

## 1. Executive Order 18-03 Workers' Rights FAQ

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## 1. WHAT IS THE EFFECTIVE DATE OF EO 18-03?

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The effective date of EO 18-03 is June 12, 2018.

## 2. WHAT IS A 'MANDATORY INDIVIDUAL ARBITRATION CLAUSE'?

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For purposes of EO 18-03, a 'mandatory individual arbitration clause' is a requirement, by an employer, to arbitrate (rather than litigate) employment grievances. It is mandatory in the sense that it is a condition of employment.

Such clauses can be found:

- In employment agreements
- In employee handbooks
- In employer policies
- Or even in an email or other communication delivered to employees

## 3. WHAT IS A 'CLASS OR COLLECTIVE ACTION WAIVER'?

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For purposes of EO 18-03, a 'class or collective action waiver' is a requirement, by an employer, that employees individually arbitrate employment grievances. It precludes class actions or employees pursuing workplace grievances as a group.

Such clauses can be found:

- In employment agreements
- In employee handbooks
- In employer policies
- Or even in an email or other communication delivered to employees

## 4. DOES 18-03 APPLY TO ME?

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EO 18-03 applies to all state executive and small cabinet agencies.

- [State Executive Agencies](#)
- [Small Cabinet Agencies](#)

## 5. WHO IS TASKED WITH ADMINISTERING IMPLEMENTATION OF EO 18-03?

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Enterprise Services is tasked with administering implementation of EO 18-03.

"To ensure operational success and consistent application of this Order across state agencies, the Department of Enterprise Services (DES) shall administer implementation of this Order."

See EO 18-03 at § 2

## 6. CAN STATE AGENCIES DO BUSINESS WITH A FIRM THAT REQUIRES THEIR EMPLOYEES, AS A CONDITION OF EMPLOYMENT, TO USE MANDATORY INDIVIDUAL ARBITRATION FOR WORKPLACE GRIEVANCES?

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Yes. EO 18-03 creates an opportunity.

- EO 18-03 requires covered agencies to seek to purchase and procure from firms that do not have mandatory individual arbitration clauses.
- EO 18-03 is similar to other legislative and executive procurement preferences regarding how the state spends its money.

7. CAN STATE AGENCIES DO BUSINESS WITH A FIRM THAT REQUIRES THEIR EMPLOYEES, AS A CONDITION OF EMPLOYMENT, TO FORGO CLASS OR COLLECTIVE ACTION DISPUTE RESOLUTION FOR WORKPLACE GRIEVANCES?

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Yes. EO 18-03 creates an opportunity.

- EO 18-03 requires covered agencies to seek to purchase and procure from firms that do not have mandatory individual arbitration clauses.
- EO 18-03 is similar to other legislative and executive procurement preferences regarding how the state spends its money.

8. DOES EO-18-03 APPLY TO COMPETITIVE PROCUREMENTS?

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Yes. EO-18-03 applies to competitive procurements for covered state agencies.

See FAQ 4 to understand which state agencies are covered state agencies for purposes of EO 18-03.

9. DOES EO-18-03 APPLY TO LEGACY CONTRACTS?

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No. EO-18-03 does not apply to existing contracts. The EO is forward looking.

10. DOES EO-18-03 APPLY TO MASTER CONTRACTS?

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Yes. EO-18-03 applies to any master contracts after June 12, 2018. EO 18-03 has been implemented in the solicitation process for master contracts after this date.

11. DOES EO-18-03 APPLY TO NONCOMPETITIVE PROCUREMENTS?

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‘Non-competitive procurements’ are identified in [RCW 39.26.125](#). With the exception of ‘direct buy purchases (see [RCW 39.26.125\(3\)](#)), EO 18-03 does not apply to non-competitive procurements such as emergency or sole source procurements. EO 18-03 does, however, apply to direct buy purchases if *reasonable practicable*. See the FAQs 12 and 13 for examples.

12. SOME OF OUR STAFF ARE REQUIRED TO MAKE SMALL AND UNUSUAL PURCHASES, SOMETIMES AT THE LAST MINUTE, SUCH AS REFRESHMENTS FOR REMOTE LOCATION MEETINGS, OR A NERF GUN FOR A DEMONSTRATION FOR A CLASS. ARE WE REQUIRED TO CHECK WITH HASBRO AND THE LOCAL GROCERY STORES TO ENSURE THAT THEY DON’T REQUIRE EMPLOYEES TO SIGN ARBITRATION CLAUSES?

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This policy states that application of executive order 18-03 is expected for direct buy purchases when *reasonably practicable* and up to the discretion of the agency. Acquiring a vendor certification from the vendors in the scenarios you provide is not likely to be reasonably practicable. However, just because it isn’t practicable in the scenarios you provided, doesn’t mean that requiring a vendor certification for other direct buy purchases won’t be practicable. DES has provided a sample vendor certification for you to customize and use at your own discretion.

13. WHEN WOULD IT EVER BE REASONABLY PRACTICABLE TO ASK A VENDOR TO CERTIFY THEY DON’T HAVE THEIR EMPLOYEES SIGN ARBITRATION AGREEMENTS IF IT ISN’T A COMPETITIVE PURCHASE?

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An example of requesting the vendor complete a vendor certification during a direct buy or non-competitive purchase could be as follows: If your agency needs to purchase customized lightweight jackets for all the employees for a total cost of \$8,000, it may be *reasonably practicable* to request vendors certify if they do or don’t have their employees sign arbitration clauses when submitting their cost estimations.

14. DOES EO-18-03 APPLY BEYOND GOODS & SERVICES?

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Yes. EO 18-03 applies beyond purchases and procurements for goods and services. The EO implementation, however, will be prioritized. The implementation prioritization begins with –

- Competitive goods and services procurements; and
- Direct buy purchases, when [reasonably practicable](#).

Covered agencies, if authorized by their statutory authority, can implement the EO more broadly.

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#### 15. DOES EO-18-03 CHANGE THE PROCUREMENT CODE?

No. EO 18-03 does not amend any RCW provisions.

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#### 16. WHAT IF A VENDOR IS A CRITICAL SUPPLIER, DOES EO-18-03 STILL APPLY?

Yes, but ...

- “To the extent permissible under state and federal law ...”
- Legislature may have required certain vendors – e.g., ferry vessels must be built in Washington

EO 18-03, however, does NOT preclude state executive and small cabinet agencies from purchasing or contracting with particular firms.

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#### 17. DOES EO-18-03 APPLY TO CONTRACT EXTENSIONS?

It depends on the contract. For contract renewals – No. Here, for example, you have a 6-year term, but contract was set up to require year-by-year ‘renewal.’

For contract extensions – possibly. It depends on the contract. If original contract term is over, then yes, EO 18-03 does apply.

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#### 18. DOES EO-18-03 APPLY TO SUBCONTRACTORS?

It depends on what the contract states. Generally speaking, the EO will apply to the contractor.

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#### 19. HOW DO STATE AGENCIES OBTAIN LEGAL ADVICE ON IMPLEMENTING EO-18-03?

The AGO is coordinating legal advice regarding EO 18-03 through the AGO’s TPC Division. Start by asking your assigned AAG for advice. Your AAG then will consult with TPC and then get back to you.

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#### 20. WHERE CAN I FIND A COPY OF THE SUPREME COURT’S DECISION?

The U.S. Supreme Court’s decision is available here: [Epic Systems Corp. v. Lewis](#), 584 U.S. (May 21, 2018).

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#### 21. WHAT DOES “REASONABLY PRACTICABLE” MEAN FOR DIRECT BUYS?

In the case of direct buy purchases, “reasonably practicable” means practicable unless the agency can show that there is a gross disproportion between the benefit of applying 18-03 and the cost, in time, trouble and money, of requesting vendors certify whether or not they require employees sign arbitration/class action clauses. See examples of when it may or may not be reasonably practicable to apply 18-03 to direct buy purchases in FAQ # 12 and FAQ #13.

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#### 22. WHAT ARE THE RAMIFICATIONS IF AN AGENCY DOESN’T IMPLEMENT 18-03?

Executive order 18-03 is a directive from the Governor to state agencies communicating to those agencies what the Governor wants the agency to accomplish. The EO does NOT have the force of law, but Agency heads serve at the pleasure of the Governor.

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#### 23. WHAT DOES 18-03 MEAN FOR PURCHASING CARD PURCHASES?

Purchasing Card (p-card) purchases are no different than any other purchases when it comes to 18-03. Regardless of the method of payment (p-card, purchase order etc...) 18-03 applies. See FAQ #8 – FAQ #14 for more information about applying 18-03 to p-card purchases.

24. DO I NEED TO ASK THE VENDOR IF THEY MAKE THEIR EMPLOYEES SIGN ARBITRATION CLAUSES, IF I AM MAKING A NEW PURCHASE OR A SECOND TIER PURCHASE ON A MASTER CONTRACT THAT WAS ESTABLISHED PRIOR TO JUNE 2018?

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When using master contracts that were established before June 2018 for new purchases, there is no need to request a contractor provide certification that they do not require employees to sign arbitration/class action clauses as 18-03 is not required for legacy contracts. However, covered agencies can apply 18-03 within the master contract at their own discretion. An example of this may be if there are several contractors to choose from on a master contract, the agency could choose to research whether or not each contractor on that contract requires their employees to sign arbitration/class action clauses. The agency could use their findings to choose which contractor they use. Again, this is not required but up to the discretion of the agency.