

To: Our Clients and Friends

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Subject: **OFCCP Update for Federal Contractors and Subcontractors**

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The following summarizes recent changes in the labor and employment requirements applicable to federal contractors and subcontractors.

### **2016 Minimum Wage Rate for Government Contractor Employees**

The Department of Labor Wage and Hour Division announced a new minimum wage rate for workers performing work or in connection with federal contracts resulting from solicitations issued on or after January 1, 2015, and contracts awarded outside of the solicitation process on or after January 1, 2015. Federal contracts that are covered include: (1) procurement contracts for construction covered by the Davis Bacon Act; (2) service contracts covered by the Service Contract Act; (3) Concession Contracts; and (4) contracts in connection with Federal property/lands and related to offering services for Federal employees, their dependents, or the general public.

The minimum wage rate applies to workers performing on or in connection with any of the covered federal contracts and **takes effect on January 1, 2016**. The new minimum wage rate for covered, non-exempt employees is \$10.15 per hour (\$5.85 per hour for tipped employees). Exempt employees, and non-exempt employees who spend less than 20% of their work hours in a particular workweek performing work in connection with covered contract, are excluded from this minimum wage rate.

The DOL revised its required poster and the poster can be found at the following hyperlink: <http://www.dol.gov/whd/flsa/eo13658/App-B.pdf>

### **Final Rules on Executive Order 13665, “Non-Retaliation for Disclosure of Compensation Information”**

On September 11, 2015, the Office of Federal Contract Compliance Programs (“OFCCP”) published its final rule to implement Executive Order 13665 (issued on April 8, 2014), entitled “Non-Retaliation for Disclosure of Compensation Information.” This Executive Order applies to federal contractors and subcontractors who entered into or modified contracts **on or after January 11, 2016** that exceed \$10,000 in value. The Final Rule:

- Specifies that covered employers are prohibited from discriminating against employees and job applicants who “inquire about, discuss or disclose their own compensation or the compensation of other employees or applicants.”
- Revises the equal opportunity clause to include a provision that prohibits contractors from “discharging, or in any manner discriminating against, any employee or applicant for employment because the employee or applicant inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant”.

- Requires contractors to disseminate a provision regarding non-retaliation for disclosure of compensation information through employee handbooks and policies. The provision must be posted electronically and in conspicuous places accessible to employees and applicants.

Establishes two defenses for employers accused of retaliation: (1) a *general defense* that permits a contractor to discipline an employee for violating a consistently and uniformly applied rule, policy, practice or agreement (provided the rule, policy, practice or agreement does not or tends not to prohibit employees and applicants from discussing or disclosing their own compensation or the compensation of other employees or applicants); and (2) an *essential job functions defense* which can be used by contractors for any adverse action taken against an employee who discloses compensation information, if the employee's access to that compensation information was part of that employee's essential job function.

### **Executive Order 13705, "Establishing Sick Leave for Federal Contractors"**

On September 7, 2015, President Barack Obama signed an Executive Order requiring federal contractors and subcontractors to provide paid sick leave to their employees *beginning in 2017*. Under the Executive Order, employees will earn one (1) hour of paid sick time for every thirty (30) hours of work, and unused accrued paid sick leave may be carried over from one year to the next. Employers will also be prohibited from limiting an employee's total accrual of sick leave to less than seven (7) days (or 56 hours) annually. If an employee is laid off and subsequently rehired within 12 months of his/her layoff, the employer must reinstate the accrued sick leave the employee had at the time of the layoff.

The Executive Order further specifies that paid sick leave can be used by an employee for:

- A physical/mental injury or medical condition;
- Obtaining diagnosis, treatment or preventive care from a health care provider;
- Caring of a child, parent, spouse, domestic partners, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship for an injury, medical condition, or for obtaining diagnosis, treatment or preventive care; and
- A domestic violence, sexual assault, or stalking incident.

Employers may require employees to submit a certification from a health provider (or from an appropriate individual or organization if the absence is due to domestic violence, sexual assault, or stalking incident) if the employees are absent for three (3) or more consecutive workdays. The employees have up to thirty (30) days from the first day of work to submit this certification.

The sick leave required under the Executive Order is in addition to the employer's obligations under the Service Contract Act ("SCA") and the Davis Bacon Act ("DBA"), and employers cannot receive credit toward their prevailing wage or fringe benefit obligations for any paid leave that is required under this Executive Order. However, an employer's existing paid sick leave policy may satisfy the prevailing wage requirements under the SCA and DBA if: (a) the sick leave is made available to all covered employees; (b) the sick leave is *in addition* to any SCA and DBA obligations the employer may have; (c) the amount of sick leave is *greater than* the required amount set forth in the Executive Order; and (d) the leave may be used for the same purposes as set forth in the Executive Order.

Please contact Anna or Janelle if you have any questions.