

WHAT FEDERAL CONTRACTORS NEED TO KNOW ABOUT OFCCP'S PROPOSED CHANGES TO THE COMPLAINT INTAKE PROCESS

Insights
Jan 27, 2023

The Office of Federal Contract Compliance Programs (OFCCP) recently announced proposed changes to its intake process for complaints of discrimination, which the agency says will help it assess allegations before a formal complaint is filed. The OFCCP – like its sister agency, the Equal Employment Opportunity Commission (EEOC) – has authority to investigate allegations of discrimination made against federal contractors on the bases of race, color, sex, sexual orientation, gender identity, religion, national origin, or veteran status. For OFCCP complaints, however, the agency only investigates claims made against federal contractors — and the charging party must be alleging claims under three specific EEO laws. Since the OFCCP only accepts a small percentage of filed complaints, the agency is seeking to add a preliminary form to the intake process to help determine whether complaints are eligible for an OFCCP investigation. Here's what federal contractors need to know about the OFCCP's proposal, which was published in the Federal Register on January 18.

A Brief Background

First, you should note that the OFCCP only investigates claims against federal contractors alleging discrimination or a violation under the following three laws:

- Executive Order 11246;
- Section 503 of the Rehabilitation Act of 1973; and
- The Vietnam Era Veterans Readjustment Assistance Act.

Related People



Sheila M. Abron

Partner

803.740.7676

Service Focus

Employment Discrimination
and Harassment

Government Contracting,
Compliance, and Reporting

Notably, however, OFCCP can refer complaints made under Executive Order 11246 and Section 503 to the EEOC. If OFCCP investigates a complaint and finds a violation of equal opportunity requirements, the agency engages in conciliation to attempt to resolve the matter.

What's Changing?

The current process requires a complainant — either an applicant or an employee of a federal contractor, their authorized representatives, or third parties — to file a Form CC-4. The proposed process would add a preliminary step, which would enable OFCCP to assess allegations before a formal complaint is filed.

The vast majority of complaints that are filed are not investigated by OFCCP, primarily because the employer is not a federal contractor or the complaint was outside the scope of OFCCP's authority (such as an age discrimination claim). The OFCCP said it received 2,075 complaints in FY 2022 and only assigned 4.9% of these for investigation.

To help streamline the process, OFCCP has designed a pre-complaint inquiry form (proposed Form CC-390) to assess the following:

- Whether the allegation is timely;
- Whether the allegation falls under OFCCP's jurisdiction; and
- Whether the allegation should be investigated.

After determining that the allegations are eligible for OFCCP to investigate, the complainant would be provided a Form CC-4 to complete, which would initiate the investigation process.

OFCCP also seeks to revise the complaint form (the CC-4), and the revisions are primarily formatting changes to improve usability. The form would also be changed to harmonize the formatting with the proposed pre-complaint inquiry form.

How to Respond

Interested contractors may file comments with the agency on the proposed changes by March 20. The agency is particularly interested in comments that evaluate the

proposed new form, changes to the CC-4 form, and whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. You may also provide comments related to the time burden, the quality of the information to be gathered, and related information.

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you would like Fisher Phillips to file comments on your behalf, please consult your Fisher Phillips attorney, the authors of this Insight, or a member of Fisher Phillips' [Affirmative Action and Federal Contract Compliance Practice Group](#).