



# Preparing for and Surviving an OFCCP Compliance Review

Insights

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The Office of Federal Contract Compliance Programs (OFCCP) is the U.S. Labor Department's enforcement agency for federal contractors subject to affirmative action requirements. In general, these requirements are imposed by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as well as the Jobs for Veterans Act.

Employers with 50 or more employees and a federal contract or subcontract in the amount of \$50,000 or more, as well as certain financial institutions, are required to prepare written affirmative action programs on an annual basis. These affirmative action programs (AAPs) include statistical analyses of the employer's workforce demographics, by race and gender. In addition, the OFCCP has proposed regulations that, if passed, would require similar statistical analyses of the employer's veterans and individuals with disabilities demographics in its workforce.

Recently, the OFCCP has increased its enforcement activities and more contractors have been subjected to OFCCP's compliance reviews. Here are some things you should know.

## How Do I Learn I'm Being Audited?

Most audits begin with a scheduling letter detailing the information the contractor must provide within 30 days of receipt of the letter. The contractor should immediately establish a response team and create its own internal deadlines. Prior to submitting any documentation to the OFCCP, you should carefully review all statistical analyses; identify and correct, if possible, any areas of potential adverse impact; compare similarly situated employees for compensation purposes; and ensure that the data you provide is accurate and consistent in every area.

Typically, the OFCCP requests additional detailed compensation data for all or some of your employees. With this in mind, it's important that you have identified which employees are similarly situated to each other.

## Can The OFCCP Come Onsite?

Yes, and OFCCP's onsite reviews have increased dramatically recently. Even absent any indicators of discrimination, OFCCP has stated that it will conduct a random onsite audit, which includes employee interviews, for every one out of 25 compliance reviews. In the onsite, your job is to educate the OFCCP about your company, to explain your company's relevant business practices, and to

showcase the company's outreach and diversity efforts. Be sure to carefully prepare for the audit just as you would for a trial.

### **What If The OFCCP Finds A Problem?**

Often, the OFCCP will provide a predetermination notice stating its preliminary findings of discrimination and providing the contractor an opportunity to respond. If the contractor fails to satisfy the OFCCP by its response, or if the OFCCP has skipped the predetermination notice, the contractor should expect to receive a notice of violation.

At this point, if not earlier, you may choose to engage in conciliation attempts with the OFCCP. If these efforts are successful, the OFCCP and the contractor will enter into a conciliation agreement. If unsuccessful, the OFCCP may ask the solicitor's office to move forward with further legal remedies. Remedies may include back pay, debarment, or injunctive relief, which often require the contractor, even without any financial penalties, to provide reports to the OFCCP for a specified period of time.

### **Preparation Is Key**

Your initial attention to detail in creating your AAP, proper maintenance of required reports and records, and efforts at internal diversity programs and outreach efforts will all assist you during the compliance review process.

In addition, you should internally audit compensation practices as well as your adverse-impact analyses, which may enable you to correct issues in their earlier stages prior to discovery or identification by the OFCCP.

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