

**OFCCP Compliance and Audit Defense**

We regularly assist companies with creating affirmative action programs (AAPs) and preparing for and defending audits and enforcement actions by the Office of Federal Contract Compliance Programs (OFCCP). Through our collaborative and pragmatic approach, we offer companies comprehensive solutions for their affirmative action compliance.

- Creating and maintaining AAPs and FAAPs;
- Advising on all aspects of OFCCP compliance;
- Defending OFCCP audits;
- Negotiating conciliation agreements;
- Complying with state AAP laws; and
- Litigating OFCCP claims before administrative tribunals and federal courts

**Mock OFCCP Audits**

Through our cost-effective mock audits, our team of experts can assist contractors with identifying and remediating potential vulnerabilities before OFCCP comes knocking. We offer fixed-cost pricing for mock audits designed to help contractors prepare for the highest OFCCP audit risk areas, including: (i) simulating OFCCP audit requests to review compliance and hiring, compensation, and promotion practices for potential vulnerabilities and issues; and (ii) creating simplified action plans to remediate identified risks.

**Pay Equity Audits and Defense**

With new equal pay, transparency, and reporting laws continuing to spread in the U.S. and internationally, companies face increased risks when ensuring their pay practices are not only fair but defensible. Federal contractors are at a heightened risk because they are subject to OFCCP auditing their pay for systemic discrimination issues. Our lawyers understand this growing compliance and litigation risk and routinely help federal contractors navigate this area. Our services include:

- Conducting privileged and proactive pay equity analysis of all forms of compensation;

- Creating effective remediation plans to address root causes and mitigate risks relating to pay;
- Developing pay practices and policies;
- Creating strategies for communicating pay equity to boards, shareholders, and the public;
- Defending pay discrimination investigations before the OFCCP and EEOC; and
- Defending pay discrimination litigation.

**Service Contract Act and Davis Bacon Act**

As the U.S. government increasingly relies on the private sector to fulfill its service and construction needs, contracts covered by the Service Contract Act (SCA) and Davis Bacon Act (DBA) continues to rapidly expand. The SCA and DBA present complex and high-stake challenges with harsh remedies, including mandatory debarment and individual liability for corporate officers and managers, for noncompliance. Our services include:

- Assessing SCA/DBA coverage;
- SCA/DBA training;
- Defending DOL SCA/DBA compliance audits;
- Advising on all aspects of SCA/DBA compliance, including those for unionized workforces; and
- Navigating SCA/DBA price adjustments.

**Mock SCA/DBA Audits:** Our mock audits are designed to assist contractors identify and remediate SCA/DBA issues within their workforce and at covered subcontractors. We efficiently review SCA/DBA compliance and create tailored solutions to remedy issues before a DOL audit.

**Competition/Employee Mobility/Trade Secrets**

In the increasingly competitive federal marketplace, it is critical for contractors to protect their confidential information and prevent unfair competition. In the last several years, lawmakers and regulators are increasingly restricting the use of these agreements with numerous states limiting the use of employee non-competes and the FTC, DOJ, and state regulators pursuing enforcement actions against companies for overbroad non-competes and “no poach” agreements. Contractors also face risk from

aggressive competitors threatening claims for aiding and abetting breach of employee non-competes and non-solicits in order to stifle competition and prevent legitimate employee mobility. Our team regularly counsels and represents contractors on restrictive covenant matters, including:

- Drafting restrictive covenants to address unique circumstances for government contractors;
- Creating programs to protect contractors' trade secrets and IP from employee misuse;
- Pursuing enforcement of restrictive covenants and unfair competition claims, including preliminary injunctions;
- Creating recruitment strategies for minimizing risks when hiring employees subject to non-competes and non-solicits; and
- Defending against overly aggressive competitors seeking to prevent fair competition.

## Other Services

**Drug Free Awareness Programs:** Contractors are grappling with their drug-free programs given evolving conflicts between federal and state marijuana laws. Under the Drug Free Workplace Act (DFWA), contractors must prohibit use of illegal drugs, including marijuana, and defense contractors must drug test certain employees. Many states have now legalized medical and recreational use of marijuana, with some states prohibiting discipline for employee off-duty medical marijuana use and testing applicants for marijuana. We understand these unique challenges and routinely assist companies establish compliant drug-free awareness programs in light of this growing conflict, including: (1) developing and reviewing drug-free workplace policies and procedures to comply with the DFWA, while mitigating risk of claims; and (2) creating and overhauling drug testing programs.

**Employee Onboarding:** Federal contractors must comply with various obligations when hiring employees to work on federal contracts, such as adhering to the "revolving-door" restrictions, avoiding personal conflicts of interest, ensuring prospective employees are screened in compliance with denied-party screening laws, such as screening in compliance with requirement under ITAR/EAR/OFAC/BIS, and ensuring candidates

have or can obtain the appropriate level of security clearance. We routinely advise contractors on establishing effective screening procedures for complying with these laws while mitigating the risk of discrimination claims. Our services include developing and reviewing employment applications, offer letters, and other screening protocols for potential issues; developing checklists and questionnaires for compliance while minimizing discrimination risks; and defending employment claims related to compliance with these laws.

**Employee Claims Against Third-Party and Government Clients:** Contractors frequently send employees to work onsite at other contractors or the government. With little control over these sites, contractors face difficult situations when their employees allege discrimination or other claims for actions of their client. We assist contractors with understanding how to minimize this risk on the front-end by establishing practical and effective contractual and other protections. We also assist with investigating and defending employee claims of unlawful client conduct.

**Sequestration and Government Shutdowns:** As gridlock in Congress continues, government contractors increasingly face actual or threatened government shutdowns that implicate a host of employment and labor concerns related to wage and hour, collective bargaining, and reduction-in-force laws, such as WARN. We assist contractors with preparing for and navigating these issues during government shutdowns, including avoiding loss of exempt status under wage and hour law; compliance with WARN and similar state laws; communications with employees; avoiding unfair labor practices when having to reduce employee headcount due to the shutdown; and mandating use of PTO.



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**Andrew Turnbull** represents companies on a broad range of labor and employment litigation and counseling matters. He has successfully defended clients in complex employment litigation before federal and state courts and administrative agencies. A primary focus of his practice involves helping companies navigate the unique employment issues that arise when doing business with the federal government, including advising on all aspects of OFCCP compliance, creating and implementing affirmative action plans, defending OFCCP audits and onsite investigations, conducting mock pay equity audits, drafting and developing business ethics policies and programs, and complying with the Service Contract Act, E-Verify, and the Drug Free Workplace Act.



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**Damien Specht** is a partner in the firm's Government Contracts & Public Procurement practice. He represents clients in all facets of government contracts transactions, as well as regulatory counseling, subcontract and teaming agreement negotiations, contract disputes, size protests, and bid protests.

Damien has been recognized as a leading Government Contracts lawyer by various publications. *Chambers USA* explains that he "is a strong choice for advising government contractors on M&A transactions," and sources say "his biggest strength is that he is very commercial, thinking about both the legal and business side of things." National Law Journal found that federal lawmakers turn to him when they "need expert advice about small-business policy."

Damien regularly serves as lead counsel in high-stakes litigation, including pre- and post-award protests at the GAO, the U.S. Court of Federal Claims, and state tribunals, as well as in size protests and appeals. He has also played a significant role in dozens of government contracts transactions, representing industry leaders, private equity firms, and entrepreneurs.



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**Tina Reynolds** represents a wide variety of government contractors including information technology, defense, biotechnology and pharmaceutical companies, with a focus on general contract counseling, compliance, and litigation. Tina counsels contractors on compliance with federal acquisition and ethics regulations. She has been involved with numerous internal investigations and compliance reviews, and with voluntary disclosures to agency Inspectors General. Tina routinely advises clients concerning prime-subcontractor relationships, sources of supply, price reductions and price reporting issues, organizational conflicts of interest, the safeguarding of intellectual property and other proprietary interests, the handling of classified materials, and agency suspension and debarment proceedings. She also assists clients with due diligence and other activities related to the acquisition of government contracting concerns, and with the drafting and negotiation of teaming agreements, subcontracts, licensing agreements, and cooperative research and development agreements. Tina has also been at the forefront of understanding ever-expanding federal cyber and data security requirements and advising clients concerning applicable IT and data security controls and systems.



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**Charles Capito** is a partner in both Morrison Foerster's National Security and Government Contracts + Public Procurement practices.

In the National Security space, he has significant experience counseling clients on the complex and evolving considerations related to the Committee on Foreign Investment in the United States (CFIUS). Charles frequently helps investors and U.S. businesses through every aspect of the CFIUS process, from understanding and allocating CFIUS risk on the front end, to presenting cases before the Committee, to negotiating appropriate mitigation measures, and ultimately to implementing and complying with mitigation agreements after the fact. Charles' experience includes securing clearances for some of the largest and most sensitive cases reviewed by CFIUS, as well as dozens of more discreet transactions and investments.

Charles regularly advises clients on critical regulatory regimes in the national security space. Whether in the context of specific transactions or day-to-day counseling, clients rely on Charles to help them comply with and operate under U.S. export controls, in particular, the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). These regimes, especially the EAR, are undergoing noteworthy and complex changes, and now play key roles in other legal regimes like CFIUS. In addition, government contractors with access to classified information and their investors go to Charles to understand their obligations under the National Industrial Security Program (NISP) and, in particular, the sensitive issues presented by foreign ownership, control, or influence (FOCI) in this space.



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**Sadé Tidwell** is an associate in the Employment + Labor Group in Morrison Foerster's Washington, D.C. office. Sadé's practice includes a broad range of employment counseling and litigation, with a focus on pay equity, OFCCP and affirmative action compliance, and diversity and inclusion counseling. Sadé has extensive experience working with clients to improve their personnel policies, create best practices and assessment tools, and ensure optimal compliance with government mandates impacting recruitment, hiring, promotion, compensation, performance evaluation, discipline, termination, and workforce restructuring.

Sadé received her J.D. from Howard University School of Law. During law school, she clerked for the Honorable Judge Reggie B. Walton at the United States District Court for the District of Columbia. Additionally, she worked as a law clerk for Allstate's Federal Legislative Regulatory Affairs office on Capitol Hill. Sadé also served as a student attorney for the United States Patent & Trademark Office; as president of the Intellectual Property Student Association; as a member of the Giles S. Rich American Inn of Court; and as the alumni relations officer for the Charles Hamilton Houston National Moot Court team, of which she was a member for two years.



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**Nicole Giles** represents government contractors on various contract matters, including mergers and acquisitions, bid protests, contract claims and disputes, and compliance issues. Before joining the firm, she worked as a government contracts associate for a leading law firm and clerked for the U.S. Civilian Board of Contract Appeals.

Nicole's experience includes advising on mergers and acquisitions involving both the purchase and sale of government contracting concerns or related assets, including performing due diligence and negotiating purchase agreements; prosecuting and defending bid protests before the U.S. Government Accountability Office (GAO) and the U.S. Court of Federal Claims (COFC); representing government contractors in disputes with the federal government, including appeals of contracting officer final decisions to the Armed Services Board of Contract Appeals (ASBCA) and Civilian Board of Contract Appeals (CBCA); and counseling clients on various compliance issues, including those involving the Service Contract Act (SCA).



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**Victoria Dalcourt Angle** is an associate in the Government Contracts + Public Procurement practice in Morrison & Foerster's Washington, D.C. office. During law school, Tori worked as a Law Clerk in the firm's Government Contracts practice, and participated in the firm's summer associate program. She also completed an internship in Judge Firestone's chambers at the U.S. Court of Federal Claims.