

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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Douglas B. Brown & Associates, LLC

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OFCCP RELEASES FINAL RULE ON LGBT DISCRIMINATION

OFCCP has released its final rule implementing Executive Order 13672 prohibiting discrimination on the basis of sexual orientation and gender identity on the part of covered federal contractors and subcontractors. The rule was published in the Federal Register on December 9, 2014 and is scheduled to be effective 120 days following its publication, making it effective on April 8, 2015. The rule will apply to new and modified contracts entered into or modified on or after that date.

To comply, covered contractors/subcontractors must modify existing anti-discrimination policies to include sexual orientation and gender identity as unlawful discriminatory bases. This should include any documents where the unlawful bases are listed including bulletin board postings, AAPs, employee handbooks, policy manuals, training materials, internet job portals, etc.

The OFCCP will retain jurisdiction for investigating any complaints of unlawful discrimination on the basis of sexual orientation or gender identity. Contractors have no obligation to take affirmative action on the basis of sexual orientation or gender identity. Moreover, there is no requirement of obligation to invite applicants or employees to voluntarily self-identify as to their sexual orientation or gender identity. Given the absence of data regarding sexual orientation and gender identity, contractors are under no obligation to conduct any type of analysis regarding compensation or other practices as to applicants or employees.

Unless contractors list all the prohibited discriminatory bases in their job advertisements in which case a reference to sexual orientation/gender identity should be included, contractors may use the EEO tag line in job advertisements (Equal Employment Opportunity Employer M/F/Vets/Disabled) without adding a reference to sexual orientation/gender identity.

Practically speaking, the implementation of the LGBT Executive Order is a non-event. All contractors need to do is modify their documents to include sexual orientation/gender identity and ensure that when EEO training is conducted, it is specifically noted that discrimination on the basis of sexual orientation and gender identity are now prohibited. While the rule may not become effective until there is a new/modified contract following the publication date, the OFCCP will likely start asking about compliance with the rule during compliance evaluations, and it is recommended that contractors simply make the necessary changes to their policies/practices as soon as practical.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown & Associates, LLC and does not represent nor is intended as a substitute for professional legal advice.