

STATE LAWS RELEVANT TO CONTRACTOR EMPLOYERS

DirectEmployers Association

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

**JOSHUA S. ROFFMAN
ALISSA A. HORVITZ
JAMES M. MCCAULEY**

MAY 7, 2025

1

1

MEET THE TEAM



JOSHUA S. ROFFMAN
MANAGING ATTORNEY

Joshua Roffman is the Managing Attorney of the Firm. Josh's practice focuses on advising and assisting employers with using data and statistical tools to evaluate their employment practices. He has been advising federal contractor employers about compliance with federal and state equal employment opportunity and "affirmative action" requirements for over twenty years. He currently is guiding employers in assessing their DEIA and similar programs for risk mitigation and compliance with nondiscrimination laws.

Josh also advises and assists employers with privileged pay equity statistical analyses. He develops and runs the statistical analyses and combines that with knowledge of the law and a pragmatic understanding of businesses and other employers to ensure analytical rigor, usefulness, and legal soundness.

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

2

2

MEET THE TEAM



ALISSA A. HORVITZ
MEMBER ATTORNEY

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on evaluating nondiscrimination and equal opportunity throughout all phases of employment using data and employment analytics. This includes analysis and advice regarding EEO in recruiting, hiring, promotions, terminations, and compensation (pay equity), as well as DEI reviews for government contractor employers seeking to unwind their compliance with EO 11246. Alissa also does live and virtual training on relevant employment law topics.

MEET THE TEAM



JAMES M. MCCAULEY
ASSOCIATE ATTORNEY

James McCauley is an Associate Attorney with Roffman Horvitz. James's experience includes evaluation and analysis of employment practices to ensure equal opportunity; preparation of EEO-1, VETS-4212, and California Pay Data Reporting filings; pay equity analyses; and analysis of applicant and hire records to address potential claims of hiring disparities.

OUTLINE

- Changes in Federal Obligations
- Affirmative Action/EEO Obligations for State and Local Contractor Employers
- Gender Identity/Sexual Orientation Nondiscrimination
- Pay Transparency Requirements
 - Employer Pay Disclosure
 - Bans on Salary History Consideration
 - Bans on Employee Pay Secrecy Policies
 - Pay Reporting Requirements

CHANGES IN FEDERAL OBLIGATIONS

NEW EXECUTIVE ORDER

- Executive Order 14173 – “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
- Executive Order 14168 – “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

7

7

RESCINDED EXECUTIVE ORDER

- EO 11246 – 1965 – Equal Employment Opportunity
 - EO 13665 – 2014 – Non-Retaliation for Disclosure of Compensation Information
- EO 14069 – 2022 – Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency

8

8

AFFIRMATIVE ACTION / EEO OBLIGATIONS FOR STATE / LOCAL CONTRACTOR EMPLOYERS

9

9

SUMMARY OF APPROACHES

- Track Federal Executive Order 11246 AAP Requirements
- EEO-1 Type Reporting
- Pay Reporting
- Certifications
- Required Adoption of Policies
- Utilization of Minority, Women, Disadvantaged, and Small Business Enterprises as Subcontractors
- Passive Enforcement In Most States
 - **Attestations in standard state contracting clauses**
 - Some require submission only on request
- Information is very decentralized
- Forthcoming – DirectEmployers Table of Contractor State/Local Affirmative Action/EEO Requirements

10

10

JURISDICTIONS WITH CONTRACTOR AAP / EEO OR EMPLOYMENT DATA REPORTING REQUIREMENTS

- California
- Connecticut
- District of Columbia
- Illinois
- Kentucky
- Maine
- Minnesota
- New Jersey
- New York
- Ohio
- Pennsylvania
- Rhode Island
- Virginia
- Wisconsin

NOTE – There may be other states that have contractor AA/EEO obligations. Also, several municipalities have contractor AA/EEO obligations.

SOME EXAMPLES

- California
- New Jersey
- Minnesota
- Madison, Wisconsin

CALIFORNIA

- Nondiscrimination Program - Requirements similar to those previously required of federal contractors
- “Compliance with a nondiscrimination program subject to review and approval by a federal compliance agency shall constitute prima facie evidence that a contractor has complied with the requirements....” 2 CCR « 1104

13

13

NEW JERSEY

- AA-302 – Similar to EEO-1
- Vendor Activity Summary Report (Hires, Promotions, Transfers, Terminations) – For Renewal, typically every three years
- Annual Equal Pay Report – Similar to old EEO-1 component 2

14

14

MINNESOTA

- Workforce Certificate
- Annual Compliance Report
- Equal Pay Certificate
- Actively Enforced by Minnesota Department of Human Rights
- Very particular about formatting and requirements, which tend to evolve

15

15

MADISON, WISCONSIN

- Ordinance 39.02
- Complete City of Madison plan or federal 41 CFR Part 60-2
- If prepare a federal AAP, must also have:
 - Disability utilization analysis and goals and timetables
 - Provisions regarding MBE, DBE, WBE, and SBE utilization
 - Documentation of three action-oriented programs if/when there are placement goals
- Very specific guidance/expectation on what are diversity related organizations, acceptable documentation
- Very thorough website covering the very particular requirements:
 - <https://www.cityofmadison.com/civil-rights/contract-compliance>

16

16

GENDER IDENTITY / SEXUAL ORIENTATION NONDISCRIMINATION

17

17

EXECUTIVE ORDER 14168 (1 of 2)

- January 20, 2025: “Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government”
- The Attorney General shall issue guidance to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.
- The Attorney General, the Secretary of Labor, the General Counsel and Chair of the Equal Employment Opportunity Commission, and each other agency head with enforcement responsibilities under the Civil Rights Act shall prioritize investigations and litigation to enforce the rights and freedoms identified.

18

18

EXECUTIVE ORDER 14168 (2 of 2)

- Cannot override federal laws passed by Congress
 - Bostock v. Clayton County (2020)
- Does not direct private employers to take any action [but . . .]
- Approaching the 120-day mark for each agency head to submit to the Director of the Office of Management and Budget:
 - Changes to agency documents, including regulations, guidance, forms, and communications, made to comply with this order; and
 - Agency-imposed requirements on federally-funded entities, including contractors, to achieve the policy of this order

GENDER IDENTITY – NO PROVISIONS

- | | |
|---------------|------------------|
| • Alabama | • Montana |
| • Alaska | • Nebraska |
| • Arizona | • North Carolina |
| • Arkansas | • North Dakota |
| • Florida | • Ohio |
| • Georgia | • Oklahoma |
| • Idaho | • South Carolina |
| • Indiana | • South Dakota |
| • Kansas | • Tennessee |
| • Kentucky | • Texas |
| • Louisiana | • West Virginia |
| • Mississippi | • Wisconsin |
| • Missouri | • Wyoming |

GENDER IDENTITY – PROTECTION AGAINST DISCRIMINATION

- | | |
|---|--|
| <ul style="list-style-type: none"> •California •Colorado •Connecticut •Delaware •District of Columbia •Hawaii •Illinois •Iowa (until June 30, 2025) •Maine •Maryland •Massachusetts •Michigan •Minnesota | <ul style="list-style-type: none"> •Nevada •New Hampshire •New Jersey •New Mexico •New York •Oregon •Pennsylvania •Puerto Rico •Rhode Island •Utah •Vermont •Virginia •Washington |
|---|--|

STATES THAT INCLUDE GENDER EXPRESSION ALONG WITH GENDER IDENTITY (1 of 2)

- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Maryland (defines gender identity to include expression)
- Michigan
- Nevada
- New Jersey
- New York
- Oregon (defines gender identity to include expression)

STATES THAT INCLUDE GENDER EXPRESSION ALONG WITH GENDER IDENTITY (2 of 2)

- Pennsylvania (the Pennsylvania Human Relations Commission interprets sex discrimination to include discrimination based on transgender identity, gender transition, gender identity, and gender expression)
- Rhode Island
- Washington

GENDER IDENTITY – CALIFORNIA

- Employers cannot discriminate based on gender identity or expression, unless a permissible defense applies.
- If employees ask to be identified by a preferred gender, name, or pronouns, including gender neutral pronouns, employers must abide by this preference unless legal obligations require them to use employees' gender or legal name as indicated in a government-issued identification document

GENDER IDENTITY – COLORADO

- Employers must allow employees to use gender-segregated facilities, such as restrooms, locker rooms, and dressing rooms, that are consistent with their gender identity. If undressing in the presence of others occurs in these facilities, employers must make reasonable accommodations to allow access consistent with employees' gender identity.

GENDER IDENTITY – DISTRICT OF COLUMBIA

- Employers must allow employees to use gender-specific facilities, such as restrooms and dressing rooms, that are consistent with their gender identity or expression. Employers must label single-occupancy restrooms with gender-neutral signs. In gender-specific facilities where nudity in the presence of other people is customary, employers must make reasonable accommodations to allow employees to access and use facilities that are consistent with their gender identity or expression, regardless of whether employees have provided identification or other documentation of their gender identity or expression.

GENDER IDENTITY – NEW YORK

- Gender identity or expression means a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristics, regardless of the sex assigned to that person at birth, and includes the status of being transgender.

GENDER IDENTITY – OREGON

- Employers must provide reasonable and appropriate access to restroom facilities that are consistent with employees' and applicants' gender expression. Gender expression is the manner in which employees and applicants express their gender, including through dress, appearance, manner, or speech, regardless of their assigned sex at birth.

GENDER IDENTITY – WASHINGTON

- Employers must allow employees to use gender-segregated facilities, such as restrooms, locker rooms, and dressing rooms, that are consistent with their gender expression or identity, including facilities where undressing occurs in the presence of other people.
- Employers can't ask or require employees to use gender-segregated facilities that are inconsistent with their gender expression or identity, separate facilities, or gender-neutral facilities.
- If a person expresses concern or discomfort about employees who use facilities that are consistent with their gender expression or identity, that person should be directed to a separate or gender-neutral facility if available.
- Employers may not take actions against employees who use gender-segregated facilities, such as removing them from the facilities, if these actions are related to their gender expression or identity instead of their conduct or behavior.
- Employers must consistently apply the same conduct and behavior standards to all employees who use facilities, regardless of their gender expression or identity.

STATES THAT HAVE NO PROHIBITION AGAINST SEXUAL ORIENTATION DISCRIMINATION

- | | |
|--------------|-----------------|
| •Alabama | •Missouri |
| •Alaska | •Montana |
| •Arizona | •Nebraska |
| •Arkansas | •North Carolina |
| •Florida | •North Dakota |
| •Georgia | •Ohio |
| •Idaho | •Oklahoma |
| •Indiana | •South Carolina |
| •Kansas | •South Dakota |
| •Kentucky | •Tennessee |
| •Louisiana | •West Virginia |
| •Mississippi | •Wyoming |

STATES THAT PROHIBIT DISCRIMINATION BASED ON SEXUAL ORIENTATION

- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois
- Iowa
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- Oregon
- Pennsylvania
- Puerto Rico
- Rhode Island
- Texas
- Utah
- Vermont
- Virginia
- Washington
- Wisconsin

WHAT DOES SEXUAL ORIENTATION INCLUDE (1 of 6)

- California, Delaware, Iowa, Maryland, Massachusetts, Nevada, New Hampshire, Oregon, Rhode Island, Utah, Vermont, Virginia:** Sexual orientation includes heterosexuality, homosexuality, and bisexuality.
- Colorado:** Sexual orientation means an individual's identity, or another individual's perception thereof, in relation to the gender or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction.
- Connecticut:** Sexual orientation means a person's identity in relation to the gender or genders to which they are romantically, emotionally, or sexually attracted, inclusive of any identity that a person may have previously expressed, or is perceived by another person to hold.

WHAT DOES SEXUAL ORIENTATION INCLUDE (2 of 6)

- District of Columbia:** Sexual orientation means male or female homosexuality, heterosexuality, and bisexuality, by preference or practice.
- Hawaii:** Sexual orientation means having a preference for heterosexuality, homosexuality, or bisexuality; having a history of one or more such preferences or being identified with one or more such preferences.
- Illinois:** Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity.

WHAT DOES SEXUAL ORIENTATION INCLUDE (3 of 6)

- Maine:** Sexual orientation means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.
- Michigan:** Sexual orientation means having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation.
- Minnesota:** Sexual orientation means someone is, or is perceived of as being, emotionally, physically, or sexually attracted to based on sex or gender identity. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities.

WHAT DOES SEXUAL ORIENTATION INCLUDE (4 of 6)

- New Jersey:** Affectional or sexual orientation refers to being perceived as, identified as, or presumed to be heterosexual, homosexual, or bisexual in practice, identity or expression.
- New Mexico:** Sexual orientation means a person's physical, romantic, or emotional attraction to people of the same or a different gender or the absence of any such attraction.
- New York:** Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or asexuality.

WHAT DOES SEXUAL ORIENTATION INCLUDE (5 of 6)

- Pennsylvania:** The Pennsylvania Human Relations Commission interprets discrimination based on sex to prohibit discrimination based on sexual orientation.
- Puerto Rico:** Sexual orientation means having an emotional, affectional, or sexual attraction to persons of the opposite gender, same gender or more than one gender.
- Texas:** The Texas Court of Appeals, Fifth District held that under the state's FEP law, discrimination based on sex includes a prohibition against sexual orientation discrimination.

WHAT DOES SEXUAL ORIENTATION INCLUDE (6 of 6)

- Washington:** Sexual orientation means heterosexuality, homosexuality, bisexuality, and gender expression or identity. Employers also can't ask applicants about their sexual orientation. In addition, employers can't ask applicants about their name if doing so would reveal their sexual orientation.
- Wisconsin:** Sexual orientation means having a preference or being identified with a preference for heterosexuality, homosexuality, or bisexuality.

PAY TRANSPARENCY REQUIREMENTS

PAY DISCLOSURE TO EMPLOYEES AND APPLICANTS

- Require employers to disclose minimum and maximum salaries for positions
 - In job advertisements
 - At certain stages in the selection process
 - Upon request by employees or applicants
- Scope
 - Positions that could be filled by candidates in the state
 - Positions where the employee will report to a worksite or supervisor in the state
- May require a description of other types of compensation
- Some laws also may require employers to provide information on the salary range for an employee's current position upon request

39

39

STATES WITH PAY DISCLOSURE LAWS – APPLICANTS

- Required scales in postings
 - California (Employers with 15 employees or more)
 - Colorado
 - Washington, D.C.
 - Hawaii
 - Illinois
 - Maryland
 - Massachusetts (October 29, 2025)
 - Minnesota
 - New Jersey (June 1, 2025)
 - New York
 - Vermont (July 1, 2025)
 - Washington
- Required during selection process or upon request
 - Connecticut – Upon request or prior to making an offer
 - Nevada – Upon completion of an interview
 - Rhode Island – Upon request or prior to making an offer with compensation

40

40

STATES WITH PAY DISCLOSURE LAWS – EMPLOYEES

- California – Upon request
- Connecticut – Upon request or when changing jobs
- Massachusetts (October 29, 2025) – Upon request
- Rhode Island – Upon request, at hire, or before moving to new position

41

41

BANS ON SALARY HISTORY CONSIDERATION

- Prohibitions on inquiring about or seeking salary history
 - Exception: May seek salary history to confirm information voluntarily provided by applicant after hire
- Prohibitions on relying on salary history to make offer or set starting pay
 - Exception: When salary history is voluntarily disclosed
- Prohibitions on retaliating against applicants for refusing to provide information on salary history

42

42

STATES WITH BANS ON SALARY HISTORY CONSIDERATION

State	Prohibition on seeking or inquiring about salary history	Prohibition on refusal to consider applicants based on salary history or refusal to provide salary history	Prohibition against relying on salary history when setting compensation
Alabama		X	
California	X	X	X
Colorado	X	X	
Connecticut	X		
Delaware	X	X	X
Washington, D.C.	X	X	X
Hawaii	X		X
Illinois	X	X	X
Maine	X		X
Maryland		X	X
Massachusetts	X		
Minnesota	X		
Nevada	X	X	
New Jersey	X	X	X
New York	X	X	
Oregon	X	X	
Puerto Rico	X		
Rhode Island	X	X	
Vermont	X	X	X
Washington	X	X	X

43

43

BANS ON EMPLOYER PAY SECRECY POLICIES

- Bans on employer policies that prohibit employees from discussing compensation
 - Exception for employees that have access to compensation information disclosing information to employees not authorized to access the information
- Bans on employers requiring that employees sign documents that purport to prohibit discussion of compensation

44

44

STATES WITH BANS ON EMPLOYER PAY SECRECY POLICIES

- California
- Colorado
- Connecticut
- Delaware
- Washington, D.C.
- Hawaii
- Illinois
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- New York
- Oregon
- Puerto Rico
- Rhode Island
- Vermont
- Virginia
- Washington

45

45

STATE PAY REPORTING REQUIREMENTS (1 of 2)

- California
 - Annual reporting required - modelled after EEO-1 Component 2
 - Required from employers with 100 or more employees in US and at least one employee in California
 - Publicly release aggregated data from reports
- Illinois
 - Employers with 100 or more employees in Illinois must apply for an Equal Pay Registration Certificate
 - Recertification is required every two years
 - Employers must report individual employee demographics, wages, and hours
 - Illinois may deny an application if the data shows the employer is paying unequal wages based on gender or vis-à-vis African-American employees
 - Employees can request anonymous data on pay for their job classification or title

46

46

STATE PAY REPORTING REQUIREMENTS (2 of 2)

- New Jersey
 - Annual reporting required – modelled after EEO-1 Component 2
 - Required from private employers that contract with the state
- Massachusetts
 - Employers with 100 or more employees in Massachusetts must file annual reports
 - Employers must file a copy of EEO-1 reports filed with EEOC covering Massachusetts establishments
 - There is currently no pay data required
 - If EEOC reinstates the EEO-1 component 2, covered employers will need to submit copies of the component 2 reports

47

47

ROFFMAN HORVITZ AT DEAMCON

- May 21 – Federal Contractor Compliance Under Executive Order 14173

48

48

ROFFMAN HORVITZ, PLC
LEGAL COUNSELLING
ROFFMAN HORVITZ, PLLC is a member firm of the

JOSHUA S. ROFFMAN

Managing Attorney
(703) 752-3775
jroffman@roffmanhorvitz.com

ALISSA A. HORVITZ

Member Attorney
(703) 752-3776
ahorvitz@roffmanhorvitz.com

JAMES M. MCCAULEY

Associate Attorney
(703) 752-3766
jmccauley@roffmanhorvitz.com

THANK
YOU