

Adam Sencenbaugh in HR Dive: DOL Expands Religious Exemption Rule to Include Contractors With a 'Religious Purpose'

August 19, 2019 Adam Sencenbaugh

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HR Dive quoted Haynes Boone Partner [Adam Sencenbaugh](#) in an article about the implications of a proposal by the U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) to expand the religious exemption in Executive Order 11246.

Here is an excerpt:

The expansion, released on Aug. 14, would allow these contractors and subcontractors to cite their religious affiliation as a defense in employment discrimination claims, two employment lawyers told *HR Dive*. This includes cases that allege discrimination based on workers' gender identity and sexual orientation, which are not current protected classes under Title VII of the Civil Rights Act of 1964.

According to an OFCCP Federal Register filing, an organization that qualifies for the religious exemption under the proposed change is "conceived with a self-identified religious purpose," must "hold itself out to the public as carrying out a religious purpose" by stating that purpose on its website or advertisements and must "exercise religion consistent with, and in furtherance of, a religious purpose." Right now, only explicitly "religious corporations, associations, educational institutions and societies" qualify for exemption, the DOL's current rule states.

The proposed change comes as discussions of LGBTQ+ workplace protections and diversity and inclusion at work have picked up among HR departments — and in the federal government. The U.S. Supreme Court will review if Title VII protections extend to gender identity and sexual orientation this fall, and the Equality Act, which would also protect LGBTQ+ workers from discrimination, is under consideration in the U.S. Senate.

"Even if the Supreme Court decides next term that sexual orientation and gender identity are explicitly protected under Title VII, the exemption for religious organizations would remain," Haynes Boone partner Adam Sencenbaugh told *HR Dive* via email. "Because the proposed rule is based on the agency's interpretation of existing case law for the religious exemption, it would take the Supreme Court (or Congress) revisiting that issue."

To read the full article, click [here](#).