

**PRESENTED AT**

**39<sup>th</sup> Annual Corporate Counsel Institute**

May 11-12, 2017

Houston, Texas

## **Employment Law Update**

**Gary D. Eisenstat**

The White House  
Office of the Press Secretary  
For Immediate Release  
April 18, 2017

# Presidential Executive Order on Buy American and Hire American

EXECUTIVE ORDER

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## BUY AMERICAN AND HIRE AMERICAN

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the faithful execution of the laws, it is hereby ordered as follows:

Section 1. Definitions. As used in this order:

- (a) "Buy American Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal grants including those that refer to "Buy America" or "Buy American" that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.
- (b) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (c) "Petition beneficiaries" means aliens petitioned for by employers to become nonimmigrant visa holders with temporary work authorization under the H-1B visa program.
- (d) "Waivers" means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.
- (e) "Workers in the United States" and "United States workers" shall both be defined as provided at section 212(n)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(E)).

Sec. 2. Policy. It shall be the policy of the executive branch to buy American and hire American.

(a) Buy American Laws. In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States.

(b) Hire American. In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

Sec. 3. Immediate Enforcement and Assessment of Domestic Preferences According to Buy American Laws. (a) Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.

(b) Within 150 days of the date of this order, the heads of all agencies shall:

(i) assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws within their agencies;

(ii) assess the use of waivers within their agencies by type and impact on domestic jobs and manufacturing; and

(iii) develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.

(c) Within 60 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to agencies about how to make the assessments and to develop the policies required by subsection (b) of this section.

(d) Within 150 days of the date of this order, the heads of all agencies shall submit findings made pursuant to the assessments required by subsection (b) of this section to the Secretary of Commerce

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First appeared as part of the conference materials for the  
39<sup>th</sup> Annual Corporate Counsel Institute session  
"Employment Law Update"