

CLIENT ALERTS

July 29, 2014

GOVERNMENT CONTRACTORS NOW PROHIBITED FROM LGBT DISCRIMINATION

Beginning immediately, federal government contractors are prohibited from discriminating based on sexual orientation or gender identity in the performance of those contracts, under President Obama's **Executive Order** dated July 21, 2014. That Order amends Executive Order 11246, which already prohibits such discrimination on the basis of race, color, gender, religion, and national origin. Contractors who violate the amended Order may have their government contracts cancelled or suspended, and may be debarred from further government work.

What Do You Need to Do?

Although sexual orientation and gender identity are not protected categories under federal statutes prohibiting discrimination in employment, they are included in numerous state statutes. Thus, if you are a contractor in one of the 18 states and the District of Columbia that prohibit lesbian, gay, bisexual, and transgender (LGBT) discrimination in employment (including government-contractor rich jurisdictions such as Delaware, California, and Colorado), presumably your employment policies already reflect this legal obligation. But if you are a government contractor in any of the remaining states with no such prohibition (or in one of the states that ban only sexual orientation discrimination), then you will need to revise your anti-discrimination and anti-harassment policies accordingly, if they do not already prohibit such discrimination. Information regarding individual state laws can be found by accessing the [website for the American Civil Liberties Union](#).

Whether or not your policies already conform to the amended Executive Order, the new Order adds cancellation and debarment to the penalties to which you may be subject. Thus, for some contractors the obligation is new, but for all contractors the risks of noncompliance are heightened.

The expansion of Executive Order 11246 reflects the trend in the private sector. According to the Fact Sheet issued by the White House, 91% of Fortune 500 companies currently prohibit sexual orientation discrimination in their employment policies; 61% also include gender identity. Similarly, according to the Office of the Press Secretary, of the 50 largest federal contractors (who account for nearly 50% of all federal contracting dollars), 86% already bar discrimination on the basis of sexual orientation, and 61% extend this prohibition to gender identity as well.

The amended Order is effective now, but details about recordkeeping, reporting, and other matters of implementation will follow when the Department of Labor issues regulations by October 19, 2014 (90 days after the Order). Prudent government contractors will use this time to review the basics:

- Do your written policies include sexual orientation and gender identity as protected categories?
- Do those policies inform employees how and where to report such a complaint within the company?
- Are your human resource professionals, managers, and supervisors trained to investigate complaints of discrimination and harassment based on LGBT status, as well as the categories protected by federal and state statutes?

The amended Order addresses the confluence of employment and government contract law. Our employment and government contract lawyers will continue to monitor the development of the regulations. As questions arise, please feel free to contact us.

Please contact a member of Venable's [Labor & Employment](#) or [Government Contracts](#) practice groups or one of the authors of this alert if you have any questions about the Executive Order.

AUTHORS

Douglas B. Mishkin
Paul A. Debolt
Emily M. Tortora
Nathaniel S. Canfield

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