Federal Law Alerts - November 2019

OFCCP Construction Contractor Compliance Guide

In November 2019, the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) released a technical assistance guide for federal construction contractors as a self-assessment tool for contractors to review their current practices and thereby eliminate discrimination and achieve equal employment opportunity (EEO) goals. The guide highlights best practices and addresses the following objectives for federal construction contractors:

- Understanding legal obligations under the laws enforced by the OFCCP.
- Complying with federal EEO laws even in the absence of a scheduled compliance evaluation by the OFCCP.
- Implementing the Standard Federal EEO Construction Contract Specifications.
- Developing written affirmative action programs, when appropriate.
- Preparing for an OFCCP compliance evaluation.

See the federal construction contractor guide and read more about the OFCCP's compliance assistance guides

IRS Announces 2020 Benefit Plan Contribution and Pension Plan Limits

On November 6, 2019, the Internal Revenue Service (IRS) released Revenue Procedure 2019-44 announcing the following limit increases for 2020:

- The contribution limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan increases from $19,000 to $19,500.
- The catch-up contribution limit for employees aged 50 and over who participate in these plans increases from $6,000 to $6,500.
- The limitation regarding SIMPLE retirement accounts increases from $13,000 to $13,500.
- The income ranges for determining eligibility to make deductible contributions to traditional Individual Retirement Arrangements (IRAs), to contribute to Roth IRAs, and to claim the Saver's Credit will all increase.
- Taxpayers may deduct contributions to a traditional IRA upon meeting certain conditions. If during the year either the taxpayer or their spouse was covered by a retirement plan at work, the deduction may be reduced, or phased out, until it is eliminated, depending on filing status and income. (If neither the taxpayer nor his or her spouse is covered by a retirement plan at work, the phase-outs of the deduction do not apply.) The phase-out ranges for 2020 are as follows:
    - For single taxpayers covered by a workplace retirement plan, $65,000 to $75,000, up from $64,000 to $74,000.
    - For married couples filing jointly, where the spouse making the IRA contribution is covered by a workplace retirement plan, $104,000 to $124,000, up from $103,000 to $123,000.

    - For an IRA contributor who is not covered by a workplace retirement plan and is married to someone who is covered, joint income between $196,000 to $206,000, up from $193,000 to $203,000.
    - For a married individual filing a separate return who is covered by a workplace retirement plan, the phase-out range is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

The income phase-out range for taxpayers making contributions to a Roth IRA is $124,000 to $139,000 for singles and heads of household, up from $122,000 to $137,000. For married couples filing jointly, the income phase-out range is $196,000 to $206,000, up from $193,000 to $203,000. The phase-out range for a married individual filing a separate return who makes contributions to a Roth IRA is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

The income limit for the Saver's Credit (also known as the Retirement Savings Contributions Credit) for low- and moderate-income workers is $65,000 for married couples filing jointly, up from $64,000; $48,750 for heads of household, up from $48,000; and $32,500 for singles and married individuals filing separately, up from $32,000.

Of note, the limit on annual contributions to an IRA remains at $6,000 and the additional catch-up contribution limit for individuals aged 50 and over is not subject to an annual cost-of-living adjustment and remains at $1,000.

Read Rev. Proc. 2019-44

DOL Announces Proposal to Expand Access to Bonuses

On November 4, 2019, the U.S. Department of Labor announced a notice of proposed rulemaking (NPRM) that would allow job creators to offer bonuses or other incentive-based pay to employees whose hours vary from week to week. The proposal would revise the regulation for computing overtime compensation for salaried, non-exempt employees who work hours that vary each week (i.e., a fluctuating workweek) under the Fair Labor Standards Act (FLSA). It also clarifies that bonus and premium payments on top of fixed salaries are compatible with the fluctuating workweek method of compensation, and that supplemental payments must be included when calculating the regular rate of pay as appropriate under the FLSA. The proposal includes examples and minor revisions to make the rule easier to understand.

The NPRM is available for public comment for 30 days.

Read the announcement and see the NPRM

DOL Fact Sheets Released

In November 2019, the U.S. Department of Labor (DOL) released the following fact sheets reflecting the federal Fair Labor Standards Act revised regulations (final rule) that implement the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees:

- Fact Sheet 17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).

- Fact Sheet 17T: Special Salary Levels for the U.S. Territories.
- Fact Sheet 17U: Nondiscretionary Bonuses and Incentive Payments (Including Commissions) and Part 541 Exempt Employees.

The final rule is effective January 1, 2020.

Read more about the final rule

Executive Order 13495 Revoked

On October 31, 2019, President Trump issued an executive order (yet to be numbered) revoking Executive Order 13495 (E.O. 13495) "Nondisplacement of Qualified Workers Under Service Contracts," which took effect in January 2013. Under E.O. 13495, and applicable to federal government service contracts, qualified workers on a federal service contract who would otherwise have lost their jobs as a result of the completion or expiration of a contract were required to be given the right of first refusal for employment with the successor contractor. Generally, a successor contractor could not hire any new employees under the contract until the right of first refusal was provided.

Trump's order did not discuss the reasoning behind the revocation but rather directed the U.S. Secretary of Labor (secretary), the Federal Acquisition Regulatory Council, and heads of executive departments and agencies to rescind any orders, rules, regulations, guidelines, programs, or policies implementing or enforcing E.O. 13495. Moreover, the secretary is to immediately terminate any investigations or compliance actions based on E.O. 13495.

Read the new executive order and about the revoked 13495