

Employment Law Risks (2014): Government Contractors

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Employment Law Risks

1. Obama Administration Executive Orders
2. Pitfalls in Recruiting Government Employees
3. Heightened Sexual Harassment Risks
4. Trade Secret Theft
5. Criminal Background Checks



1. Recent Executive Orders



4 Executive Orders in 2014

1. Establishing a Minimum Wage for Contractors- Executive Order 13658
2. Non- Retaliation for Disclosure of Compensation Information- Executive Order 13665 Amending 11246 (EEO)
3. Executive Order 13672 Further Amending 11246 and 11478
4. Fair Pay and Safe Workplaces- Executive Order 13673

Establishing a Minimum Wage for Contractors

- Executive Order 13658
- Signed 2/10/2014
- Effective 1/1/2015 the order Establishes a minimum wage for Federal contractors and subcontractors including those under (29 U.S.C. 214(c)).
- Increases the hourly minimum wage of parties who contract with the Federal Government to a rate of \$10.10.
- Will be increased annually beginning January 1st 2016 by an amount to be determined by the Secretary of Labor in accordance with the Order.
- Increases the hourly rate of tipped workers to \$4.90.
- Affects
 - procurement contracts for construction covered by Davis-Bacon Act (DBA)
 - Service contracts covered by Service Contract Act (SCA)
 - Concession contracts, and those excluded from SCA by the DOL's regulation at 29 C.F.R. 4.133(b);
 - And contracts in connection with Federal property or lands and relating to offering services for Federal employees, their dependants or the general public.

Non-Retaliation for Disclosure of Compensation Information

- Executive Order 13665
- Effective 4/08/2014
- Amends 11246 (EEO) Section 202
- The Notice of Proposed Rulemaking by Secretary of Labor will be available for public comment until December 15, 2014.
- Prevents contractors and subcontractors from discriminating against employees who discuss compensation.
- Ensures that Federal contractors' employees may discuss their compensation without fear of adverse action.
- Enhances ability to remediate unlawful discriminatory practices, in turn contributing to a more efficient market in Federal contracting.

Further Amendments to Equal Employment Opportunity in Federal Government and Equal Employment Opportunity (11478,11246)

- Executive Order 13672
- Effective 7/21/2014
- Applies to contracts entered on or after 7/21/2014.
- Replaces terminology in Executive Order 11478- Equal Employment Opportunity in the Federal Government & Executive Order 11246- Equal Employment Opportunity (EEO).
- Adds sexual orientation and gender identity to list of protected classes under EEO.
- Expands legal exposure for covered contractors to claims of discrimination based on sexual orientation, transgender status, gender identity and gender expression status.

Fair Pay & Safe Workplaces

- Executive Order 13673
- Effective immediately 7/31/14
- Will apply to all new contract bids as set forth in final rules to be issued by Federal Acquisition Regulation Council (FAR).
- Will be implemented “in stages on a prioritized basis, during 2016”.
- Concerns companies seeking new contracts over \$500,000.
 - Requires disclosures of certain labor and employment law violations from the preceding 3 years;
 - Requires disclosures to employees and independent contractors of hours and pay-related information;
 - Prohibits contractor use of pre-dispute arbitration agreements for certain employment-related disputes.
- Part of the new bidding process entails prospective contractors to publish these reports on a website to be developed by the General Services Administration (“GSA”).
- Employers should reevaluate subcontractor arbitration agreements.
- This Order limits a Contractor’s ability to use pre-dispute arbitration agreements. Does not apply to employees covered by collective bargaining agreements or those who consented prior to bid, unless agreement specifies changes are possible.

2. Recruiting Government Employees

- Limitations based on role
- One-year compensation ban
- Firewall requirements
- Special restrictions on senior employees
- Special DoD restrictions
- Restrictions on aiding foreign governments



2. Recruiting Government Employees (cont'd)

- Revolving door restrictions
- Penalties include suspension, debarment, fines and compensation forfeiture
- Obtaining ethics opinions



3. Sexual Harassment / Discrimination



Factors

- Start-up status – no processes established
- Culture of creativity, flexibility and innovation
- Diversity in workforce = diversity in cultural norms
- Lack of management experience

Sexual Harassment - Definition

- It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
- Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.
- E.E.O.C Definition- www.eeoc.gov

Sex Harassment – Definition (cont'd)

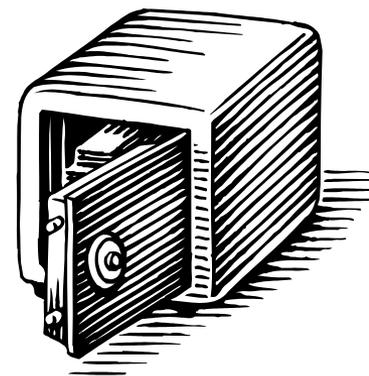
- Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).
- The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

The Retaliation Theory

- All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).
- For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.
- The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- www.eeoc.gov

4. Trade Secret Theft

- Non-Compete Agreements
- Other Protective Agreements
- Trade Secret Statutes
- Physical Security Measures



Non-Compete Agreements in Maryland

- Must be adequate consideration (continued employment)
- Reasonable restraints – geography and time
- No undue hardship
- Generally limited to unique services
- “Blue-penciling” permitted
- Injunctions available



Other Protective Measures

- Non-Disclosure / Confidentiality Agreements
- Non-Solicitation Agreements
- Trade Secret Statutory Protections
- Physical Security Measures



5. Criminal Background Checks

- EEOC – Title VII (Disparate Impact) Guidance
- Fair Credit Reporting Act, *15 U.S.C. 1681*
 - Proper purpose
 - Full disclosure, authorization
 - Required notifications, waiting period



For More Information Contact Us



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