

# Neel, Hooper & Banes, P.C.

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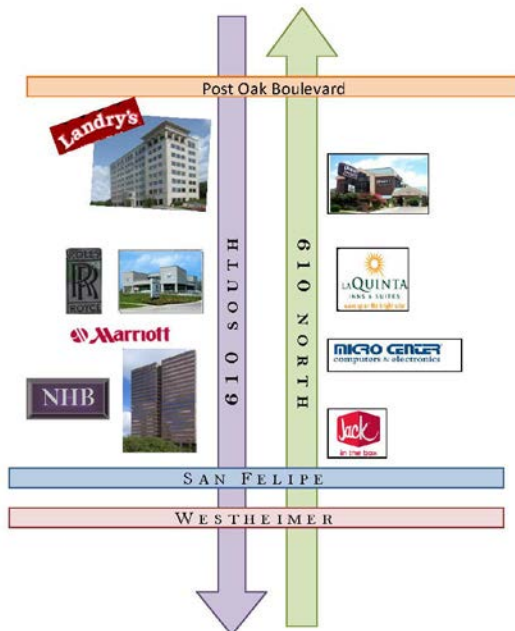
VOL. XXX, No. 1

SUMMER UPDATE

AUGUST 2011

## FIRM NEWS

*Neel, Hooper & Banes, P.C. is moving! As of August 28, 2011, our new address will be 1800 West Loop South, Suite 1750, Houston, Texas 77027-3272. Our telephone and fax numbers will remain the same. We have also launched our new web and e-mail addresses at: [nhblaw.com](http://nhblaw.com). See page 8 for details.*



Bryant S. Banes is recognized as a leader in the field of labor and employment law in the upcoming 2011 edition of Chambers USA.

According to Martindale Hubbell's peer review, Bryant S. Banes, James M. Neel and Paul T. Gregory have received AV® Preeminent ratings in their respective fields of government contract, labor and employment law, and commercial litigation.

We welcome **Mina Madani** to the firm as a Junior Associate.

**THE SUPREMES HAVE BEEN BUSY!** Here are a few recent decisions from the Supreme Court that could impact your business.



**Class Action:** The Wal-Mart case involved the biggest class action in history. Some 1.5 million female employees and former employees claimed the company engaged in a practice of discrimination in pay and promotion. The main question for the Court was whether the group was actually a class and the answer was NO. In a 5-4 opinion, the Court said the group did not meet the requirements for a class because it lacked commonality. Because there were 3,400 stores represented in 50 different states and a large group of supervisors who made pay and promotion decisions with broad discretion in a largely subjective manner, there was no glue to hold the claims together. There were no questions of law and fact common to the entire class and no proof that the company operated under a general policy of discrimination. The case seems to say the more varied and decentralized a company's job practices are, the less likely there can be a class action claim. Only workers who truly have a common legal claim may sue as a group and they will have to provide proof that all workers had experienced the same bias.

**Who Is The Decision-Maker?** Vincent Staub served as a member of the United States Army Reserve while working as an angioplasty technician. When he was terminated in 2004, Staub alleged his lower level supervisors referred to military duty as "a strain on the department" and urged the hospital to "get rid of him." Soon after these statements, the supervisors allegedly began to discipline Staub. After briefly reviewing Staub's personnel file, the VP of HR decided to immediately terminate Staub. Staub sued the company under the Uniformed Services Employment and Reemployment Rights

Act (USERRA) and won at the lower court level, but the Seventh Circuit reversed, holding that the discriminatory statements of Staub's lower level supervisors could not be attributed to the employer and decision-maker, the hospital's VP of HR, who ultimately made the decision to terminate Staub after reviewing his personnel file. Instead, the Seventh Circuit held that for the hospital to be liable the decision-maker would have had to have his own reasons for the termination.

But the Supreme Court disagreed and said the decision-maker need not personally maintain a discriminatory reason to be held liable for unlawful discrimination. If an unlawful "motivating factor" is present under USERRA, the company can be liable.

In Staub's case, this meant his immediate supervisors' anti-military comments, which were intended to cause his employment termination, constituted an unlawful "motivating factor" because it was relied upon by the decision-maker. Furthermore, the hospital's decision-maker did not conduct any type of investigation, but instead relied upon the tainted supervisor's provision of facts and recommendation to immediately terminate Staub.

**Retaliation:** Generally, people don't like getting sued and employers are no different. Yet, when it comes to being sued by one's employees, there is an important rule for employers to remember: DO NOT RETALIATE! According to statistics from the U.S. Equal Employment Opportunity Commission (EEOC), there were 36,258 retaliation charges filed under both state and federal employment statutes in 2010 — a record number. Furthermore, two recent decisions by the U.S. Supreme Court make it clear that if you retaliate against employees, do not expect sympathy from the high court.

In January, the court ruled 8-0 that Eric Thompson was protected from retaliation after his fiancée filed a gender discrimination lawsuit against their mutual employer. In essence, the Court determined that anti-retaliation laws must be construed to cover a broad range of employer conduct, including third-party reprisals.

So, what should an employer do if an employee or someone related to the employee makes a complaint against the business? First of all, do not overreact. Do not confront the employee or take any adverse action against him or her. Second, contact your attorney and determine a strategy to deal with the situation. It may be that the issue raised by the employee has merit under the law and has to be

dealt with. If the complaint does have merit, deal with it and cut your losses. If an investigation proves that the complaint has no merit, then devise a plan with your legal counsel to address the employee's mole hill without creating a legal mountain!

The *Thompson* decision was not the only retaliation lawsuit to be decided by the Supreme Court this year. In March, the Court ruled 6-2 that the anti-retaliation provision of the Fair Labor Standards Act (FLSA – which provides minimum wage, maximum hour and overtime pay rules) applies to an employee's oral complaints, as well as to written ones. Kevin Kasten was fired after telling his employer that the company illegally placed time clocks in the dressing area. The location kept workers from receiving credit for time they spent putting on and taking off work clothes.

The issue on appeal was whether Kasten's verbal complaint was "filed" within the meaning of the statute. The Court determined it was filed because a reasonable, objective person would have understood the employee to have put the employer on notice that the employee was asserting rights under the law.



### **Drug Testing For Government Employees.**

A group of NASA employees, who were considered low risk, were going to be subjected to new background checks imposed as a condition of their continued employment. The employees were unhappy about the new checks and got an injunction to stop the new rules from going into effect. The lower courts agreed with the employees and believed they would succeed on the theory of constitutional privacy, especially with respect to questions about drug treatment and counseling. But the Supreme Court disagreed and found that many private employers ask for this information and the government has also used it with their employees for several decades. Further, the Court found there has never been an employment case that limited the information that the government could collect regarding drug treatment by those seeking employment with the government.

**Attorney's Fees ... A Subject Near And Dear To Our Hearts!** The Supreme Court held that defendants are entitled to recover attorneys' fees done for work on a frivolous claim if that work was required *solely* because of that claim. If the work is done on a claim that is partially frivolous and partially non-frivolous, fees are not recoverable.

## TRUE CASES RIPPED FROM THE TEXAS HEADLINES...

**Is Sexual Harassment Expensive? Let Me Count The 4 Million Ways!** A Texas waitress sued a popular breakfast chain for sexual harassment and assault by a cook. The waitress had reported all kinds of offensive behavior to managers and was told to call the company hotline. But the company did not follow up. She quit and sued under both Chapter 21 and common law claims. The lower court awarded her \$4 million and the appeals court confirmed. But the Texas Supreme Court stepped in and reversed and remanded it back to the lower courts. Chapter 21 is basically the Texas version of Title VII and prohibits discrimination and harassment. It also has specific guidelines on how such claims are handled and a cap of \$300,000 on damages. The waitress had filed her suit under both Chapter 21 and common law and the Supremes said she could not have it both ways. Because both her claims were based on the same underlying conduct, the common law claims were preempted by Chapter 21. She had to give back her \$4 million and although she may still win, it will be much less because of the damage cap under Chapter 21. Lesson: If you get reports of discrimination or harassment, follow-up, investigate and act accordingly. The claims may be bogus or they may be true. But your quick, thorough and appropriate responses can save the company lots of blood, sweat and tears...not to mention \$4 million!



### Overtime Pay Adds Up To Big Money:

The DOL and a Houston company with locations around the country reached a settlement to the tune of \$830,000 for underpaying more than 4,600 employees over the past two years. The case stems from concerns that the company rounded work hours in the company's favor, failed to pay employees who attended meetings prior to the beginning of their shifts and did not include bonuses when calculating overtime pay. The company believed that its incentive plan, under which bonuses were paid, was not part of an employee's regular hourly pay because whether a bonus was paid and the amount of the bonus were at the discretion of managers.

Under the FLSA, bonuses that are related to meeting or exceeding production, efficiency or attendance goals are to be included when calculating overtime pay. However, bonuses that are truly discretionary and neither promised nor

expected, do not have to be included. Is it time for you to review your pay policies? Mistakes can be costly!

### It's Better If The Cheese (And An Arbitration Agreement) Stands Alone.

When an employee-at-will was terminated, she filed a suit alleging age and disability discrimination. The company moved to compel arbitration based on a stand-alone arbitration agreement. Both the district court and the court of appeals denied the motion. Because the arbitration agreement was referenced in the employment manual, the employee had argued that the agreement lacked consideration and was illusory because the company reserved the right to change any provision in the manual at any time, including the arbitration agreement. The Texas Supreme Court saved the day for the company and disagreed with the lower courts, noting that the arbitration agreement itself did not have language permitting alterations, was not a part of the manual and the agreement was a stand-alone document. A good lesson for companies: if you have an arbitration agreement, make sure it is a stand-alone document and not a part of your employee manual.



### Employee V. Independent Contractor ... That's Still The Question:

Texas law requires an employer to pay a tax for unemployment compensation benefits with respect to that employer's "employees." In a recent case, a staffing service challenged the Texas Workforce Commission's determination that nurses assigned by the staffing service to work in client hospitals were "employees" of the staffing service, and not "independent contractors" (IC). The court held (1) the agency's own 20-factor test of employee status is an appropriate framework for determining status; (2) it is appropriate to consider a *client* employer's exercise of control and provision of equipment as factors weighing in favor of a worker's status as an employee of the staffing service; (3) a worker's status as a "professional" does not necessarily place that worker beyond the effective supervisory control of an employer; (4) a worker's right to decline an assignment offered by a staffing service is an instance of *pre-employment* discretion—not discretion over the work—and therefore counts little toward IC status. If you have ICs, you may want to review this checklist.

**Noncompetes.** These agreements have always been confusing and the newest case from the Texas Supreme Court may not help. Basically, the Marsh USA case held that stock options are sufficient consideration for a non-compete because they are designed to protect a valid business interest—business goodwill. But keep in mind this does not necessarily mean that a simple payment of money, like a signing bonus, will be sufficient. And the noncompete still has to meet other criteria, such as a reasonable time frame and geographical area. Watch this space for updates on this new wrinkle!

## NEWS FROM AROUND THE COUNTRY

**All Kinds Of Discrimination Goin' On Costs All Kinds Of Money!** In this out-of-state case, Morgan was an over-40 manager who won big bucks after proving that the reason given for his termination (poor performance) was a pretext. He was able to show that the employer had relaxed performance standards for many of the younger managers. And in an unusual twist, instead of discriminating against a pregnant employee, the company had used the pregnancy as an excuse to allow her to have a lower performance standard. But in the case of Morgan, an older male, extenuating circumstances were not considered according to the Sixth Circuit. Additionally, the employer had made statements such as “time had passed him by” and “we need young people” and had hired a younger replacement even before terminating Morgan. If a picture is worth a thousand words, in this case a word is worth \$12 million dollars!



**Social Media And The Workplace:** Last year the National Labor Relations Board (NLRB) sued a Connecticut ambulance company that had fired an employee for posting negative comments about her boss on

Facebook. The company claimed to have fired the employee because of her complaints about her work. The case was settled. The company agreed to change its blogging and Internet policy that barred employees from disparaging the company or supervisors and prohibited employees from depicting the company in any way over the Internet without permission.

The NLRB claimed these policies interfered with longstanding protections that allow workers to discuss wages, hours and working conditions with co-workers. Terms of a private settlement between

the company and the employee were not disclosed and she was not rehired. The employee had posted comments in 2009 from her home computer, on her own time, hours after her supervisor told her a customer had complained about her work. The expletive-filled post referred to her supervisor using the company's code for psychiatric patients. The remarks drew supportive posts from colleagues.

While this case serves as a good wake-up call for employers to review their own Internet policies, it does not give employees free reign to discuss anything work-related on social media. There can still be problems with disloyalty or disclosure of confidential information. There are boundaries, but they do seem to be moving. Call us if you have questions.



## Beware Of Reviewing Confidential Information.

The Supreme Court of New Jersey held that the company's broadly worded computer policy did not allow the employer's lawyers to review otherwise confidential communications between an employee and her lawyer. The employee had used a personal, password protected web-based email service accessed via the company's computer and she specifically discussed her situation at work. The company later used an expert to retrieve those communications from her hard drive. The court found the policy to be overly broad, ambiguous on whether personal email was company property and did not warn employees that their hard drives could be monitored. And the court went on to say even a clearly written policy that would permit an employer to review messages between an employee and her attorney would be against public policy and unenforceable.

## New Additions To The ADA

In September 2008, President Bush signed the ADA Amendments Act and it became effective in May 2011. It will now be referred to as the ADAAA and reversed various Supreme Court decisions. Among other things, it bans lawsuits by non-disabled individuals for reverse disability discrimination, clarifies the EEOC's authority over the ADA to develop and implement binding regulations and amends the definition of disability for claims.

There are several changes of which employers must be aware, but most come under one of three basic points:

1. It will be easier for people with disabilities to obtain protection under the ADA;
2. The definition of "disability" will be broader in favor of expansive coverage; and
3. The primary focus of ADA cases will be whether companies comply with obligations and whether discrimination has occurred, not whether the person meets the definition of disability.

There are many other changes and they are too detailed to discuss here, but you need to be aware of them. Also, it has been noted that the EEOC is already starting to take a closer look at neutral absence control policies that it considers too rigid under the new regulations.

We will continue to update you on these changes. And if you have ADA issues, it is critical that you get legal advice before making hasty decisions.

## UNION ACTIVITY

**Union Organizational Activity Since Our Last Newsletter.** Eleven petitions for certification were filed by unions and five petitions for decertification were filed by management. Of the ten elections held, management won seven.

## GOVERNMENT CONTRACTS



### Legislative Update – Insourcing.

The Congressional Small Business Committee is currently drafting proposed legislation to address many of the issues facing contractors, especially small business contractors, as a result of insourcing. We, at Neel, Hooper & Banes, have been working with the Small Business Committee attorneys in drafting this proposed legislation to protect contractors. Our Managing Partner, Bryant Banes, was invited and participated in live testimony before the Congressional Small Business Committee on the topic of insourcing, its adverse effects on small business and the lack of any demonstrated cost benefit to the government as a result of the insourcing initiative. Among the legislative solutions on which we are working and to be proposed in Congress very soon, include:

- Amending the definitions of "protest" in the Competition in Contracting Act ("CICA"), 31 U.S.C. § 3551(1) to include conversion of a function that is being performed by private contractors to federal civilian or military employee performance;

- Amending 31 U.S.C. § 3551(2) to provide that "prudential standing" in a bid protest action is coextensive with interested party status (overruling recent cases to the contrary);
- Imposing a legislative moratorium on insourcing until the Obama Administration completes its evaluation of the impact of insourcing on small business, and the general overall cost savings (if any) of the insourcing initiative to date;
- Exempting small businesses from the federal government's insourcing initiative; and
- Requiring a "public-private competitive sourcing analysis" and a determination that insourcing provides best value. (This has already been proposed in the House as the Freedom from Government Competition Act, S. 785, H.R. 1474).

Perhaps it is time that DoD and its components, particularly the Air Force, be held accountable for its insourcing determinations and be required to consider the adverse impacts and true costs of insourcing before further damage is inflicted on small businesses and other federal government contractors and their employees. *Santa Barbara Applied Research, Inc. v. United States*, 2011 WL 1680355 (Fed.Cl. May 4, 2011) ("SBAR case"); *Hallmark-Phoenix 3, LLC v. United States*, 2011 WL 2006802 (Fed.Cl. May 13, 2011) ("Hallmark case"); *Triad Logistics Services Corp. v. United States*, Fed.Cl. No. 11-43C (Horn, J.) ("Triad case").

**Contractors 1, GAO 0.** In *Turner Construction v. U.S.*, 2011 WL 2714137 (Fed.Cir. 2011), the Federal Circuit affirmed the U.S. Court of Federal Claims ("COFC") in sustaining a protest of an agency decision to implement a recommendation of the Government Accountability Office ("GAO") based on its Organizational Conflict of Interest ("OCI") analysis. The Federal Circuit found that the COFC properly disregarded an agency's reliance on a GAO recommendation to terminate a contract based on an alleged OCI because the recommendation was irrational.

**Damages Awarded for Government Destruction of Trade Secrets.** In [Spectrum Sciences & Software, Inc. v. U.S.](#), 84 Fed. Cl. 716 (2008), the U.S. Court of Federal Claims ("COFC") determined that the Air Force had breached a CRADA by disclosing its industry partner's proprietary data in a subsequent competitive procurement of the product resulting from the partnership. In follow-on to that decision, the COFC has now awarded damages in the amount of \$1,211,754 to the company, [Spectrum Sciences & Software, Inc. v. U.S.](#), No. 04-

[1366C, 2011 WL 490504 \(Fed. Cl. Feb. 14, 2011\).](#)

This decision is valuable because it contains rare guidance on how such damages should be calculated. Specifically, the court concluded that the correct amounts to include in this calculation were the amounts that were before the parties at the time of the breach by the Government. Thus, it found that the contractor had correctly used the number of units that were projected to be procured and the sales period that the Air Force was projecting the procurements to cover. As to the sales price, the court accepted the amount that the contractor had offered in an unsolicited proposal before the Air Force decided to conduct a competitive procurement disclosing the contractor's proprietary data. With respect to profit, the court limited the claimed profit to the maximum provided for in [FAR 15.404-4\(c\)\(4\)\(i\)\(A\)](#), namely, fifteen percent (15%).

**Brand Names Are Not Adequate RFP Descriptions.** In *Cal. Indus. Facilities Res., Inc., d/b/a CAMSS Shelters*, B-403397.3, 2011 CPD ¶ 71, the Government Accountability Office ("GAO") recently ruled that an agency solicitation was unduly restrictive because it required proposals to be based solely on brand-name products and did not include the salient characteristic of the products. The Competition in Contracting Act ("CICA") expressly requires agencies to specify their needs and develop specifications in a manner designed to achieve full and open competition. [10 U.S.C. § 2305\(a\)\(1\)\(A\)](#) (2006). To that end, this may include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency. [10 U.S.C. § 2305\(a\)\(1\)\(B\)](#). GAO stated that agencies must use specifications stated in terms of function (so that a variety of products or services may qualify), performance characteristics or design requirements, depending on the nature of the requirements. [10 U.S.C. § 2305\(a\)\(1\)\(C\)](#). Where the agency wants to use a brand-name only, it must prepare and execute the required justification and approval (J & A) for use of other than full and open competition. [10 U.S.C. §§ 2304\(c\), \(f\)](#); FAR § 11.105.



**Court Of Federal Claims Beginning To Reign In The Government?** In *Kellogg Brown & Root Services, Inc. v. United States*, No. 09-351C (Ct. Fed. Cl. July 6, 2011)(order granting in part and denying in part plaintiff's motion to dismiss) as a

response to counterclaims filed by the Government against KBR relating to its LOGCAP contract in Kuwait and Iraq, the Court of Federal Claims appears to be going back to basics as it pertains to

allegations of fraud, violations of the Anti-Kickback Act, and False Claims Act. In the past, the government has been allowed to expand and redefine the definitions and applications of all of these claims against contractors with little correction by the Court of Federal Claims. While this case allows kickbacks received by employees to be imputed to the company, as opined by Judge Miller in her most recent Order, it appears the days of loose interpretation and broad application might be gone. However, Judge Miller has left open the possibility that all payments made to KBR through their main task order under the LOGCAP contract from 2003-2005 might be recovered by the government as a result of alleged kickbacks. We will closely observe the developments of this case in order to better equip you on the recent trends in this area of law. If you have any questions, feel free to inquire.



**CONTRACTOR  
SURVIVOR'S GUIDE IN  
EVENT OF FEDERAL  
GOVERNMENT  
SHUTDOWN**

In the event of a federal government shutdown:

- First and foremost, contractor should contact its Contracting Officer prior to shutdown for each federal government contract and ask for them to provide guidance regarding performance, payment and POC status in the event of a federal government shutdown.
- Contractor should be or quickly become familiar with all its federal government contracts (type, location, service, whether service would be considered essential or not by the government, status of performance, contract clauses, etc.).
- Contractor should check its insurance policies / carriers to see if it has insurance coverage for a government shutdown (insurance coverage may be dependent on the cause of the government shutdown – if due to natural disaster may be yes, but if due to government financial issues, may be no).
- Government essential tasks will most likely be exempted from shutdown. For guidance on government funding priorities during shutdown, see [OMB Circular No. A-11](#). Each agency will determine which contractors are performing essential tasks.
- Contractor should develop and **maintain a shutdown plan prior to the shutdown, as well as a natural disaster plan.**

**Know where employees are.** If contractor has workers at a government facility, these employees may be denied access during a shutdown. Determine contingencies prior to shutdown. If contractor does not have employees at a government facility, it is still a good idea to determine and know where all employees are and how to get in touch with them, if necessary. Contractor could establish a “call/text/email tree” similar to a disaster plan to facilitate communications.

Contractor should determine if any employees are on official travel on a government contract? If so, contractor will need to establish communication and determine instructions for those employees – whether to return home immediately or to stay a few extra days because it costs less for them to stay put (perform cost analysis).

Contractor should determine if any employees are currently on leave or vacation, and whether those employees should continue leave status, if necessary.

**What does contractor do with its employees affected by the shutdown in the meantime?**

Contractors must attempt to minimize the government's liability and its own by considering work reassignments. It may be possible to re-task employees to a related project that is not affected by the shutdown. There may be other unrelated projects where employees may be temporarily utilized.

Other possible considerations for employees: temporarily reassignment for training; request employees to take vacation or leave, but remain on “stand by” if needed; may need to mandate vacation or leave; temporary lay-off or furlough, which is last resort, but may become necessary. Do not allow employees to work “at risk” on a government contract when it is unclear whether the government will pay for that work. Do not allow employees to work “voluntarily” without pay, as this can be in violation of DOL and other federal regulations.

Be sure to also contact and coordinate work shutdown with your subs, independent contractors and consultants, but contractors may need to consult the individual agreements to determine appropriate course of action.

**As a Contractor, determine whether you need a federal employee POC in order to perform or complete your work, or to process payments.**

Contractor should determine prior to shutdown if and who its POC will be with the government during the shutdown, and answers to the following questions:

- Will payments from government to contractor be processed during shutdown? Be prepared that payments will likely not be processed during a government shutdown.
- Should contractor submit invoices during shutdown, and if so, are invoicing instructions different than normal during shutdown?
- Will deliveries be accepted or inspections conducted by the government during shutdown?
- Will government process security clearances, export licenses, etc. during shutdown?
- Will contractor employees have access to government facilities, government owned property, government web portals / websites necessary to conduct work?

If contractor cannot determine a clear answer to these questions from an authorized government representative prior to shutdown, contractor should assume that all these functions will not be performed during shutdown.

**Other Contract Factors to Consider under Shutdown or Continuing Resolution:**

- Until new fiscal year budget is approved, no new contracts will be awarded which depend on new fiscal year appropriations.
- During shutdown, no contracts will be awarded and no proposals will be reviewed during a shutdown.
- Any contract options dependent on new fiscal year appropriations or contract options that are for a longer period of time than the approved funding appropriation period will not be exercised.
- Contracts that depend on incremental funding will be stopped during a shutdown, and if funding period expires during the shutdown period, that contract may be in jeopardy of not continuing even after the shutdown. (Exception: if service or product is essential, but most essential tasks do not operate on incremental funding).
- Contracts currently supplying necessary and essential support to the on-going war efforts in Afghanistan and/or Iraq may have a chance to be exempt from shutdown.
- The government is prohibited by law from using “voluntary” contractors in place of furloughed federal workers during a government shutdown.
- During or prior to a shutdown, if the government requests contractors to work without funding (“at risk”), or on a contract not exempt from the shutdown, the likelihood of getting paid by the government is extremely low. Request and get a

signed funding mod and written authorization to work during the shutdown before working "at risk." Be very careful if the government says "we really need this work, go ahead and work, we will sort it out later. I promise you will get paid." Do not buy it, you will be working "at risk" during the shutdown. Once the shutdown ends, the government employees will be addressed first, contractors will most likely not be paid. In such circumstance, contractors must weigh the benefit of satisfying the customer against the financial / business risk associated with working when there is no assurance that contractor will ultimately be paid.

#### What kinds of costs incurred during shutdown might be recoverable?

- Most are on a contract-by-contract basis. Look at your contracts to determine if there are any shutdown contract provisions that may apply.
- Depending on the type of contract, generally contractors mandated by the government to shutdown contract performance due to government shutdown can be paid for the extra costs and time needed to shutdown a project before shutdown occurs and the extra costs and time for ramping the project back up after shutdown. Keep detailed records of these costs.

**Other potential recoverable costs: Generally,** extra material/vendor costs and "unabsorbed" overhead costs directly attributable to the shutdown are recoverable; however, any costs incurred must be offset by insurance coverage paid, if any.

- Generally, there will be no recovery of back pay or "consequential damages."

#### Other questions to consider prior to and during a shutdown:

- Is your cash flow sufficient to accommodate a delay in payments from the government?
- Do you have suppliers and/or subcontractors to notify?
- Do you have a CBA to consider? Review any applicable provisions in CBA's.
- What notification is required to union employees?
- Can you fund B&P costs while waiting for delayed awards and solicitations?
- Can you afford to pay your employees and not be reimbursed by the government or your Prime Contractor for a period of time? Determine how long.
- What are other potential implications or alternatives to survive government shutdown? Banking, loans, lines of credit, insurance, etc.

#### Other things to remember:

- Analyze your current financial situation.
- Plan for multiple possible events.
- Communicate with your employees and the government POC before, during and after shutdown.
- Document and account for all shutdown costs, winding down costs and ramping back up costs.
- Mitigate costs and time where possible.

This checklist is intended as general guidance, as each contract may have differing circumstances.

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The Quarterly Update is a newsletter providing recent items of interest to our clients in the various areas of employment law. While the Update is to alert you to potential new problem areas or changes in the law, it is not to be considered legal advice or a legal opinion. Such can only be given after careful consideration of the facts unique to any situation. The contents of this newsletter are copyrighted and may not be used without express written consent of Neel, Hooper & Banes, P.C.

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