

Publications

Labor and Employment Alert: Federal Contractors Must Now Comply With Pay Transparency Requirements

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On January 11, 2016, the Office of Federal Contract Compliance Programs (OFCCP) final rule on pay transparency became effective. The rule implements Executive Order 13665, issued in April 2014, prohibiting federal contractors from discharging or discriminating against an employee or applicant "because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant" (See our previous *Labor and Employment Alert* on the final rule). The OFCCP's final rule applies to all federal contractors with contracts in excess of \$10,000 entered into or modified on or after January 11, 2016.

There are three things federal contractors must do in order to comply with the final rule. First, federal contractors must incorporate the Executive Order's prohibition against discrimination for inquiring about, disclosing, or discussing pay information into their covered contracts and subcontracts. Second, federal contractors must also include the following OFCCP-prescribed language into their employee handbooks:

PAY TRANSPARENCY POLICY STATEMENT

The contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

Finally, federal contractors must disseminate the nondiscrimination provision to employees and applicants, either electronically or by posting in conspicuous places. Simply placing the “Pay Transparency Policy Statement” in an employee handbook is insufficient; the provision must also be posted. The OFCCP has drafted an updated "EEO is the Law" poster that includes the required employee notifications (<http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>).

Contact your Vorys lawyer if you have questions about the pay transparency final rule or other requirements imposed on federal contractors.