

One Minute Memo[®]



OFCCP News Roundup

On March 6, 2008, the Office of Federal Contract Compliance Programs (OFCCP) hosted a web conference highlighting the Agency's initiatives and providing clarification on existing enforcement strategies. This was the Agency's first update for 2008. An update about OFCCP operations is planned for May, 2008 with an OFCCP policy update to follow in July.

OFCCP is Releasing Second Round of Audit Scheduling Letters for FY2008

You may soon be receiving a letter scheduling one or more of your facilities for a compliance evaluation. On March 10, 2008 the OFCCP regional offices obtained a new list of contractors they may begin reviewing. The newest wave of compliance evaluations includes approximately 5,000 facilities. Last October, when kicking off their new fiscal year, the Agency began conducting reviews from a new list of approximately 2,000 facilities. With a little more than half their fiscal year remaining, the OFCCP apparently expects to more than double its pace of conducting audits.

The Agency is continuing to follow its trend of aggressive enforcement. The OFCCP's last fiscal year ending September 30, 2007 marked OFCCP's third consecutive record year conducting nearly 5,000 compliance evaluations, and collecting almost \$52 Million in financial remedies for alleged discrimination.

OFCCP Policy and Enforcement Update

OFCCP Hires New Director of Statistical Analysis:

Compensation discrimination will continue to be a major focus for the OFCCP in 2008. In order to pursue this objective the OFCCP has named Dr. Javaid Kaiser as Director of Statistical Analysis effective February 19, 2008. He fills the vacancy left by Dr. Michael Sinclair who left the agency last fall. Dr. Kaiser most recently held the position as Director of the Office of Applied Studies at the Substance Abuse and Mental Health Services Administration. Even though his experience in government is substantial, Dr. Kaiser's exposure to the world of federal contractors appears extremely limited.

Systemic Compensation Discrimination: In 2008, the Agency expects to make continued progress toward a uniform approach to analysis of compensation. The OFCCP claims each of its offices has access to the same set of tools to evaluate compensation but acknowledges that there is some difference between offices and compliance officers. Our experience is that there are substantial differences in how various OFCCP offices conduct compensation analyses.

Reporting Categories: The OFCCP has confirmed it is no closer to providing official guidance on whether it will conform the collection of race and ethnicity data for Affirmative Action compliance purposes to the new

standards now in place for the EEO-1 report. Since the new EEO-1 report became effective, the EEOC and OFCCP have used different reporting standards for collecting and reporting data. For the time being, however, the Agency has decided to accept Affirmative Action Plans (AAP) that use either current OFCCP or the new EEO-1 categories. Because this issue is yet unsettled, contractors should be cautious about changing their human resources information systems to use the new EEO-1 race and ethnicity definitions.

America's Job Bank Records: The June 30, 2007 shutdown of America's Job Bank (AJB) left contractors challenged to find a new way to comply with the Jobs for Veterans Act (JVA) posting requirement ([click here](#) to view our One Minute Memo on this topic). Since that time, the OFCCP has directed contractors to state job banks or other services to satisfy the job posting obligation. The Agency cautions contractors that meeting the compliance requirement is the contractor's responsibility and not that of their vendor.

Amidst the AJB shut down, a second major challenge for contractors has surfaced—record keeping. Obtaining AJB records is important to all contractors, but especially to those who have, or expect to be scheduled for compliance evaluation. Fortunately, the records are still available to contractors who used the AJB to fulfill posting requirements. Contractors should start to seek a record of their prior listings with AJB electronically by either sending an email to ajb@labor.state.ny.us, or following the prompts at www.jobbankinfo.org. Because the Agency

expects this service to be cut off early this summer, contractors are encouraged to obtain their AJB records as soon as possible.

Accessibility of Online Application Systems & Electronic Record Keeping: As many contractors move toward electronic application processes, the OFCCP is increasing its focus on the contractors' obligations to provide reasonable accommodations to those individuals with disabilities and who are unable to access the online application system because of those disabilities. The OFCCP cautions contractors to ensure that disabled candidates are provided an alternative method for applying for employment if their disability prevents them from accessing or otherwise completing the electronic application.

The OFCCP expects to provide additional guidance to its compliance officers regarding standards for auditing a contractor's electronic record keeping. Such guidance is expected to be available to the public within 60 days and will discuss types of systems appropriate for record keeping and when hard copy records may be destroyed. We hope this guidance will result in more uniform analyses of electronic records during compliance evaluations.

If you want to learn more about affirmative action and diversity, or have specific questions related to the matters addressed above, please contact the Seyfarth Shaw attorney with whom you work, or one of the affirmative action and diversity attorneys listed on our website at www.aap-seyfarth.com.

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