



August 22, 2018

Via Email to Leen.Craig@dol.gov

Craig E. Leen
Deputy and Acting Director
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington D.C. 20210

Dear Acting Director Leen:

On behalf of The Institute for Workplace Equality, we seek guidance from the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") on federal contractors' nondiscrimination obligations under Executive Order 11246 in light of the agency's recently issued Directive 2018-03 addressing religious liberty.¹ The Institute previously submitted a letter to Acting Director Tom Dowd on October 27, 2017 seeking guidance after the Department of Justice issued a memorandum on religious liberty² and a memorandum on transgender coverage under Title VII.³ A copy of that letter is attached. To date, we have not received a response to our October 2017 letter.

The Institute for Workplace Equality ("The Institute") is a national non-profit employer association based in Washington, D.C. The Institute's mission includes the education of federal contractors as to their affirmative action, diversity, and equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal, and staffing functions representing many of the nation's largest and most sophisticated federal contractors. Based on discussions with the members of The Institute, we are respectfully requesting further guidance on how Directive 2018-03 impacts federal contractors' obligations under Executive Order 11246.⁴

Some of the questions members have raised include whether federal contractors are obligated to accommodate employees who claim that they will not work with LGBT individuals based on their religious beliefs; whether federal contractors now have a greater or different obligation to accommodate those with religious objections than they did prior to the issuance of Directive

¹ *Executive Order 11246 § 204(c), religious exemption*, Directive 2018-03, Office of Federal Contract Compliance Programs, August 10, 2018; <https://www.dol.gov/ofccp/regs/compliance/directives/Dir2018-03-ESQA508c.pdf>.

² *Federal Law Protections for Religious Liberty*, Office of Attorney General, October 6, 2017; <https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>.

³ *Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, Office of Attorney General, October 4, 2017; <https://www.justice.gov/ag/page/file/1006981/download>.

⁴ [Executive Order 11246](#)—Equal Employment Opportunity, 30 FR 12319, 12935 (1965).

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2018-03; and whether employees' reliance on their religious beliefs would be a lawful reason to refuse to work with women or other protected employee groups.

The Institute respectfully requests that OFCCP provide guidance to address these issues, including updated FAQs and/or opinion letters addressing the new Directive and how to accommodate those who have a religious objection to working with individuals otherwise protected by Executive Order 11246. Moreover, providing such guidance would be in furtherance of the recently issued "Bill of Rights" that committed OFCCP to provide access to accurate compliance assistance material, timely responses to compliance assistance questions, and opportunities for contractors to provide meaningful feedback and collaborate.

We would welcome the opportunity to confer with you and your staff on these matters or to answer any questions that you may have.

Respectfully,



David B. Cohen



David S. Fortney



Mickey Silberman

Bcc: B. Kelly
J. Kinderdine