

“I Have A Dream”

History of Executive Order 11246

On September 24, 1965, more than two years after the Rev. Martin Luther King Jr. delivered his “I Have A Dream” speech on the steps of the Lincoln Memorial and more than a year after the Civil Rights Act of 1964 became the law of the land, the Nation took a historic step towards equal employment opportunity when President Lyndon Johnson issued Executive Order 11246.

For the first time, Executive Order 11246 charged the Secretary of Labor, a Cabinet-level official with strong enforcement authority, with the responsibility of ensuring equal opportunity for minorities in federal contractors’ recruitment, hiring, training and other employment practices. Until that time, such efforts had been in the hands of various Presidential committees. Executive Order 11246 continued and reinforced the requirement that federal contractors not discriminate in employment and take affirmative action to ensure equal opportunity based on race, color, religion, and national origin.

Signed by President Johnson that early autumn Friday in 1965, Executive Order 11246 became a key landmark in a series of federal actions aimed at ending racial, religious and ethnic discrimination, an effort that dated back to the anxious days before the U.S. was thrust into World War II.

Today, Executive Order 11246, as amended and further strengthened over the years, remains a major safeguard, protecting the rights of workers employed by federal contractors—approximately one-fifth of the entire U.S. labor force—to remain free from discrimination on the basis of their race, color, religion, sex, sexual orientation, gender identity, or national origin...and opening the doors of opportunity through its affirmative action provisions.

Executive Order 8802

As America geared up its industrial might for what proved to be its inevitable entrance into a global war, President Franklin Delano Roosevelt responded to leaders, such as A. Philip Randolph and Bayard Rustin, who protested that African-American workers were blocked from taking jobs in segregated war production factories. On June 25, 1941, FDR signed Executive Order 8802, outlawing discrimination based on race, color, creed, and national origin in the federal government and defense industries.

Executive Order 9346

In 1943, President Roosevelt broadened the coverage of Executive Order 8802 by making it applicable to all government contractors.

Executive Order 10308

Nearly a decade later, on December 3, 1951, President Harry S. Truman’s Executive Order 10308 advanced the achievements initiated during World War II by creating the Committee on Government Contract Compliance. The committee, as its name implies, was tasked with overseeing compliance by federal contractors with the non-discrimination provisions of Executive Order 8802.

Executive Order 10479

President Dwight D. Eisenhower took a further step on August 13, 1953, by creating the President’s Committee on Government Contracts under Executive Order 10479. This reorganization furthered the principle that “...it is the obligation of the contracting agencies of the United States Government and government contractors to insure compliance with, and successful execution of, the equal employment opportunity program of the United States Government.”

This Executive Order made the head of each contracting agency of the federal government responsible for obtaining compliance by their contractors and subcontractors with the nondiscrimination provisions of the contracts into which they entered. Coordination would be provided by the President’s Committee on Government Contracts, housed in the Department of Labor, and comprised of representatives of major contracting agencies, the Labor and Justice Departments, and the General Services Administration as well as eight Presidential appointees. The President designated the Committee’s chair and vice chair.

Executive Order 10925

By the time John F. Kennedy was elected President, it was evident that to advance equal employment opportunity federal involvement needed to be broader and more proactive. On March 6, 1961, shortly after JFK took office, he signed Executive Order 10925, opening a new chapter in achieving access to good jobs by requiring government contractors to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin.”

Executive Order 10925 gave federal contracting agencies authority to institute procedures against federal contractors who violated their EEO obligations—including contract cancellation, debarment from future contracts and other sanctions. It also created the President’s Committee on Equal Employment Opportunity, which upon passage of the Civil Rights Act in 1964 became the Equal Employment Opportunity Committee. The President’s Committee was chaired by Vice President Lyndon Johnson and later by Vice President Hubert Humphrey. The Committee’s vice chair was Secretary of Labor Willard Wirtz.

Like its predecessors, Executive Order 10925 gave each federal department and agency Executive Order enforcement responsibility for its contractors, and each developed its own organizational approach to carrying out these responsibilities. The President’s Committee oversaw issues of policy and the Department of Labor played a coordinating role.

Executive Order 11246

President Johnson’s vision of creating a “Great Society” led to a host of endeavors that sought to change the political, social and economic landscape of the U.S. In his 1965 commencement address to graduates of Howard University, LBJ gave voice to his vision, declaring, “We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.”

At LBJ’s request, Vice President Humphrey led a comprehensive review “of the activities of the various federal agencies involved in the field of civil rights.” Humphrey’s conclusions and recommendations, articulated in a memorandum to Johnson, were based on the principle that “...whenever possible operating functions should be performed by departments and agencies with clearly defined responsibilities, as distinguished from interagency committees or other interagency arrangements. That principle is particularly applicable to civil rights programs where it is essential that our objectives be pursued vigorously and without delay that frequently accompanies a proliferation of interagency committees and groups.”

The Vice President continued, “The Secretary of Labor, as Vice Chairman of the [President’s] Committee [on Equal Employment Opportunity], has had primary responsibility for reviewing complaints and, through the contracting departments and agencies, insuring compliance by government contractors with nondiscrimination requirements. With all the experience gained over a period of years by the personnel involved in this program, responsibility should now be vested directly in the Department of Labor, and I so recommend.”

Thus, on September 24, 1965, President Johnson signed Executive Order 11246, making the Secretary of Labor responsible for administering the order’s non-discrimination and affirmative action provisions. Soon thereafter, Secretary of Labor Wirtz established the Office of Federal Contract Compliance. Edward C. Sylvester, Jr. was appointed as the agency’s first director.

Executive Order 13279

On December 12, 2002, President Bush signed Executive Order 13279 amending Executive Order 11246. This amendment allows religiously affiliated contractors (religious corporations, associations, educational institutions, or societies) to prefer individuals of a particular religion when making employment decisions relevant to the work connected with its activities. However, such contractors and subcontractors are not exempted or excused from complying with the other requirements of Executive Order 11246.

Executive Order 13665

On April 8, 2014, President Obama signed the Presidential Memorandum and Executive Order 13665, amending Executive Order 11246. These measures, which apply to federal contractors and subcontractors, are aimed at promoting equal pay for women by improving transparency of wages and making gender pay disparities easier to identify. The new Executive Order prohibits retaliation by federal contractors against employees or applicants who inquire about, discuss, or disclose details of their own or other employees’ or applicants’ compensation. The stated goal of the order is to provide workers with greater ability to identify violations of equal pay laws.

Executive Order 13672

On July 21, 2014, President Obama signed Executive Order 13672, amending Executive Order 11246, to prohibit federal contractors and subcontractors from discriminating on the basis of sexual orientation or gender identity. This Executive Order prohibits federal contractors from discriminating against lesbian, gay, bisexual, and transgender employees and applicants. The Executive Order directed the Secretary of Labor to prepare regulations implementing the new protections. As a result, the Department of Labor published a final rule in the Federal Register on December 9, 2014, changing OFCCP’s regulations to require federal contractors and subcontractors to treat applicants and employees without regard to their sexual orientation or gender identity. This final rule took effect on April 8, 2015. Contractors covered by the new rule will have to ensure that agreements modified or entered into after the effective date of the final rule, as well as job solicitations and postings, contain appropriate references to the new prohibited forms of discrimination. Contractors will need to revise their EEO and affirmative action policies and statements to include sexual orientation and gender identity as protected classes.

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