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Labor and Employment Alert: President Obama Adds Sexual Orientation and Gender Identity to Protected Categories for Government Contractors

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President Obama has signed yet another executive order changing the rules of the road for government contractors. Following on the heels of executive orders regarding minimum wage, compensation discrimination, and discussion of wages, the most recent executive action prohibits government contractors from discriminating against individuals on the basis of sexual orientation or gender identity. The president signed this executive order on July 21, 2014. It amends Executive Order 11246, the law setting forth affirmative action requirements for covered federal contractors and subcontractors.

As a result of the most recent executive actions, federal contractors and subcontractors subject to Executive Order 11246 must treat discrimination based on gender identity and sexual orientation the same as discrimination based on sex, race and national origin. Equal employment opportunity policies will need to be adjusted to reflect the additional protected categories. Job advertisements will also need to be modified to list the new protected categories. Significantly, however, the new executive order does not change the affirmative action requirements, which remain applicable only to gender, race, disability and veteran status.

An exemption for religious organizations was conspicuously absent from the Order. The omission of such an exemption, while not altogether surprising, stands in stark contrast to the Supreme Court's decision in *Hobby Lobby*, which held that there was such an exemption to the Affordable Care Act. While this aspect of the executive order may ultimately be challenged in federal court, federal contractors and subcontractors subject to Executive Order 11246 should abide by the new order as written, even if they are a religious organization.

The executive order indicates that it is effective immediately, but directs the United States Department of Labor (DOL) to promulgate regulations to implement the executive order within 90 days.

Employers having questions regarding this development should consult their Vorys attorney.

