



Staff Recommendation

An Introduction to the Office of Federal Contract Compliance Programs

The Office of Federal Contract Compliance Programs is a civil rights agency within the United States Department of Labor. The OFCCP was established in 1965 and charged with overseeing the compliance of private employers that do business with the Federal Government with their legal obligations under Executive Order 11246 (EO 11246), Section 503 of the Rehabilitation Act of 1973 (Section 503), and The Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA).

There are three (3) primary components of the OFCCP's operations: assistance, evaluation, and investigation. The OFCCP offers various resources to assist with their efforts to meet their legal obligation to provide jobseekers and employees with equal employment opportunity and prevent discrimination in employment practices. Further, the OFCCP conducts compliance evaluations to monitor companies that are federal contractors; these compliance evaluations examine employment practices for disparate impact on protected classes of employees and jobseekers and the affirmative actions the employer has undertaken to fulfill their legal obligation to provide equal opportunity. Finally, the OFCCP investigates complaints of discrimination against federal contractors.

OFCCP SCOPE OF JURISDICTION

EO 11246 prohibits discrimination against any jobseekers or employees with regard to the following protected classes: race, color, sex, sexual orientation, gender identity, religion, and national origin for employers with federal contracts exceeding \$10,000 and further compels employers to exercise affirmative action to ensure the applicant pool contains a representative percentage of qualified females and minorities in underutilized job groups. EO 11246 also provides some protection for employees to discuss their compensation and that of others without their employer taking adverse action.

Section 503 prohibits discrimination and requires affirmative action to hire and advance qualified individuals with disabilities; it applies to federal supply and service or direct construction contract or subcontract that exceed \$15,000.

VEVRAA prohibits discrimination and requires affirmative action in all employment practices for protected veterans. Protected veterans include disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA applies to federal supply and service or direct construction contract or subcontract that exceed \$150,000.

IMPORTANT AREAS OF COMPLIANCE

1. Creating a written Affirmative Action Program

Employers with 50 or more employees and more than \$50,000 in federal contracts must prepare a separate written affirmative action program on their compliance with EO 11246 and Section 503; those employers with 50 or more employees and more than \$150,000 in federal contracts must also prepare a separate written affirmative action program for VEVRAA.

An AAP serves as a guiding plan for management to offer equal employment opportunity to all jobseekers and employees. An effective AAP documents the organizational structure, demographic composition of the workforce, and policies and procedures that ensure the company does not discriminate in employment practices and offers equal employment opportunities.

To complete a written AAP for EO 11246, the employer must conduct an analysis to determine utilization versus availability by job group among the protected classes as identified by the U.S. Census data. Goals should be identified for job groups that do not fully utilize the available females or minorities. The employer must also analyze their employment practices to identify job groups where disparate treatment may have occurred. Finally, the employer must compare compensation by gender and ethnicity to identify discrimination in their compensation practices.

To complete a written AAP for Section 503, the employer must conduct an analysis to determine utilization of qualified individuals with disabilities against the goal set by the OFCCP (currently 7%). If the employer does not meet the utilization goal, then the AAP should include the action-oriented programs they will undertake to increase the percentage of qualified individuals with disabilities in the applicant pool.

To complete a written AAP for VEVRAA, the employer must conduct an analysis to determine utilization of protected veterans against the hiring benchmark for veterans. If the employer does not meet the hiring benchmark, then the AAP should include the action-oriented programs they will undertake to increase the percentage of qualified individuals with disabilities in the applicant pool.

2. Recordkeeping

All federal contractors must collect, maintain, and analyze personnel activity data on the basis of race, sex, disability status, and veteran status. Personnel activity data includes records covering hiring, job assignments, rates of pay and other compensation information, promotions, transfers, training, layoffs and terminations, recalls from layoffs, and demotions.

Without recordkeeping there is no way for federal contractors to demonstrate their compliance with EO 11246, Section 503, or VEVRAA. To satisfy the recordkeeping requirements of the OFCCP, records must be kept for two (2) years from the date of the record or the personnel action, whichever is longer. The employer must maintain a record of all applications for employment that are submitted; along with the record of the application for employment all applicants must be invited to complete the OFCCP's self-identification form to self-identify gender, race/ethnicity, protected veteran status, and disability status.

Once an offer of employment is extended then the individual should be offered a second opportunity to self-identify, but if an employee chooses not to self-identify then the company is responsible to obtain the race and gender of the employee, usually by observation. The employer must maintain this information on all applicants that choose to self-identify and their current workforce so they will be able to perform the required analysis for their written AAP's.

Employers also need to keep records that will demonstrate their good faith efforts for compliance with the standards enforced by the OFCCP. Replicating the same practices that previously produced inadequate results will not necessarily satisfy the employer's obligation to make good faith efforts to increase representation of the protected classes in their applicant pool. Failure to meet a utilization goal does not imply noncompliance with the regulations to the OFCCP, but failure to adequately document the employer's efforts to broaden the applicant pool to reach their goals can be a potential violation.

3. Ensuring Equal Employment Opportunity standards in all employment practices

Employers must post appropriate notice for all employees and jobseekers of their status as an Equal Opportunity Employer including physical posters and online notice if they accept electronic applications. Federal contractors also need to incorporate the required Equal Opportunity clauses in their employment practices and include an EEO tagline in all job postings to provide jobseekers with as much notice as possible regarding the protected groups. Further, all opportunities for employment should be posted with state and local employment service delivery systems.

4. Periodic review of job descriptions and qualifications for adverse impact

Employers should conduct periodic reviews of physical and mental job qualifications to ensure that qualified individuals with disabilities are not eliminated from consideration on the basis of disability. The findings of these reviews as well as any revisions made should be recorded to show the employer's good faith efforts to prevent discrimination and provide evidence of their affirmative action efforts.

5. Provide reasonable accommodations to qualified individuals with disabilities

The OFCCP has taken a new interest in the employers' efforts to make reasonable accommodations for qualified individuals with disabilities. Particularly in the Section 503 Focused Reviews, the OFCCP reviews records pertaining to reasonable accommodations, including the request for accommodation, the identification of potential accommodations, and especially documentation on the reason an accommodation was an undue hardship on the employer and therefore not provided. Federal contractors should be aware of the potential for increased scrutiny of the policies, procedures, and practices surrounding reasonable accommodations for qualified individuals with disabilities in their organization.

SESCO has decades of experience assisting clients in their compliance with their obligations under Executive Order 11246, Section 503, and VEVRAA. To determine the applicability of these obligations to your organization or to discuss any of the aforementioned areas including written Affirmative Action Programs and other matters of compliance, please do not hesitate to contact SESO at sesco@sescomgt.com or at (423) 764-4127.