Business Groups Call for Fair Pay and Safe Workplaces Executive Order (E.O. 13673) to be Withdrawn by the President

President Does Not Have Legal Authority to Make Changes Without Congress

Washington, D.C. - Today, HR Policy Association, in partnership with a broad coalition of business groups representing federal contractors, sent a letter to U.S. Department of Labor Secretary Thomas Perez and Assistant to the President and Director of the Domestic Policy Council, Cecelia Muñoz, expressing strong concerns with the President’s “Fair Pay and Safe Workplaces Executive Order” (E.O.) 13673 and calling for it to be withdrawn by the President.

The letter argues that the E.O. “suffers from a number of fundamental flaws,” which make it ultimately impractical, including that the President does not have the legal authority to make the changes in law that will follow from this E.O. As the letter explains:

By directing the Department of Labor (DOL) to develop guidance that will establish degrees of violations not included in the underlying statutes, the E.O. significantly amends the enforcement mechanisms Congress established for these laws. Simply put, the President is not authorized to change enforcement mechanisms in a statute without specific Congressional approval... [Additionally], the E.O. disregards existing enforcement powers the administration already has through the Federal Acquisition Regulation (FAR) and various other labor laws. The DOL and the federal agencies have sufficient authority under the FAR to consider contractor compliance with federal labor laws as part of a determination of eligibility for award and in on-going responsibility determinations for contractors already under contract.

In addition to these legal shortcomings, the coalition believes the new E.O. would lead to widespread delays and disruptions in the federal procurement process, and significantly increase costs for both government and industry by “imposing new data collection, review, inter-agency consultation and enforcement procedures on top of the already balanced remedial provisions under the 14 labor laws and related state laws the E.O. cites.” The end result, the coalition explains, directly conflicts with the stated goals for improving the federal acquisition system.

HR Policy Association represents the most senior human resource executives in more than 360 of the largest companies in the United States. Collectively, these companies employ more than 10 million employees in the United States, nearly nine percent of the private sector workforce, and 20 million employees worldwide. Many of the Association’s member companies are government contractors and as such, they will be directly impacted by this regulation.

HR Policy Association President and General Counsel Daniel V. Yager, noted that, “This executive order is a classic example of regulatory overreach. In the name of weeding out what the President has acknowledged are a relatively few bad actors, the administration is creating a huge new bureaucracy and regulatory burden that will negatively impact the entire federal contracting community. The cumulative effect of this and other executive orders issued this year is to reduce competition for federal contracts by raising the cost of compliance to the point that it will drive employers out of the marketplace and dissuade others from entering.”
The coalition also explains in the letter that the E.O. contradicts federal law in the impact it would have on the ability of employers to use arbitration to resolve employee disputes. And that the implementation of the E.O. will create widespread disruptions in the federal procurement process and significantly increase costs for both government and industry.

"We urge the Administration to consider the comments of this coalition and to avoid rushing the guidance and rule through the implementation process, and to consider the full impact these actions would have on federal procurement, employers and American workers."

To view the business coalition letter, please visit:

**HR Policy Association** is the lead organization representing chief human resource officers of major employers. The Association consists of more than 360 of the largest corporations doing business in the United States and globally, and these employers are represented in the organization by their most senior human resource executive. Collectively, their companies employ more than 11 million employees in the United States, over 9 percent of the private sector workforce, and 20 million employees worldwide. They have a combined market capitalization of more than $8 trillion. These senior corporate officers participate in the Association because of their commitment to improving the direction of human resource policy. Their objective is to use the combined power of the membership to act as a positive influence to better public policy, the HR marketplace, and the human resource profession. For more information visit www.hrpolicy.org.