

# Republicans are poised to repeal important worker protections, starting with the requirement that federal contractors play fair

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# Summary

The Obama administration instituted a series of executive orders to raise wages and benefits, improve worker safety, and reduce discrimination for workers on federal contracts. Approximately 25 percent of the U.S. workforce is employed by companies that do business with the federal government, according to the [Office of Federal Contract Compliance Programs](#), so measures that relate to workers employed by federal contractors can have a broad impact on the workforce. Tomorrow, congressional Republicans will begin the process of repealing the rule implementing the previous administration's executive order on Fair Pay and Safe Workplaces. Using the Congressional Review Act (CRA), which provides for expedited procedures for considering a joint resolution disapproving a final rule, they will take aim at this measure designed to protect workers. It is likely that they will succeed, sending the resolution to President Trump's desk as early as this week. President Trump will then have the opportunity to veto the resolution. For Trump to remain true to his campaign promises to defend U.S. workers, that is exactly what he must do.

Under the CRA, a resolution of disapproval cannot be filibustered in the Senate and thus requires only a majority for passage. Any resolution of disapproval that is enacted invalidates not only the rule in question, but, in most cases, also prevents an agency from issuing another rule in "substantially the same form" as the disapproved rule unless authorized to do so in a subsequent law (5 U.S.C. § 801(b)(2)). Therefore, if the Fair Pay and Safe Workplaces rule is invalidated under CRA, it is unlikely that another rule addressing labor and employment law violations in federal contracting would be promulgated, leaving workers unprotected and law-abiding contractors exposed to unfair competition from businesses that don't play by the rules. Without the transparency required by the rule, American taxpayer dollars will continue to support employers that violate basic wage and hour laws, safety regulations, and anti-discrimination protections.

Fair Pay and Safe Workplaces was just one of several executive orders issued by the previous administration to raise wages and benefits, reduce discrimination, improve

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worker safety, and increase worker rights. To understand the impact of this broad set of actions, it is crucial to place it in a broader context. For most of the last four decades, wages have been stagnant for most workers and inequality has been rising. The benefits of economic growth have gone to a small sliver of people at the top of the income distribution rather than to people all across the income distribution. Knowing that a deadlocked Congress would not be able to pass crucial legislation to increase wages, benefits, and worker rights, the Obama administration used executive orders to start down the path of creating a fairer economy. Importantly, executive orders only dictate how agencies manage the operations of the federal government itself. But because approximately 25 percent of the U.S. workforce is employed by companies that do business with the federal government, executive orders that relate to workers employed by federal contractors can have a broad impact on the workforce. What follows is a detailed description of the rule implementing the Fair Pay and Safe Workplaces executive order, and a brief overview of other executive orders issued by the previous administration to boost wages, benefits, and worker rights.

## Fair Pay and Safe Workplaces (E.O. 13673)

The federal government spends around \$500 billion each year on contracts for goods and services (data on [federal awards by fiscal year](https://www.usaspending.gov) is available at [usaspending.gov](https://www.usaspending.gov)). The federal government has a responsibility to ensure that it uses taxpayer dollars to do business with honest employers who comply with workplace protection laws and regulations.

The Fair Pay and Safe Workplaces rule requires that contractors disclose violations of federal labor laws and executive orders addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections. Agency contracting officials take this information into account in awarding federal contracts. Currently, there is no effective system for distinguishing between law-abiding contractors and those that violate labor and employment laws. Billions of dollars have been awarded to companies that violate minimum wage and overtime laws, violate safety and health regulations, and discriminate against workers on the basis of race, ethnicity, religion, gender, sexual orientation, gender identity, or national origin. The Fair Pay and Safe Workplaces rule helps ensure that taxpayer dollars do not support law-breaking employers.

In addition to the contractor reporting requirements, the rule mandates that contractors provide each worker with written notices that include basic information about the worker's hours worked and wages, overtime hours, and any additions to or deductions from the worker's pay. Contractors must also provide written notices informing workers who are independent contractors about their status and specifying whether they are exempt from overtime pay.

Each year, workers are cheated out of billions of dollars in earned wages by unscrupulous employers. This “wage theft” can take many forms. Employers may not pay workers minimum wage or overtime when earned or they may simply not pay workers at all. Workers who are actually employees but are misclassified as independent contractors don’t, for example, have access to the same rights to benefits and to getting overtime pay as do employees. The rule seeks to ensure that workers on federal contracts do not experience wage theft, including by being misclassified as an independent contractor.

The rule also bans pre-dispute arbitration agreements for claims arising under Title VII of the Civil Rights Act or torts related to or arising out of sexual assault or harassment. Pre-dispute arbitration agreements are agreements that workers sign that obligate them to arbitrate disputes they might have with their employer and to give up their right to pursue their claims in a class or collective action in court. By banning such agreements, the Fair Pay and Safe Workplaces rule allows workers alleging discrimination on the basis of sex, race, ethnicity, or religion to go to court to resolve their disputes. Under the rule they are no longer forced to sign agreements not to sue as a condition of employment. Workers on federal contracts have the opportunity to file individual, group, or class lawsuits when their rights are violated as opposed to individually navigating arbitration proceedings in which employees win less often and, on average, receive much lower damages than they do in court.

*The Arbitration Epidemic*, an EPI report published in 2015, provides additional background information on the importance of reducing mandatory arbitration.

The requirement that contractors provide workers with information on their pay and classification went into effect on January 1, 2017. The other provisions of the rule have been enjoined from taking effect.

## **Nondisplacement of Qualified Workers Under Service Contracts (E.O. 13495)**

The rule implementing this executive order was effective January 18, 2013. This rule creates rights for employees of federal contractors when a federal service contract changes hands and the new contract is at the same location and for essentially the same services as the old contract. In particular, the workers on the old contract, who would otherwise lose their jobs as a result of the completion or expiration of a contract, have the right of first refusal for employment under the new contract. This leads to a continuity of the workforce which means that if a union is present at the time of the change in contractor, the new contractor typically has to recognize the union and bargain with the union to change any terms and conditions of employment. Protecting workers’ rights in this way is also good use of taxpayer dollars: a carryover workforce reduces disruption to the delivery of services between contractors and provides the federal government with the benefits of an experienced and trained workforce.

## **Notification of Employee Rights Under Federal Labor Laws (E.O. 13496)**

If workers do not understand their rights, they will not be able to exercise them, and will never receive the economic benefits those rights may confer. The rule implementing the “notification” executive order requires federal contractors and subcontractors to notify employees about their rights under the National Labor Relations Act (NLRA). The notice must include information about workers’ rights under the NLRA to form, join, and support a union and to bargain collectively with their employers. The notice must also provide examples of unlawful employer and union conduct that interferes with those rights and explain how employees can contact the National Labor Relations Board (NLRB) with questions or to file complaints. The rule implementing this executive order went into effect on June 21, 2010.

## **Use of Project Labor Agreements for Federal Construction Projects (E.O. 13502)**

The rule implementing this executive order encourages agencies to use project labor agreements (PLAs) on large-scale construction projects. Project labor agreements establish the terms and conditions of employment for all contractors and employees on a project. They promote efficiency in federal contracting and help ensure compliance with wage and hour laws, safety and health regulations, and labor and employment standards. Not only do these agreements offer fair wages and benefits, PLAs often establish labor/management committees that deal with safety and health issues. They also provide workers with access to training opportunities and job security. Further, these agreements help to ensure an uninterrupted supply of skilled workers on a project. PLAs are used in the private sector as a means of guaranteeing timely, safe, and cost-efficient construction. The rule does not mandate the use of PLAs on any project; rather it provides agencies with factors to consider when analyzing whether a PLA may be beneficial. The rule implementing this executive order went into effect on May 13, 2010.

## **Minimum Wage for Federal Contractors (E.O. 13658)**

The rule implementing this executive order raised the minimum wage for workers on federal contracts to \$10.10 on January 1, 2015, and increases it annually thereafter based on inflation (using the CPI-W). Further, it steadily raises the minimum hourly cash wage for tipped workers on federal contracts until it is at least 70 percent of the regular federal minimum wage. On January 1, 2017, the minimum wage for non-tipped workers on federal

contracts was increased to \$10.20 and the tipped minimum wage was increased to \$6.80. **It is estimated that** roughly 200,000 workers will benefit from this rule and that the rule will put around \$500 million per year in the pockets of these workers. Evidence from extensive research shows that minimum-wage increases have boosted wages for low-wage workers with little to no significant job loss, in part because some of the increased cost to employers is recouped by the fact that the higher wages lead to reduced turnover. On a broader scale, minimum-wage workers spend their increased wages in the economy. For more on the economic impact of increases in the minimum wage, see the [EPI minimum-wage research page](#).

## **Non-Retaliation for Disclosure of Compensation Information (E.O. 13665)**

The rule implementing this executive order went into effect on January 11, 2016. Under this rule, federal contractors and subcontractors may not fire or otherwise discriminate against employees for discussing, disclosing, or inquiring about their own pay or that of their coworkers. The rule also protects pay discussions by job applicants. In too many workplaces around the country, a culture of secrecy keeps workers from knowing if they are underpaid. Non-retaliation for disclosure of pay promotes pay transparency, which in turn can generate clearer standards of pay, and such clearer standards help reduce the substantial and persistent pay differentials between women and men and between workers of different races and ethnicities. EPI Senior Economist Elise Gould **recently testified** on the economic impact of pay transparency.

## **Prohibiting Contractor Discrimination Based on Sexual Orientation and Gender Identity (E.O. 13672)**

The rule implementing this executive order went into effect on April 8, 2015. This rule prohibits federal contractors and subcontractors from discriminating on the basis of sexual orientation or gender identity in hiring, firing, pay, promotion, and other employment practices. This rule will help ensure that sexual orientation and gender identity are not used as justification for workplace discrimination by those who profit from taxpayer dollars. And because discrimination keeps qualified workers from maximizing their potential, reducing discrimination improves productivity. Further, companies have found that inclusive, flexible, and supportive workplace policies make it easier to recruit, retain, and motivate employees, and that logic applies to extending antidiscrimination protections to LGBT workers.

# Paid Sick Leave for Federal Contractors (E.O. 13706)

Under the rule implementing this executive order, workers are mandated to accrue 1 hour of paid sick leave for every 30 hours worked on a federal contract, up to 7 days annually. Workers may use paid sick leave if they are sick, need to take care of a sick family member, or must see a doctor or take a family member to a medical appointment. Workers may also use paid sick leave for reasons related to domestic violence, sexual assault, or stalking. This rule will provide paid sick leave to more than one million workers, including more than half a million who would have no paid sick days without it. The benefits of this rule accrue even more widely; evidence from the private sector and state and cities with paid sick leave laws show that paid sick days reduce turnover, reduce the spread of illness, and increase productivity. For more about the economic impact of paid sick days, see the [EPI paid sick leave](#) research page. The rule applies to contracts that are new (or renewed) on or after January 1, 2017.

## Conclusion

President Trump campaigned on the promise of defending America's workers. These executive orders, and the regulations that implement them, do just that. They raise wages, increase benefits, improve worker safety, reduce discrimination, and increase worker rights. After nearly four decades of rising inequality, they are important steps toward a fairer economy. One measure of whether President Trump will stand up for workers is whether he keeps these protections in place. And if Congress approves the resolution of disapproval of the Fair Pay and Safe Workplaces rule, President Trump will have the opportunity to stand with America's workers and veto the resolution.

*—Heidi Shierholz is EPI Director of Policy and heads EPI's Perkins Project on Worker Rights and Wages. Celine McNicholas is EPI Labor Counsel and a member of the Perkins Project team. EPI's Perkins Project on Worker Rights and Wages is a new project to track the Trump administration's wage, labor, and employment policies and hold the administration accountable for its record. The Perkins Project will document and fight any attempts to dismantle the laws and regulations that protect and defend American workers.*