

OFCCP Issues Opinion Letter Protecting “Controversial” Religious Beliefs

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On January 8, 2021, the Office of Federal Contract Compliance Programs (OFCCP) issued an [opinion letter on “Legal Protections for Religious Liberty in the Workplace.”](#) The opinion letter builds on [OFCCP’s recent regulations](#) regarding the religious exemption to provide broad protection to employees against discrimination based on their religious practices. The opinion letter appears to signal that OFCCP leadership is concerned that certain aspects of religious faith may be deemed controversial, leading to adverse employment actions against employees who hold these views. Although LGBTQ issues are not directly addressed in the opinion letter, the opinion letter’s principles could conflict with the [increasing protections](#) that federal and state employment discrimination laws provide to LGBTQ employees.

The primary guidance provided by the opinion letter comes in the form of answers to several hypothetical questions. These answers state that a federal contractor violates OFCCP’s non-discrimination regulations if it subjects an employee or applicant to an adverse employment action because:

- The contractor assumes the individual holds beliefs that others may find offensive;
- The individual is a member of a religion that has taken public policy positions that others may find offensive (providing, as examples, support or opposition for Israel and opposition to abortions);
- The individual supports or attends a religious-related cause or event that others may find offensive (providing, as examples, an anti-war rally, the March for Life, or a rally opposing anti-Semitism);
- The individual states to co-workers that he or she holds religious views others may find offensive (providing, as examples, a belief in traditional marriage). The opinion letter does limit this principle by noting that the individual’s statement could be unprotected if he or she has been told such comments are unwelcome, the comments are objectively hostile, or the comments constitute harassment.

The opinion letter also states that as part of the “duty” federal contractors carry to provide equal employment opportunities to individuals of different religious faiths, contractors “should develop reasonable internal procedures” to ensure that religious accommodations are being “fully implemented.” The letter encourages contractors to “voluntarily” implement best practices such as centralized accommodation request systems, collaboration with employee resource groups, and training for managers and employees.

It is unclear how lasting this OFCCP guidance will prove, given that it was issued less than two weeks before President-Elect Biden’s inauguration. The OFCCP Director position does not require Senate confirmation, so it can be filled immediately by appointment, and sub-regulatory guidance like opinion letters can be immediately withdrawn or changed by a new Director. To the extent the opinion letter creates tension between contractors’ obligations to employees of faith and other protected groups, contractors must keep in mind that other, non-OFCCP federal, state, and local non-discrimination laws continue to apply. Still, the opinion letter emphasizes that federal contractors are subject to an additional layer of scrutiny with respect to their employment actions, and must consider OFCCP implications when making personnel decisions.

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