

PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

October 17, 2019

If you have questions concerning the content below, please visit this [link](#).

LITIGATION & DISPUTE RESOLUTION

The Supreme Court Clarifies Vague Arbitration Clauses Affecting Class Disputes for Growing Businesses, October 10, 2019, [Patrick Burns](#)

For most small to medium-sized businesses, the threat of a class action is not usually front-of-mind. However, as a business grows, the threat can increase depending on the number of employees and the nature of the work being performed. Class actions are commonly thought of as involving hundreds, if not thousands, of individuals. However, courts routinely consider much smaller groups of employees, including groups of approximately 40 individuals to be sufficient to establish a class action. ***To reduce the risk of a class action disrupting business operations and impacting revenue, businesses may want to consider including arbitration clauses in their employment and consumer agreements.*** [\[Read More\]](#)

BUSINESS & CORPORATE LAW

Government Contractor Acquisitions and Clearances: Deal Structure Matters, October 11, 2019, [Kathryn Hickey](#) and [Megan Connor](#)

Our Corporate and Government Contracts attorneys often counsel contractors interested in acquiring an entity with a clearance or assets used on a classified contract. The clearance is a consideration in the transaction that cannot be overlooked. Indeed, the clearance is often one of the seller's most important "assets." ***Buyers and sellers alike should be aware of the National Industrial Security Program Operating Manual requirements.*** [\[Read More\]](#)

Special Considerations When Forming a Medical Professional Services Company, October 9, 2019, [David Shafer](#) and [Francis Massaro](#)

While it is often thought that forming a business is a simple process accomplished by filing formation documents provided by a jurisdiction's Secretary of State (or equivalent), actual compliance with a particular jurisdiction's corporate and/or limited liability company law provisions requires further analysis. For many types of professional services businesses, most states require such professional services businesses to organize as professional corporations (PCs) or professional limited liability companies (PLLCs), which impose additional organizational requirements. Professional services businesses are often categorized by jurisdictions as those businesses that require additional licensure to perform the services associated with the business, such as medical service providers, engineers, architects, accountants, and attorneys. ***For medical services PCs and PLLCs in Virginia and Maryland, these requirements, which often relate to various licensing requirements, can complicate establishing professional services companies and expose owners, officers, and employees to additional risk and liability.*** [\[Read More\]](#)

Kathryn Hickey Guest Blogs "Simplifying the Complex World of Employee Incentive Plans," October 11, 2019, [Kathryn Hickey](#)

"How do I keep my employees from leaving? Talent is so hard to find and retain!" These are comments we hear all the time from clients struggling to compete for talent in a pool that is growing ever more competitive. It can be overwhelming and confusing to consider the many options available—cash bonus plans, broad-based qualified plans, stock options, restricted stock, stock appreciation rights, phantom stock. Which is right for you and your company? [\[Read More\]](#)

Related Business & Corporate Law Presentations by PilieroMazza

EVENT: Legal Considerations Prior to Doing Business with a Prime Contractor or the Federal Government, October 22, 2019, Speaker: [Kathryn Hickey](#). [\[Read More\]](#)

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](#). [\[Read More\]](#)

LABOR & EMPLOYMENT LAW

DoL Issues Notice of Proposed Rulemaking to Amend Tip Regulations

The Department of Labor's (DoL) Wage and Hour Division issued a notice of proposed rulemaking regarding Tip Regulations under the Fair Labor Standards Act (FLSA). In the Consolidated Appropriations Act, 2018 (CAA), Congress amended section 3(m) of the FLSA to prohibit employers from keeping tips received by their employees, regardless of whether the employers take a tip credit under section 3(m). In this Notice of Proposed Rulemaking (NPRM), DoL proposes to amend its tip regulations to address this Congressional action. DoL also proposes to codify policy regarding the tip credit's application to employees who performed tipped and non-tipped duties. Comments to the proposed rule are due December 9, 2019. Read the published version [here](#).

2020 Labor Surplus Area List Announced

The Department of Labor's (DoL) Employment and Training Administration (ETA) issued a notice announcing the annual Labor Surplus Area (LSA) list for fiscal year 2020. DoL's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subpart A. These regulations require ETA to classify jurisdictions as LSAs pursuant to the criteria specified in the regulations and annually publish a list of LSAs. Read the published version [here](#).

DoL Office of Inspector General Highlights for July–August Released

DoL's Office of Inspector General (OIG) released a report titled "DoL-OIG Highlights for July–August 2019." The DoL-OIG Highlights is part of DoL's ongoing commitment to ensure that all stakeholders are fully and timely apprised of the OIG's efforts. The report lists recent DoL investigations, highlights the office's concerns regarding the Job Corps program to provide a safe environment for its students and staff, and notes the number of open recommendations and monetary value of those recommendations that the OIG has made as of October 7, 2019. Read the full report [here](#).

Related Labor & Employment Law Presentations by PilieroMazza

EVENT: Employment Law for Government Contractors, October 23, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: Labor and Employment for Government Contractors—Yes, There Is a Difference! November 12, 2019, Speaker: [Nichole Atallah](#). [[Read More](#)]

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

GOVERNMENT CONTRACTS LAW

Executive Order Seeks to Expand Notice of Agency Guidance Documents

President Trump issued an Executive Order that all agency “guidance documents” be made available to the public on agency websites and, further, that agencies must treat these guidance documents as “non-binding both in law and in practice, except as incorporated into a contract.” “Guidance document” means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. Read the full order [here](#).

Executive Order Limits Use of Agency Guidance

Another recent Executive Order, “Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,” states:

When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it must establish a violation of law by applying statutes or regulations. The agency may not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of applicable statutes or regulations. When an agency uses a guidance document to state the legal applicability of a statute or regulation, that document can do no more, with respect to prohibition of conduct, than articulate the agency’s understanding of how a statute or regulation applies to particular circumstances. An agency may cite a guidance document to convey that understanding in an administrative enforcement action or adjudication only if it has notified the public of such document in advance through publication, either in full or by citation if publicly available, in the Federal Register (or on the portion of the agency’s website that contains a single, searchable, indexed database of all guidance documents in effect).

...

When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it may apply only standards of conduct that have been publicly stated in a manner that would not cause unfair surprise. An agency must avoid unfair surprise not only when it imposes penalties but also whenever it adjudges past conduct to have violated the law.

Read the full order [here](#).

“Commercial Item” Redefined in FAR

The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) issued a final rule to revise the Federal Acquisition Regulation (FAR) definition of a “commercial item.” The final rule broadens the definition to allow certain additional items developed exclusively at private expense to qualify for the benefits associated with being treated as a commercial item. Section 847 expands the universe of non-developmental items that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments. The final rule amends the definition of commercial item in FAR Part 2 to reflect the statutory change made by section 847. Specifically, the rule adds the phrase “or to multiple foreign governments” at the end of paragraph (8). No changes were made from the proposed rule to the final rule. Read the published version [here](#).

Compliance Guide for New “Commercial Item” Definition in FAR

A small entity compliance guide was issued under the joint authority of DoD, GSA, and NASA regarding the above-referenced final rule revising the FAR definition of “commercial item.” This guide was prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Read the guide [here](#).

NASA Finalizes FOIA Regulations

NASA issued a rule finalizing its Freedom of Information Act (FOIA) regulations, in accordance with the FOIA Improvement Act of 2016. NASA published a proposed rule for its FOIA regulations in the Federal Register at 84 FR 14628, on April 11, 2019, to implement the following requirements of the 2016 FOIA Improvement Act of 2016 that will be beneficial to requesters:

- notify requesters for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services;
- make records that have been both released previously and requested three or more times available to the public in electronic format;
- establish a minimum of ninety days for requesters to appeal an adverse determination; and
- provide, or direct requesters to, dispute resolution services at various times throughout the FOIA process.

Read the published version [here](#).

Related Government Contracts Law Presentations by PilieroMazza

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

EVENT: Legal Considerations Prior to Doing Business with a Prime Contractor or the Federal Government, October 22, 2019, Speaker: [Kathryn Hickey](#). [\[Read More\]](#)

EVENT: How to Form Teaming Agreements and Strategic Partnerships, October 23, 2019, Speaker: [Megan Connor](#). [\[Read More\]](#)

WEBINAR: “Past Performance” of Government Contractors: Obtaining It, Using It, and Defending It, October 29, 2019, Speaker: [Kathryn Flood](#) and [Sam Finnerty](#). [\[Read More\]](#)

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](#). [\[Read More\]](#)

WEBINAR: Labor and Employment for Government Contractors—Yes, There Is a Difference! November 12, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: PCI Subcontracting Summit 2019: Administration, November 19, 2019, Speaker: [Isaias “Cy” Alba](#). [\[Read More\]](#)

Top Legal Questions from Government Contractors, November 21, 2019, Speaker: [Tony Franco](#). [\[Read More\]](#)

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

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

SBA Fiscal Year 2019 Lending Numbers Announced

SBA announced fiscal year 2019 lending numbers, showing that it guaranteed over \$28 billion to entrepreneurs that otherwise would not have access to capital to start, grow, or expand their small businesses. In fiscal year 2019, SBA’s flagship 7(a) loan program made approximately 52,000 7(a) loans totaling \$23.17 billion. The 504 loan program had another year of increased performance, with more than 6,000 loans made for a total dollar amount of more than \$4.9 billion. There also was significant growth of dollars lent in the SBA’s Microloan program, with more than 5,500 loans approved for nearly \$81.5 million. Read more [here](#).

HUBZone Program Pros and Cons

The Congressional Research Service released a report titled “Small Business Administration HUBZone Program.” The report examines arguments both for and against targeting assistance to geographic areas with specified characteristics as opposed to providing assistance to people or businesses with specified characteristics. It then assesses the arguments both for and against the continuation of the HUBZone program. The report also discusses the HUBZone program's structure and operation, focusing on the definition of HUBZone areas and HUBZone small businesses and the program's performance relative to federal contracting goals. It includes an analysis of SBA's administration of the program and SBA's performance measures. Read the full report [here](#).

Related Small Business Programs & Advisory Services Presentations by PilieroMazza

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

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](#). [\[Read More\]](#)

WEBINAR: PCI Subcontracting Summit 2019: Administration, November 19, 2019, Speaker: [Isaias “Cy” Alba](#). [\[Read More\]](#)

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, including:

- Aerospace and Defense
- Construction
- Cybersecurity & Data Privacy
- Emerging and Developing Industries
- Environmental Remediation
- Healthcare
- Information Technology
- Manufacturers and Suppliers
- Professional Services
- Solar Energy
- Telecommunications
- Transportation

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 translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

With lawyers in Washington, DC; Boulder, CO; Annapolis, MD; and Chicago, IL, PilieroMazza is privileged to represent clients in the following areas:

- [Audits & Investigations](#)
- [Business & Corporate Law](#)
- [Cybersecurity & Data Privacy](#)
- [False Claims Act](#)
- [Government Contracts Claims and Appeals](#)
- [Government Contracts Law](#)
- [Intellectual Property & Technology Rights](#)
- [Labor & Employment Law](#)
- [Litigation & Dispute Resolution](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Venture Capital](#)
- [Small Business Programs & Advisory Services](#)

Visit us at www.PilieroMazza.com.

###

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

©2019 PilieroMazza PLLC
All rights reserved.