

For: LeClairRyan, New Haven, Conn.  
From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

**New Federal Directive May Pose Challenges to Employers, Say LeClairRyan Attorneys**  
*Religious beliefs and civil rights can clash in hiring-firing decisions, Acee and Yaqoob warn*

NEW HAVEN, Conn. (12/10/18)— A recent directive issued by the Office of Federal Contract Compliance Programs (“OFCCP”) aimed at aligning federal policy with recent Executive Orders and Supreme Court decisions could signal an eventual workplace “collision” between religious freedom and other recently gained civil rights protections, according to attorneys Elizabeth Acee and Shaleem Yaqoob from LeClairRyan’s New Haven office.

“Given some conflicting court rulings, federal contractors and employers in general should be aware of recent legal developments as they consider hiring and firing decisions,” they wrote in a post, [Is Religious Freedom on a Collision Course with Newly Gained Civil Rights?](#), which appears in the national law firm’s [Workplace Defender](#) blog. Acee is a LeClairRyan member and leader of the firm’s Litigation Department; Yaqoob is an associate at the firm.

“President Obama’s Executive Order that extended nondiscrimination protections to sexual orientation and gender identity remains intact, and the EEOC has taken the position that Title VII offers protection on those bases,” they write. “But some specific references in the recent OFCCP directive have prompted some concern that it might enable faith-based entities to discriminate under the guise of religious freedom.”

Among the examples of Supreme Court decisions that underly its guidance, “the directive cites [Masterpiece Cake Shop, Ltd. v. Colo. Civil Rights Comm’n](#), 138 S. Ct. 1719 (2018), which found that government violates the Free Exercise clause when its decisions are based on hostility to religion or a religious viewpoint,” the attorneys note in the post. “The directive also points to [Burwell v. Hobby Lobby, Inc.](#), 134 S. Ct. 2751 (2014), which decided that the Religious Freedom Restoration Act of 1993, or RFRA, applies to closely held for-profit corporations that can object to certain legal requirements on religious grounds.”

These kinds of references have prompted some concern that the directive might enable faith-based entities to discriminate under the guise of religious freedom, the attorneys note. “In particular, some LGBTQ advocacy groups have been quick to decry the directive as a license to discriminate,” Acee and Yaqoob write. “Although the precise effect of the directive is yet unclear, it seems to be part of a larger effort to encourage faith-based organizations to compete for federal contracts.”

They also note that the directive cites Executive Orders 13831 and 13798, which proclaim the policy of the executive branch to enforce legal protections for religious freedom and to allow faith-based organizations an opportunity to compete for federal grants, contracts, programs and other funding opportunities.

“Generally, OFCCP’s FAQs and Directives are guidance documents that do not have the same authority as Executive Orders or the regulations,” they write. “But the directive instructs the OFCCP staff to take these developments into consideration in their enforcement and other efforts.”

Meanwhile, some courts are beginning to entrench rights whose scope was previously unclear, according to the post. They cited a March decision by the Sixth Circuit Court, [EEOC v. R.G. & G.R.](#)

*Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018), that termination of an employee on the basis of transitioning or transgender status violates Title VII.

Because the OFCCP guidance is new, and courts are issuing conflicting opinions, “companies may wish to consult with their legal advisor regarding their hiring, firing, disciplinary and other decisions to continue to ensure that they are in compliance with current federal, state, and local laws, which often add additional requirements to employers,” the attorneys conclude.

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