomeo, a partner in Arnold & Porter LLP's government contracts practice. "This takes the teeth out of what [the] DCAA was really hoping to do, and I'm kind of surprised that Congress even bothered, unless they thought it was some kind of compromise."

While the law is an improvement for contractors, it still directs the DCAA to use internal audit reports when evaluating contractor business systems and allows the agency to make an issue over an access denial, McKenna Long & Aldridge LLP partner Thomas Lemmer said.

"The way this language ties these reports into compliant business systems, I think that's going to make these requests for internal audit reports routine," he said.

Rather than using financial withholding as a stick to punish contractors who don't turn over their internal audit reports, the law instead offers the carrot of promised efficiency in business system audits, according to Lemmer, who is skeptical about the idea.

"In the past when [the] DCAA has gotten more access and said that it needs more access to gain efficiency, those efficiencies have never happened," he said.

Few contractors are confident that turning over more information will speed up the agency's audits, and some contractors worry the DCAA will use the internal audit reports as the basis for further investigations and more questioned costs rather than using them to speed up its

National Labor Relations Board Steps into the Social Media Scene

Posted by

Rosemary Brkopac

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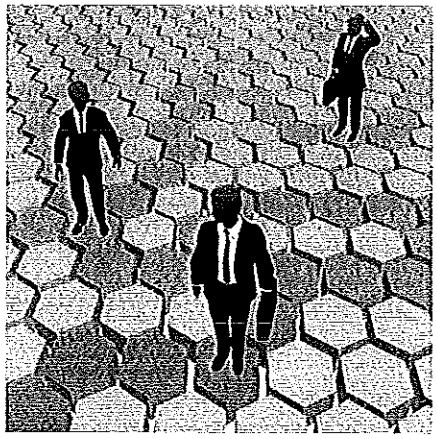
National Labor Relations Board Steps into the Social Media Scene

Posted by Rosemary Brkopac on Tue, Jan 29, 2013

Along with a fresh near year, we are seeing a fresh new protection on the formerly precarious practice of employees posting their comments about their employers' activities on social media sites - under certain conditions.



Over the past two years I've made a couple of blog posts on the topic of employer/employee issues in social media. Why? Well, many employers took a hard line stance about (usually negative) social media mentions by their employees, and many individuals were naïve about the ability of their employers to determine exactly what they were saying about them. It was not unusual to hear of cases where employers were even requesting passwords to their employees' social media accounts. With jobs being hard to come by, this was important information to impart.

Now, employees in the U.S. who wish to discuss working conditions in social media platforms may do so without fear of backlash. The reason for this turnabout is that they have found an advocate in the form of the National Labor Relations Board.

According to a recent article in the New York Times *"Federal regulators are ordering employers to scale back policies that limit what workers can say online. The labor board's rulings, which apply to virtually all private sector employers, generally tell companies that it is illegal to adopt broad social media policies — like bans on "disrespectful" comments or posts that criticize the employer — if those policies discourage workers from exercising their right to communicate with one another with the aim of improving wages, benefits or working conditions.* The NLRB chairman, Mark G. Pearce, explained the support saying "*Many view social media as the new water cooler. All we're doing is applying traditional rules to a new technology.*"

Although this is a great step forward, I think employees still need to be careful about what they post. Those releasing confidential information, or who are ranting and raving about their employers will receive a rude awakening if they believe their "free speech" will be defended. No one is going to step up and save their jobs.

As I've said before, assume anything you post on the Internet is permanent and may be viewed by anyone, and that your online activities may come to the attention of your employers or potential employers.

[img source: Bigstock.com]

Outline of Federal Employment Law Recordkeeping Requirements

Constangy, Brooks & Smith, LLP

OUTLINE OF FEDERAL EMPLOYMENT LAW RECORDKEEPING REQUIREMENTS

Constangy, Brooks & Smith, LLP

TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
1. PERSONNEL RECORDS:	Applications, resumes, and other forms of employment inquiries, job advertisements, notices to the public or to employees regarding job openings, training programs and written training agreements, documents related to hiring, firing, transferring, assignment, demotions, promotions, and layoffs, payroll records, rates of pay or other terms of compensation, job descriptions, employment handbooks, notice of and criteria for selection for training or apprenticeship programs, employee evaluations, requests for reasonable accommodation, summaries of applicants' qualifications, lists of job criteria, interview records, identification of minority and female applicants, opportunities for overtime	• **4 years generally recommended***	None specified, but records should be kept safe and accessible at the place or places of employment, or at an established central record-keeping office Where records are not maintained at the place of employment, they must be made available upon 72 hours' notice	• Title VII, Civil Rights Act of 1964[a]; 29 C.F.R. §§ 1602.7-1602.14, 1602.20-1602.21† • Civil Rights Act of 1866[b]; 42 U.S.C. § 1981 • Americans with Disabilities Act Amendments Act of 2008 (ADAAA)[c]; 42 U.S.C. § 12117; 29 C.F.R. §§ 1602.7-1602.14 • Age Discrimination In Employment Act (ADEA)[d]; 29 U.S.C. § 626; 29 C.F.R. §§ 1627.2-1627.6, 1627.10-1627.11 • Exec. Order No. 11,246[e]; 41 C.F.R. §§ 60-1.3, 60-1.7, 60-1.12 • Davis-Bacon and Related Acts (DBRA)[f]; 40 U.S.C. § 276a; 29 C.F.R. § 5.5(a)(3)‡ • Rehabilitation Act of 1973[g]; 29 U.S.C. § 793; 41 C.F.R. § 60-741.80 • Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)[h]; 38 U.S.C. § 42.12; 41 C.F.R. §§ 60-250.80, 60-250.81, 60-300.80, 60-

* NOTE: All employers are subject to the Civil Rights Act of 1866, 42 U.S.C. § 1981, as amended. Constangy recommends that all employment records be maintained for a minimum of four years, although some other applicable statutes have shorter limitations and record retention periods. *See* endnote b below. Furthermore, in light of the Lily Ledbetter Fair Pay Act, an especially cautious course of action would be to retain all employment records in some format indefinitely.

† Employers having 100 or more employees must always retain a copy of the most recent Employer Information Report EEO-1 for each reporting unit.

‡ Records must be maintained for 3 years from completion of contract.

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Constangy, Brooks & Smith, LLP

TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
3. ONLINE/ INTERNET APPLICATION RECORDS:	Any and all expressions of interest through the internet or related technologies as to which the employer or government contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying applicants contacted about their interest in a particular position: • If utilizing INTERNAL RESUME DATABASE, must maintain a record of each resume added to the database, the date added, the position for which each search of the database was made, and for each such search, the search criteria and date • If utilizing EXTERNAL RESUME DATABASE, must maintain a record of the position for which each search of the database was made, and for each search, the search criteria, the date of the search, and the resumes of the job seekers who met basic position qualifications	•1 year from date of personnel action to which record relates[±]	None specified	•Exec. Order No. 11,246; 41 C.F.R. § 60-1.12

[±] Government contractors or subcontractors with 150 or more employees, OR a government contract of $150,000 or more, must keep records for 2 years.

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TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
6. INCOME TAX WITHOLDING:	Information related to FICA and FUTA income tax withholdings	•4 years	None specified	•Federal Insurance Contribution Act (FICA); 26 U.S.C. § 3101, et. al.; FICA Reg. § 316001-1(e)(2) •Federal Unemployment Tax Act (FUTA); 26 U.S.C. § 3301, et. al.
7. TIME CARDS AND SCHEDULES:	Records showing time each workday began and ended, total hours worked in each day and each week, wage rate tables, work schedules, amount of and reason for each deduction from or addition to wages, and daily output of an employee not paid on an elapsed time basis	•3 years from termination of employment generally recommended**	None specified; must be made available upon 72 hours' notice	•FLSA; 29 C.F.R. § 516.6 •FMLA; 29 C.F.R. §§ 630.1211, 825.500
8. WAGE DIFFERENTIAL:	Records explaining any wage differential between sexes and substantiating documents	•2 years	None specified	•EPA; 29 C.F.R. § 1620.32; 20 C.F.R. § 516.6
9. GENERAL BUSINESS RECORDS:	•Records showing total dollar volume of sales or business and total volume of goods purchased or received	•3 years	As maintained in the ordinary course of business; must be made available upon 72 hours' notice	•FLSA; 29 C.F.R. §§ 516.5(c), 516.6(b)
	•Records of customer orders or invoices, incoming or outgoing shipping or delivery records, bills of lading and billings to customers (not individual sales slips or cash register tapes)	•2 years		

** Time cards and schedules are supplementary basic records that must be kept for two years under the FLSA. However, as the statute of limitations for willful violations is three years, it is strongly recommended that employers keep time cards and schedules for three years.

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TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
	•VETS-100 Reports	•1 year		•VEVRAA; 41 C.F.R. §§ 60-250, 60-300
13. MISC. DOCUMENTS, INCLUDING AGREEMENTS, CONTRACTS, CERTIFICATES, BENEFITS:	Written records relating to employee benefits plans, collective bargaining agreements, seniority and/or merit systems, plans, trusts, individual employment contracts, written FLSA agreements, certificates authorizing payment at less than minimum wage	•3 years from end of plan or system	None specified	•FLSA; 29 C.F.R. § 516.5 •EPA; 29 C.F.R. § 1620.32
14. AFFIRMATIVE ACTION EMPLOYERS:††	•Applications for employment if employer has more than 150 employees, including where possible, the gender, race, and ethnicity of applicants and internet applicants	•2 years from the date of filling the position	Records containing racial or ethnic identity should be kept separate from employee's basic personnel records that are available to those responsible for personnel decisions	•Exec. Order No. 11,246; 41 C.F.R. §§ 60-1.3, 60-1.4(a), 60-1.7, 60-1.12 •Rehabilitation Act; 41 C.F.R. § 60-741.80 •VEVRAA; 41 C.F.R. §§ 60-250.80, 60-250.81, 60-300.80, 60-300.81
	•Applications for employment if employer has more than 150 employees, including where possible, the gender, race, and ethnicity of applicants and internet applicants	•1 year from the date of filling the position		
	•Written affirmative action plans including supporting documentation, analyses, and related records or raw data, tests given to employees including documents on their use and validation studies	•2 years		

†† These requirements apply to government contractors or subcontractors with more than 50 employees or a single contract in the amount of $50,000 or more. Any federal depository is also subject to these requirements.

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TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
16. IMMIGRATION RECORDS:	Employment Eligibility Verification Form I-9	•3 years after date of hire •OR 1 year from termination of employment, whichever is later	I-9 Form, signed by new hire and employer, to be readily available upon request; I-9 Forms should be kept separate from regular personnel documents to ensure no discrimination and easily distinguishable access to files if audited	•Immigration Reform and Control Act of 1968 (IRCA)[m]; 8 U.S.C. § 1324b(3)(B)
17. RECORDS OF SELF-IDENTIFYING VETERANS AND INDIVIDUALS WITH DISABILITIES:	Government contractors must keep a separate file on applicants and employees that self-identify as disabled veterans or Vietnam-Era veterans, or individuals with disabilities	•2 years[±]	None specified	•Rehabilitation Act; 41 C.F.R. § 60-741.80 •VEVRAA; 41 C.F.R. §§ 60-250.80, 60-250.81, 60-300.80, 60-300.81, 60-741.42(b)
18. EMPLOYEE BENEFITS RECORDS:	Benefit plan documents, disclosure of plan description, annual reports and summary of annual reports, summary plan descriptions, all recorded information used in compiling required reports (such as vouchers, worksheets, receipts, applicable resolutions, and participants' elections and deferrals), copies of COBRA notices, acknowledgments that COBRA notices were received, documents relating to any instance in which COBRA is not offered due to gross	•Generally 6 years from filing (or date would have been filed but for exemption or simplified reporting requirement) •Every employer must maintain records concerning employee benefits	None specified; electronic record-keeping is satisfactory if system has controls to ensure the integrity, accuracy, authenticity, and reliability of the records, the records are kept in	•Employment Retirement Income Security Act (ERISA)[n]; 29 U.S.C. § 1027; 29 C.F.R. § 2520.107-1 •Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); 29 U.S.C. § 1161 •ADEA; 29 C.F.R. § 1627.3

[±] Government contracts or subcontractors with 150 or more employees, OR a government contract of $150,000 or more, must keep records for 2 years.

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19. OSHA RECORDS:	•OSHA Form 101: supplemental record for each occupational injury or illness •OSHA Form 200: log and summary for occupational injuries and illnesses •OSHA Form 300 and 300-A: Record of employee's injuries or illnesses if they result in death, one or more days away from work, restriction of work or motion, loss of consciousness, transfer to another job or medical treatment and work-related cases of cancer, chronic irreversible disease, fractured or cracked bone, or punctured eardrum when diagnosed by physician, include employee's name (or confidential number), job title, date of injury or onset of illness, description of injury or illness, parts of body affected, object or substance that caused injury or illness, number of calendar days away from work, on restricted duty, and fatalities	•5 years following end of year to which records relate	Entries must be made within 7 calendar days; Records may be computerized	Occupational Safety and Health Act (OSHA)°; 29 U.S.C. § 657-58; 29 C.F.R. §§ 1904.4, 1904.5, 1904.7, 1904.29, 1904.32, 1904.33, 1904.44, 1910.1020 Toxic Substances Control Act; 15 U.S.C. § 2607
	•OSHA Form 301: Record injured or ill employee's name, address, age, and gender, name and address of physician or other health care provider who provided treatment, indicate whether employee was treated in an emergency room or hospitalized, the date, time and description of injury or illness, how injury occurred, and what employee was doing just before incident	•5 years following end of year to which records relate	Entries must be made within 7 calendar days; Records may be computerized	

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TYPE OF RECORDS TO BE RETAINED	DESCRIPTION	RETENTION PERIOD	FORM IN WHICH RECORDS ARE TO BE KEPT	STATUTORY AND REGULATORY AUTHORITY
21. POLYGRAPH RESULTS:	A copy of the statement concerning the activity or incident under investigation and basis for testing particular employee, all opinions, reports, charts, written questions, lists, or other records relating to the test furnished by the examiner, records identifying the loss or injury and the access of the examinee to the loss or injury, identity of persons examined, copy of the written statement of time and place of examination and the examinee's right to consult counsel, notice to examiner of persons to be examined, and a record of the number of exams conducted each day as well as duration of examinations	•3 years from date of exam (or from date examination requested if no exam is conducted)	Should be kept in a confidential employee record folder and be accessible upon 72 hours' notice	•Employee Polygraph Protection Act of 1988 (EPPA)[P]; 29 C.F.R. § 801.30
22. DRUG TESTING RECORDS:	•DOT drug testing records for employees in safety-sensitive transportation positions in aviation, trucking, railroads, mass transit, pipelines and other transportation industries:[§§]		Must be kept in a secure location with controlled access	•Omnibus Transportation Employee Testing Act of 1991[q]; 14 C.F.R. §§ 121 App. I, 121 App. J; 46 C.F.R. § 16.260; 49 C.F.R. §§ 40, 199.227, 219.901, 219.903, 382.401; 655.71
	•Negative test results and alcohol test results less than .02; cancelled controlled substance tests	•1 year from test date (2 years for railroad)		

§§ The retention requirements provided here are generally appropriate for all federally-mandated drug and alcohol testing for employees, however some variations exist between specific industries for some employees, specifically railroad employees, airline pilots, and pipeline employees. Additional review of industry-specific regulations should be conducted to determine an employer's obligations if engaged in those industries.

U.S. Department of Labor Workplace Poster Requirements for Small Businesses and Other Employers

Poster Page: Workplace Poster Requirements for Small Businesses and Other Employers http://www.dol.gov/oasam/boc/osdbu/sbrefa/

Some of the statutes and regulations enforced by agencies within the Department of Labor require that posters or notices be posted in the workplace. The Department provides electronic copies of the required posters and some of the posters are available in languages other than English.

Please note that posting requirements vary by statute; that is, not all employers are covered by each of the Department's statutes and thus may not be required to post a specific notice. For example, some small businesses may not be covered by the Family and Medical Leave Act and thus would not be subject to the Act's posting requirements. For information on coverage, visit the Employment Laws Assistance for Workers and Small Business (elaws) Poster Advisor. You may also contact the Office of Small and Disadvantaged Business Utilization, for assistance with these notice requirements.

To obtain posters or for more information about poster requirements or other compliance assistance matters, you may contact the U.S. Department of Labor at 1-866-4-USA-DOL.

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250.4(k); 4 1 C.F.R. 60-74 1.5(a)4 ▪ En Español	Please note that the EEOC* may provide additional posting requirements at Section 2000e-10 [§711].		
Fair Labor Standards Act (FLSA) Minimum wage poster Wage and Hour Division ▪ En Español ▪ Chinese Version (PDF) ▪ Russian Version (PDF) ▪ Thai Version (PDF) ▪ Hmong Version (PDF) ▪ Vietnamese Version (PDF) ▪ Korean Version (PDF) **Specific posters for:** ▪ State & Local Gov't Employees (PDF)	Every private, federal, state and local government employer employing any employee subject to the Fair Labor Standards Act, 29 USC 211, 29 CFR 516.4 posting of notices.	No citations or penalties for failure to post.	Any employer of employees to whom sec. 7 of the Fair Labor Standards Act does not apply may alter or modify the poster legibly to show that the overtime provisions do not apply.

Uniformed Services Employment and Reemployment Rights Act (Notice for use by all employers.) Veterans' Employment and Training Service 38 U.S.C. 4334, 20 CFR 1002.	The full text of the notice must be provided by each employer to persons entitled to rights and benefits under USERRA.	No citations or penalties for failure to notify. An individual could ask USDOL to investigate and seek compliance, or file a private enforcement action to require the employer to provide the notice to employees.	Employers may provide the notice by posting it where employee notices are customarily placed. However, employers are free to provide the notice in other ways that will minimize costs while ensuring that the full text of the notice is provided (e.g., by distributing the notice by direct handling, mailing, or via electronic mail).
NOTICE TO ALL EMPLOYEES WORKING ON FEDERAL OR FEDERALLY FINANCED CONSTRUCTION PROJECTS (Davis-Bacon Act) Wage and Hour Division 29 CFR 5.5(a)(l) ▪ En Español	Any contractor/subcontractor engaged in contracts in excess of $2,000 for the actual construction, alteration/repair of a public building or public work or building or work financed in whole or in part from federal funds, federal guarantee, or federal pledge which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1.	No citations or penalties for failure to post.	The contractor or subcontractor is required to insert in any subcontract the poster requirements contained in 29 CFR 5.5(a)(l). The poster must be posted at the site of work, in a prominent and accessible place where it can easily be seen by workers.
NOTICE TO EMPLOYEES WORKING ON	Every contractor or subcontractor engaged in a contract with the	No citations or penalties for failure to post.	Contractors and any subcontractors engaged in federal service contracts

NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS Office of Labor-Management Standards Executive Order 13496; 29 CFR Part 471	Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically.	The sanctions, penalties, and remedies for noncompliance with the notice requirements include the suspension or cancellation of the contract and the debarring of Federal contractors from future Federal contracts.	The notice, prescribed in the Department of Labor's regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. Additionally, the notice provides examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (www.nlrb.gov), the agency responsible for enforcing the NLRA.

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Posters of special interest to federal contractors:

- The Davis-Bacon Act (Government construction)
- The Service Contract Act (SCA)
- Uniformed Services Employment and Reemployment Rights Act (Notice for use by federal agency employers)
- Equal Employment Opportunity
  - En Español