



American Bridge

Trump Policy Brief: Fair Pay and Safe Workplaces Rule

4.13.17

FAIR PAY AND SAFE WORKPLACES RULE

Trump signed a bill eliminating the Fair Pay and Safe Workplaces rule, which would have required companies applying for federal contracts to disclose labor law violations and imposed paycheck transparency requirements.

The rule, which was opposed by business groups that sought and received a temporary injunction against it, would have protected workers and taxpayers alike. Federal contractors are routinely found in violation of labor laws without losing their federal contracts. One in five Americans is employed by a company with federal contracts, and women, who are more likely to suffer employment abuses such as paycheck disparity, particularly stood to gain from the rule.

The rule also banned forced arbitration clauses, which companies use to force employees to settle disputes privately with the company. Lawyers for FOX News CEO Roger Ailes sought to use forced arbitration to keep sexual harassment claims brought by anchor Gretchen Carlson out of the press.

In 2012, Rodney Bridgett, an employee of Tyson's Foods, was killed as the result of a safety violation. At the time, the company received nearly \$300 million per year in federal contracts. Another company continued to receive hundreds of millions in Navy contracts even after an explosion killed two workers and seriously injured four others.

Trump Signed A Bill Eliminating The Pro-Worker, Pro-Taxpayer Fair Pay And Safe Workplaces Rule

TRUMP ELIMINATED THE FAIR PAY AND SAFE WORKPLACES RULE THAT MADE IT HARDER FOR COMPANIES WITH LABOR LAW VIOLATIONS TO OBTAIN FEDERAL CONTRACTS

President Trump Signed A Bill Eliminating The Fair And Safe Workplaces Rule. According to the Chicago Tribune, "President Donald Trump signed a bill Monday that killed an Obama-era worker safety rule that required businesses competing for large federal contracts to disclose and correct serious safety and other labor law violations. Earlier this month, the Senate voted to eliminate the Fair Pay and Safe Workplaces rule, which applied to contracts valued at \$500,000 or more. Votes on the bill in both the House and Senate divided along party lines. The Fair Pay and Safe Workplaces regulation was finalized in August but most of it was never implemented. Within days of it being finalized, the Associated Builders and Contractors (ABC) sued, securing a temporary injunction that prohibited the federal government from implementing it." [Chicago Tribune, [3/27/17](#)]

- **Headline: "Trump Makes Labor-Law Violators Eligible For Federal Contracts Again"** [New York Magazine, [3/27/17](#)]
- **Former OSHA Chief Of Staff Debbie Berkowitz: Republicans "Took A Sledgehammer And Destroyed A Common-Sense Rule."** According to an opinion by former OSHA chief of staff Debbie Berkowitz for The Hill, "Who could be against fair pay and safe workplaces? Well, it turns out Republican senators—with President Trump's blessing—just voted to side with corporations that steal workers' wages and cut corners on workplace safety. On Monday, these senators voted to block the Obama administration's Fair Pay and Safe Workplaces final rule—to the detriment of workers, taxpayers and law-abiding employers. In doing so, Congressional Republicans took a

sledgehammer and destroyed a common-sense rule requiring businesses to disclose any labor violations when applying for federal contracts worth more than \$500,000.” [Debbie Berkowitz – The Hill, [3/7/17](#)]

The Rule Required Companies Applying For Federal Contracts To Report Labor Law Violations And Comply With Paycheck Transparency Laws. According to the National Law Review, “As anticipated, President Trump has put an end to Executive Order 13673 – Fair Pay & Safe Workplaces, also known as the ‘blacklisting’ executive order. [...] The end result – federal contractors will not be required to report alleged labor violations to federal agencies as part of the bid process, are not required to implement procedures to comply with required paycheck transparency, and will not be prohibited from entering into mandatory arbitration agreements concerning employee Title VII claims.” [National Law Review, [3/28/17](#)]

DOL: The Rule “Seeks To Ensure That Contractors’ Employees Are Given The Information They Need Each Pay Period To Make Sure They Are Getting Paid What They Are Owed.” According to the U.S. Department of Labor, “The [Fair Pay and Safe Workplaces Executive Order] seeks to ensure that contractors’ employees are given the information they need each pay period to make sure they are getting paid what they are owed. The Executive Order requires covered contractors and subcontractors to provide wage statements to covered workers, giving them information concerning their hours worked, overtime hours, pay, and any additions to or deductions made from their pay. The Executive Order also requires covered contractors and subcontractors to provide to workers whom they treat as independent contractors a document informing them of their independent contractor status.” [U.S. Department of Labor, accessed [3/29/17](#)]

SUPPORTERS OF THE RULE ARGUED IT PROTECTED TAXPAYERS AS WELL AS WORKERS

David Madland Of The Center For American Progress: “People Who Rip Of Workers Rip Off The Government.” According to the Washington Post, “David Madland of the Center for American Progress, a liberal think tank, said the rule applied only to companies with contracts worth \$500,000 or more. With its elimination, he said, taxpayers will lose alongside affected workers. One purpose of the rule was to make it easier for federal agencies to identify contractors who were not honest brokers when it came to employee pay. ‘People who rip off workers rip off the government,’ Madland said.” [Washington Post, [3/6/17](#)]

Rep. Bobby Scott: “If You Can Save Money By Underpaying Your Workers And Violating OSHA, Why Should You Have A Competitive Advantage Over Those Who Are Complying With The Law?” According to the Washington Post, “Rep. Robert C. ‘Bobby’ Scott (D-Va.) is leading efforts to block the rule-killing measures. He argues that Byrne’s measure to kill the Volks rule ‘will block OSHA’s enforcement efforts and create a safe harbor for those employers who deliberately underreport.’ OSHA says staffing levels permit investigators to visit an American business roughly once every 140 years, unless a serious violation is reported. Before Monday night’s vote, Scott defended the Fair Pay and Safe Workplaces rule, saying that nothing in the regulation would have banned a company from securing a federal contract. He noted that only companies with ‘serious, pervasive, intentional and repeated’ safety violations would have to report them. ‘Who qualifies for that who we need to help?’ Scott said. ‘If you can save money by underpaying your workers and violating OSHA, why should you have a competitive advantage over those who are complying with the law?’” [Washington Post, [3/6/17](#)]

Huffington Post: “Backers Of The Rule [...] Said It Would Have Helped Assure That The Nation’s Most Unscrupulous Employers Aren’t Rewarded With Taxpayer Dollars.” According to the Huffington Post, “Obama’s rule would have required companies seeking federal contracts to disclose violations of labor law — including minimum wage, overtime, and health and safety statutes— over the previous three years. Federal agencies would have been able to consider those violations when doling out

contracts. Backers of the rule, which included Democrats and worker groups, said it would have helped assure that the nation's most unscrupulous employers aren't rewarded with taxpayer dollars. [Huffington Post, [3/6/17](#)]

Former OSHA Chief Of Staff Debbie Berkowitz: Republicans “Voted To Block The Obama Administration’s Fair Pay And Safe Workplaces Final Rule – To The Detriment Of Workers, Taxpayers And Law-Abiding Employers.” According to an opinion by former OSHA chief of staff Debbie Berkowitz for The Hill, “On Monday, these senators voted to block the Obama administration’s Fair Pay and Safe Workplaces final rule—to the detriment of workers, taxpayers and law-abiding employers.” [Debbie Berkowitz – The Hill, [3/7/17](#)]

Business Groups Opposed The Bill And Secured An Injunction Against It Shortly After It Was Finalized

Washington Post: The Rule Had Been “Targeted By Business Groups.” According to the Washington Post, “President Trump and congressional Republicans are poised to roll back a series of Obama-era worker safety regulations targeted by business groups, beginning Monday night with a vote by the Senate to kill a rule that required federal contractors to disclose and correct serious safety violations. In a narrow result that divided along party lines, the Senate voted 49 to 48 to eliminate the regulation, dubbed the Fair Pay and Safe Workplaces rule.” [Washington Post, [3/6/17](#)]

The Chamber Of Commerce, The Business Roundtable, And Other Business Groups Opposed The Rule. According to the Washington Post, “The U.S. Chamber of Commerce, the Business Roundtable and other leading business groups have urged Congress and the Trump administration to eliminate the regulations, arguing that they discourage businesses from competing for government contracts, thereby reducing jobs.” [Washington Post, [3/6/17](#)]

The Rule Was Finalized In August 2016, And A Court Issued An Injunction Against It In October 2016 When The Associated Builders And Contractors Sued. According to the Washington Post, “In a narrow result that divided along party lines, the Senate voted 49 to 48 to eliminate the regulation, dubbed the Fair Pay and Safe Workplaces rule. Finalized in August and blocked by a court order in October, the rule would limit the ability of companies with recent safety problems to complete for government contracts unless they agreed to remedies. [...] The Fair Pay and Safe Workplaces regulation was finalized in August. Days later, the Associated Builders and Contractors (ABC) sued, securing a temporary injunction that prohibited the federal government from implementing it. ABC and other business groups objected to the rule’s requirement that companies disclose citations for alleged safety violations that they are still challenging.” [Washington Post, [3/6/17](#)]

THE RULE WAS ESPECIALLY IMPORTANT TO WOMEN, WHO ARE MORE LIKELY TO FACE PAYCHECK DISPARITY, SEXUAL HARRASSMENT, AND OTHER EMPLOYMENT ABUSES

Mother Jones HEADLINE: “In One Executive Order, Trump Revoked Years Of Workplace Protections For Women” [Mother Jones, [4/5/17](#)]

Andrea Johnson Of The National Women’s Law Center: The Rule Was Especially Important To Women Who “Are Vulnerable To Labor And Employment Abuses” And Face “Retaliation When They Try To Unionize Or Enforce Their Rights.” According to a blog post by Andrea Johnson for the National Women’s Law Center, “Ditching the Fair Pay and Safe Workplace rule hurts all workers, but is especially bad news for women. Women are more likely to work in low-wage jobs, and are vulnerable to labor and employment law abuses, like wage theft, sexual harassment and other forms of sex discrimination on the

job, or retaliation when they try to unionize or enforce their rights. Sexual harassment is rampant, particularly in industries dominated by low-wage jobs, but is vastly underreported. Forced arbitration removes any incentive for workers to come forward, allowing harassers to continue their behavior without consequence and victims to be silenced.” [Andrea Johnson – Blog, National Women’s Law Center, [3/28/17](#)]

Mother Jones: The Fair Pay And Safe Workplaces Rule Required Federal Contractors To Follow Labor Laws, Including Ones Aimed At Parental Leave, Sexual Discrimination, Equal Pay, And Sexual Harassment Proceedings. According to Mother Jones, “In 2014, President Barack Obama signed the Fair Pay and Safe Workplaces executive order. It required companies with federal contracts to heed 14 different labor and civil rights laws, including ones aimed at protecting parental leave, weeding out discrimination against women and minorities, and ensuring equal pay for women and fair processes surrounding workplace sexual harassment allegations. Last week, Trump revoked this order, leaving workers at thousands of companies much more vulnerable to a host of abuses from their employers—and undoing protections meant to create more equitable workplaces for women.” [Mother Jones, [4/5/17](#)]

The Rule Imposed Paycheck Transparency Requirements For Federal Contractors

The Rule Imposed Paycheck Transparency Requirements For Federal Contractors. According to the U.S. Department of Labor, “The [Fair Pay and Safe Workplaces Executive Order] seeks to ensure that contractors' employees are given the information they need each pay period to make sure they are getting paid what they are owed. The Executive Order requires covered contractors and subcontractors to provide wage statements to covered workers, giving them information concerning their hours worked, overtime hours, pay, and any additions to or deductions made from their pay. The Executive Order also requires covered contractors and subcontractors to provide to workers whom they treat as independent contractors a document informing them of their independent contractor status.” [U.S. Department of Labor, accessed [3/29/17](#)]

NBC: “The Fair Pay Order Trump Overturned Was One Of The Few Ways To Ensure Companies Were Paying Women Workers Equally To Their Male Colleagues.” According to NBC News, “The other result of Trump's executive order on federal contractors was lifting a mandate on paycheck transparency, or requiring employers to detail earnings, pay scales, salaries, and other details. The Fair Pay order Trump overturned was one of the few ways to ensure companies were paying women workers equally to their male colleagues.” [NBC News, [4/3/17](#)]

2005-2009: Sixty Percent Of The 50 Worst Wage Theft Violators Received Federal Contracts

NBC: “Out Of The 50 Worst Wage Theft Violators That GAO Examined Between 2005-2009, 60 Percent Had Been Awarded Federal Contracts After Being Penalized By The Department Of Labor’s Wage And Hour Division.” According to NBC News, “In an attempt to keep the worst violators from receiving taxpayer dollars, the Fair Pay order included two rules that impacted women workers: paycheck transparency and a ban on forced arbitration clauses for sexual harassment, sexual assault or discrimination claims. Noreen Farrell, director of the anti-sex discrimination law firm Equal Rights Advocates, said Trump went ‘on the attack against workers and taxpayers.’ ‘We have an executive order that essentially forces women to pay to keep companies in business that discriminate against them, with their own tax dollars,’ said Farrell. ‘It’s an outrage.’ Out of the 50 worst wage theft violators that GAO examined between 2005-2009, 60 percent had been awarded federal contracts after being penalized by the Department of Labor’s Wage and Hour Division. Similar violation rates were tracked through the Occupational Safety and Health Administration (OSHA) and the National Labor Relations Board.” [NBC News, [4/3/17](#)]

The Rule Banned Forced Arbitration Clauses, Which Required Employees To Settle Disputes, Including Sexual Harassment Claims, Privately With The Company

The Rule Banned Forced Arbitration Clauses, Which Forced Employees To Settle Disputes, Including Sexual Harassment Claims, Privately With The Company. According to NBC News, “In an attempt to keep the worst violators from receiving taxpayer dollars, the Fair Pay order included two rules that impacted women workers: paycheck transparency and a ban on forced arbitration clauses for sexual harassment, sexual assault or discrimination claims. [...] But the research did not reveal much about sexual harassment or sexual assault claims. That’s because forced arbitration clauses — also sometimes called ‘cover-up clauses’ by critics — are commonly used to keep sex discrimination claims out of the courts and off the public record. ‘Arbitrations are private proceedings with secret filings and private attorneys, and they often help hide sexual harassment claims,’ said Maya Raghu, Director of Workplace Equality at the National Women’s Law Center. ‘It can silence victims. They may feel afraid of coming forward because they might think they are the only one, or fear retaliation.’ Mandatory arbitration clauses are increasingly used in employment contracts, said Raghu, who added that banning the process was an important step forward for victims of workplace harassment or assault.” [NBC News, [4/3/17](#)]

- **Lawyers For FOX News’ Roger Ailes Sought To Use Forced Arbitration To Keep Sexual Harassment Claims Brought By News Anchor Gretchen Carlson Out Of The Press.**

According to NBC News, “Many learned about forced arbitration clauses for the first time just last year through the Fox News sexual harassment case. Fox News anchor Gretchen Carlson dodged her own contract’s arbitration clause by directly suing former CEO Roger Ailes rather than the company. Ailes’ lawyers accused Carlson of breaching her contract, and pressed for the private arbitration to try to keep the story out of courts and the public record. A new lawsuit filed Monday by Fox News commentator Julie Roginsky joined a growing list of accusations against Ailes, and claims Roginsky faced retaliation ‘because of plaintiff’s refusal to malign Gretchen Carlson and join ‘Team Roger’ when Carlson sued Ailes,’ NPR reported. By overturning the Fair Pay order, Trump made it possible for businesses with federal contracts to continue forcing sexual harassment cases like Carlson’s into secret proceedings — where the public, and other employees, may never find out about rampant sex discrimination claims at a company.” [NBC News, [4/3/17](#)]

FEDERAL CONTRACTORS, EMPLOYING 1 IN 5 AMERICAN WORKERS, ARE ROUTINELY FOUND IN VIOLATION OF LABOR LAWS WITHOUT LOSING THEIR CONTRACTS

One In Five American Workers Work For Companies With Federal Contracts. According to the Washington Post, “A half-dozen other worker safety regulations are in Republican crosshairs, with one headed to the Senate floor as soon as this week. Many are directed at companies with federal contracts. Such companies employ 1 in 5 American workers — meaning the effort could have wide-ranging effects.” [Washington Post, [3/6/17](#)]

Huffington Post: “Studies Have Shown That Many Federal Contractors Routinely Break Workplace Laws, And Many Continue To Receive Contracts Regardless Of Violations.” According to the Huffington Post, “Studies have shown that many federal contractors routinely break workplace laws, and many continue to receive contracts regardless of violations. The Labor Department estimated that the rule would have applied to roughly 14,000 contractors each year. ‘Only a small share of these companies is expected to have reportable violations, and even fewer are expected to have serious, repeated, willful, or pervasive violations to report,’ the department noted.” [Huffington Post, [3/6/17](#)]

Chicago Tribune: Sen. Elizabeth Warren “Released A Staff Report That Showed That 66 Of The Federal Government's 100 Largest Contractors Have At Some Point Violated Federal Wage And Hour Laws.” According to the Chicago Tribune, “In a last-minute effort to fight for the rule earlier this month, Sen. Elizabeth Warren, D-Mass., released a staff report that showed that 66 of the federal

government's 100 largest contractors have at some point violated federal wage and hour laws.” [Chicago Tribune, [3/27/17](#)]

Chicago Tribune: Warren’s Staff Report Also Said That Since 2015 “More Than A Third Of The 100 Largest OSHA Penalties Have Been Imposed On Federal Contractors.” According to the Chicago Tribune, “In a last-minute effort to fight for the rule earlier this month, Sen. Elizabeth Warren, D-Mass., released a staff report that showed that 66 of the federal government's 100 largest contractors have at some point violated federal wage and hour laws. Since 2015, the report says, more than a third of the 100 largest OSHA penalties have been imposed on federal contractors.” [Chicago Tribune, [3/27/17](#)]

THE RULE WAS PARTLY INSPIRED BY THE 2012 WRONGFUL DEATH OF A TYSON’S FOODS EMPLOYEE WHILE THE COMPANY WAS RECEIVING NEARLY \$300 MILLION A YEAR IN FEDERAL CONTRACTS

The Fair Pay And Safe Workplaces Rule Was Partly Inspired By The 2012 Wrongful Death Of A Tyson’s Foods Employee. According to the Washington Post, “Warren criticized the Republican-led effort during a speech on the Senate floor moments before the vote. ‘Instead of creating jobs or raising wages,’ she said, ‘they’re trying to make it easier for companies that get big-time, taxpayer-funded government contracts to steal wages from their employees and injure their workers without admitting responsibility.’ That concern prompted the Fair Pay and Safe Workplaces regulation. Among the strongest data points: Rodney Bridgett, 37, a worker at a Tysons Foods beef processing plant in Nebraska, was crushed by a piece of heavy equipment when a chain snapped on the plant’s ‘kill floor’ in 2012. Tyson spokesman Worth Sparkman called Bridgett’s death ‘a tragic accident’ and said the company aspires to ‘have zero work-related injuries and illnesses, and continue to improve our culture related to safety every day.’ OSHA investigators found that Tysons supervisors had repeatedly failed to inspect the faulty chain.” [Washington Post, [3/6/17](#)]

Tyson’s Foods Was Receiving Nearly \$300 Million A Year In Federal Contracts At The Time. According to the Washington Post, “OSHA investigators found that Tysons supervisors had repeatedly failed to inspect the faulty chain. While OSHA sought to fine the company, the Obama administration moved separately to target a major source of Tysons’s revenue: nearly \$300 million a year in federal contracts.” [Washington Post, [3/6/17](#)]

IN ANOTHER CASE, A COMPANY RECEIVED HUNDREDS OF MILLIONS OF DOLLARS IN NAVY CONTRACTS EVEN AFTER NEGLIGENCE LED TO THE DEATH OF TWO WORKERS

Former OSHA Chief Of Staff Debbie Berkowitz: A Company Continued To Receive “Hundreds Of Millions Of Dollars” In Navy Contracts After It Was Found To Be Violating “The Most Basic Safety Precautions” And Had An Explosion That Killed Two Workers And Seriously Injured Four Others. According to an opinion by former OSHA chief of staff Debbie Berkowitz for The Hill, “A few years ago, when I was working as a senior official at OSHA, there was an explosion in a shipyard that killed two workers and very seriously injured four more. OSHA found that the company had violated the most basic safety precautions and put their workers’ lives in grave danger. The company was charged more than \$1 million in fines and citations. Unbelievably, even after this horrific incident—and for years afterwards—the company continued to receive hundreds of millions of dollars in government contracts. Don’t you think it would’ve been important for the Navy to know that taxpayer dollars were being given to a company that cut corners on safety and jeopardized workers’ lives? Wouldn’t it have been better for the workers, their families, and the business itself if the company, as part of the federal contracting process, had been encouraged to come into compliance with basic safety standards?” [Debbie Berkowitz – The Hill, [3/7/17](#)]

