



August 22, 2018

Via Email to Leen.Craig@dol.gov

Craig E. Leen
Deputy and Acting Director
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington D.C. 20210

Dear Acting Director Leen:

On behalf of The Institute for Workplace Equality, we seek guidance from the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") on federal contractors' nondiscrimination obligations under Executive Order 11246 in light of the agency's recently issued Directive 2018-03 addressing religious liberty.¹ The Institute previously submitted a letter to Acting Director Tom Dowd on October 27, 2017 seeking guidance after the Department of Justice issued a memorandum on religious liberty² and a memorandum on transgender coverage under Title VII.³ A copy of that letter is attached. To date, we have not received a response to our October 2017 letter.

The Institute for Workplace Equality ("The Institute") is a national non-profit employer association based in Washington, D.C. The Institute's mission includes the education of federal contractors as to their affirmative action, diversity, and equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal, and staffing functions representing many of the nation's largest and most sophisticated federal contractors. Based on discussions with the members of The Institute, we are respectfully requesting further guidance on how Directive 2018-03 impacts federal contractors' obligations under Executive Order 11246.⁴

Some of the questions members have raised include whether federal contractors are obligated to accommodate employees who claim that they will not work with LGBT individuals based on their religious beliefs; whether federal contractors now have a greater or different obligation to accommodate those with religious objections than they did prior to the issuance of Directive

¹ *Executive Order 11246 § 204(c), religious exemption*, Directive 2018-03, Office of Federal Contract Compliance Programs, August 10, 2018; <https://www.dol.gov/ofccp/regs/compliance/directives/Dir2018-03-ESQA508c.pdf>.

² *Federal Law Protections for Religious Liberty*, Office of Attorney General, October 6, 2017; <https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>.

³ *Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, Office of Attorney General, October 4, 2017; <https://www.justice.gov/ag/page/file/1006981/download>.

⁴ [Executive Order 11246](#)—Equal Employment Opportunity, 30 FR 12319, 12935 (1965).

Mr. Craig E. Leen
August 22, 2018
Page 2

2018-03; and whether employees' reliance on their religious beliefs would be a lawful reason to refuse to work with women or other protected employee groups.

The Institute respectfully requests that OFCCP provide guidance to address these issues, including updated FAQs and/or opinion letters addressing the new Directive and how to accommodate those who have a religious objection to working with individuals otherwise protected by Executive Order 11246. Moreover, providing such guidance would be in furtherance of the recently issued "Bill of Rights" that committed OFCCP to provide access to accurate compliance assistance material, timely responses to compliance assistance questions, and opportunities for contractors to provide meaningful feedback and collaborate.

We would welcome the opportunity to confer with you and your staff on these matters or to answer any questions that you may have.

Respectfully,



David B. Cohen



David S. Fortney



Mickey Silberman

Bcc: B. Kelly
J. Kinderdine



October 27, 2017

Via Email to Dowd.Tom@dol.gov

Thomas M. Dowd
Deputy and Acting Director
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington D.C. 20210

Dear Acting Director Dowd:

On behalf of The Institute for Workplace Equality, we are seeking guidance from the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") on federal contractor's nondiscrimination obligations under the recently issued memoranda addressing religious liberty and the coverage of transgender individuals under Title VII.

On October 6, 2017, the U.S. Department of Justice ("DOJ") issued a memorandum, entitled Implementation of Memorandum on Federal Law Protections for Religious Liberty (the "Religious Liberty Memorandum"), to all component heads and US Attorneys.¹ The Religious Liberty Memorandum has raised many questions for all employers but especially for federal contractors who are subject to the nondiscrimination requirements of Executive Order 11246 that are enforced by OFCCP.² On October 4, 2017, the Attorney General issued a memorandum entitled Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (the "Transgender Memorandum") to all component heads and US Attorneys.³ Again, the changes announced in the Transgender Memorandum pose questions for federal contractors in understanding their compliance obligations relating to transgender individuals in accordance with the nondiscrimination obligations of Executive Order 11246.

¹ *Federal Law Protections for Religious Liberty*, Office of Attorney General, October 6, 2017; <https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>.

² *Executive Order 11246*--Equal Employment Opportunity, 30 FR 12319, 12935 (1965).

³ *Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, Office of Attorney General, October 4, 2017; <https://www.justice.gov/ag/page/file/1006981/download>.

The Institute for Workplace Equality (“The Institute”), formerly known as The OFCCP Institute, is a national non-profit employer association based in Washington, D.C. The Institute’s mission includes the education of federal contractors as to their affirmative action, diversity and equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal and staffing functions representing many of the nation’s largest and most sophisticated federal contractors. Based on discussions with the members of The Institute, we are respectfully requesting further guidance on the following two questions arising as a result of the recent DOJ memoranda.

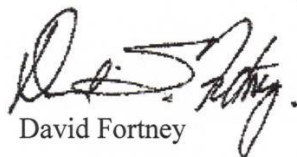
The first question is how the DOJ Transgender Memorandum concluding that transgender individuals are not protected by Title VII affects the obligations of federal contractors who are prohibited under Executive Order 11246 from discriminating against applicants and employees based on sexual orientation or gender identity, including transgender individuals.⁴ Are we correct in understanding that notwithstanding the most recent interpretation of Title VII by DOJ as not covering sexual orientation or gender identity, that federal contractors’ obligations under Executive Order 11246, as amended by Executive Order 13672, remain unchanged? Federal contractors have received questions as a result of the Transgender Memorandum as to whether they are still required not to discriminate against LGBT individuals.

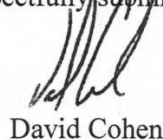
The second question is what obligations do federal contractors have to accommodate employees who claim that they will not work with LGBT individuals based on their religious beliefs. Do federal contractors have a greater or different obligation to accommodate those with religious objections than they did prior to the issuance of the DOJ memoranda?

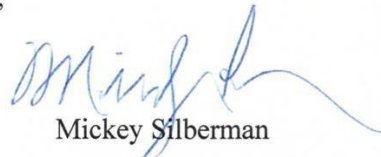
The Institute would strongly recommend that OFCCP provide guidance including updated FAQs to federal contractors addressing the new DOJ memoranda, including how to accommodate those who have a religious objection to working with LGBT individuals.

We would welcome the opportunity to confer with you on these matters or to answer any questions you may have.

Respectfully submitted,


David Fortney


David Cohen


Mickey Silberman

⁴ President Obama added “sexual orientation” and “gender identity” to the protections covered by Executive Order 11246 by Executive Order 13672 on July 21, 2014. [Exec. Order No. 13672](#) of July 21, 2014, 79 FR 42971 (July 23, 2017).