

## Federal Contractors Face More Regulations on Pay Practices

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President Obama signed an executive order on April 8, 2014 **barring federal contractors and subcontractors from retaliating against employees who discuss their pay with each other**. The order is entitled the Non-Retaliation for Disclosure of Compensation Information.

The Executive Order states that a contractor is prohibited from discharging or in any other manner discriminating against an “employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant.” An exception to this prohibition exists for employees who have access to such information as part of their essential job functions unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

The National Labor Relations Act already makes such retaliation unlawful so this Executive Order would appear duplicative. The Secretary of Labor must issue regulations implementing this Order within 160 days of April 8, 2014. Those regulations should shed light on how this requirement differs, if at all, with the NLRA. The NLRA does not protect the right of supervisors or managers to discuss pay and salaries, and we expect this Order is designed to extend to those individuals.

In a related action on April 8, 2014, President Obama issued a Presidential Memorandum entitled “Advancing Pay Equality Through Compensation Data Collection” to the U.S. Secretary of Labor directing him to propose within 120 days a rule that would require Federal contractors and subcontractors to submit to the Department of Labor summary data on the compensation paid their employees, including data by sex and race. While the Office of Federal Contract Compliance (OFCCP) has been collecting data of this type over the last several years in connection with some of its audits of federal contractors, this proposal would greatly expand these efforts and likely foster efforts by OFCCP to demand that federal contractors take action to reduce or eliminate pay differences between persons of different genders and different races.

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