



## Workplace Policies for Federal Contractors

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Nichole Atallah, Partner  
Labor & Employment  
PilieroMazza PLLC

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# Nichole D. Atallah



Nichole Atallah, Partner  
Labor & Employment  
Pilieromazza PLLC  
202.857.1000  
[natallah@pilieromazza.com](mailto:natallah@pilieromazza.com)

Nichole counsels employers and their compliance professionals on a broad range of labor and employment matters, including employment discrimination, wage and hour, family and medical leave, labor union negotiations and grievances, executive compensation, and reductions in force. Nichole's primary goal in representing employers is to help guide them through difficult situations, proactively address compliance, and avoid costly disputes.

Government contractors rely on Nichole's substantial expertise with FAR Part 22 compliance, including the Service Contract Labor Standards (the Service Contract Act), Construction Labor Standards (the Davis-Bacon Act), and the Office of Federal Contract Compliance Programs requirements specific to government contractors. Nichole also offers guidance to tribally owned entities regarding their unique labor and employment issues, including Native American preference, sovereign immunity, and Title VII jurisdiction.

# About PilieroMazza

PilieroMazza—a business law firm—serves as a strategic partner to government contractors and commercial businesses from across the United States in numerous industries.

We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translate into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

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- Cybersecurity & Data Privacy
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- False Claims Act
- Fund Formation & Structuring
- Government Contracts
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# Objectives

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- Discuss workplace policies specific to federal contractors
- Use of handbook to minimize liability
- Strategies to minimize risk

# General Handbook Advice

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- A Handbook is not a contract (at will, unionization, variations)
- It should not be too long
- Multijurisdictional issues
- Gives guidance but not a straight jacket
- Culture
- Corporate, projects

# Equal Employment Opportunity

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- Executive Order 11246
  - Include in subcontracts
  - Reconcile with Title VII and state law
  - Agency requirements
- Office of Federal Contract Compliance Programs
- Investigations



# Verifying Work Status

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- E-Verify
  - Contractors are required to use E-Verify
  - 3 days
  - Report mismatch
- Pre-Employment Screening questions
  - Citizenship
  - Credit history
  - Criminal history

# Pay Transparency

- Equal Pay – compensation analysis
  - Directive 2022-01
- Pay Transparency – cannot take adverse action because an employee or applicant inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant
  - Include such a provision in subcontracts
  - Exclusion if access to compensation information as part of job
- No retaliation



# Wage and Hour

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- Minimum Wages for Government Contractors
  - January 1, 2023, \$16.20
- Federal enclaves (Do they really protect you from state law?)
- Contract Work Hours and Safety Standards Act
  - Overtime for laborers and mechanics
- Prevailing Wages (SCA/DBA)
- Contract requirements



# Example

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- ABC Co. has a call center in New Jersey and picks up a federal contract. The SCA wage determination rate is \$16.00/hour and the state minimum wage is \$14.13/hour.

True or False?

ABC Co. should pay employees at least \$16.00/hour because you pay the higher of either the SCA prevailing wage rate or the state minimum wage.



# Paid Time Off, Holidays

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- Sick Leave for Federal Contractors
  - SCA or DBA contracts
  - 1 hour of leave for 30 hour worked up to 56
  - Carry over
  - PTO policy for non-SCA personnel
- State law
- Reconciling project holiday with corporate holidays



# Government Site Closures / Shut Down

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- Stop Work
  - Exempt employee considerations
  - Ramp down/up
- Inclement Weather
- Reductions in Work
  - Layoffs
  - Contract considerations



# Government Shutdown Example

- The federal government issued a stop work order on Tuesday. ABC Co. believes the shutdown will only last for 2 days. But even by the next Tuesday, the government has not authorized return of work. ABC cannot afford to pay leave so it tells employee to take leave without pay.

Is ABC exposed to wage and hour liability?

- A. Yes
- B. No

# Successorship

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- Family and Medical Leave- successor employees get credit for service with predecessor
- Uniformed Services Employment and Reemployment Rights Act- Right to reemployment
- Collective Bargaining and the NLRA
- Non-Displacement (forthcoming)



# Successorship Example

- ABC Co. hires several people from a predecessor contractor. Three months into performance, Bobby B. calls human resources and states that he has been on military leave. HR has no record of this employee, but after some digging determines he worked for the predecessor and is coming back from deployment. Does ABC Co. need to hire him and displace someone else?
  - A. Yes
  - B. No
  - C. Maybe

# Timekeeping

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- Defense Contract Audit Agency
- Checks and Balances necessary
- False Claims Act Liability
- Time must be entered daily, approved by a supervisor, changes documented





# Ethics

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- Confidentiality
- Conflict of Interest
- Procurement Integrity
- Gifts
- Anti-Kickback Act
- Government Hiring
- Trafficking in Persons
- Balance between the handbook and the Code of Business Ethics

# Drug Free Workplace

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- Contracts of \$100,000 or more
- Implement Drug-Free Workplace program
- Prohibits using, distributing illegal drug or misusing legal drugs while working on a federal contract
- Testing
- Americans with Disabilities Act



# Contractual Issues

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- Confidentiality (third-party NDAs)
- Trade Secrets
- Inventions
- Non-Solicitation
- Non-Compete



# Government Removals

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- Joint employer liability
- Writing
- Non-personal services contracts
- Mitigating Risk



# Example: Government Removals

- The contracting officer called and said that Susy is not performing well and they want her removed. ABC Co. is surprised because the client has praised her in recent months. When ABC directs her removal, Susy tells ABC that she let the client know she was pregnant last week and would be taking 12 weeks off in the fall.

What should ABC do next?

- A. Tell her there is nothing you can do now
- B. Let the client know about the concern and ask them to investigate
- C. Report the issue to the client but assure them there is nothing to do



# Third-Party Contracts

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- Contractual Requirements
- HUBZone
- Limitations on Subcontracting
- Union issues



# Questions?



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