



## PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

September 25, 2019

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### **FALSE CLAIMS ACT**

#### **Small Businesses and the False Claims Act (FCA): Are More FCA Cases Against Small Businesses on the Horizon?** September 19, 2019, [Timothy Valley](#)

On August 20, 2019, the U.S. Department of Justice (DOJ) announced that it had reached a \$20 million settlement with Luke Hillier (Hillier), the majority owner and former CEO of a Virginia-based defense contractor, ADS, Inc. (ADS), to resolve “allegations that he violated the FCA by fraudulently obtaining federal set-aside contracts reserved for small businesses that his company was ineligible to receive . . . .” The resolution of the claims against Hillier follows ADS’s payment of a separate \$16 million settlement on related claims, as well as an additional \$225,000 paid by Charles Salle, the former general counsel of ADS, to resolve claims arising from his role in the alleged scheme. Combined, the \$36 million total settlement is believed to be the largest FCA recovery in history based on allegations of small business contracting fraud. ***Given the size of the collective settlement and the nature of the allegations against Hillier and ADS, small businesses everywhere—particularly government contractors—should anticipate a potential increase in the frequency of small business fraud-related FCA cases.*** [[Read More](#)]

#### **United Parcel Service, Inc. (UPS) Pays \$8.4 Million Settlement to Resolve Allegations That It Overcharged Under General Services Administration (GSA) Contract**

DOJ announced that UPS has agreed to pay the United States \$8.4 million to resolve allegations that it overcharged federal agencies for package delivery services under a GSA contract. The settlement resolves allegations that, from 2007 to 2014, UPS failed to follow the Price Reductions Clause of the GSA contract, which required UPS to provide GSA with certain lower prices offered to another customer, resulting in the government paying more than it should have for package deliveries. Read more [here](#).

### **LABOR & EMPLOYMENT LAW**

#### **Minimum Wage for Government Contractors Increases January 1, 2020**, September 20, 2019, [Nichole Atallah](#)

Executive Order 13658, Establishing a Minimum Wage for Contractors, established a minimum wage for employees working on, or in connection with, covered government contracts. Each year, the Department of Labor (DOL) assesses the established minimum wage and, using determined methodology, announces an increase. On September 19, the DOL announced the rate would increase to \$10.80 per hour on January 1, 2020. The required minimum cash wage that generally must be paid to tipped employees performing work on, or in connection with, covered contracts will increase to \$7.55 per hour on January 1, 2020. ***For government contractors, if your workforce is affected by the increase, you may be eligible for a price adjustment.*** [[Read More](#)]

### **California Measure Signed Making It Harder for Businesses to Classify Workers as Independent Contractors**

Law360 reported that California Governor Gavin Newsom signed a landmark measure that makes it harder for California businesses to classify their workers as independent contractors, dealing a potential body blow to gig economy players like Uber and Lyft. Assembly Bill 5 revamps the state's test for classifying workers as independent contractors, presuming workers are employees—who have several protections not afforded contractors—unless the hiring business can prove three specific things. In doing so, the law effectively codifies a 2018 California Supreme Court decision known as Dynamex, in which the court applied the so-called ABC Test to claims brought under a set of quasi-employment statutes known as wage orders. Under the test, workers are employees unless their hiring business shows they operate autonomously, perform work that isn't the alleged employer's main business, and are regularly and independently engaged in the work they're hired to do. The new law takes effect January 1, 2020.

### **Progress Made on Government Accountability Office (GAO) Recommendations to Improve Nondiscrimination Oversight, but Challenges Remain**

Since September 2016, the GAO issued three reports addressing equal employment opportunity. Federal law prohibits employers from employment discrimination based on race and gender (among other things). The U.S. Equal Opportunity Employment Commission (EEOC) and the DOL's Office of Federal Contract Compliance Programs (OFCCP) are the primary agencies that enforce these laws. In order to provide an update on the status of its prior recommendations, the GAO released its testimony provided to the House Committee on Education and Labor's Subcommittee on Civil Rights and Human Services. The GAO had previously testified about challenges the EEOC and OFCCP face in ensuring that employers meet equal employment opportunity requirements. For instance, OFCCP's method for selecting contractors to conduct compliance evaluations might not accurately identify those at the greatest risk of equal employment disparities. Although OFCCP has implemented four GAO recommendations, seven recommendations require additional agency action to be fully implemented. Read the testimony [here](#).

#### **Related Labor & Employment Law Presentations by PilieroMazza**

**WEBINAR: Resolving Onboarding Mistakes That Cause Legal Problems on Federal Contracts**, December 11, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

#### **BUSINESS & CORPORATE LAW**

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**EVENT: GovCon Tips for M&A in 2020!** October 30, 2019, Speaker: [Isaias "Cy" Alba](#). [\[Read More\]](#)

**EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships**, November 8, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

## **GOVERNMENT CONTRACTS LAW**

### **Protégé Subcontract Revenues from Mentor Hold No Basis for Economic Dependence**, September 18, 2019, [Patrick Rothwell](#)

An important benefit of a mentor-protégé agreement (MPA) is that no determination of affiliation may be found between a protégé and its mentor solely because of assistance provided under the agreement. A recent decision of the Small Business Administration (SBA) Office of Hearings and Appeals, *Avar Consulting, Inc.*, upheld a size determination which found that a protégé was not affiliated with its SBA-approved mentor through economic dependence, even though the revenues it received from the mentor constituted over 70% of the revenues it received between formation and the date of size self-certification. ***A small business government contractor that anticipates future affiliation with a business under the 70% economic dependence rule should consider entering into an SBA-approved small business MPA with that business to prevent future revenues it receives from the business from being considered when economic dependence is assessed.*** [\[Read More\]](#)

### **SBA Falls Short in All Small Mentor-Protégé Program Evaluation**

SBA's Office of Inspector General (OIG) released a report titled "Evaluation of SBA's All Small Mentor-Protégé Program." SBA established the All Small Mentor-Protégé program in 2016 to extend SBA-approved mentor-protégé relationships to all small businesses. The program seeks to develop protégé firms through mentor-provided business development assistance and to help protégé firms successfully compete for federal contracts. OIG's objectives were to determine whether SBA implemented effective controls to ensure it conducted initial application reviews and annual evaluations in accordance with the All Small Mentor-Protégé program regulations, and it measured program success. OIG found that SBA did not implement effective controls to ensure it conducted initial application reviews and annual evaluations to fully align with program regulations. Additionally, SBA did not fully adhere to established processes or ensure it appropriately documented assessments. Further, while SBA identified program performance indicators and a process to measure results, it did not effectively monitor and evaluate the results. Read the full report [here](#).

### **SBA Lacks Sufficient Controls to Prevent Ineligible Entities from Participating in Small Business Programs**

SBA's OIG audited SBA's suspension and debarment process. The objective was to determine whether SBA has sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA's preference contracting programs and small business loans. SBA's OIG found that SBA has not established sufficient controls over its suspension and debarment process to prevent ineligible individuals or entities from participating in small business programs or to control the risk presented by potentially irresponsible entities participating in federal government programs. Read the full report [here](#).

### **GAO Explores Options for Increasing Federal Contracting Opportunities for Mid-Sized Businesses**

The GAO released a report examining how many small businesses grew to be mid-size and options for increasing federal contracting opportunities for mid-sized businesses. Some federal contracts are set aside for small businesses (categorized by their number of employees or their revenue). But what happens when these businesses grow to become mid-size? GAO found that, between 2008 and 2017, very few small businesses (about 2.5%) grew to mid-size and continued to receive some type of federal contract. However, stakeholders told GAO that implementing a mid-sized business set-aside would likely reduce opportunities for small businesses. Read the full report [here](#).

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**WEBINAR: PCI Subcontracting Summit 2019: Purchasing Systems**, October 22, 2019, Speaker: [Isaias “Cy” Alba](#). [[Read More](#)]

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**SMALL BUSINESS PROGRAMS & ADVISORY SERVICES**

**SBA Seeks Comments on Potential Changes to Export Loan Programs Regulations**

SBA issued advance notice of proposed rulemaking and seeks comments on potential changes to the regulations governing its Export Loan Programs. The SBA 7(a) Loan Program includes three financing options for U.S. small business exporters, or businesses adversely affected by import competition. The purpose of these programs is to provide access to capital for U.S. small business concerns to support expansion into international markets and the growth of U.S. small business exports. Read the published version [here](#).

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- Environmental Remediation
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- Information Technology
- Manufacturers and Suppliers
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- Solar Energy
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- Transportation

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