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# SuperVision™ TODAY

Labor & Employment News

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## Recent Developments for Federal Contractors

By: [Peter R. Rich](#)

Companies and individuals seeking to do business with the federal government have been targeted in the "year of action" promised by President Barack Obama. The President has taken steps to impose a number of additional labor and employment-related obligations on federal contractors in recent months. The developments summarized involve subjects where the President has unsuccessfully sought legislative action from Congress.

Click [here](#) to read about all of the recent developments.

## The Fate of Obamacare Premium Tax Credits

By: [Anna L. Sweigart](#)

Last month, two federal courts of

## Notes from the Chair and Executive Editor

Welcome to the third quarter edition of *SuperVision Today*, the quarterly e-newsletter published by Spilman's labor & employment group.

If you missed the SuperVision symposia in Charleston or Pittsburgh, we would love for you to join us at our upcoming sessions in Roanoke and Winston-Salem. The Roanoke symposium is Thursday, September 18, 2014, at the Hotel Roanoke in downtown Roanoke, Virginia. Our Winston-Salem symposium will be the next day, Friday, September 19, 2014, at WinMock at Kinderton in Bermuda Run, North Carolina. Both symposia are full-day events beginning at 9:30 a.m. Attendees in both Charleston and Pittsburgh have raved about the content, so don't miss out on the last chances to hear these valuable presentations.

The SuperVision symposium is designed to help you prepare for what is NEXT in labor & employment law in order to manage your human capital, and these sessions are ideal to help you plan to meet your goals for 2015. Key legal and business leaders will examine the number of trending HR topics, including the use of arbitration agreements, wellness programs, restrictive covenants and other important employment issues. Attendance is free, and we always expect large crowds so please click [here](#) to reserve your place. Contact Pamela Kesling at 304.720.4065 or [pkesling@spilmanlaw.com](mailto:pkesling@spilmanlaw.com) for additional information. We look forward to seeing you there.

appeals issued opposing decisions on whether the Patient Protection and Affordable Care Act (the "ACA") permitted subsidies, in the form of premium tax credits, to health coverage bought through insurance Exchanges operated by the federal government. As a quick refresher, those tax credits would help subsidize the cost of health insurance purchased by an individual. As for employers, those subsidies are the trigger for determining if and when the employer mandate, also known as the "pay-or-play" provision, comes into play. In its simplest form, if individuals do not receive a premium tax credit, employers would never be required to pay the pay-or-play mandate.

Click [here](#) to read the entire article.

## Sexual Orientation and Gender Identity the Next Protected Class?

By: [Lindsay Griffin Smith](#)

On July 21, 2014, President Obama signed an executive order expanding protection of employees of the federal government provided by Executive Orders 11478 and 11246. Specifically, individuals in federal employment cannot be discriminated against in their employment based on their sexual orientation and/or gender identity. Previously, federal law only banned employment discrimination against federal employees based on the employees' sexual orientation. Sexual orientation refers to an individual's attraction to a specific gender, e.g. homosexual, heterosexual, bi-sexual. The new executive order expands protections to include gender identity, which refers to an individual's identification as a man, woman or another gender which may or may not correspond to the individual's sex at birth. In addition to federal employees, the executive order also bans discrimination based on sexual orientation and/or gender identity against employees of companies that receive federal contracts. At this point whether the size of the federal contract is relevant to the application of the executive order

The lead article in this edition of *SuperVision Today* has Alyesha Dotson looking at the latest in pregnancy discrimination laws including the EEOC's recent enforcement guidance and, especially for our West Virginia readers, the newly enacted Pregnant Worker Fairness Act. What makes the timing of EEOC's recent Guidance curious is that the United States Supreme Court has agreed to hear an appeal on a pregnancy discrimination case next term that could directly negate part of the guidance. In *Young v. United Parcel Service, Inc.*, the Court of Appeals for the Fourth Circuit held that the Pregnancy Discrimination Act does not mandate the kind of accommodations that the EEOC's Guidance demands for pregnant employees. In *Young*, UPS had a light duty policy that allowed "light duty" only for certain classes of employees. Young had medical restrictions relating to her pregnancy that barred her from lifting heavy packages and wanted UPS to accommodate her by putting her on the light duty work even though she didn't fall into one of the categories for which "light duty" could be offered. In other words, Young wanted UPS to offer her the same accommodations that it offered to other employees, which accommodations would be specifically required under the Guidance. The Fourth Circuit held that UPS's refusal to accommodate Young with light duty did not constitute pregnancy discrimination under a theory that UPS's light duty policy was pregnancy neutral (i.e. the light duty was offered to employees on the basis of the source of the restriction and would impact pregnant and non-pregnant employees identically). If affirmed by the Supreme Court, the ruling would negate the Guidance's requirement that pregnant employees must be granted the same accommodation as any disabled employee. We will keep watch on this decision and let you know how it turns out (and West Virginia employers must comply with the Pregnant Worker Fairness Act regardless).

Also in this edition, Pete Rich examines recent executive orders addressing labor and employment issues. Anna Sweigart explains some of the recent case developments, which you may have seen in the news regarding the Affordable Care Act, and Lindsay Griffin Smith details new federal rules on gender identity.

As always, we strive to bring you valuable content with every edition of *SuperVision Today*. If you have any questions or ideas for future articles, please feel free to reach out to us.

[Eric W. Iskra](#)

Chair, Labor and Employment Group

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Editor, *SuperVision Today*

## EEOC Ratchets Up Focus on Pregnancy Discrimination with Updated Guidance

By [Alyesha Asghar Dotson](#)

The U.S. Equal Employment Opportunity Commission's recent

is not known; however, the Department of Labor is tasked with promulgating rules to effectuate the order.

Click [here](#) to read the entire article.

guidance regarding pregnancy discrimination in the workplace heralds that agency's renewed focus on that topic. After three decades of silence on the issue of pregnancy discrimination, the EEOC recently issued new federal guidelines on the subject titled "Enforcement Guidance on Pregnancy Discrimination and Related Issues." The updated Guidance is accompanied by a set of prepared questions and answers about the Guidance and a Fact Sheet for Small Businesses. In addition to addressing the Pregnancy Discrimination Act (PDA), the Guidance also discusses the application of the Americans with Disabilities Act (ADA), as amended in 2008, to pregnant individuals.

Click [here](#) to read the entire article.



Carrie M. Harris

Ms. Harris's primary area of practice is litigation with an emphasis on labor and employment, consumer finance, public utility and energy law. She has represented employers on claims of discrimination, retaliation, wrongful discharge, contract disputes and business torts. In addition, she advises clients on all types of labor and employment issues including EEO policies and practices. Ms. Harris is admitted to the Virginia and West Virginia State Bars, the U.S. District Courts for the Eastern and Western Districts of Virginia, the U.S. District Court for the Southern District of West Virginia, and the U.S. Court of Appeals for the Fourth Circuit. She is a graduate of Roanoke College and received her law degree from the William and Mary School of Law. Since 2013, Ms. Harris has been recognized as a Rising Star in the area of Labor and Employment by *Virginia Super Lawyers* magazine.



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