



Arbitration Restricted For Defense Contractors And Subcontractors

Insights

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On December 19, 2009, President Obama signed into law a new Defense Appropriations Act. The Act contains a provision, originally introduced by Senators Al Franken of Minnesota and Mary Landrieu of Louisiana, with important implications for federal defense contractors and subcontractors that have implemented arbitration agreements for their employees. Specifically, the Act prohibits the federal government from awarding funds appropriated by the Act for any federal contract in excess of \$1,000,000 if a contractor requires its employees or the employees of an independent contractor to arbitrate certain claims.

The Act sets out two conditions that a defense contractor must meet in order to receive federal contracts in excess of \$1,000,000. First, the contractor must agree not to enter into any agreement that requires, as a condition of employment, "that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention." Second, the contractor must agree not to take any action to enforce any agreement by an employee or independent contractor to arbitrate such claims.

The provision covering contractors applies to contracts awarded 60 days from the effective date of the Act. While the Act does not expressly specify its effective date, it is presumably the date of enactment, meaning the contractor provision would apply to contracts awarded after February 17, 2010.

The new provision also covers defense subcontractors. It provides that defense contractors must certify that any subcontractor that has a federal contract in excess of \$1,000,000 also agrees not to enter into or enforce arbitration agreements with its employees and independent contractors. The limitations on subcontractors apply only to employees and independent contractors who are performing work related to contracts that are covered by the Act. The provision covering subcontractors applies to contracts awarded 180 days from the effective date of the Act. Thus, the subcontractor provision would apply to contracts awarded after June 17, 2010.

Because of the way the way the Act is written, tying the prohibition against arbitration to receipt of funds appropriated by the Act, not all defense contractors and subcontractors will necessarily be

covered. The Act nonetheless has far-reaching importance for any contractor or subcontractor who receives or hopes to receive federal defense contracts in excess of \$1,000,000. Such contractors that presently have arbitration agreements with their employees or independent contractors may need to take a different approach. Please contact your Fisher Phillips attorney if you have any questions about the Act, its effect on your business, or steps you may need to take to comply with the Act's provisions.

This Legal Alert provides an overview of certain aspects of a new law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.