

Publications

Labor and Employment Alert: U.S. Department of Labor Prohibits Federal Contractor Pay Secrecy

Related Professionals

Michael C. Griffaton

Related Services

Labor and Employment

CLIENT ALERT | 9.11.2015

UPDATE: FEDERAL CONTRACTORS MUST NOW COMPLY WITH PAY TRANSPARENCY REQUIREMENTS

On January 13, 2016, a client alert was published that explains that the Office of Federal Contract Compliance Programs (OFCCP) final rule on pay transparency became effective. For more information, [click here](#).

ORIGINAL ALERT:

On September 11, 2015, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published its Final Rule on pay transparency in federal contracts. According to the Department of Labor (DOL), this rule "provides a critical tool to encourage pay transparency, so workers have a potential way of discovering violations of equal pay laws and can seek appropriate remedies."

The Final Rule prohibits federal contractors and subcontractors from discharging or discriminating against their employees and job applicants for discussing, disclosing or inquiring about their own "compensation" or that of another employee or applicant. Contractors are also prohibited from having policies that prohibit or tend to restrict such discussions or inquiries. "Compensation" is broadly defined to include salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement. Employees and applicants can file a complaint of discrimination with the OFCCP within 180 days of the alleged discrimination.

Under the Final Rule, there are two broad categories of inquiries, discussions, or disclosures that **may not** be protected. First, inquiries, discussions, or disclosures of compensation information an employee obtains through his or her "essential job functions" are not protected. Information is obtained as a part of an "essential job function" if (1) access to that information is necessary to perform the job function, or

(2) the job function includes maintaining the privacy of employee personnel records, including compensation information. Second, contractors are protected if the employee violates a consistently and uniformly applied workplace rule, so long as that rule doesn't generally prohibit compensation disclosures. The DOL explains that the Final Rule requires contractors to uniformly apply workplace rules to similarly situated employees regardless of their protected activity. So an employee who is shouting about his pay or is late returning from a break because he was discussing pay issues with his coworkers can be disciplined for being disruptive or tardy (if the workplace rule so allows) but not for disclosing or discussing his pay.

The National Labor Relations Act has a similar restriction against prohibiting employees and job applicants from disclosing or discussing compensation. However, the Final Rule extends this protection to supervisors, managers, agricultural workers and employees of rail and air carriers.

The Final Rule becomes effective on January 11, 2016, and applies to new covered federal contracts or modifications to existing covered federal contracts entered into or modified after that date. Contractors will also need to update their equal opportunity clauses to reflect the Final Rule, incorporate a nondiscrimination provision prescribed by OFCCP into existing employee manuals or handbooks, and post the revised "EEO is the Law" poster. Contact your Vorys lawyer if you have questions about the Final Rule or for assistance in complying with these new requirements.