

EMPLOYMENT SERVICES ALERT

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President Obama issues Executive Order Making it Illegal for Federal Government Contractors to Discriminate on the Basis of Sexual Orientation or Gender Identity

On July 21, 2014, President Obama issued an Executive Order that makes it illegal for federal government contractors to discriminate on the basis of sexual orientation or gender identity. The Executive Order amends Executive Order 11246, first issued in 1965, which prohibits federal government contractors and subcontractors from discriminating against an employee or applicant for employment because of that person's race, color, religion, sex or national origin.

This new expansion of Executive Order 11246's protections for employees of federal government contractors and subcontractors is particularly significant because employees of federal contractors and subcontractors comprise a substantial portion—approximately 20 percent—of the nation's workforce.

The Secretary of Labor has been directed to prepare implementing regulations within 90 days (or by October 19, 2014). While the Order is effective immediately, the obligations set forth in the Order will apply to contracts entered into on or after the effective date described in the regulations. Once in effect, probably in early 2015, federal contractors will be required to maintain a policy against discrimination based on sexual orientation and gender identity with respect to employees and job applicants. Stay tuned for further information once the Department of Labor's proposed implementing regulations are published.

Of note, the executive order does not include new religious exemption language, relieving the concern of LGBT rights advocates concerned that post *Burwell v. Hobby Lobby* the Obama administration might cave under pressure from conservatives by including religious exemption language in any executive order providing nondiscrimination guarantees for LGBT employees of federal contractors. In *Hobby Lobby*, the court said that closely held corporations with religious objections could be exempted from providing employees with insurance coverage for contraception, and there were fears that the case would have repercussions for gay men, lesbians, bisexuals and transgender people.

This step to expand workplace protections for lesbian, gay, bisexual and transgender individuals was widely anticipated in light of stalled federal legislative action on the Employment Non-Discrimination Act (ENDA), which would make it illegal for all employers to fire or refuse to hire someone based on their sexual orientation or gender identity. In a historic vote, the United States Senate passed ENDA, but its chances of success in the House are slim with the current majority.

The new Executive Order applies only to federal government contractors and subcontractors and does not apply to private employers who do not hold a federal government contract or subcontract.

In addition, federal contractors and subcontractors should review their employment policies—particularly policies on equal employment opportunity and anti-harassment—to ensure that they prohibit discrimination and harassment on the basis of sexual orientation and gender identity. Federal contractors and subcontractors should also consider training managers and employees regarding these new protections, to the extent the contractor does not already have such protections in place.

For further information, please contact any of the following Roetzel attorneys:

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