

# OFCCP: Affirmative Action Contractors Update on Compliance with Sexual Orientation and Gender Identity Obligations

## Labor & Employment Law Update

By Heather Bailey on March 27, 2015

This is the first time since 1974 that the protected classes for affirmative action contractors have been modified. The effective date for compliance is April 8, 2015 for any new or modified contracts (more than \$10,000). At this time, you must begin implementing the new requirements related to sexual orientation and gender identity applicants and employees. The OFCCP held webinars in March to give contractors guidance on what they are expecting out of these new requirements. Here is what we learned:

- It is encouraged that all affirmative action contractors should follow these adjustments and incorporate these two protected classes in their affirmative action efforts (even if you don't fall under the new regulations).
- Job Advertisement Tag Lines – if it currently lists all protected statuses (e., race, national origin, sex, religion), then you must include sexual orientation and gender identity with the full list. Alternatively, if you do not list the specific classes it is appropriate to just have Equal Employment Opportunity Employer. One exception is if you are covered by the veteran and individuals with disabilities regulations. If so, the OFCCP opined a sufficient tag line is “Equal Employment Opportunity Employer/Veterans/Disabled.” Please note that the OFCCP warned that the abbreviation “LGBT” should not be used since the abbreviation does not cover all individuals identified under sexual orientation and gender identity.
- EEO is the Law Poster – they are creating a supplement in the near future, soon after the effective date. In the meantime, ensure the current version is posted.
- Offered Benefits – the basic rule of thumb is if you offer the benefit to opposite sex married couples, you must offer the same to same sex married couples who are married in a state or territory that recognizes those marriages. You are not, however, required to give those benefits to individuals in civil unions or domestic partnerships unless of course you offer the benefits to similar opposite sex unmarried couples.

What has not changed with your obligations for the addition of sexual orientation and gender identity individuals:

- No new placement, outreach and employment goals;
- No self-identification requirement;
- No data collection requirement;
- No Handbook or Affirmative Action Plan update required (OFCCP did opine it was a best practice to include these protected classes in any EEO clause);
- No mandatory training (but still encouraged); and
- No change to religious exemption.

Why is this important? Not only is this a good business practice to incorporate these two classes of individuals in your equal employment opportunity efforts, but the OFCCP will share and coordinate with the EEOC with a joint investigation and/or referral if they notice any type of discriminatory impact, intent, practice, etc. for individuals and even class complaints.

It is recommended you seek counsel advisement on getting started to ensure compliance, but the OFCCP also offers resources for contractors in order to give guidance and FAQs at <https://www.dol.gov/>.

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