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## EMPLOYMENT LAW LETTER

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### FEDERAL CONTRACTORS

## OFCCP publishes updated compliance manual

by Jonathan R. Mook

*The federal government estimates that it has contracts totaling almost \$700 billion with more than 200,000 businesses across the United States. If you're one of those 200,000 businesses and have a federal contract worth more than \$10,000, you're obligated to take affirmative action to advance the employment of qualified minorities. Moreover, if you have a contract worth \$50,000 or more and employ 50 or more workers, you must prepare and maintain a formal affirmative action program. If you don't, you can get into trouble with the Office of Federal Contract Compliance Programs (OFCCP), which is the federal agency that enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).*

*Complying with the various OFCCP requirements and trying to stay on the right side of the law isn't always an easy task. The record-keeping and documentation obligations of federal contractors continue to change, and compliance can become overwhelming for an HR professional.*

### **Updated compliance manual**

Recently, the OFCCP provided some insight into its compliance activities when it published an updated version of its "Federal Contract Compliance Manual." The updated manual, meant to provide internal guidance to the agency's compliance officials, sets forth the procedures for evaluating a federal contractor's adherence to its affirmative action and equal employment opportunity obligations. The manual covers such topics as desk audits, on-site reviews of supply and service contractors, and evaluation of construction contractors.

The manual also discusses how the agency conducts its corporate management compliance evaluations and assesses a company's affirmative action program. Those evaluations are of particular importance to many government contractors because their purpose is to determine whether minorities are encountering barriers to

advancement into middle and senior level corporate management.

The manual provides significant insight into the manner in which the agency approaches its investigation of complaint allegations, develops an investigative plan, and conducts on-site investigations. The updated manual's discussion of how compliance officials are to approach such investigations should be of particular interest for government contractors that have been the subject of an on-site discrimination investigation.

### **Practical guidance**

Although the OFCCP's compliance manual isn't a statement of the law, or even a government regulation, it does provide the practical framework under which the OFCCP approaches enforcement of the law. The manual also reaffirms the need for federal contractors to allocate additional time and money to ensure they are complying with their legal obligations. In that regard, the updated manual memorializes the more stringent (and onerous) OFCCP investigatory procedures that have been put into place during the Obama administration.

To be ready when the OFCCP comes calling, all federal contractors that are subject to the affirmative action requirements of the law should become familiar with the guidance set forth in the agency's compliance manual. That way, when you're dealing with an OFCCP investigator, you will have a much better understanding of the reasons for the questions you're being asked. You also will have better insight into why the investigator is requesting various types of information and documents from you.

### **Bottom line**

It's an old saying that the best source of information is "from the horse's mouth." In the case of the OFCCP, that "horse's mouth" is the agency's Federal Contract

Compliance Manual. Accordingly, a copy of the manual should be on the desk (or downloaded to the PC or iPad) of every HR professional who deals with the OFCCP. If

you're interested in obtaining a copy of the OFCCP's updated manual, please contact Jonathan Mook at [jmook@dimuro.com](mailto:jmook@dimuro.com). ♣