

PUBLICATION

New Sex Discrimination Rules for Federal Contractors

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It took them more than 46 years but the OFCCP *finally* released updated guidelines for federal contractors regarding sex discrimination (the last update was in 1970). The new guidelines are consistent with Title VII and the EEOC's current interpretation of the statute and provide federal contractors with direction regarding OFCCP's position on compensation, pregnancy, and harassment, as well as a listing of Best Practices to prevent sex discrimination in the workplace.

Based upon this new guidance, federal contractors should:

1. Review their health insurance coverage to ascertain if it provides for categorical exclusions of enumerated health care services. Excluding health services related to gender transition is a form of categorical exclusion that could subject a federal contractor to sex discrimination claims.
2. Check preconceived (and perhaps well meaning) notions at the door. Assuming that a young mother with two small children would prefer not to take an out-of-town business trip could be viewed as sex discrimination if a young man with two small children is offered the opportunity based on the assumption that he is not needed at home. The guidelines are clear that an employee's personal circumstances should not be a factor in their work assignments or volume of work. Checking these preconceived notions at the door also means not making judgments or having set expectations about an employee's demeanor or manner of dressing based on their sex.
3. Review the OFCCP's Best Practices for suggestions on how to prevent workplace discrimination. Some of the suggested practices include avoiding gender specific job titles, such as "foreman" and using a gender neutral title.

Federal contractors should do an assessment of their current practices and benefit programs to ensure that employees are not being treated differently based on their sex or gender identity. Review of and compliance with the OFCCP's updated guidance will help federal contractors avoid sex discrimination claims.