



January 14, 2025

MEMORANDUM FOR: JULIE SU
Acting Secretary of Labor

FROM: 
LARRY D. TURNER
Inspector General

SUBJECT: **Management Alert Memorandum:** The Majority of
DOL Nondisclosure Agreements Do Not Include
Required Anti-Gag Language,
Report No. 09-25-0001-MA-01-001

This Management Alert is a result of a Congressional request for the Office of Inspector General (OIG) to review “all nondisclosure policies, forms, agreements, and related documents” specific to the U.S. Department of Labor (DOL) to determine if the anti-gag provision is included as required by law.¹ The anti-gag language was codified in the Whistleblower Protection Enhancement Act of 2012 (WPEA).

The statute states that a nondisclosure agreement (NDA) cannot be implemented or enforced if it does not include the following language:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

Attempting to implement or enforce an NDA that does not include the required language is a prohibited personnel practice.²

¹ 5 U.S.C. § 2302(b)(13)(A)

² *Id.*

Initially, in response to the Congressional request, the OIG, on June 10, 2024, sent the following request to the Office of the Solicitor (SOL):

Provide copies of all non-disclosure policies, forms, or agreements executed since January 1, 2021, unless the particular form has been replaced by a more recent one. This request is for standard form agreements and if the same agreement was signed by multiple people, we only need a copy of the form document. However, if there were any changes made to individual agreements, then we request a copy of the individual signed agreements in addition to the form document. The OIG is not seeking information on the individuals who signed the agreements, so it would be permissible for signatures and names to be redacted.

Also, please provide a link to the current page on DOL's website which includes the information required by WPEA as well as any guidance issued since January 2021, to agency heads and employees apprising them of the WPEA.

This request covers all agencies within DOL, except for the Office of Inspector General.

On August 12, 2024, SOL responded to the OIG stating:

As an initial matter, SOL confirmed with the Office of the Assistant Secretary for Administration and Management (OASAM) that DOL does not have a single repository of or clearance process for non-disclosure or other confidentiality agreements. As a result, neither OASAM nor SOL has a formal role in reviewing or otherwise approving non-disclosure or confidentiality agreements individual DOL agencies use. Because of this decentralized process for using non-disclosure or confidentiality agreements, SOL is not able to account for other DOL agencies' (including OASAM's) use of such agreements.

SOL provided the OIG with a memorandum that had been sent to all Agency Heads on July 30, 2013, from the then Assistant Secretary for Administration and Management regarding the requirement to add the anti-gag language to NDAs going forward. In the memorandum, the Assistant Secretary also stated that an email would be sent to all DOL employees and would include the anti-gag language required to be in NDAs and inform employees that the required anti-gag language should be read as though incorporated into any nondisclosure policy, form, or agreement they have signed. The foregoing email was sent to DOL employees on August 5, 2013. SOL also provided a link to the DOL website,

which includes the information required by WPEA as well as the OIG Whistleblower Protection Coordinator website.³

Following receipt of SOL's response, the OIG sent a memorandum to each DOL agency that included the following request:

Provide copies of all non-disclosure policies, forms, or other agreements that contain confidentiality clauses executed since January 1, 2021, unless the particular form has been replaced by a more recent one, that have been signed by DOL employees. This request is for standard form agreements and if the same agreement was signed by multiple people, we only need a copy of the form document. However, if there were any changes made to individual agreements, then we request a copy of the individual signed agreements in addition to the form document. The OIG is not seeking information on the individuals who signed the agreements, so it would be permissible for signatures and names to be redacted.

The OIG received responses from 21 separate DOL agencies. Of the 21 agencies that responded, 7 agencies provided documents for review.⁴ The other agencies informed the OIG they had no documents responsive to the request.

The 7 agencies produced a total of 42 discrete documents for review. Of the 42 documents provided to the OIG, 14 were prepared by another federal agency or a private entity and deemed to be not included in the request. Thus, the OIG reviewed the remaining 28 documents to determine if they included the required anti-gag language.

Of the 28 documents reviewed, only 8 (29 percent) contained the required language. The remaining 20 documents did not include the language required by the WPEA.

Conclusion

DOL employees perform an essential service by reporting evidence of wrongdoing, including misconduct, fraud, waste, and abuse, in DOL programs. The WPEA anti-gag provision ensures that all current and former federal employees and applicants for employment know they are not limited in their rights to report any wrongdoing to Congress, Inspectors General, or the U.S. Office of Special Counsel, thereby removing any chilling effect on their

³ LaborNet, Whistleblower Protections Available to DOL Employees, last updated December 11, 2024, available at: <https://labornet.dol.gov/me/hr/Whistleblower-Protections.htm>; and Office of the Inspector General, OIG Whistleblower Protection Coordinator, available at: <https://www.oig.dol.gov/whistleblower-coordinator.htm>. SOL also provided a document responsive to the OIG's request, which is included in the analysis described in this memorandum.

⁴ The OIG collected and reviewed NDAs prepared by the OIG and confirmed that all NDAs prepared by the OIG contain the required anti-gag language.

communications. The Department is not in compliance with the WPEA because 71 percent of the responsive NDAs the OIG reviewed did not include the required anti-gag provision.

Recommendations

To ensure the required anti-gag provision is included in all nondisclosure forms, agreements, and related documents and to rectify the fact that the anti-gag provision has not consistently been included in NDAs, the OIG recommends the Acting Secretary:

1. Direct OASAM, in coordination with SOL, to send an updated memorandum to all DOL Agency Heads reminding them of the requirement to include the anti-gag provision in all nondisclosure forms, agreements, and related documents.
2. Direct OASAM, in coordination with SOL, to send an email to all DOL employees providing the required anti-gag language and informing all DOL employees that such language should be read as incorporated into any nondisclosure agreement (an agreement requiring an employee not to disclose certain governmental information) they may have signed since November 27, 2012, that did not include the required language.
3. Revise all existing nondisclosure agreement forms or templates to include the required anti-gag language.

DOL agreed with the OIG's recommendations.