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DOL Issues Final Rule Re-Defining Sex Discrimination By Federal Contractors

On June 15th, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published its Final Rule expanding the definition of "sex" in its prohibition on discrimination by federal contractors and subcontractors. The Final Rule, which will take effect August 14, applies to Federal Government contractors and subcontractors, defined in E.O. 11246 as "any business or organization that: (1) holds a single federal contract, subcontract, or federally assisted construction contract in excess of \$10,000; (2) has federal contracts or subcontracts that, combined, total in excess of \$10,000 in any 12-month period; or (3) holds Government bills of lading . . . [.]". The OFCCP estimates that more than 164,000 transportation and warehousing firms are considered covered Federal Government contractors and subcontractors subject to the Final Rule.

The Final Rule outlines the sex-based discriminatory practices that contractors must identify and eliminate and clarifies how contractors must choose applicants and treat them while employed, without regard to sex. The term "sex" includes, but is not limited to, pregnancy, childbirth or related medical conditions; gender identity; transgender status; and sex stereotyping. Among other requirements under the Final Rule, and subject to certain conditions, Federal Government contractors and subcontractors must generally: (1) treat applicants and employees the same regardless of sex; (2) offer sick or family leave for both mothers and fathers on the same terms; (3) provide workplace accommodations for pregnancy and childbirth similar to those provided for other medical conditions; (4) avoid discrimination on the basis of pregnancy, childbirth or related medical conditions; (5) compensate similarly situated employees equally without regard to sex; (6) provide fringe benefits such as medical insurance equally without regard to sex; (7) prohibit sexual harassment; (8) make employment decisions without regard to sex-based stereotypes such as compliance with gender norms or family caregiver responsibilities; and (9) permit the use of bathrooms, changing rooms and showers consistent with the

employee's gender identity. Although not binding on Federal Contractors, the Final Rule also includes various recommended practices for maintaining a workplace free of discrimination based on sex. These suggested practices include utilizing gender neutral job titles and designating single-user restrooms as gender neutral.

For additional information on the Final Rule, including how it may affect Federal Government contractors and subcontractors and guidance on implementing policies and practices meeting the Final Rule's requirements, contact Jim Hanson (jhanson@scopelitis.com), David Robinson ([drobinson@scopelitis.com](mailto:d robinson@scopelitis.com)), or Jack Finklea (jfinklea@scopelitis.com) in the Firm's Indianapolis office at (317) 637-1777 or Don Vogel ([dvoegel@scopelitis.com](mailto:dvogel@scopelitis.com)) or Sari Pettinger (spettinger@scopelitis.com) in the Firm's Chicago office at (312) 255-7200.