

OBSERVATIONS

EEOC and OFCCP Updates Provided by ERS Group

Corporate Selection Announcement Letters for Fall 2009

OFCCP is now issuing Corporate Selection Announcement Letters (CSAL) for Fall 2009. The letters are being sent “as a courtesy” to the government contractors if at least two of their establishments “have been identified for possible scheduling of a compliance evaluation during this scheduling cycle.” As in prior scheduling cycles, Federal contractors with one establishment selected by the Federal Contractor Selection System (FCSS) for a possible audit would not receive a selection announcement letter. In addition, Federal contractors may have other facilities, not listed on the CSAL, scheduled for audit if they are covered under a Functional Affirmative Action Program (FAAP), subject to a Corporate Management Compliance Evaluation (CMCE), or covered under the American Recovery and Reinvestment Act of 2009.

The text of the CSAL is available [here](#). One notable change to the text is the removal of the limitation on the number of facilities subject to an evaluation. The new text of the CSAL reads, “Finally, there will be no limit on the number of new compliance evaluations of your company’s facilities that OFCCP will conduct during a fiscal year.” This is in contrast to the previous CSAL which limited the number of facilities to 25 that could be scheduled for an evaluation in a fiscal year.

New Director of the OFCCP

Since our last update, Patricia Shiu, formerly an attorney with the Legal Aid Society-Employment Law Center (LAS-ELC) of San Francisco, has been named the new Director of the Office of Federal Contract Compliance Programs (OFCCP). Formerly, Ms. Shiu was the Vice President for Programs and director of the Society’s Work and Family Project at the LAS-ELC. She joined the LAS-ELC in 1983 and is a graduate of the University of San Francisco School of Law.

Ms. Shiu joined the OFCCP in September 2009 as the Department of Labor was in the process of abolishing the Employment Standards Administration (ESA) which oversees the OFCCP, the Office of Labor Management Standards, and the Wage and Hour Administration. As of November 2009, the three agencies previously reporting to the ESA report directly to the Secretary of Labor’s office headed by Hilda Solis.

OFCCP Participates in Conferences and Webinars Regarding Affirmative Action Obligations under the American Recovery and Reinvestment Act of 2009

The OFCCP participated in Wage and Hour Division Prevailing Wage Conferences and webinars to discuss the obligations of federal contractors receiving funds from the American Recovery and Reinvestment Act of 2009 (ARRA). The OFCCP indicated that the auditing of federal contractors with contracts awarded under ARRA will be independent from the normal audit schedule with no limitation on the number of audits that can be scheduled. In addition, the Active Case Management compliance evaluation procedures announced by the OFCCP on September 17, 2008, which limits most audits to an abbreviated desk audit, will not be used for audits conducted under the ARRA scheduling procedure. According to OFCCP, the ARRA compliance evaluation procedures require a full compliance review. This review includes a full desk audit and the on-site review of every ARRA funded contractor scheduled for an evaluation even if there is no indication of systemic discrimination.

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EEOC publication “Understanding Waivers of Discrimination Claims in Employee Severance Agreements”

The OFCCP has recently published a compliance review scheduling letter to be used for construction contractors. This letter requests documentation of the contractor's compliance efforts by providing records and information in 12 areas generally encompassing EEO efforts, as well as employee records and hours worked for each trade. Find the letter [here](#).

Recently, the OFCCP announced multiple job openings for Equal Opportunity Specialists primarily in Southeastern states to directly support ARRA efforts. These openings are considered term appointments that are not to exceed September 30, 2010. It is expected that the OFCCP will increase its audit efforts with the addition of the ARRA funds. Additional ARRA scheduling information is available [here](#).

OFCCP Increased Budget Request in Fiscal Year 2010

The budget request for the OFCCP in fiscal year 2010 has increased from fiscal year 2009 by approximately 30% from \$82.1 million to \$109.5 million with a requested increase in staff from 585 full-time employees to 798 full-time employees. In addition to financing the additional staff, the increase in OFCCP's budget is expected to finance a new case management system and support additional enforcement and outreach efforts related to compensation. According to the FY 2010 Department of Labor Budget in Brief:

Given the complexities of new procedures outlined in the two federal register notices – Interpreting Nondiscrimination (sic) (Standards) and Voluntary Guidelines for Requirements of Executive Order (guidelines), OFCCP needs to place additional emphasis on outreach and training, as well as improving the various approaches and investigative techniques used to evaluate compensation. In addition, the program increase will also support litigation to amplify enforcement activities by funding external experts to verify OFCCP's allegations and assessments to solidify its commitment to strong enforcement.

To review the FY 2010 Department of Labor Budget in Brief, click [here](#).

OFCCP Compliance Review Scheduling Letter Contains Additional Text Regarding Compensation Data

The OFCCP has recently issued an updated compliance review scheduling letter with additional text regarding the submission of compensation data under Item 11 (in the Itemized Listing). In general, Item 11 requests annualized compensation data by employee groupings, race and gender. These data may be submitted in an electronic format and may

include additional information that the contractor believes would assist the OFCCP in understanding its compensation system. The additional text is highlighted on the following reproduction of the updated Item 11:

11. Please provide annualized compensation data (wages, salaries, commissions, and bonuses) by either salary range, rate, grade, or level showing total number of employees** by race and gender and total compensation by race and gender. Present these data in the manner most consistent with your current compensation system. If you maintain the information in electronic format, please submit in that format. See 41 CFR 60-1.4(a)(1). You may also include any other information you have already prepared that would assist us in understanding your compensation system(s).

Alternatively, under the voluntary guidelines for self-evaluation of compensation practices, 71 Fed. Reg. 35114 (June 16, 2006), you have the option of seeking compliance coordination. If you so choose, you need not submit the annualized compensation data outlined in Item 11. However, you must notify OFCCP that you "seek compliance coordination under the voluntary OFCCP compensation self-evaluation guidelines."

**For this purpose, the method used to determine employee totals by the contractor should be the same as that used to determine employee totals in the organizational profile for the AAP.

The Compliance Review Scheduling Letter is available [here](#); The Federal Register is available [here](#).

OFCCP Issues Technical Assistance Guides

OFCCP has recently issued three updated technical assistance guides for new contractors, supply and service contractors, and for construction contractors. These guides are intended to assist the contractor in complying with OFCCP rules and guidelines. The technical assistance guides are available at the following locations:

http://www.dol.gov/ofccp/TAGuides/new_contractors_guide.htm

http://www.dol.gov/ofccp/TAGuides/ss_technical_assistance_guide.htm

<http://www.dol.gov/ofccp/TAGuides/consttag.htm>

OFCCP Re-Publishes Construction Contractor Participation Goals for Minorities and Females

In the updated Technical Assistance Guide for Federal Construction Contractors, guidance is given regarding the participation goals for federal and federally assisted contractors. The goals are applicable to all of the contractor's worksites, regardless of whether the worksite is federally funded or assisted. The female participation goal is 6.9% for all construction sites as established in Federal Register, Vol. 45, No. 251 at 85750-85751 (December 30, 1980) available [here](#). The minority participation goal is derived from the 1970 Census of the Population and it varies by Standard Metropolitan Statistical Area as established in Federal Register, Vol. 45, No. 194 at 65976-65991 (October 3, 1980) available [here](#).

E-Verify Required as of September 8, 2009

Federal contractors and sub-contractors with contracts that include the Federal Acquisition Regulation (FAR) E-Verify Clause are required to use the E-Verify system as of September 8, 2009 to verify the eligibility of their employees to work in the United States. The E-Verify system is a free web-based system operated by the Department of Home Land Security in partnership with the Social Security Administration. The system verifies employment eligibility by comparing information from the Employment Eligibility Verification Form (I-9) to government databases.

EEOC Publishes "Understanding Waivers of Discrimination Claims in Employee Severance Agreements"

On July 15, 2009, the EEOC issued a document entitled "Understanding Waivers of Discrimination Claims in Employee Severance Agreements" with the intention of answering questions that may be posed by employees "offered a severance agreement in exchange for a waiver of your actual or potential discrimination claims." The document provides information on severance agreements in general, valid waivers, and compliance of waivers of age with provisions of the Older Workers Benefit Protection Act (OWBPA).

Review "Understanding Waivers of Discrimination Claims in Employee Severance Agreements" [here](#).

Meet ERS Group Professionals

January 11, 2010, Webinar

2010 Compensation Tune-up: Are Your Pay Practices Ready for Challenges?

ERS Group Presenters: Janet R. Thornton, Ph.D., and Carole M. Amidon, Ph.D.

Call Frances Michels at 850-562-1211 ext. 170 or email [her](#) for information on how to register.

February 25 - 26, 2010, New York, NY, Millenium UN Plaza Hotel

ACI Employment Discrimination Litigation Conference

Call Frances Michels at 850-562-1211 ext. 170 or email [her](#) for information on a registration discount sponsored by ERS Group. Read more about the upcoming conference [here](#).

April 14 - 16, 2010, Washington, DC, Hamilton Crowne Plaza

Preparing for OFCCP Compliance Audits and Crafting Effective Affirmative Action Plans

ERS Group Presenters: Paul F. White, Ph.D., George T. Desloge, and Carole M. Amidon, Ph.D. View details [here](#).

Please contact us if you would like to discuss any of the issues raised here in more depth.

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