

Affirmative Action Compliance Checklist

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) implemented new regulations recently. This Affirmative Action Compliance Checklist contains specific action steps for contractors to comply with these new requirements and pre-existing requirements.

JOB POSTINGS

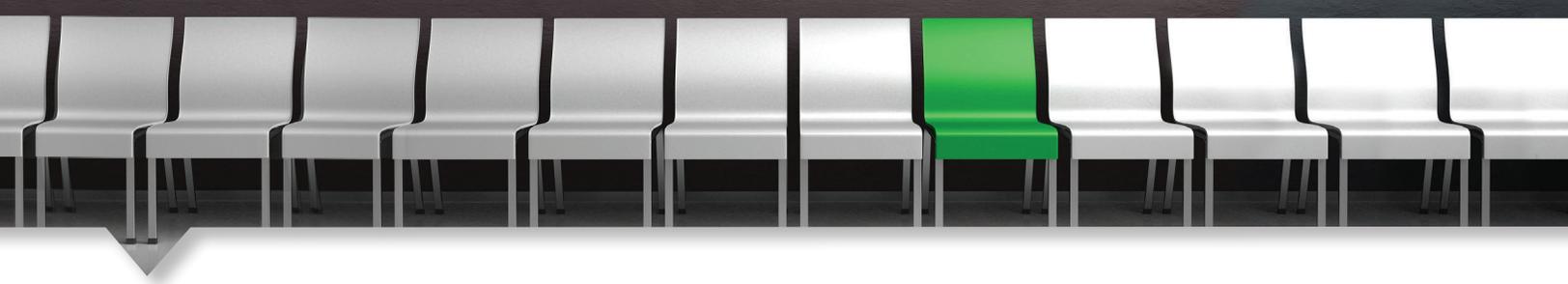
- Review job posting to ensure basic qualifications are appropriate
 - ▶ Objective, non-comparative and relevant to the performance of the particular job
- Post jobs with the state's employment service delivery system or state workforce agency job bank (*there is an exception for executive and senior management positions and internal promotions*)
- Send information regarding job openings to local veterans organizations and organizations supporting disabled individuals, as discussed in your written affirmative action plan (*explained below*)
- Include language in job postings that the employer is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin

NOTIFICATIONS/POSTINGS

- The employment service delivery system or state workforce agency job bank must be notified, simultaneous with first job posting, of the following:
 - ▶ That the employer is a federal contractor
 - ▶ That it desires priority referrals of protected veterans
 - ▶ The name and location of each hiring location within the state
 - ▶ The contact information of the person responsible for hiring at each location
- The employer must post OFCCP's notice, which can be found at: <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>
 - ▶ Posting must be on physical premises available to employees and applicants
 - ▶ For employees who work offsite, electronic posting or email notification is permissible if accessible to the employees
 - ▶ An electronic posting must be used to notify job applicants if the employer utilizes an electronic application
- Employer must post its Affirmative Action Policy Statement on its bulletin boards
- Employer must notify each labor organization that represents its employees that it is a government contractor that takes affirmative action with regard to women, minorities, disabled individuals and protected veterans

COLLECTING INFORMATION ON APPLICANTS AND EMPLOYEES (assumes applications submitted through the Internet)

- Define applicant to comply with Internet applicant rule
 - ▶ Consider methods of limiting number of applicants
 - ▶ Ensure recruiters use disposition codes consistently
- If social networking sites are used, create plan for collecting required information
- APPLICANT REQUEST.** Invite applicants to self-identify race, gender, disability status and protected veteran status. Faegre Baker Daniels can provide a sample form for race, gender and veteran status. For disability status invitation, an employer must use the form provided by OFCCP at: <http://www.dol.gov/ofccp/regs/compliance/section503.htm#bottom>.
 - ▶ The form provided by OFCCP can be converted to an electronic request as long as it:
 - Displays the OMB number and expiration date;
 - Contains the text of the form without alteration;
 - Uses a sans-serif font, such as Calibri or Arial; and
 - Uses at least 11-pitch for font size (*with the exception of the footnote and burden statement, which must be at least 10-pitch in size*).
- POST-OFFER REQUEST.** Invite new hires (*after the offer is made but prior to commencing work*) to self-identify race, gender, disability status and protected veteran status (*including specific veteran status category*). Faegre Baker Daniels can provide a sample form for race, gender and veteran status category. For disability status invitation, an employer must use the form provided at: <http://www.dol.gov/ofccp/regs/compliance/section503.htm#bottom>.
- CURRENT EMPLOYEES – INITIAL SURVEY.** All employees must be invited to disclose disability status on the form provided by OFCCP prior to March 23, 2015
- CURRENT EMPLOYEES – PERIODIC SURVEY.** All employees must be resurveyed every five years regarding disability status
- EMPLOYEE NOTIFICATION.** At least once during the years between the invitations to self-identify disability status, contractors must remind their employees that they may voluntarily update their disability status at any time
- If an applicant identifies as disabled, inquire as to whether a reasonable accommodation is necessary
- Self-identification forms should be kept separate from the applicant and personnel files



PREPARING AFFIRMATIVE ACTION PROGRAM FOR WOMEN AND MINORITIES

- Prepare text of written plan
- Comply with provisions of written plan
- Determine establishments (*each facility with 50 or more employees; facilities with less than 50 employees are "rolled-up"*)
- Create job groups — first EEO-1 categories, then break down by similar wage, opportunity and content
- Review census codes and geographic recruitment area
- Review internal and external availability
- Prepare Workforce Analysis, Job Group Analysis, Availability Report, Utilization Report and Goals Report
- Review reasons for disparities; revise if appropriate
 - ▶ Correct census codes, geographic area, internal/external split?
- Develop meaningful action-oriented programs to address areas of underutilization
- Complete and submit the annual EEO-1 report
- Document progress on prior year's goals

AFFIRMATIVE ACTION PROGRAM FOR PROTECTED VETERANS AND DISABLED INDIVIDUALS

- Prepare text of written plan, including:
 - ▶ Company's Affirmative Action Policy Statement
 - Include U.S. executive's support for the program
 - Provide for audit and reporting system
 - Assign overall responsibility
 - ▶ Plan for review of personnel processes
 - ▶ Plan for review of physical and mental qualifications
 - ▶ Anti-harassment policy
 - ▶ Plan for external dissemination of policy, outreach and positive recruitment
 - ▶ Assessment of external outreach and recruitment efforts
 - ▶ Develop audit and reporting systems
 - ▶ Assign responsibility for implementation
 - ▶ Analyze data comparing job openings, jobs filled, protected veterans hired, disabled individuals hires and total number of applicants.

- ▶ Prepare utilization analysis
- ▶ Identify problem areas
- ▶ Create action-oriented programs
- Comply with provisions of written plan
- Complete and submit the annual VETS 100A report
- Reasonable accommodation policy
- Document accommodations made to disabled applicants and employees
- Document external outreach and recruitment
- Annually evaluate external outreach and recruitment and adjust plan when appropriate
- Ensure website is ADA compliant
- Document adoption of hiring benchmark for protected veterans (if applicable)
- Evaluate effectiveness of implemented personnel processes
- Evaluate physical and mental qualifications for jobs and monitor evaluation

ANNUAL SELF-AUDIT

(**recommend preparing under attorney-client privilege**)

- Review wages for disparities based on race and gender
- Prepare adverse impact analysis comparing applicants to hires, incumbents to promotions and incumbents to terminations
 - ▶ Define what a promotion is in your organization and report it consistently
 - ▶ Analyze any disparities and address if appropriate

OTHER

- Document all good faith efforts at overcoming underutilization
- Incorporate EEO clause in all covered contracts
- Train and educate hiring managers and supervisors about the AAP requirements
- Comply with document retention requirements (*generally three years*)

If you need help completing this checklist or have any questions, please contact a member of our team.

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