

Andersen, Bruce - OFCCP

From: Lenhoff, Donna R - OFCCP
Sent: Friday, May 04, 2012 11:05 AM
To: Shiu, Patricia A - OFCCP
Cc: Mehta, Parag V - OFCCP
Subject: RE: EEOC Decision in Trans Woman's Case "Will Almost Certainly Impact" Federal Contractor Rules, Scholars Say

The article below states:

“Since April 27, *Metro Weekly* has been asking the Department of Labor to detail the implications for OFCCP of the Apr. 20 EEOC decision and has not received any information from Labor as of this report.”

EXEMPTION 5

EXEMPTION 5

From: Maxwell, Mary Beth - OSEC
Sent: Friday, May 04, 2012 8:39 AM
To: Fillichio, Carl - OPA; Lenhoff, Donna R - OFCCP; Shiu, Patricia A - OFCCP; Greenfield, Deborah - SOL
Subject: FW: EEOC Decision in Trans Woman's Case "Will Almost Certainly Impact" Federal Contractor Rules, Scholars Say

fyi

From: Winnie Stachelberg [mailto:wstachelberg@americanprogress.org]
Sent: Friday, May 04, 2012 7:16 AM
To: Maxwell, Mary Beth - OSEC
Subject: Fw: EEOC Decision in Trans Woman's Case "Will Almost Certainly Impact" Federal Contractor Rules, Scholars Say

EXEMPTION 5

Winnie Stachelberg
202 716 1646 cell

From: Chris Geidner [mailto:crgeidner@gmail.com]
Sent: Friday, May 04, 2012 01:36 AM

Subject: EEOC Decision in Trans Woman's Case "Will Almost Certainly Impact" Federal Contractor Rules, Scholars Say

Looking forward ...

<http://www.metroweekly.com/poliglot/2012/05/eec-decision-in-trans-womans.html>

EEOC Decision in Trans Woman's Case "Will Almost Certainly Impact" Federal Contractor Rules, Scholars Say

Posted by *Chris Geidner* |
May 4, 2012 1:25 AM | [Permalink](#)

The April 20 [decision](#) by the Equal Employment Opportunity Commission that the federal law banning sex discrimination in the workplace includes discrimination based on gender identity is likely to have several effects outside the decision itself and the EEOC, but one of the more clear implications, a trio of legal scholars says, is that "the decision will almost certainly impact the enforcement of Executive Order 11246" -- the existing federal contractor nondiscrimination executive order.



Since 1965, when President Lyndon B. Johnson signed Executive Order 11246, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has ensured that all federal contractors doing more than \$10,000 in government contract work in a year comply with the executive order's equal employment opportunity policy. This prohibits discrimination based on race, color, religion, sex, or national origin.



Because it did not explicitly include sexual orientation or gender identity, advocates have been seeking to have President Obama expand the executive order or issue a new, similar executive order to cover sexual orientation and gender identity. On April 11, however, [the White House told LGBT advocates](#) -- and later White House press secretary Jay Carney [confirmed](#) on the record -- that Obama was not planning to issue such an order "at this time."

Nine days after Obama's decision was announced, the EEOC decision was made in a case brought by the Transgender Law Center on behalf of Mia Macy against the Department of Alcohol, Tobacco, Firearms and Explosives (ATF). In the decision, the EEOC found that an employer who discriminates against an employee or applicant on the basis of the person's gender identity is violating the prohibition on sex discrimination contained in Title VII of the Civil Rights Act of 1964.

On April 23, *Metro Weekly* [broke the news](#) of the EEOC decision, noting that the decision could alter the legal landscape for transgender workers and would be binding on all federal agencies and departments as to their

interpretation of sex under Title VII. Outside of Title VII itself, however, several agencies and departments look to Title VII to inform their interpretation of related statutes.

Since April 27, *Metro Weekly* has been asking the Department of Labor to detail the implications for OFCCP of the Apr. 20 EEOC decision and has not received any information from Labor as of this report.

In a report to be released later today, May 4, however, three scholars from the Williams Institute -- Nan D. Hunter, Christy Mallory, and Brad Sears -- write that "[t]he OFCCP has an explicit policy of interpreting the nondiscrimination requirements of EO 11246 in a manner consistent with Title VII principles, and has followed EEOC regulations and guidance in enforcing EO 11246."

Later in the report, a copy of which was provided to *Metro Weekly*, they detail that OFCCP's guidance for enforcing Executive Order 11246 is found in its Federal Contract Compliance Manual.

The Williams Institute scholars write, "The chapter of the Manual that 'focuses on how to determine whether the facts of a case show employment discrimination' states that '[i]t is OFCCP's policy to interpret the non-discrimination requirements of Executive Order 11246, as amended, in a manner consistent with Title VII principles.'"

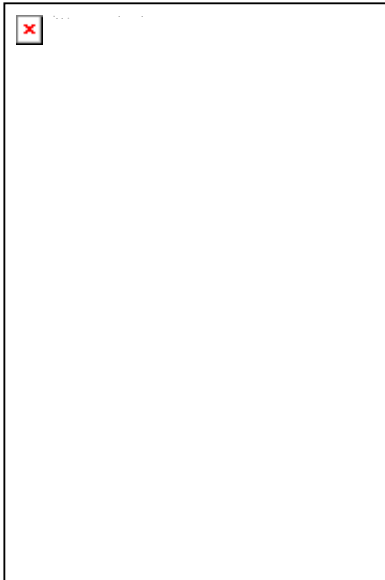


They go on to note that administrative law judges and the Administrative Review Board "have followed courts' interpretations of Title VII when deciding cases brought under EO 11246" and that the memorandum of understanding between the EEOC and OFCCP has been established to "coordinate enforcement efforts under Title VII and EO 11246."

Sears, who is the executive director of the Williams Institute, said in a statement, "Current policies and practices of OFCCP require consistency with Title VII and clarifying regulations will assist federal contractors seeking to comply with the executive order and the agency with its enforcement efforts."

Tico Almeida, founder of Freedom to Work, had [highlighted this issue](#) on the night of *Metro Weekly*'s report regarding the EEOC decision in Macy's case.

Today, he tells *Metro Weekly*, "The only intellectually honest way to interpret the existing executive order's ban on sex discrimination at federal contractors is for the Labor Department to issue public notice to the companies that profit from lucrative taxpayer-funded contracts to inform them that they cannot harass or fire talented employees just because they are transgender.



"I am confident that Labor Secretary Solis and OFCCP Director [Patricia] Shiu will do the correct and legal thing by interpreting the existing order to protect transgender Americans."

He went on, however, to continue to call on Obama to act to protect all LGBT employees of federal contractors, saying, "Secretary Solis is limited in her ability to protect gay and lesbian Americans from workplace harassment and discrimination at federal contractors because President Obama has still not fulfilled his four-year old campaign promise to create an executive policy banning anti-gay discrimination by companies profiting from taxpayer funds."

The promise is a reference to *Metro Weekly's* [exclusive reporting](#) earlier this year that, in 2008, then-Senator Obama had told the Houston GLBT Political Caucus that he would support a "formal written policy of non-discrimination that includes sexual orientation and gender identity or expression ... for all Federal contractors."

The administration has not directly answered questions about whether Obama continues to support his 2008 position, instead focusing on his generalized support for sexual orientation and gender identity employment nondiscrimination.

To that end, Almeida says now, "[W]e urge President Obama to reconsider the mistake made by White House staff who passed on the LGBT Executive Order 'at this time.' Based on President Obama's strong record of promoting LGBT fairness in law and policy, I remain optimistic he will sign his name to the executive order this year."

A report issued by the Williams Institute this past week [noted](#) that "[a]s of April 2012, 86 percent of the top 50 federal contractors prohibit discrimination based on sexual orientation, and 55 percent prohibit discrimination based on gender identity."

[Photos: Obama (upper left), Sears (right) and Shiu (lower left).]

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