



# Hands Off My Workforce!: Responding to the Government When They Cross the Line

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# Presented by

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# About PilieroMazza

PilieroMazza PLLC is a full-service law firm with offices in Washington, DC and Boulder, CO. We are most well known as a government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

Our primary practice areas are:

- Government Contracting
- Small Business Programs & Advisory Services
- Labor & Employment
- Business & Corporate
- Litigation
- Intellectual Property & Technology Rights

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# Personal Services Contracts

- “Personal services” contracts
  - Makes the contractor personnel appear to be (actually or in effect) government employees
  - Not to be issued unless authorized
  - Key factor is supervision and control
- Non-personal service contracts
  - Personnel are not subject, either by contract terms or through performance, to the supervision and control usually prevailing in relationships between the government and its employees
- Joint Employer Liability considerations

# When this Becomes Important

- Discipline, Requesting or “suggesting” removal
  - Contract rights versus liability concerns
- Discrimination/Harassment
  - Client reports performance concerns and/or requests removal and then employee reveals she told the client she is pregnant
  - Employee reports that supervisor yells and screams at him all the time, corners him in private offices, and he is afraid
  - Client denies telework requested for a medical reason
- Family and Medical Leave
  - Client denies leave request for employee surgery
- Military Leave
  - New hire requests military leave before start and client denies applicant approval

# What to Keep Top of Mind When Government Comes Calling

- Check your contract!
- Evaluate potential risk factors
  - Whistleblower allegations
  - FMLA
  - Protected classes
  - Complaints about terms of employment
- Ask if the Government's actions interfere with your ability to perform

# Contractor Obligations

- Investigate complaints
  - Follow your policy, periodically review
- Request any necessary supporting documentation
- Report to government or prime contractor
- Take other appropriate action
- Subcontractor Challenges and Defenses
  - Limits on investigatory capability and communication
  - Joint employer liability

# Client Obligations

- High standard of conduct in the “public trust”
  - Addressed by individual agencies
- Agency EEO processes
  - May report there and be investigated by
- Elevate concerns appropriately
- Avoid conduct that exposes government to liability
- Avoid constructively changing the contract through interference, justifying an REA or claim
- Duty to cooperate and not hinder or interfere with the other party’s performance



# Playing Defense

- Contact the contracting officer or higher official
  - Rely on your legal obligation to do so
  - Protecting the government
- Document, Document, Document
  - Try to get the CO to send you an email or letter confirming their position
  - If they won't, email them your understanding
- Managing relationship risks
  - Consider the best way to message your concerns

# When the Unthinkable Happens:

- Consequences:
  - Contract is terminated
  - Employee files a lawsuit
  - Other damages
- How should you react?:
  - Give the government an opportunity to take corrective action
  - File a claim
  - Bring the government into the lawsuit

# Questions?

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