



OFCCP Reviews on the Rise: What Contractors Need to Know

by Thomas A. Dixon and Melissa A. Gerber

In January 2011, the Office of Federal Contractor Compliance Programs (OFCCP) announced that it was aggressively enforcing the laws under its jurisdiction and instituted a new compliance evaluation program for all supply and service contractors. Under the new program, Active Case Evaluation (ACE), contractors are required to provide more information to the OFCCP which will be reviewed in greater scope than under the old procedure.

Generally, the OFCCP ensures that federal contractors and subcontractors comply with non-discrimination and affirmative action laws and regulations. Specifically, it enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Executive Order 11246 prohibits contractors with a government contract of \$10,000 or more from discriminating in employment on the basis of race, color, religion, sex or national origin and requires contractors to create an affirmative action program to ensure equal opportunity employment.

To enforce these laws, the OFCCP initiates compliance evaluations to investigate the employment practices of contractors. There is no limit on the number of evaluations that can be conducted in a given year. Contractors are

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About the photo: Picture of the Ohio Statehouse



selected based in part on a mathematical model intended to identify those likely to be in violation of affirmative action laws. The OFCCP has significantly increased the number of contractors audited annually.

Under ACE, the OFCCP may engage in any of the following procedures when conducting a compliance evaluation: compliance review, offsite review of records, compliance check or focused review. A compliance review is the most commonly used evaluation procedure. When selected, the OFCCP will mail the contractor a scheduling letter with an itemized listing of affirmative action program documents that the contractor must submit to the OFCCP within 30 days. These documents include:

- description of organizational profile;
- description of the formation of job groups;
- a statement of the percentage of minority and female incumbents in each job group;
- a determination of minority and female availability for each job group;
- a comparison of incumbency to availability for each job group;
- placement goals for each job group where the percentage of minorities or women is less than what would be reasonably expected;
- a copy of the Employer Information Report EEO-1;
- a copy of the collective bargaining agreement (if applicable);
- information about affirmative action goals for the preceding year;
- data on employment activity for the preceding affirmative action program year; and
- annualized compensation data by race and gender.

Upon receipt, the OFCCP will analyze the documents to determine if the contractor is in compliance with the law. Additionally, the OFCCP will contact the Equal Employment Opportunity Commission and the state fair employment practices agency to determine the nature and outcome of any complaints filed against the contractor under review. If there is no indication that the contractor has violated the law, the compliance evaluation will end. If, however, there is insufficient information to make a compliance determination or there is an indication of failure to comply, the OFCCP may proceed to an on-site investigation or an off-site records review.

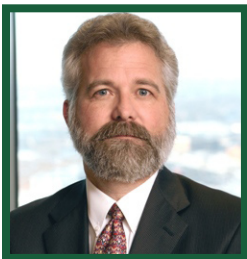
If the evaluation results in a finding that the contractor is in violation of the law, the OFCCP will attempt to negotiate a conciliation agreement with that contractor. In this agreement, the OFCCP and the contractor will agree on a time-frame to bring the contractor in compliance with the laws. If conciliation efforts fail, the OFCCP may pursue enforcement against the contractor. Sanctions for violations include cancellation or termination of contracts or debarment from receiving future contracts.

Contractors should not just wait until they receive notice that they have been selected for a compliance evaluation. Below are precautionary measures that contractors need to take now to ensure that they are prepared in the event of a compliance evaluation.

- Review all affirmative action programs and implement new programs if necessary.
- Ensure that all personnel or employment records are accurate and easily reviewable.

- Ensure that the OFCCP "Equal Employment Opportunity is the Law" poster is posted in a conspicuous place.
- Check that all job postings contain the necessary equal employment opportunity language.
- Provide reasonable accommodations to applicants with disabilities.
- Prohibit retaliation against individuals who file complaints, assist in investigations, or exercise any right protected by the OFCCP.

If you have any questions about the OFCCP enforcement procedures please contact the attorneys at Eastman and Smith Ltd.



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