

One Minute Memo®



President Trump's Budget Includes Proposed Merger of EEOC and OFCCP

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Seyfarth Synopsis: On May 23, 2017, the White House released its proposed budget for the 2018 Fiscal Year. Included in the proposal, which would impose deep cuts to many programs administered by the Department of Labor, was a proposal to merge the Office of Federal Contract Compliance Programs ("OFCCP") into the Equal Employment Opportunity Commission ("EEOC"). The proposed budget states that the goal is to create "one agency to combat employment discrimination."

What is the Future of the OFCCP?

The proposed budget calls for the Office of Federal Contract Compliance Programs ("OFCCP") to merge into the Equal Employment Opportunity Commission ("EEOC") and form a single organization by the end of the 2018 fiscal year. The proposed budget states that such a merger will create "one agency to combat employment discrimination" and that the "integration of these two agencies will reduce operational redundancies, promote efficiencies, improve services to citizens and strengthen civil rights enforcement."¹ The proposal provides that the EEOC and the OFCCP will work together to "collectively coordinate the transition." Even before the merger would take effect, the proposed budget would reduce OFCCP's current budget by \$17 million and would cut the number of full time employees from 581 in the 2016 fiscal year to 440 in the 2018 fiscal year.²

What is the Future of Affirmative Action in Employment?

Currently, OFCCP enforces Executive Order 11246 ("EO 11246"), Section 503 of the Rehabilitation Act ("Section 503"), and the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA") applicable to federal contractors and subcontractors. Under these requirements, those employers doing business with the government are required to engage in affirmative action and to refrain from discrimination based on a myriad of protected characteristics including race/ethnicity, sex, disability status, veteran status, sexual orientation and gender identity. In contrast, the EEOC has no authority to impose affirmative action requirements and instead, its primary mission is to investigate and resolve non-discrimination laws under Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Equal Pay Act, the Genetic Information Nondiscrimination Act, and the Age Discrimination in Employment Act of 1967, among other federal employment discrimination laws.

¹ Department of Labor Fiscal Year 2018 Proposed Budget, pg. 23 available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/lab.pdf>

² The budget proposal would continue funding the EEOC at its current level through the 2018 fiscal year

If the EEOC and OFCCP were to be merged into one combined agency as set forth in the proposed budget, EO 11246 would need to be amended to delegate the enforcement authority which currently rests with the Department of Labor to the EEOC. Likewise, Congressional action would be required to transfer enforcement authority to the EEOC for Section 503 and VEVRAA outside the budgetary process.

What Does this Mean for Employers?

As noted, the proposal to combine the EEOC and OFCCP is part of the budget from the White House which includes many other proposed changes. The budget will need to be approved by Congress before it becomes effective.

The issue was specifically addressed as part of testimony before the House Subcommittee on Workplace Protections, entitled “The Need for More Responsible Regulatory and Enforcement Policies at the EEOC,” that happened to take place today, the same day the White House submitted its budget to Congress. Interestingly, both the employer community and civil rights activists seem to be on the same side in opposing the proposed merger. When asked about the proposed merger both Camille Olson, a Partner with Seyfarth Shaw, testifying on behalf of the U.S. Chamber of Commerce, and Todd Cox, Director of Policy for the NAACP Legal Defense and Education Fund, Inc., opposed the merger on the grounds that the EEOC and the OFCCP are vastly different organizations with different operational goals, missions and approaches.

We will continue to monitor the White House’s proposal to merge the EEOC and OFCCP and will provide updates as they occur.

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