

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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NEW EXECUTIVE ORDER PROHIBITING LESBIAN, GAY, BI-SEXUAL AND TRANSGENDER DISCRIMINATION BY FEDERAL CONTRACTORS

On July 21, 2014, President Obama signed a new Executive Order (EO) amending two prior Executive Orders: EO 11246 signed by President Johnson in 1965 and EO 11478 signed by President Nixon in 1969. These two EOs addressed Equal Employment Opportunity by federal contractors and the federal government. The new EO adds sexual orientation and gender identity as protected statuses, thereby prohibiting discrimination against lesbian, gay, bi-sexual and transgender employees of federal contractors.

The EO directs the Secretary of Labor to prepare implementing regulations within 90 days of July 21, 2014. Enforcement of the regulations will almost certainly fall to the Office of Federal Contract Compliance Programs (OFCCP) who already enforces EO 11246. This means that both the OFCCP and federal contractors are likely to start seeing the filing of individual complaints of discrimination.

While the OFCCP has always had the ability to investigate individual complaints of discrimination by federal contractors, in reality, they have rarely done so. Rather, they have referred individual complaints to the Equal Employment Opportunity Commission (EEOC). In this instance, because there is no companion federal legislation prohibiting discrimination on the basis of sexual orientation or gender identity that could be referred to the EEOC, the OFCCP will have to retain jurisdiction and investigate the complaint.

The Agency's complaint handling process has a 180-day statute of limitations, unlike Title VII (EEOC) which may allow up to as much as 300 days to file a charge of discrimination. Also, only the OFCCP can take action to enforce the law as there is no right under EO 11246 for an individual to bring an action in federal court on their own. As such, this may add a significant amount of work to the OFCCP's plate.

While there is no general federal prohibition against discriminating on the basis of sexual orientation or gender identity, many states and municipalities already have laws prohibiting discrimination on these bases. This EO adds the prohibition to the federal contractor community.

By October 21, 2014, the Department of Labor will have issued the new regulations. They will certainly include adding sexual orientation and gender identity to anti-discrimination policies and posting. If not already part of an organization's policies and procedures, there is no practical reason to wait until that time to include this in your policies and postings.

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.