

# WHAT FEDERAL CONTRACTORS NEED TO KNOW ABOUT THE TIKTOK BAN FOR GOVERNMENT DEVICES: YOUR 5-STEP COMPLIANCE PLAN

Insights  
Aug 28, 2023

Federal contractors beware: the recent rule banning the TikTok app from government devices applies to all government contracts — and includes personal devices used for federal contract work. The government issued an interim rule on June 2 implementing the No TikTok on Government Devices Act, which applies to all government contracts, including those below the simplified acquisition threshold and contracts for items that are commercially available. You'll want to check right away to see if you're covered by the rule: It applies to any contract solicitations federal agencies issued on or after June 2, as well as contracts awarded before that date if performance begins after June 2. It also applies to existing federal contracts that are amended or modified after that date. Notably, this sweeping ban has several key implications for federal contractors. What do you need to know about the TikTok ban and what five steps should you consider taking now?

## First, How Did We Get Here?

TikTok is a software application that is owned and operated by ByteDance Limited, a privately held company headquartered in Beijing, China. Since the app tracks users' locations, their keystroke patterns, and the filenames on their devices, lawmakers were

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concerned that TikTok could violate the privacy and civil rights of users in the United States. They also worried about the national security implications that stem from massive data gathering and discussed the need to remove TikTok from federal government phones..

Ultimately, both chambers of Congress passed the ban for government devices, and President Biden signed the TikTok Rule into law on December 29, 2022. The law required the government to “develop standards and guidelines for executive agencies requiring the removal of any covered application.” In this context, “covered application” refers to “the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by the company.” The White House also issued a [memorandum](#) on February 28 that outlined the implementation plan.

## Your 5-Step Compliance Plan

What does this mean for your operations? If you are a federal contractor, you should consider taking the following five steps now to comply with the interim rule:

- 1. Work with your legal counsel to determine applicability.** You are covered if you have a contract that includes the ban. You are also likely covered if:
  - You responded to a contract solicitation issued on or after June 2 and it was awarded to you;
  - You were awarded a contract before June 2, but performance begins on or after June 2; or
  - You have an existing federal contract that is amended or modified on or after June 2.
- 2. Develop a list of potentially covered devices.** The ban applies to all devices using any “information technology” in the performance of the contract. It doesn’t matter whether the device is owned by the government, the federal contractor, or the employee. Thus, a personal cell phone “used or provided by the

contractor under this contract" is a covered device. "Contract-related work" encompasses emailing, calling, texting, and virtual meetings.

3. **Remove TikTok from all covered devices.** This would include requiring employees to remove TikTok from personal cell phones that are used in the performance of an applicable federal contract.
4. **Revise existing human resource policies** to ensure compliance with the interim rule.
5. **Make sure to "flow down"** the applicable contract clause to subcontractors.

### **What Are the Exceptions?**

- The ban does not extend to a personally owned cell phone that is not used in performance of a federal contract.
- It also does not extend to "any equipment acquired by a federal contractor incidental to a federal contract."
- There are also limited exceptions to the restrictions outlined in the White House memorandum, including law enforcement activities, national security interests and activities, and security research.
- Employers should consult with their legal counsel to determine if any exceptions apply to them.

### **Conclusion**

Fisher Phillips has a dedicated team of attorneys that can assist you with your compliance efforts. Please contact your Fisher Phillips attorney, the authors of this insight, or any attorney in our [Affirmative Action and Federal Contractor Compliance Practice Group](#). We will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.

