

NWX-DOL ESA OFCCP

Moderator: Brenda Stewart
April 8, 2015
1:00 pm CT

Coordinator: Welcome and thank you for standing by. At this time, all participants are in a listen-only mode. After the presentation, we will conduct a question and answer session. To ask a question, please press Star then 1. You will be prompted to record your first and last name.

Today's conference is being recorded. If there are any objections, please disconnect at this time.

I'd now like to introduce your host for today's conference, Brenda Stewart.
Thank you. You may begin.

Brenda Stewart: Thank you, operator and welcome everyone. Again, my name is Brenda Stewart, and I'll be your moderator for today's Webinar. We're glad to have you join us for the Filing A Complaint Based On Sexual Orientation and Gender Identity Webinar. You may have participated in some of our other Webinars, and this is one of a series of public Webinars that OFCCP has been conducting on Executive Order 13672.

And today the focus is on how OFCCP will be processing complaints received under Executive Order 11246 as amended by Executive Order 13672.

In this Webinar, you're welcome to submit your questions throughout the Webinar in the WebEx Chat Box. We have people who will be reviewing the questions and any of the comments that are submitted, and we will try to get to as many questions as possible during the actual Webinar, but there may be some that we will not get to today.

However, we'll review those questions and use them to develop our Frequently Asked Questions. And you can locate the chat box on the lower right hand corner of your screen. So when you submit your questions, make sure you send them to all panelists.

You'll also notice that there's a Media Viewer screen at the bottom right hand corner. That's where you can see closed captioning. We have live closed captioning for today's Webinar.

And finally, if you're having any difficulties with WebEx, you can still participate in today's session by dialing into the teleconference line, and that number is (888) 593-8431 pass code 9940015. And I'll also post that information in the chat box along with the streaming links so that you can connect to the audio through your speakers on your laptop through your computers.

So right now, I'd like to introduce you to Director Shiu. Patricia Shiu is scheduled to give us some opening remarks and she will be taking over the presentation right now. Miss Shiu?

Patricia Shiu: Thank you very much, Brenda, and welcome everyone to today's seminar. This is a very exciting day for us here at the Department of Labor and OFCCP because for the first time since 1974, our protection against workplace discrimination has expanded to new classes of workers.

Beginning today, every new or modified federal contract will include a provision that the employer prohibit discrimination on the basis of race, color, sex, religion, national origin, disability, status as a protected veteran, and -- at long last -- sexual orientation and gender identity.

That provision will flow from prime contractors to subcontractors. It will span every type of federal contract, from companies that build our highways and manage our IT infrastructure to those that run our cafeterias, produce our military uniforms, and stock our supply closets.

The rule will apply to every establishment of those contractors -- not just the ones directly involved in performing the contract. And I believe a ripple effect will begin across the American workforce. I believe this because one, it's already happening at the state and local level, and two, this has been the arc of our history for more than 70 years.

On the eve of World War Two when FDR prohibited defense contractors from discriminating against African Americans, he catalyzed a series of changes that led to the Civil Rights Act.

In 1967, when LBJ added sex discrimination to the Executive Order we enforce at OFCCP, he paved the way for more robust enforcement of equal pay laws and protections for pregnant women in the workplace.

And when Richard Nixon signed the Rehabilitation Act of 1973, he created new pathways of opportunity and accommodation for millions of workers with disabilities -- paths that were broadened two decades later by the Americans with Disabilities Act.

We are reaching a major milestone today as we put in place the first of its kind federal protections for lesbian, gay, bisexual, and transgender workers in the private sector and that is a very big step forward.

Thank you for joining us.

Brenda Stewart: Thank you, Director Shiu (unintelligible). So now I'd like to introduce our speakers for today -- Patrick Patterson and Naomi Levin.

Patrick Patterson was appointed to serve as Deputy Director of OFCCP in October 2014. And in this capacity, Mr. Patterson advises the agency on legal and policy matters as well as enforcement and training opportunities -- I'm sorry, training priority.

Mr. Patterson comes to the Department of Labor from the US Equal Employment Opportunity Commission, where he served as Senior Council to former chair Jacqueline Berrien from 2010 to 2014. At the EEOC, Mr. Patterson provided legal and policy advice to facilitate the development of regulations, guidance, technical assistance, and recommendations from litigation and Amicus briefs.

Prior to joining the EEOC, Mr. Patterson litigated many employment discrimination class actions and other civil rights and public interest cases in various parts of the country. He served as assistant council and western regional council for the NAACP Legal Defense and Educational Fund in New

York and Los Angeles, taught at the University of Wisconsin and UCLA Law School, and worked as a Legal Services lawyer in Milwaukee and engaged in private practice.

We also have Naomi Levin, who is the Special Assistant to the Director of Policy and Program Development. Miss Levin joined OFCCP in May of 2008 after more than 20 years as a senior attorney at the EEOC.

For nine years, Miss Levin served as special assistant and advisor to two of EEOC's commissioners. Prior to her work with the commissioners, Miss Levin worked in EEOC's Office of Federal Operations, where she ran an administrative appellate decisions on complaints, alleging employment discrimination in the federal sector.

She then joined EEOC's Office of Legal Counsel, where her accomplishments included co-authoring the commission's original ADA regulations and commenced conducting numerous ADA and Rehabilitation Act training around the country.

Miss Levin received her law degree from the Washington College of Law at the American University and her B.A. in American Government from Clark University.

Welcome Naomi and Patrick. (Unintelligible) so now I'll turn the presentation over to Patrick.

Patrick Patterson: Thank you, Brenda and welcome everyone. On July 21 of 2014, the President signed Executive Order 13672, which expands workplace protections to applicants and employees in the federal contracting workplace on the basis of sexual orientation and gender identity.

As Director Shiu indicated, this Executive Order amended Executive Order 11246 and directed the Secretary of Labor to prepare regulations implementing the new protections. The Department of Labor published its final rule on December 9 of 2014, changing OFCCP's regulations so that they prohibit discrimination based on and require treatment of applicants and employees without regard to sexual orientation or gender identity.

OFCCP held Webinars last month to provide technical assistance to federal contractors on the implementation of Executive Order 13672. The focus of today's presentation will be to explain OCCP's complaint process now that we have the authority to accept, investigate, and resolve individual and systemic complaints based expressly on sexual orientation and gender identity.

As the slide indicates, we will quickly go over the basics of the final rule and then we'll delve into the complaint process. We will discuss the intersection between Executive Order 11246 and Title 7 of the Civil Rights Act of 1964. And what that means for people who want to file a complaint based on sexual orientation or gender identity. Next slide please.

OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veteran's Readjustment Assistance Act -- also known as VEVRA.

Executive Order 11246 prohibits federal contractors and subcontractors and federally-assisted construction contractors and subcontractors who hold over \$10,000 in government contracts in one year from discriminating in employment on the basis of race, color, religion, sex, or national origin, and now also on the basis of sexual orientation or gender identity.

The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects their employment.

Since the final rule was published in December of 2014, OFCCP has been actively soliciting input from stakeholders and working on ways to implement the changes to help guide the public and contractors about the practical effects of this new rule. Our goal at OFCCP is to enable contractors to comply with these regulations through clear guidance and compliance assistance when needed, and also to make workers aware of the new protections they now have.

The final rule can be found in the Federal Register, and it will be incorporated into the next publication of the Code of Federal Regulations. It is also available now on our Web site. (Unintelligible) slide please.

This slide provides definitions of the terms “sexual orientation” and “gender identity” -- although these definitions may change as statutory, regulatory, and case law develop.

OFCCP defines sexual orientation as an individual’s physical, romantic, and/or emotional attraction to people of the same and/or opposite gender.

OFCCP defines the term gender identity as one’s internal sense of one’s own gender. It may or may not correspond to the sex assigned to a person at birth, and may or not be made visible to others.

OFCCP will continue to monitor legal developments regarding the use of these terms and will provide further guidance on these terms on its Web site in the event that legal developments require a change.

Now I'll turn it over to Naomi to go over what's OFCCP Complaint Jurisdiction on the next slide.

Naomi Levin: Okay thank you, Patrick. And let me add my welcome to everybody who is joining us today. We're delighted you're able to.

And on this slide, we have listed all of the bases in which employment discrimination is explicitly prohibited by Executive Order 11246 and by Title 7 of the Civil Rights Act of 1964, which is primarily enforced by EEOC.

Executive Order 11246 explicitly prohibits discrimination on the bases of race, color, religion, sex, national origin, sexual orientation, and gender identity, while Title 7 explicitly prohibits discrimination on the bases of race, color, religion, sex, and national origin.

So as you can see, Title 7 does not explicitly prohibit discrimination based on sexual orientation or gender identity, but our Executive Order as amended now does. Next slide.

However, discrimination on the basis of sex has been interpreted by the EEOC, OFCCP, and a number of federal courts to include discrimination based on gender identity, including gender status.

OFCCP clarified its position last August in a directive that you can easily find on our Web site. It's directive number 2014-02. This directive states that we will accept and investigate individual and systemic complaints alleging sex

discrimination on the basis of gender identity including discrimination against transgender applicants or employees.

Certain cases of sexual orientation discrimination may also constitute unlawful sex discrimination under Title 7, particularly those that involve sex stereotyping. Because of this, EEOC has taken the position that it will accept sexual orientation discrimination charges despite the lack of specific sexual orientation language in Title 7.

OFCCP will continue to monitor legal developments regarding this interpretation and will provide further guidance as warranted by any further legal development in this very dynamic area. Next slide, please.

Of course, with a broad interpretation of sex discrimination, OFCCP will consider and discrimination complaints that it receives based on sexual orientation or gender identity to be simultaneously dual filed under Title 7. Simultaneously dual filed means that the complaint is considered to be filed under both Executive Order 11246 and Title 7.

This is important because when OFCCP receives a dual filed complaint, OFCCP not only investigates under our Executive Order, but may also as we say stand in the shoes of EEOC for purposes of investigating and resolving the Title 7 component of the complaint as well.

Now sometimes you may file a discrimination complaint with OFCCP that we turn around and transfer to EEOC for processing and investigation. When this happens, the date that you filed with OFCCP is going to be considered the date that you filed with EEOC for Title 7 purposes.

So I'm sure a lot of people out there are now going, "So when does that happen? And how does OFCCP determine when to transfer complaints to EEOC and when it's going to keep and investigate that case ourselves?" Let's go to the next slide and start answering some questions.

Patrick Patterson: Thank you, Naomi. So first, let's address what kinds of complaints OFCCP will accept and investigate under the new rule. Unlawful discrimination can occur in many ways, including but not limited to discrimination in the hiring, promotion, compensation, or termination, or for example harassment or retaliation.

It is OFCCP's job to serve as a neutral fact finder when a complaint is filed, and then to make a determination of whether discrimination has occurred.

OFCCP has been preparing to accept and investigate complaints based on sexual orientation and gender identity. We will accept individual and class complaints alleging such discrimination, including complaints alleging discrimination based on transgender status.

As always, OFCCP will investigate complaints filed during the course of compliance evaluations. OFCCP conducts more than 3000 compliance evaluations every year, during which we examine federal contractors' affirmative action programs and run statistical analyses on their personnel activity data, which includes compensation information and records related to hiring, promotion, and termination decisions.

During the course of these compliance evaluations, our agency may conduct an onsite review, during which we may find individuals who wish to file complaints alleging discrimination.

When an employee or applicant files a discrimination complaint while a compliance review is going on, OFCCP will investigate the complaint. The bottom line is that under the new rule, OFCCP will accept complaints alleging discrimination based on sexual orientation or gender identity. Next slide, please.

After OFCCP receives a complaint, it coordinates with the EEOC in a number of ways on a case-by-case basis. Sexual orientation or gender identity complaints will be referred to the EEOC if OFCCP lacks jurisdiction because a company does not have a contract entered into or modified on or after April 8, or does not meet the monetary threshold for OFCCP jurisdiction.

In cases that OFCCP does not refer, we will work with the EEOC on a case-by-basis to share information related to the complaints. There are likely to be some cases where discrimination is best remedied by a joint investigation between OFCCP and the EEOC. And there may be other cases that would be best remedied by transferring the case in its entirety to the EEOC.

All of these determinations will be made from a close examination of the facts and the evidence on a case-by-case basis in consultation with a Solicitor of Labors Office. Next slide, please for Naomi.

Naomi Levin: And now that you have a better understanding of the protections available and the interplay in coordination between OFCCP and the EEOC, let's talk a bit about the process for filing a complaint with OFCCP.

Complaints may be filed in a number of ways. In our time today, we can only provide you with a brief overview of the complaint process, but if you want to know more, you'll find more in-depth discussion on our Web site.

First, if you're an applicant or employee and you believe that you've been discriminated against based on sexual orientation or gender identity, or for that matter on any other basis that you heard us talk about, you may file a complaint with OFCCP.

You can also have an individual or an organization file a complaint on your behalf, or you may file a complaint on behalf of a group of applicants or employees. Once you decide to file a complaint, there are three basic steps that you need to take.

First step, download the complaint form that you'll find on our Web site. Step two, complete that form. When you look at the form, you'll notice it doesn't have sexual orientation and gender identity on it. OFCCP will be revising that complaint form to reflect the amendments to Executive Order 11246, but until that process is completed, when you're filing based on sexual orientation or gender identity, please mark the box next to ex.

If you accidentally check a different box, not to worry -- we always will examine your description of the facts and we will see if your complaint of discrimination is intended to be on the basis of sexual orientation or gender identity no matter what box you've checked.

When you complete the complaint form, please be sure that that form contains all of these pieces of information. First, identify yourself and the contractor that you believe discriminated against you. In the narrative section of the complaint form, describe the acts that you believe resulted in the alleged discrimination.

Then, we want you to provide the names of the people involved and any others who may have relevant information. So tell us who you think is

responsible for the alleged discrimination. Are there other witnesses who have valuable information who saw something happen or heard something happen? Are there other applicants or employees that are in similar circumstances to you, or those that were treated more favorably than you were?

So that's just sort of a sample of the kind of people who may have relevant information. So let us know who those people are if you know who they are.

Then please provide us with the dates of the incident or actions or multiple actions that are the alleged discrimination or that caused the alleged discrimination. And least but certainly not least, provide us your contact information because we may need to reach you and talk to you.

Remember that the complaint form serves as a narrative of what happened and why the complainant -- and that's the person alleged to have been discriminated against -- believes that he or she has been subjected to discrimination. In other words, this is your opportunity to tell your story to us.

And step three -- after you've completed the form, submit it to OFCCP by either filing it electronically with the appropriate regional office, or you can mail or fax the complaint to the appropriate regional office, or you can file the complaint in person at any one of our OFCCP district or area offices. So you can go to the office closest to you.

The appropriate OFCCP regional office location is the regional office that covers the location where the alleged discrimination occurred. However, if you make a mistake and send your complaint to the wrong office, we'll simply forward it to the correct office for processing.

Remember please that your signature is required on the complaint form. So if it's not on the form when you submit it, we'll ask you to sign your complaint form at a later time.

You may also file a discrimination complaint with us in the form of a signed letter. So it doesn't have to be on the complaint form. It can be a signed letter as long as all the information that I told you to include in the complaint form is included in your letter.

If you have questions about the complaint process or if you want to discuss your complaint or want to learn more about the filing a complaint process, you may find more information on our Web site that's helpful to you, or feel free to call or visit any OFCCP office.

Complaints alleging discrimination based on sexual orientation or gender identity must be filed within 180 days of the date of the alleged discrimination. So be mindful of the time. Don't wait too long. And that 180 days is the time period unless the time for filing is extended for good cause shown. Next slide.

On this slide we just present a screen shot of the complaint page of our Web site where detailed instructions are bolded that explain filing a complaint based on sexual orientation or gender identity. So for those of you who are looking at a computer screen right now, you can see what that page would look like.

And notice also that we're working on making the complaint form available in several languages in addition to English. Specifically, we hope to have the form available soon in Spanish, in French, in Mandarin and Cantonese dialects of Chinese, and in Korean and Vietnamese. Next slide.

And on this slide we have just showed OFCCP's Web page. This is another screen shot of our Web page where you can find contact information for each of OFCCP's regional offices and the states and area that each regional office covers. You can use this page to identify the appropriate regional office for you to file a complaint with.

The contact information for each regional office also includes a dedicated email address for receiving complaints. Next slide.

Okay so you've filed a complaint. What happens once you've done that? Well, the complaint process is initiated once the complaint is received by an EEOC or an OFCCP office, or it's filed using the online form with an OFCCP office. That office will review the complaint, will do an initial review to determine if OFCCP has jurisdiction, whether the complaint is timely filed, and whether we have all of the information we need in order to start that investigation.

So in order to ensure that we understand the allegation and have all of the necessary information, an OFCCP Compliance Officer -- or CO, as we call them -- may call you to discuss the complaint. OFCCP will usually complete sort of initial, preliminary review of the complaint within ten calendar days. But this timeframe may be extended as needed. Next slide.

Now OFCCP is ready to proceed with the investigation. The complaint is assigned to a CO. The CO will serve as a neutral investigator, a fact finder, and doesn't represent the complainant. Rather, the CO represents the government's interests in ensuring that companies doing business with the government do not discriminate in employment.

One of the first actions OFCCP will take is to provide written notice of the complaint to the contractor. The complainant will also receive a notice from us confirming our receipt of the complaint. And during the investigation of that complaint, a CO will communicate with the complainant on a regular basis and will also serve as the contact person for the company.

The scope of the investigation that we'll do on the complaint will vary and depends on the allegations that are raised in the complaint. We may in appropriate circumstances ask for data and information that pertains to the allegations. We may conduct interviews of company officials, employees, applicants or other witnesses that have been identified who may have information about the issues in the complaint.

We may also review records and may even visit the facility where the incident occurred to inspect that facility.

We do our best here to try to investigate and resolve complaints as expeditiously as possible. With - for that reason we have a target of completing the processing of complaints within 60 calendar days. This time frame for our complaint investigation may be extended of course for appropriate reasons -- for example, the availability or unavailability of witnesses, or the need to review the luminous records may also cause us to extend our investigation period. Next slide, please.

Patrick Patterson: After completion of the investigation that Naomi just described, OFCCP will make factual findings and reach a conclusion as to whether discrimination has occurred. The Compliance Officer writes a report indicating whether or not the evidence supports that one or more violations occurred.

If OFCCP finds a violation, we will attempt a settlement with the company, resulting in a conciliation agreement. The conciliation agreement will seek to make the complainant whole -- that is, to restore the complainant as nearly as possible to where they would've been had the discrimination not occurred, and to ensure that discrimination will not recur.

If a settlement is not reached, the case may be referred to the Solicitor of Labor for enforcement. The Solicitor brings an administrative enforcement action before an administrative law judge. If that occurs, the complainant will not be a party to the case.

If no discrimination is found in OFCCP's investigation, OFCCP will contact the complainant to provide one more opportunity to provide additional witnesses or new information before a final determination is made. If OFCCP reaches the same no violation determination, at that point we would close the investigation.

If the complainant disagrees with OFCCP's conclusion, he or she may write the regional director to request reconsideration. The complainant should explain the reason for the belief that the conclusion reached was incorrect. OFCCP will review the request to determine whether it should be granted, and OFCCP's decision is final. Next slide, please.

This slide addresses the subject of the notice of Right to Sue. Letters notifying both the complainant and the contractor of OFCCP's investigation results will be provided in every case. In dual filed complaints where OFCCP does not find a violation, and there may be a claim under Title 7, a document called the Notice of Right to Sue is included with the closure letter to the complainant. This notice states that you have the right to file your own lawsuit within 90

days of the receipt of the notice under Title 7 against the contractor in federal or state court.

If the complaint has been pending for 180 days or more, the complainant also has the right to request and obtain a Right to Sue notice at that point.

Note that the ability to file your own lawsuit only applies to the Title 7 component of a dual filed complaint. There is no private right of action -- that is, no private right to bring a lawsuit under Executive Order 11246. Next slide, please.

On this slide, we show remedies available for complainants under Executive Order 11246 and Title 7. OFCCP's remedies under 11246 are designed to make the discrimination victims whole to the extent reasonably possible. In fashioning remedies, OFCCP attempts to obtain a complete remedy.

It is important to note that the types of make whole relief listed here would not necessarily be appropriate in every case. As the slide indicates, make whole relief could include a job offer, back pay, and front pay if appropriate. Back pay is designed to restore the monetary value of wages, salary and benefits lost by the victim due to discrimination. Front pay is designed to avoid the loss of future wages, salary, and benefits, where placement in a job or reinstatement is not feasible.

Additionally, OFCCP may pursue injunctive relief or corrective remedies to stop the violation, to cure the effects of the violation, and to prevent the violation from recurring. Other types of corrective remedies include training, monitoring, and reporting requirements.

If OFCCP is unable to resolve a violation, it will refer the violation to the Solicitor of Labor for further administrative enforcement proceedings. These proceedings may result in remedies that include debarring the contractor from receiving future contracts, or modifications or extensions of existing contracts. Contractors may also have existing contracts cancelled or terminated.

These remedies that I've just referred to are only available under Executive Order 11246. They are not available under Title 7.

In dual filed complaints that OFCCP investigates separately from the EEOC, OFCCP will investigate, process, and resolve the Title 7 component of the complaint to the full extent of its authority in a manner consistent with Title 7 principles.

Title 7 similarly focuses on making the discrimination victims whole, correcting the violation, and preventing the recurrence. In addition however, Title 7 authorizes EEOC and private litigants to recover compensatory damages -- that is, damages to compensate the victim, for example for emotional distress. And also Title 7 authorizes the recovery of punitive damages. Those are damage to punish an employer for engaging in discrimination with malice or reckless indifference to federally protected rights.

As a general matter, OFCCP does not seek to recover compensatory or punitive damages. OFCCP will take into account the various forms of relief and remedies available under the two laws and how they differ in considering whether joint investigation with the EEOC or transfer of a case to EEOC is appropriate. We have the next slide, please.

Naomi Levin: Before we go to questions, we wanted to spend a little time discussing the most common question that we've been receiving regarding fringe benefits for same-sex couples, identification documents for transgender applicants and employees, and restroom access for transgender applicants and employees. Next slide.

Okay. First question. Is a contractor required to provide fringe benefits to an employee's same sex spouses if they reside or work in a state that does not recognize their marriage? If contractors provide such benefits to employees in opposite sex marriages, they are required to provide the same benefits to employees in same sex marriages.

In addition, contractors must use the same standard to determine if the same sex or opposite sex marriage qualifies a spouse to benefits. Examples of such standards include a place of residence or a place of celebration rule. In states that do not recognize same sex marriage, the use of a place of residence or place of business rule that results in finding all same sex marriages invalid and denies benefits on this ground may constitute prohibited discrimination under the executive order. This is -- the cause to do this -- could have an unjustified disparate impact or effect on the basis of sexual orientation.

However, adopting a place of celebration rule avoids this riff. Under this rule, any marriage is recognized if it was entered into in a US state or territory that recognizes that marriage or if entered into outside the United States is valid in the place where entered into, and could have been entered into in at least one US state or territory. Next slide.

And next question. What about employees in civil unions or domestic partnerships? Well, contractors are not required to treat same sex couples in civil unions or domestic partnerships the same as married couples with regard

to the provision of fringe benefits, provided that treatment is not based on discriminatory animus.

However, if a contractor provides benefits to opposite sex couples in civil unions or domestic partnerships, it must provide those same benefits to same sex couples in those same types of relationships. Next slide.

Okay so may an employer ask a transgender applicant or employee for documentation to prove his or her gender identity? Well, the short answer is no, an employer may not ask transgender applicants or employees to prove their gender identity.

So what kinds of documents may an employer require a transitioning applicant or employee to provide about the employee's transition? And here, the touchstone is how an employer treats other employees in similar circumstances. What do I mean? Well, that means for example that an employer may not ask a transgender applicant or employee for any documentation they do not request from other employees under similar circumstances.

If a transgender employee is requesting to make a name change, an employer may require the same documentation it requires from other employees seeking to make a name change. If a transgender employee is requesting medical leave in connection with his or her transition, here again an employer may request the same documentation it requires from other employees who seek medical leave for other purposes. Next slide for Patrick.

Patrick Patterson: And one other frequently asked question we'll address today is how is restroom access affected by the final rule? Under the rule, contractors must ensure that their restroom access policies and procedures do not discriminate based on sexual orientation or gender identity of an applicant or employee.

In keeping with the federal government's existing legal position on this issue, contractors must allow employees and applicants to use restrooms consistent with their gender identity. Next slide, please.

As part of the implementation of the new executive order and the final rule, staff will be reaching out to community organizations to educate the LGBT community about these new protections. We invite and welcome the input of those in the LGBT community on ways to engage in this outreach in the most effective manner possible.

In addition, OFCCP will continue to update its resources and post additional FAQs and other information to increase awareness of the community resources available.

I'm now going to turn the Webinar back over to our moderator, Brenda Stewart. She will begin the question and answer process.

Brenda Stewart: Thank you Patrick and thank you Naomi. At this time we'll begin to take some of the questions that you have been submitting through the WebEx Chat Box. If you have not done so, please do so now. We're going to take a very short break so we can begin compiling those questions and preparing responses for you.

Coordinator: Going to ask a question on the audio side, please press Star then 1. You will be prompted to record your first and last name. To withdraw your request, press Star2.

Man: Said at the beginning we were taking...

Brenda Stewart: Unfortunately, we will not be taking live questions through the phone. Questions can only be submitted through the WebEx Chat Box.

Coordinator: Thank you.

Brenda Stewart: Okay, everyone. We've had quite a few questions come in, and we'll begin to go through those and provide you with responses.

First I've gotten quite a few questions about the slides and the presentation and whether they will be available to participants. And yes, they will be made available. Right now we need to have them remediated before they're posted on our Web site, but I have included the link to the Web site in the chat box and I will send that again. So check back and they will be posted there.

And I'll turn the questions over (unintelligible). Okay I'm sorry. We're going to our questions. Okay. So we have here with us to address some of these questions is our subject matter expert, Adam Pulver. Adam is an attorney in the Civil Rights and Labor Management Division of the Office of Solicitors at the Department of Labor.

Prior to joining this department in 2014, he spent several years as a Civil Rights Litigator representing plaintiffs in employment, housing, prisoners' rights, and police misconduct cases. He's the author -- I'm sorry -- of several publications on LGBT, disability, and labor employment issues and has worked extensively on the publication and implementation of this final rule. Welcome, Adam.

Adam Pulver: Thank you. Good afternoon, everyone. The first question that we received is can a complaint be submitted anonymously? And the answer to that is yes,

you may submit a complaint anonymously or someone can submit a complaint on your behalf without identifying their name.

There are a few caveats to that, though. First, the more specifics you can provide us in a complaint, the more thorough an investigation that OFCCP can conduct. For example, (unintelligible) the supervisors, witnesses, and other people who might have information about an ongoing practice. In addition, the remedy that will be available to you will be limited if we don't have your name or identity, so it's very hard for example to provide you with back pay if we don't have your identity. But yes, if you do want to submit anonymously, you may.

Also as a reminder is that there are prohibitions on retaliation against applicants and employees who seek protection under the executive order. So you would be protected under those provisions, which are in our regulations.

I'll turn it over to Patrick to handle the next question.

Patrick Patterson: Thanks, Adam. The next question we have is does a contractor status as a religious entity within the meaning of Title 7 affect any of its non-discrimination obligations?

Well, within the meaning of Title 7 may not be a necessary part of that question, but the general answer is that a religious entity may have an exemption to certain obligations under Executive Order 11246. To start with, the Executive Order applies only to employers that are federal contractors or federally assisted construction contractors or subcontractors.

A religious organization will be subject to the final rule if it enters into a new contract or modifies an existing contract after April 8. However, religious

organizations that are not contractors but are merely recipients, for example, of federal grant funds would not be subject to 11246.

On the other hand, if an organization -- a religious organization -- does hold a covered contract, it is prohibited from discriminating on any of the protected bases listed in the executive order which now, includes sexual orientation and gender identity. There is a specific exemption provision for religious organizations that was added to Executive Order 11246 in 2002 and that organization - that exemption rather provides that the executive order shall not apply to a government contractor or a subcontractor that is a religious corporation, association, educational institution or society.

With respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities, such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the Executive Order.

You can find that -- the regulation implementing that exemption -- at 41CFR Section 60-1.5A5. And you can also find frequently asked questions about it that are posted on our Web site.

Brenda Stewart: Okay. So we have a question that is coming for you, Naomi. When will the supplement to the EEO law poster be posted on (unintelligible) Web site for downloading and posting by contractors?

Naomi Levin: That's a good question. In case anybody doesn't know, OFCCP and EEOC share The EEO is the Law Poster. So it has all information about all of the laws that both agencies enforce. And employers who are subject to any of

those laws have to post that poster, which if you've probably seen in your workplace somewhere.

We have already started working with the EEOC to update that poster so that it reflects the requirements of Executive Order 13672, but that takes a while as things frequently do. So in the short term, we are working very hard to get out a supplement to the poster that would be posted with the old existing current poster that would discuss all of the different changes to the laws OFCCP enforces.

Now the question of course was when, not what. I wish I could give you a date certain but we're working hard to get that done as quickly as we can. We will certainly post that and send out - post a notice on our Web site when that supplement is available. But until it is, employers will not be expected to change the poster on their own. So that current poster should remain there and as soon as we have a new poster or the new supplement available, we will post an announcement on our Web site and make sure everybody knows and then it can be downloaded right from our Web site.

Brenda Stewart: Awesome. Thank you, Naomi. We have another question for Adam. Is the 180-day following deadline extended to 300 days? The state law contains prohibitions above this (divination) on the basis of sexual orientation or gender identity.

Adam Pulver: So I'll give both a short answer and a long answer. So the short answer to this question is no. Your time will not be extended to 300 days simply because a state law exists which may also have prohibitions on the same protected bases.

As a bit of a background, though, just realize that OFCCP will not necessarily construe the prohibitions on discrimination on the basis of sexual orientation

and then gender identity exactly the same as state or local laws as with any other law. We do tend to follow Title 7 and the EEOC's interpretations of Title 7 as well as that by federal courts.

Also, keep in mind that in addition to non-discrimination requirements, what makes OFCCP's regulations slightly different is that this rule also requires contractors to take some affirmative steps to ensure equal treatment and this includes -- as Naomi was talking about -- the revised EEO law. I'm sorry. EEO is the law poster once it's available. And updating the Equal Opportunity Clause (unintelligible) subcontracts and purchase orders and including a revised tagline in advertisements and solicitations.

Brenda Stewart: Thanks, Adam. Another question for Naomi -- What about federal grants? Does that automatically make you a federal contractor?

Naomi Levin: And the short answer to that is no. A federal grant does not make you a federal contractor. So if all you have is a grant that is not going to be enough. A federal contract is when you are providing goods or services or including construction to the federal government or a subcontractor who's providing those services to a contractor who's providing them for the federal government.

A contract also includes federally assisted construction projects, which is something sort of special, but generally speaking, just a grant or federal financial assistance for anything other than construction is not a federal contract. If that's all you have, you would not be subject to this - our laws.

Brenda Stewart: Okay. What about job posting tagline? What should they use?

Naomi Levin: Well the tag line Adam already mentioned, one of the requirements that our laws require of contractors is that in their job advertisements, they include an equal opportunity tagline as we call it -- something that lets people know they're an equal opportunity employer -- in every single job advertisement or vacancy announcement.

The Executive Order gives contractors two choices for how they can have this tagline. They may have a tagline that includes all of the protected bases in their tagline, or they may simply say equal opportunity employer. Both options remain available for contractors, even as amended by Executive Order 13672 with this one caveat -- if you were to be a contractor and you were listing out all the bases, you would have to include sexual orientation and gender identity in your list of protected bases.

Now I'm sure some people are thinking what about LGBT? We sort of discourage that, only because it doesn't include everybody who's protected by the law, because the law will protect everyone based on their sexual orientation and gender identity.

I guess the last thing to let people know is that if you are listing those out, do not abbreviate sexual orientation or gender identity. We want to be sure that everybody understands what you mean and who it is who's protected. So that's why we would ask those terms not be abbreviated if you're doing that.

Brenda Stewart: Okay. So the EOE (unintelligible) that will take someone six years. Well that's what it says.

So we have one last question for Adam. Are contractors that provide health benefits to employees required to provide health benefits to transgender employees for transition-related care, such as surgery and hormones?

Adam Pulver: So this is a question that I want everyone to know that all OFCCP is very much aware of and then Department is aware of. And part of the ongoing implementation of this rule, we're working with other government agencies -- including Health and Human Services and the Office of Personnel Management -- to make sure that OFCCP takes a - enforce an approach as consistent as that of other federal agencies and is in sync with other federal policies and protection based on gender identity and sexual orientation.

Now in the interim, all I can tell you is OFCCP will analyze any complaints received relating to health insurance benefits under Title 7 principles relating to disparate treatment and disparate impact discrimination.

So although we do not have anything further we can add to that discussion at this time, if you submit a complaint it will be considered and (unintelligible).

Brenda Stewart: Okay well that's all the questions that we have time for today. Again, if you have questions in the future or if we weren't able to get to your question today, leave your (unintelligible) and include the variety of resources where more information can be obtained -- including our contact information.

I also want to take this opportunity to make you aware that you can subscribe to receive OFCCP updates and alerts. On our Web site, the subscribe button is on the right just above the latest news and current events section. With this subscription, you will receive emails about OFCCP activities, events, new postings on our Web site, things like that.

Now I want to take time to thank everyone for participating in today's Webinar. And a special thanks to our presenters, Patrick and Naomi and as well as to Adam for going through the questions. And please stay tuned to that

Web site for information on upcoming Webinars. We have another one on the same topic tomorrow if you'd like to join us again. Thank you everyone, and have a great day.

Coordinator: Thank you for joining today's conference. That does conclude the call at this time. All participants may disconnect.

END