
President Obama Signs Executive Order Prohibiting Discrimination Based on Sexual Orientation and Gender Identity

By Thomas P. Brady / Jul 23, 2014

On July 21, 2014, President Barack Obama signed an amendment to Executive Orders 11246 and 11478 which prohibits discrimination by federal contractors on the basis of an applicant's or employee's race, color, religion, sex, or national origin. The amendment prohibits discrimination by a federal contractor on the basis of a person's sexual orientation and gender identity. The amendment is effective immediately, but the nondiscrimination provisions become effective after the Labor Department's Office of Federal Contract Compliance and Programs (OFCCP) issues regulations governing the change. Those regulations are expected in early 2015.

The amendment to the Executive Orders does not contain exemptions for religious affiliated employers. Under the Orders, religious affiliated employers are prohibited from making hiring and other employment decisions based on an applicant's or employee's sexual orientation or gender identity. Religious leaders are expected to challenge the law.

The amendment will apply to companies with government contracts or subcontracts in excess of \$10,000. Under the existing regulations, employers are required to maintain extensive records on all aspects of the employment relationship including hiring, promotions, assignments, demotions, transfers, layoffs and terminations. We must await the OFCCP's regulations on these issues but we expect these recordkeeping requirements to apply to sexual orientation and gender identity.

If you have any questions about the amendment, you may contact Thomas P. Brady at (313) 965-2891, tbrady@clarkhill.com, or another member of Clark Hill's Labor and Employment Practice Group.