

New Employment Protections for LGBT Employees of Federal Contractors, U.S. Government

Continuing to use executive authority to act in the absence of Congressional action, President Obama signed an Executive Order on July 21, 2014 that gave new protections against discrimination to lesbian, gay, bisexual and transgender (LGBT) employees of federal contractors and subcontractors, and the federal government. For the federal government, discrimination was already prohibited on the basis of sexual orientation and is now also prohibited on the basis of gender identity. The new rules relating to federal contractors won't be effective until additional regulations are issued in the next three to nine months, but the rules relating to employment by the federal government are effective immediately.

All federal contractors who do \$10,000 or more in business with the federal government in a given year are prohibited from discriminating against an employee or applicant on the basis of sexual orientation or gender identity. The Executive Order requires the Office of Federal Contract Compliance Programs (OFCCP) to prepare regulations to implement the new rules within 90 days and all contracts entered into after those rules are effective must abide by the new rules. Employers who are or may be covered by this new Executive Order should now take steps to ensure their internal policies and manuals reflect the new requirements. The OFCCP expects to issue permanent regulations to enforce the Executive Order by early 2015.

Notably, President Obama rejected suggestions that he create additional exemptions for religiously affiliated contractors in the Executive Order he signed. The only exemption that exists was put in place by President George W. Bush and permits a religiously affiliated contractor to favor individuals of a particular religion when making an employment decision but does not excuse compliance with any other provision of the applicable Executive Order. Whether the Executive Order could and/or will be challenged by closely held, religiously affiliated contractors on the basis of the recent *Hobby Lobby* decision is an open question at this point.

Employers who contract with the federal government, or who are subcontractors to a federal contractor, should be aware of the president's action and take this time to review their internal policies and OFCCP compliance practices. Additional information on the proposed regulations from OFCCP will be forthcoming when it is made available. The Executive Order that President Obama signed can be found [here](#) and the original Executive Order relating to the employment practices of federal contractors can be found [here](#).

If employers have any questions or concerns, they should contact a member of Cozen O'Connor's Labor & Employment Department for more information about this decision.



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