



To: Board of Trustees – Florida Pension Clients

From: Klausner, Kaufman, Jensen & Levinson, Board Counsel

Re: New Florida Laws – Sections 287.138 and 787.06, Florida Statutes

Date: October 1, 2024

In this past Florida legislative session, two new Florida laws went into effect that impose new contract requirements on Florida governmental entities, including public pension boards. The first law requires government contractors to verify that they are not using coercive labor practices. The second law requires that every new Request for Proposal (RFP) and new contract which provides access to personal identifying information of the participants will need to include an affidavit for the government contractor to attest that it is not an entity of a foreign country of concern.

Section 787.06(13), Florida Statutes

Effective July 1, 2024, Section 787.06(13), requires any non-governmental entity that executes, renews or extends a contract with a governmental entity is required to provide an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the nongovernmental entity does not use “coercion” for labor or services. For the purposes of this statute, coercion means any of the following activities:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

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Our office has prepared the attached affidavit that can be sent to the Board's service providers to execute and return for the Plan's records. It will only need to be sent to those service providers who have executed, extended or renewed an agreement with the Board since July 1, 2024. Additionally, moving forward, we recommend using the below language in any contract between the Board and the contracting entity:

In accordance with Florida law, the Contractor hereby represents that it does not use coercion for labor or services as defined in Section 787.06, Florida Statutes as certified by the attached Human Trafficking Affidavit (Exhibit 1).

Section 287.138, Florida Statutes

Beginning January 1, 2024, a governmental entity may not accept a proposal or enter into a contract with an entity, which would provide the entity with access to personal identifying information of the participants, unless the entity provides the governmental entity with an affidavit signed by an officer or representative under penalty of perjury attesting to the following:

- The entity is not owned by a government of a foreign country of concern;
- No government of a foreign country of concern has a controlling interest in the entity;
- The entity is not organized under the laws of or has its principal place of business in a foreign country of concern.

For purposes of this affidavit, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.

Additionally, beginning July 1, 2025, a governmental entity may not renew or extend a contract with an entity who cannot attest to the above if the contract would give access to a participant's personal identifying information. If any renewing contract is with an entity that cannot sign the affidavit, it cannot be renewed.

Moreover, if, at any time in the future, the contracting entity does become owned by a foreign country of concern, if a foreign country of concern acquires a controlling interest in the entity, or the entity becomes organized under the laws of or relocated to a foreign country of concern, the entity will need to immediately notify the Board and no contracts may be executed, renewed, or extended between the parties.

It is our opinion that this provision would apply to contracts with the Board's Administrator/Recordkeeper, Actuary, Attorney, Custodian and Auditor, as those entities will likely receive access to participant's personal identifying information over the course of the contract.

Our office has prepared the attached affidavit that can be sent to the Board's applicable service providers to execute and return for the Plan's records. It will only need to be sent to those service providers who have access to a participant's personal identifying information and who have entered into an agreement with the Board since January 1, 2024. Beginning July 1, 2025, when renewing or extending an existing contract with those service providers who have access to a participant's personal identifying information, the affidavit will need to be executed and returned for the Plan's records.

Service providers should be notified of the requirements of these two new laws by providing a copy of this memo to them. This memo should be placed on the next available agenda for discussion by the Board.

This memo will be discussed at your next meeting.

Attachment 1.

Human Trafficking Affidavit

The undersigned, on behalf of Contractor, hereby attests as follows:

- A.** Contractor understands and affirms that Section 787.06(13), Florida Statutes, prohibits the Plan from executing, renewing, or extending a contract to entities that use coercion for labor or services.
- B.** Contractor hereby attests, under penalty of perjury, that Contractor does not use coercion for labor or services as defined in Section 787.06(2), Florida Statutes.

I, the undersigned, am an officer or representative of the nongovernmental entity named below, and hereby represent that I: make the above attestation based upon personal knowledge; am over the age of 18 years and otherwise competent to make the above attestation; and am authorized to legally bind and make the above attestation on behalf of the Contractor. **Under penalties of perjury, I declare that I have read the forgoing document and that the facts stated in it are true.** Further Affiant sayeth naught.

Contractor: _____

Authorized Signature: _____

Date: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____, as _____ on behalf of the company/corporation. They are personally known to me or have produced _____ as identification.

Signature of Notary Public

Name of Notary Typed, Printed or Stamped
My Commission Expires: _____

COMPANY NOT AN ENTITY OF A FOREIGN COUNTRY OF CONCERN

For purposes of this affidavit, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.

The undersigned, on behalf of the entity listed below hereby attests under penalty of perjury as follows:

1. I am over the age of 18 and I have personal knowledge of the matters set forth herein.
2. I am an officer or representative of _____ (herein after "Entity"), and I am authorized to provide this affidavit on its behalf.
3. Entity is not owned by the government of a foreign country of concern.
4. No government of a foreign country of concern has a controlling interest in Entity.
5. Entity is not organized under the laws of or has its principal place of business in a foreign country of concern.
6. If, at any time in the future, Entity does become owned by a foreign country of concern, if a foreign country of concern acquires a controlling interest in Entity, or Entity becomes organized under the laws of or relocated to a foreign country of concern, Entity will immediately notify the Plan and no contracts may be executed, renewed, or extended between the parties.
7. I have read the foregoing affidavit and confirm that the facts stated in it are true, and are made for the benefit of, and reliance by the Plan.

Company: _____

Authorized Signature: _____ **Date:** _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____, as _____ on behalf of the company/corporation. They are personally known to me or have produced _____ as identification.

(Affix Notary Stamp or Seal)

Notary Public Signature
Print, Type or Stamp Name of Notary: _____
My commission expires: _____