



## Labor & Employment ADVISORY ■

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### **President Obama Issues Two New Orders Impacting Federal Contractors**

Last week, President Barack Obama signed a memorandum directing the Department of Labor (DOL) to issue a rule requiring federal contractors to provide compensation data by sex and race and an executive order banning federal contractors from retaliating against employees who discuss their compensation with one another.

Until the DOL issues the regulations directed by the [memorandum](#), the impact is hard to evaluate. The memorandum discusses generally the development of a compensation data collection tool, but provides no insight into the parameters of the tool. One main concern from an employer's point of view is that the regulations may require federal contractors to present compensation data—which is very complex and involves many variables—in an oversimplified manner that has the potential to be misleading.

The anti-retaliation [order](#) expands protections that the National Labor Relations Board (NLRB) says are already afforded under the National Labor Relations Act (NLRA). The NLRB has interpreted and applied the amorphous language of Section 7 of the NLRA to prohibit employers from keeping workers from discussing their compensation. The executive order's anti-retaliation provision, however, is an express legal requirement that is binding on federal contractors. The order's protections are broader than those potentially afforded under the NLRA in that the NLRA does not apply to management employees or employees of certain industries, such as rail or airline carriers. Additionally, by implication, the order provides that employers who contract with the federal government can no longer enforce policies mandating the confidentiality of employee compensation information. However, the order does include an exception for employees whose essential job functions permit them access to other workers' wage information and who disclose the compensation of other employees to individuals who do not otherwise have access to such data.

While both the memorandum and executive order only immediately impact those employers who contract with the federal government, they reflect the Obama administration's larger employment policy agenda focused on equal pay and exemplify the President's willingness to use orders to advance this agenda without congressional support.

The President has used executive power to change a number of federal contractor employment practices, the most recent of which occurred in February of this year when he issued an executive order increasing minimum wage for employees of federal contractors and subcontractors to \$10.10 per hour. That order followed the administration's unsuccessful attempts to muster congressional support for a comparable national minimum wage increase.

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