

CLIENT ALERT

## DOL Issues Final Rule Protecting Workers from Discrimination Based on Sexual Orientation and Gender Identity

DECEMBER 5, 2014

On December 3, 2014, the U.S. Department of Labor (DOL) released its final rule, implementing President Obama's July 21, 2014 Executive Order 13672 (EO 13672), prohibiting discrimination on the bases of sexual orientation and gender identity in the federal contracting workforce.

EO 13672 tasked the DOL with updating the rules implementing Executive Order 11246 (EO 11246) to add protection from discrimination based on gender identity and sexual orientation. Specifically, the final rule provides that the EO 11246 implementing regulations replace the words "sex or national origin" with the words "sex, sexual orientation, gender identity, or national origin." While 18 states and the District of Columbia offer workplace protections to lesbian, gay, bisexual, and transgender employees, EO 13672 was the first federal action covering LGBT workplace equality concerns in the private sector.

Pursuant to the final rule, the only affirmative action requirements affected are those contained in 41 CFR part 60-1, which contains the full list of protected characteristics. Contractors satisfy this obligation by including the updated equal opportunity clause in new or modified subcontracts and purchase orders; ensuring that applicants and employees are treated without regard to their sexual orientation and gender identity; and by updating the equal opportunity language used in job solicitations and workplace notices. However, no changes are made to the reporting and information collection affirmative action program requirements. As such, the final rule does not require federal contractors to:

- conduct any data analysis with respect to the sexual orientation or gender identity of their applicants or employees;
- collect any information about applicants' or employees' sexual orientation or gender identity. However, the final rule does not prohibit contractors from asking applicants and employees to voluntarily provide this information, although doing so may be prohibited by state or local law.

Further, the new rule does not alter EO 11246's religious exemptions or the judicially created "ministerial exception."

According to the DOL, the final rule is scheduled to appear in the December 5 Federal Register, and will become effective 120 days after publication. The final rule will apply to employers that enter into or modify federal contracts on or after the effective date. More information is available at [www.dol.gov/ofccp/LGBT](http://www.dol.gov/ofccp/LGBT).

2 Min Read

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