

Down with OFCCP (Yeah You Know Me): Federal Contractor/Affirmative Action Update

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OFCCP Contractor Portal



What is the Portal?



- A secure web-based interface created to improve communication and the transfer of Affirmative Action Program data, between Federal Contractors and the OFCCP.

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Two Purposes

- Annual certification by contractors regarding whether they have developed and maintained AAP for each establishment.
- Secure submission of AAPS (and other requested information) to the OFCCP during compliance evaluations (aka, "audits").

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Who Must Certify?

- Supply and services federal contractors and subcontractors with
 - 50 or more employees; and
 - A federal contractor/subcontract in excess of \$50,000
- Construction contractors are currently excluded

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Process

- Register on the Portal
- Make sure you have a current AAP in place (!!)
- Certify compliance with all three (3) affirmative action laws



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Certification Options

1. [The contractor] has developed and maintained affirmative action programs at each establishment, as applicable, and/or for each functional or business unit. See 41 CFR Chapter 60.
2. [The contractor] has been party to a qualifying federal contract or subcontract for 120 days or more and has not developed and maintained affirmative action programs at each establishment, as applicable. See 41 CFR Chapter 60.
3. [The contractor] became a covered federal contractor or subcontractor within the past 120 days and therefore has not yet developed applicable affirmative action programs. See 41 CFR Chapter 60.

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Timing



- The Portal is now open for contractors to certify compliance
- Deadline is June 30, 2022.
- Extension?

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Action Steps

- Register
- Get your AAP in place!!
- Certify by June 30th!



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Federal Contractor Minimum Wage



The Basics

- Effective January 30, 2022, the federal contractor minimum wage is \$15/hour.
- Applies to contractor employees who work "on or in connection with" a federal contract



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Contractor Coverage

1. Procurement contracts for construction covered by the Davis-Bacon Act ("DBA");
2. Service contracts covered by the Service Contract Act ("SCA");
3. Concessions contracts, including any concessions contracts excluded from the SCA by the Department's regulations at 29 C.F.R. 4.133(b); and
4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

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Court Challenges

- Court challenges pending in Arizona and Texas federal courts
- No injunctions thus far...



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New OFCCP Directives and Proposed Rules



Directive on Pay Equity Audits

- Requirement: Contractors must conduct annual compensation review and correct problem areas
- Directive: OFCCP will review pay for similarly situated employees; and also broadly across workforce to identify "patterns of segregation"
- Analyses not protected by "attorney-client privilege"

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New Proposed Rule

- Rescind prior "rigid" evidentiary standards
- Clarify the use of the Predetermination Notice and the Notice of Violation as part of OFCCP's pre-enforcement notice and conciliation procedures.
- Return the Predetermination Notice response period to the 15-calendar day period.
- Retain the regulatory language regarding early resolution.
- Give the agency the right to add violations between each stage of bringing a claim.

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New Enforcement Directive

- Rescinds Trump OFCCP's "four pillars:"
 - Certainty
 - Efficiency
 - Recognition
 - Transparency



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Federal Contractor Vaccine Mandate



Status

- *Kentucky v. Biden*
 - Appealed to 6th Circuit
- *Georgia v. Biden (aka, the nationwide mandate)*
 - Appealed to 11th Circuit
- *Louisiana v. Biden*
 - Appealed to 5th Circuit
- *Missouri v. Biden*
 - Appealed to 8th Circuit



Miscellaneous



Odds and Ends

- New Census Data
- Veteran Hiring Benchmark now 5.5%
- Non-binary data collection
- EEO-1 pay data collection

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Questions?

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