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## Recent Mandates for Federal Contractors

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### ***Equal Employment Opportunity***

On July 21, 2014, President Obama signed an [Executive Order](#) prohibiting federal contractors from discriminating in employment decisions on the basis of sexual orientation and gender identity. The executive order amends Executive Order 11246, which prohibits federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, national origin — and now, sexual orientation and gender identity — and also includes affirmative action requirements for covered contractors. President Obama's Executive Order does not provide an exemption from the nondiscrimination requirements of Executive Order 11245 beyond a previously-existing exemption that permits religiously affiliated contractors to favor individuals of a particular religion when making employment decisions. In his order, President Obama instructed the Secretary of Labor to prepare regulations to implement the new requirements within 90 days.

Soon after the issuance of the executive order, the Office of Federal Contract Compliance Programs (OFCCP) issued a directive clarifying that existing agency guidance prohibiting discrimination on the basis of sex

includes discrimination based on gender identity and transgendered status. The directive is consistent with the Department of Labor's larger effort to extend federal nondiscrimination requirements to decisions based on gender identity or transgendered status.

A contractor in violation of Executive Order 11246 may have its contracts canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for future government contracts. Federal contractors should review their policies and contracts to ensure compliance with the expanded nondiscrimination requirement.

### ***Fair Pay and Safe Workplaces***

On July 31, 2014, President Obama signed the [Fair Pay and Safe Workplaces Executive Order](#), which imposes additional record keeping requirements on contractors with federal procurement contracts valued in excess of \$500,000. The Executive Order requires covered federal contractors to report whether there has been any administrative merits determination, arbitral award or decision, or civil judgment rendered against them within the last three years, arising out of violations of state and federal employment laws. The Executive Order also requires covered federal contractors to provide periodic updates about state and federal employment law violations during the performance of a contract. This information will be evaluated by government contracting officers in the award and administration of federal procurement contracts.

President Obama's Executive Order also targets arbitration agreements. The Executive Order mandates that all federal contracts with an estimated value exceeding \$1 million must include an instruction that contractors may agree with employees or independent contractors to arbitrate Title VII claims or tort claims arising out of sexual harassment or harassment only *after* a dispute arises. Federal contractors should evaluate any pre-existing arbitration agreements or applicable collective

bargaining agreements to determine whether they fall within one of the narrow exemptions from this significant limitation on the use of arbitration.

For more information about whether your business is a federal contractor or subcontractor subject to the laws enforced by OFCCP, feel free to visit the Department of Labor's [website](#).

**Published In:** [Alternative Dispute Resolution \(ADR\) Updates](#) [Civil Rights Updates](#)  
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