

One Minute Memo®



White House Executive Actions Seek to Give Equal Pay its Day

By Annette Tyman and Meredith Bailey

President Obama flexed his executive arm in actions that will impose new requirements on federal contractors. Yesterday, the President signed an Order amending Executive Order 11246 to prohibit federal contractors from retaliating against applicants or employees who share information about their pay. Executive Order 11246 now prohibits policies or practices that bar applicants or employees from discussing their own compensation or the compensation of other employees. The Administration views this action as a “critical tool to encourage pay transparency.”

Despite the amendment, employees with access to the confidential compensation information of other employees as a result of the position they hold are not protected by the anti-retaliation provisions of the Executive Order. Such employees may be subjected to discipline if they share confidential compensation information with employees who would not otherwise have access to the information.

The Executive Order directs the Secretary of Labor to propose regulations implementing the requirements of the Order within 160 days. While the amendments to Executive Order 11246 are effective immediately, the changes will apply to contracts entered into on or after the effective date of the implementing regulations. The full text of the Executive Order is available [here](#).

President Obama also signed a Presidential Memorandum directing the Secretary of Labor to create new regulations within 120 days that will require federal contractors and subcontractors to submit summary compensation data, along with sex and race information. While the details remain sparse, President Obama directed the Labor Secretary to draft regulations that:

- enable the Department of Labor to target entities for which reported data suggests potential discrepancies in employee compensation exist;
- minimize, where possible, the burden on federal contractors and subcontractors and small entities, including small nonprofit organizations;
- encourage greater voluntary compliance by employers with Federal pay laws; and
- use the data to identify and analyze industry trends.

The Memorandum provides that “to the extent feasible” the proposed regulations shall “avoid new record-keeping requirements and rely on existing reporting frameworks to collect the summary data.” While the precise reporting framework is not yet known, the Memorandum references the potential compensation data collection tools referenced

in the DOL's August 10, 2011 Advance Notice of Proposed Rulemaking (ANPRM) and the responses received as "ample information" from which the DOL can develop its data collection tool. Public comments on the ANPRM can be viewed [here](#). A copy of the Presidential Memorandum is available [here](#).

These executive actions are the latest in a year filled with regulatory initiatives impacting federal contractors, including the new OFCCP Disability and Veterans regulations that went into effect on March 24, 2014, and the President's Executive Order raising the minimum mandatory wage paid to employees of covered federal contractors to \$10.10 per hour.

In addition, Congress continues to deliberate gender pay equity legislation. The Senate will soon vote on the Paycheck Fairness Act (S.84/H.R. 377), which seeks to eliminate pay disparities based on gender which would affect all employers—not just federal contractors. Among other key changes, the Senate proposal would require companies to prove that pay differences among men and women are due to factors independent of gender. The bill has twice-failed to garner sufficient votes, even with the full support of the White House. We will continue to keep you informed on future developments.

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