

U.S. Department of Labor Publishes Final Rule On Pay Transparency Rules for Federal Contractors

Labor & Employment Law Update

By Sara Zorich on September 22, 2015

On September 10th, the Office of Federal Contract Compliance Programs ("OFCCP"), a division of the US Department of Labor, published the final rule to implement Executive Order 13665, which prohibits federal contractors from discharging or discriminating against employees or applicants who inquire about, discuss, or disclose their own compensation or the compensation of another employee or applicant. The rule allows these individuals to file a discrimination complaint with OFCCP if they believe that their employer fired or otherwise discriminated against them for discussing, inquiring about, or disclosing their own compensation or that of others.

This final rule generally applies to any organization that holds a federal contract or subcontract in excess of \$10,000 or holds government funds. The rule will be applicable to any new covered federal contract or modified existing contract on or after January 11, 2016.

The final rule becomes effective on January 11, 2016 and requires covered contractors to do the following:

1. Modify employee handbooks or manual to include the nondiscrimination provision found [here](#).
2. Post the New EEO is the Law poster (currently being amended and not yet available)
3. Disseminate the nondiscrimination provision by either electronic posting or by posting a copy of the provision in a conspicuous place available to employees and applicants of employment

The final rule does provide employers with two defenses to an allegation of pay transparency discrimination: (1) a general defense for violation of "workplace rules" and (2) an "essential job functions" defense to alleged violations. For example, employers may discipline/terminate employees for violating a general work rule if it was applied uniformly to employees who discussed their pay and those who did not. Further, an employer may discipline/terminate an employee whose job requires them to have access to other employee's pay and who

discloses such information about another employee to others who do not have access to such information.

Based on the second defense, federal contractors should review their job descriptions of HR and payroll employees and modify, if necessary, to include accessing compensation information and protecting and maintaining the privacy of employee personnel records (including compensation information) as essential functions of the job.

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