

THOUGHT LEADERSHIP

LEGAL UPDATES

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Proposed Changes to OFCCP Scheduling Letter

On May 12, 2011, the Office of Federal Contract Compliance Programs (OFCCP) published notice of intent to change its standard Scheduling Letter, used in connection with its compliance evaluations. With these changes, OFCCP intends to broaden the type and nature of data it seeks in an evaluation, imposing significant new burdens on the contractor community.

When a facility is formally selected for a compliance evaluation, OFCCP sends a Scheduling Letter directly to the facility to be evaluated. The Scheduling Letter, with its itemized Listing, requires the contractor to submit to OFCCP specific categories of data, and the contractor's affirmative action plans, by the date set in the letter.

The current form of the Scheduling Letter is set to expire, under federal Office of Management and Budget rules, on September 30, 2011, so OFCCP is taking this opportunity to propose changes to the Scheduling Letter. The changes proposed by OFCCP to the Scheduling Letter demonstrate, once again, that OFCCP is aggressively enforcing the laws within its jurisdiction. The significant changes proposed by OFCCP are:

That contractors provide employment leave policies, such as policies concerning the Family and Medical Leave Act, pregnancy leave, and accommodations for religious observances and practices. OFCCP further proposes that, if the company's policies are in a handbook, the contractor provide the entire handbook to OFCCP. OFCCP believes this change will allow it to better enforce the prohibitions on sex and religious discrimination (and, presumably, the requirement to accommodate disabilities).

That contractors provide more demographic information for applicants, hires, promotions and terminations. Specifically, OFCCP wants data by certain sub-minority groups, and by job group as well as job title, for these personnel actions. OFCCP believes this change will provide more accurate data to allow it to identify discrimination indicators.

That contractors provide compensation data as of a specific date (February 1), for each employee by job title, EEO-1 category, and job group. OFCCP believes this change will provide more accurate data from which it can more specifically analyze possible discrimination based on race or sex.

That contractors provide the last three years' of VETS-100/VETS-100A reports. OFCCP believes this change supports its efforts to prohibit discrimination based on one's status as a protected veteran.

The complete text of the proposed Scheduling Letter can be reviewed here. OFCCP will accept comments about its proposed changes through July 11, 2011. After that date, OFCCP will consider the comments, and then release its final proposed changes to the Scheduling Letter. Interestingly, OFCCP estimates that, as a result of its changes to the Scheduling Letter, a typical contractor will need to spend fewer hours responding to its Scheduling Letter (26 hours, instead of 28 hours).

What This Means to You

We encourage contractors to consider whether to submit comments to OFCCP. In the meantime, contractors should take the opportunity to review their policies, as well as their affirmative action plans and procedures, to ensure they comply with legal requirements. Additionally, we recommend contractors evaluate their affirmative action plan data and actions at least once partway through the plan year, to identify and correct any deficiencies at the earliest opportunity.

Contact Info

For additional information and assistance, please contact your Husch Blackwell attorney or Molly Kurt at 816.983.8229.

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