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More Changes for Federal Contractors

Last week, the Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) released its [Final Rule](#) regarding the requirements that covered federal contractors must meet under the provisions of Executive Order 11246 prohibiting sex discrimination in employment.

The Final Rule represents the first updates to the sex discrimination guidelines since 1970, and represents a comprehensive revision to the regulations for covered federal contractors, including (but not limited to):

- **Redefining "sex."** The final rule defines "sex" to include gender identity, transgender status, pregnancy, and sex stereotyping. Notably, in 2014, President Obama signed E.O. 13672, amending E.O. 11246 to prohibit federal contractors and subcontractors from discriminating on the bases of sexual orientation and gender identity. As a result, discrimination on the bases of gender identity and sexual orientation is unlawful under this Final Rule as well as under E.O. 13672 and the implementing regulations.
- **Transgender facility access.** The Final Rule expressly provides that denying transgender employees access to the restrooms, changing rooms, showers, and similar facilities designated for use by the gender with which they identify is an example of a discriminatory practice.
- **Compensation Discrimination.** The Final Rule also broadens the OFCCP's concepts of wage discrimination and officially adopts the Lilly Ledbetter Fair Pay Act standard.
- **Pregnancy Accommodation.** According to the DOL the Final Rule "reflects" the *Young v. UPS* decision and specifies that denying accommodations for pregnancy, childbirth, or related medical conditions is unlawful disparate treatment where (i) the contractor denies accommodations only to employees affected by pregnancy, childbirth, or related conditions; (ii) the contractor provides accommodations to other employees

whose abilities or inabilities to perform their job duties are similarly affected, the denial of accommodations to employees affected by pregnancy, childbirth, or related medical conditions imposes a significant burden on those employees, and the contractor's asserted reasons for denying accommodations do not justify that burden; or (iii) intent to discriminate is otherwise shown.

- **Employee Leave.** Additionally, to the extent that a covered contractor provides family, medical, or other leave, such leave must not be denied or provided differently on the basis of sex, and, specifically, that (among other things) contractors must provide job-guaranteed family leave, including any paid leave, for male employees on the same terms that family leave is provided for female employees.

The Final Rule generally applies to any business or organization that (1) holds a single federal contract, subcontract, or federally assisted construction contract or subcontract in excess of \$10,000; (2) holds federal contracts or subcontracts that have a combined total in excess of \$10,000 in any 12-month period; or (3) holds government bills of lading, serves as a depository of federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. The Final Rule will be effective on August 15, 2016.

The DOL alleges these changes are designed to make the applicable regulations "consistent with current law." However, the scope of many of these issues is still being contested in courts across the country. Despite some of these legal uncertainties, the DOL will likely argue that covered contractors contractually agreed to comply with these changes. As a result, the Final Rule has substantial implications for covered contractors as the DOL will closely monitor employers' compliance with the rules. Federal contractors should review their policies and procedures in order to implement the required changes and ensure compliance in the event of an OFCCP audit.

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