

INSIGHTS

President Obama Issues Executive Order Prohibiting Federal Contractors From Discriminating Based on Sexual Orientation or Gender Identity

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On July 21, 2014, President Barack Obama issued an Executive Order prohibiting federal contractors from discriminating in employment decisions based on applicants' or employees' sexual orientation or gender identity. This Executive Order amends long-standing obligations for federal contractors in Executive Order 11246 to add sexual orientation and gender identity to the list of protected categories including race, color, religion, sex, and national origin.

Notably, the Executive Order specifically amends both the contractor non-discrimination obligations and the requirement that contractors "take affirmative action to ensure that applicants are employed and treated during employment, without regard" to their sexual orientation or gender identity. These obligations extend not only to hire, termination, promotion, and other employment decisions but also to "recruitment or recruitment advertising," "rates of pay or other forms of compensation," and "selection for training."

The Executive Order does not define either sexual orientation or gender identity. However, it requires the Department of Labor to draft regulations within 90 days to implement the Executive Order, which may include these definitions. Contractors will have the opportunity to comment on the proposed regulations before they become final.

These new obligations apply to federal contractors with \$10,000 or more per year in federal contracts and subcontracts, and without regard to the number of employees of the contractor.

Although some federal contractors may have non-discrimination obligations under state law (approximately 20 states and the District of Columbia prohibit discrimination based on sexual orientation and approximately 17 states and the District of Columbia prohibit discrimination based on gender identity) or local ordinances, for others, this is a first-time requirement. In addition, many state and local laws apply only to larger employers (those exceeding a minimum number of employees). Significantly, the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") will likely accept and investigate complaints of discrimination

based upon sexual orientation or gender identity from applicants and employees of federal contractors.

The final regulations presumably will address the extent of the obligations imposed upon federal contractors as a result of this amendment, including possible issues such as recordkeeping, self-disclosure, outreach recruitment and affirmative action plan analyses, if any.

The text of the Executive Order is available [here](#).