



The Right to Discriminate? Department of Labor's Proposed Rule Expanding Religious Exemptions for Faith-Based Federal Contractors

Public comments due September 16, 2019

On August 15, 2019, the U.S. Department of Labor issued a proposed rule that would grant federal contractors broad religious exemptions from employment non-discrimination laws.

Federal contracts impact nearly one-fifth of the U.S. labor force, raising serious concerns for the rights of employees, applicants, and others who work for federal contractors across the country. While religious entities play an essential role in community-based services and other contracting activities, their religious nature does not mean that their workers should have fewer rights than employees of non-religious employers.

The Department of Labor is soliciting public comments on the rule through September 16, 2019. Interfaith Alliance is focused on preventing this dangerous proposal from becoming law - but we need your help.

What You Should Know About the Proposed Rule

1. *What are federal contractors and who oversees them?*

Federal contractors are individuals or employers who enter into a contract with the U.S. government to perform a specific job. The eligibility and application process is very rigorous but once approved, they approved, a contractor receives regular payments from the government to complete that task. These payments are made up of taxpayer dollars.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducts audits, investigates complaints of employment discrimination, and reviews hiring data by federal contractors. Many different departments and agencies work with contractors but OFCCP has the central supervisory authority to ensure that all contractors across the federal government are following non-discrimination laws. With this proposed rule, OFCCP is attempting to redefine the very discrimination it is tasked with investigating, leaving thousands of workers without recourse if they are rejected, fired, or penalized by an employer for religious reasons.

2. *Why is OFCCP giving religious employers special treatment?*

OFCCP is not the first federal agency to relax restrictions on religious entities under the guise of religious freedom. In 2017, then-Attorney General Jeff Sessions issued a guidance document to all administrative

agencies and executive departments outlining a coordinated agenda to privilege the religious beliefs of a small few over the freedom and autonomy of others.

This document turned equal opportunity protections upside down, arguing that religious entities and individuals face unlawful discrimination when they are held to the same programmatic standards as non-religious entities. By downplaying third party harms – for instance, the injury to an employee fired for their sexual orientation or religious beliefs – Sessions’ guidance privileged the interests of religious entities over all other considerations.

OFCCP continues this effort in the proposed rule, building on Sessions’ guidance and mischaracterizing three major Supreme Court decisions to construct a limitless interpretation of “anti-discrimination protections that must be afforded religion-exercising organizations and individuals under the U.S. Constitution and federal law.”

3. Who would be able to claim an exemption from employment non-discrimination laws?

The proposed rule would grant an exemption to any company or organization that has a federal contract and nominally holds itself out to the public as carrying out a religious mission. This would include for-profit companies and entities that do not otherwise publicize their religious nature.

4. What types of discrimination would be protected?

Under current law, federal contractors cannot discriminate against employees on the basis of race, creed, color, religion, sex, national origin, sexual orientation, and gender identity. But the proposed rule would allow these employers to use their religious beliefs as a defense against discrimination lawsuits (except for suits on the basis of race) – while still receiving payments from taxpayer dollars.

5. Would an employer have to use the same religious standards for all of their employees?

No! Under the proposed rule, contractors would be allowed to take tenets of their faith into account when making employment and benefit decisions, but these decisions do not have to be uniform. This means employers can pick and choose which individuals or groups to exclude.

Organizations can also enforce tenets differently even among impacted populations. For example, a religiously affiliated hospital could hire an openly LGBTQ+ doctor, but refuse to provide spousal or transition related health benefits.

6. What types of discrimination might be permitted under this rule?

Expanding the religious exemption might allow faith-based federal contractors to claim a right to:

- Refuse to interview anyone, however qualified, who doesn’t regularly attend religious services or isn’t the “right” religion
- Fire an employee who uses birth control or who is pregnant and unmarried
- Fire an employee who marries his same-sex partner or deny employment or health benefits to married same-sex couples that are available for married straight couples

- Refuse to allow transgender employees to dress and access facilities consistent with their gender identity

Take Action

Shortly after OFCCP released the proposed rule, Interfaith Alliance policy and legislative advisor Katy Joseph told the [Washington Post](#), “We reject the Trump administration’s distorted notion that personal faith can be used as an opt-out from civil rights laws, and we will not stand by while they place employees of minority faiths, nonreligious people, LGBTQ+ individuals, and so many others at risk.”

In advance of the September 16th deadline, Interfaith Alliance is in the process of preparing organizational comments urging the Department of Labor to stand up for the rights of *all* workers to be free from discrimination.

Ready to submit your own? Visit the Department of Labor’s [public comment portal](#) to share your story. Administrative agencies are required to read every comment they receive so your voice truly matters.