



The Evolving World of Equal Pay Laws

Insights

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President Obama recently signed two executive orders changing the landscape of equal pay protections applicable to federal contractors. The first executive order prohibits federal contractors from firing, demoting or retaliating against employees who discuss their compensation. The second order directs the Secretary of Labor, Tom Perez, to establish and implement new regulations requiring federal contractors to submit compensation data that, in part, is broken down by sex and race. According to the White House, the data will be used to encourage voluntary compliance with already existing equal pay laws and assist with more targeted enforcement initiatives.

The executive orders are part of a larger push by President Obama and other Democrats that they claim is aimed at ensuring women earn equal pay in the workforce. As of now, the rules established by the executive orders only apply to federal contractors, meaning a large swath of employers, in the short run, will not experience any changes to the equal pay laws. However, the Paycheck Fairness Act, a law that would impose new regulations on how employers pay employees, was considered by the Senate on April 9th. The Act would, among other things, codify the two executive orders President Obama signed by making them applicable to all employers, require employers to prove that pay differences between male and female employees are the result of factors independent from gender, and allow for compensatory and punitive damages in unequal pay lawsuits brought against employers. Despite weeks of heavy messaging by Democrats, the Act failed to garner a single Republican vote in the Senate and fell short of the 60 votes necessary to formally open debate.

With increasing frequency, President Obama is using executive orders to circumvent Congress and push forward with his legislative agenda. Outside of equal pay laws, President Obama, with much fanfare, raised the minimum wage for federal contractors to \$10.10 through an executive order. While Republicans in the House and Senate are unlikely to approve raising the minimum wage or enact the Paycheck Fairness Act, President Obama and Democrats are continuing to push these issues in the run up to the mid-term elections; the belief among many Democrats is that these issues play well among a large portion of the electorate. Employers, and particularly those with federal contracts, unfortunately find themselves stuck in the middle of this proverbial tug-of-war between President Obama and Republicans. The end result is an evolving and fluid situation that employers must carefully monitor to ensure they fully comply with any newly issued executive orders or regulations.