

President Obama Targets Federal Contractors on Pay Disparity Issues

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Last week, President Obama issued two important directives aimed at ending gender pay disparities. The first, an **Executive Order**, prohibits federal contractors and subcontractors with government contracts exceeding \$10,000 from retaliating against employees who discuss their compensation with their co-workers. The second, a **Presidential Memorandum**, directs the Department of Labor (DOL) to establish new regulations that would require federal contractors and subcontractors to provide summary compensation data by sex and race to the DOL, which would allow the DOL to enhance its enforcement of the Equal Pay Act and Title VII of the Civil Rights Act.

The Order essentially prohibits federal contractors from enforcing any policy requiring employees to keep employee compensation confidential, which could have wide-ranging effects for employee handbooks, employment agreements, and employee confidentiality agreements. The Order does, however, provide an exception for employees whose essential job functions give them access to other employees' pay information and who disclose the compensation of other employees to individuals who do not have access to such information.

The anti-retaliation provisions align with the protections under Section 7 of the NLRA, which the NLRB interprets to prohibit employers from preventing their workers from discussing their compensation. But the Order applies to any employee of a federal contractor, whereas the NLRA does not apply to management employees or employees in certain industries like airlines.

The DOL rule, which is to be issued by August 6, 2014, will require federal contractors to produce data on employee compensation that would indicate any pay disparities based on gender or race. The data will be used by the DOL to encourage voluntary compliance with equal pay laws, but also to conduct targeted enforcement actions against contractors with perceived pay discrepancies.

This move comes on the heels of President Obama's February 12th Executive Order, which raised the minimum wage to \$10.10 per hour for federal contractor employees working on new government contracts. Unlike that Order though, the non-retaliation requirements apply to all federal contractors both on current and new contracts.

With little movement by Congress to pass the Paycheck Fairness Act (which would extend the non-retaliation provisions to most public employers), President Obama has pushed for change through his executive authority, which has put federal contractors in the crosshairs.

Federal contractors should review their policies to ensure compliance with the new Order and will have to "wait and see" if the President makes additional moves to regulate them through new wage and hour rules.

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