



White House Reaffirms Protections For Federal Contractor LGBTQ Workers

Insights

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Earlier today, the White House issued a statement announcing that it would continue to enforce President Obama's 2014 executive order that protects the rights of the LGBTQ community in the federal contractor workplace. While this statement does not break any new legal ground, it is a reminder to all federal contractors that they have an obligation to ensure antidiscrimination measures apply to all workers regardless of sexual orientation or gender identity.

What Does The Statement Say?

The January 31, 2017, [White House statement](#) is brief but to the point. After reminding readers that President Trump was the first-ever Republican nominee to mention the LGBTQ community in his nomination acceptance speech, the statement announces: "The executive order signed in 2014, which protects employees from anti-LGBTQ workplace discrimination while working for federal contractors, will remain intact at the direction of President Donald J. Trump."

The statement was issued at a time when rumors were swirling that the White House could take action to reverse the 2014 executive order. Instead, President Trump's staff reassured LGBTQ workers that the commitment to protect their workplace rights would stay in place, and federal contractor's obligations would continue unabated.

What Protections Are Already In Place?

President Obama originally signed the federal contractor protections in place in 2014, and our full alert written at the time [can be found here](#). Here is a summary of the key points of the LGBTQ executive order:

- **Broad application:** The order extends antidiscrimination protection on the basis of sexual orientation and gender identity, and includes both categories in contractor's affirmative action requirements.
- **Lower thresholds:** Federal contractors or subcontractors holding contracts of \$10,000 or more are subject to the executive order, which is a lower threshold than the \$50,000 contract requirement for full affirmative action obligations.
- **Religious exemption:** The executive order does not address any sort of exemption for a contractor's religious beliefs. Prior to 2014, religiously affiliated contractors were permitted to favor individuals of a particular religion when making employment decisions, based on a prior

amendment to Executive Order 11246, the basic non-discrimination directive. Thus, a contractor subject to this religious exemption could “discriminate” and hire individuals of a particular religion to perform work associated with the organization’s activities. Because the prior executive order was neither addressed in the 2014 executive order nor rescinded, religious institutions remained covered by the exemption.

- **Affirmative Action:** Federal contractors continue to be required to go beyond the nondiscrimination obligations required by Title VII of the Civil Rights Act. Instead, they must take affirmative action to ensure that applicants are employed and treated fairly during their employment without regard to these categories, which includes LGBTQ workers.
- **Compliance:** The U.S. Labor Department’s Office of Federal Contract Compliance Programs (OFCCP) continues to have the authority to investigate complaints arising out of the categories that the affirmative action laws protect, including sexual orientation and gender identity, and will ensure compliance with the executive order.

If you have any questions about this statement and executive order or how they may affect your business, please contact any member of our [Affirmative Action and Federal Contract Compliance Practice Group](#) or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a White House statement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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