

AFFIRMATIVE ACTION UPDATE

** NEWS FLASH **

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Douglas B. Brown & Associates, LLC

November 12, 2015

- NEW POSTING & NOTICE REQUIREMENTS
- INCREASED THRESHOLD FOR COVERAGE UNDER 4212

REMINDER: NEW POSTING AND NOTICE REQUIREMENTS

This is a reminder that there are two new notice and posting requirements under recent OFCCP regulations. The first is adding the “EEO is the Law” Poster Supplement to comply with the LGBT Discrimination and Pay Secrecy regulations. The LGBT discrimination regulation was effective April 8, 2015 and applies to either new contracts entered into or contracts modified after that date. The regulation requires the addition of “Sexual Orientation/Gender Identity” as prohibited bases of discrimination. EEO policies in employee handbooks, union contracts and policy statements posted on bulletin boards must be updated to include these bases.

These bases must also be added to the “EEO is the Law” poster. While a new poster has not yet been published, the additional language has been included in a supplement that is to be posted along with the prior version. A copy of the supplement is attached. This should be printed out and posted with the current version of the poster.

In addition, what was originally called the “Non-Retaliation for Disclosure of Compensation Information” under Executive Order 13665, is now referred to as “Prohibitions Against Pay Secrecy Policies and Actions” in the implementing regulation. This rule forbids contractors from prohibiting employees and applicants from voluntarily sharing information regarding their compensation with each other or from retaliating against employees or applicants if they do share such information. It does not require contractors to divulge pay/compensation information upon request. It also prohibits the disclosure of compensation information by employees who obtain such information as part of their essential job functions. So for example, a human resources supervisor or generalist could not disclose information about someone else’s pay that was obtained in the performance of the HR professional’s job. However, they could disclose information about their own compensation/wages to others.

This regulation is effective January 11, 2016 and applies to contracts either entered into, or modified after that date. The regulation has two notice/posting requirements. The first is the posting of the “Pay Transparency Policy Statement” on bulletin boards and inclusion of the Statement in employee handbooks, and policies. A copy of the “Pay Transparency Policy Statement” is likewise attached. The statement **must be used exactly as written and without modification.**

The second part is the inclusion of the statement in the EEO clause that is included in all covered contracts and subcontracts. Contractors/subcontractors may also meet this obligation through “*Inclusion of the equal opportunity clause by reference*” in the covered documents. Sample language referencing the EEO Clause is attached.

In conclusion, while we have not yet seen the OFCCP inquire into the EEO is the Law Poster Supplement, and the pay secrecy rule will not be effective for another two months, it would be prudent for contractors to start preparations to be in compliance as soon as possible.

THRESHOLD FOR COVERAGE UNDER VEVRAA/4212 INCREASED TO \$150,000 FOR A SINGLE CONTRACT

Effective October 1, 2015, the threshold for coverage under Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) increased to \$150,000 for a single contract. This means unless a contractor/subcontractor holds a single covered federal contract or subcontract of at least \$150,000, they are not required to comply with the provisions of VEVRAA, including the preparation of an affirmative action plan (AAP) for protected veterans, listing covered job opportunities with the appropriate state jobs delivery system, or engaging in outreach for protected veterans.

An infographic published by the OFCCP showing the coverage thresholds for Executive Order 11246, Section 503 of the Rehabilitation Act, and VEVRAA/4212 is attached. Please note that depending on the value of the contract, a contractor/subcontractor may have to prepare an AAP for minorities, females and the disabled, but they may not have to do so for Protected Veterans.

It is recommended that contractors and particularly subcontractors, review the value of their federal contracts/subcontracts to determine whether the value of those contracts meets the jurisdictional threshold amount.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown & Associates, LLC and does not represent nor is intended as a substitute for professional legal advice.

“EEO is the Law” Poster Supplement

Employers Holding Federal Contracts or Subcontracts Section Revisions

The Executive Order 11246 section is revised as follows:

RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits employment discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

PAY SECRECY

Executive Order 11246, as amended, protects applicants and employees from discrimination based on inquiring about, disclosing, or discussing their compensation or the compensation of other applicants or employees.

The Individuals with Disabilities section is revised as follows:

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship to the employer. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

The Vietnam Era, Special Disabled Veterans section is revised as follows:

PROTECTED VETERANS

The Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans (i.e., within three years of discharge or release from active duty), active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

Mandatory Supplement to EEOC P/E-1(Revised 11/09) “EEO is the Law” Poster.

If you believe that you have experienced discrimination contact OFCCP: 1-800-397-6251 | TTY 1-877-889-5627 | www.dol.gov.

Pay Transparency Policy Statement:

The contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

EEO CLAUSE

TO BE INCLUDED ON ALL COVERED CONTRACTS, SUBCONTRACTS AND PURCHASE ORDERS

As applicable, the provisions of the Equal Opportunity Clauses pursuant to Section 202 of Executive Order 11246, as amended, and 41 CFR Section 60-1.40; as well as 29 C.F.R. Part 471, Appendix A to Subpart A, are herein incorporated by reference. Further, sellers who (1) are not otherwise exempt as provided by 41 CFR 60-1.5, (2) have 50 or more employees and, (3) have a contract, subcontract or purchase order amounting to \$50,000 that is necessary to the completion of a covered federal contract or subcontract are hereby notified of their obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) as required under the regulations set forth above.

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Note: The 2nd paragraph must be in **BOLD** font.

The below statement must be included starting Jan 1, 2016

The provisions and requirements of 41 CFR 60-1.4 (a)(4) regarding Non-Retaliation for the Disclosure of Compensation Information are hereby incorporated by reference.

JURISDICTIONAL THRESHOLDS

EXECUTIVE ORDER 11246

SUPPLY & SERVICE Basic Coverage

Any + **Contracts more than \$10,000**
number of employees

CONSTRUCTION Basic Coverage

Any + **Contracts more than \$10,000**
number of employees

AAP Coverage

50 + **Contracts \$50,000 or more**
or more employees

16 SPECIFICATIONS

Any + **Contracts more than \$10,000**
number of employees

SECTION 503

SUPPLY & SERVICE Basic Coverage

Any + **Contracts more than \$15,000**
number of employees

CONSTRUCTION Basic Coverage

Any + **Contracts more than \$15,000**
number of employees

AAP Coverage

50 + **Contracts \$50,000 or more**
or more employees

AAP Coverage

50 + **Contracts \$50,000 or more**
or more employees

VEVRAA

SUPPLY & SERVICE Basic Coverage

Any + **Contracts \$150,000 or more**
number of employees

CONSTRUCTION Basic Coverage

Any + **Contracts \$150,000 or more**
number of employees

AAP Coverage

50 + **Contracts \$150,000 or more**
or more employees

AAP Coverage

50 + **Contracts \$150,000 or more**
or more employees

Please note the coverage requirements for Section 503 and VEVRAA do not apply to federally assisted construction contractors. Additionally, both Section 503 and VEVRAA are subject to a federal statute that adjusts certain requisition-related dollar thresholds for inflation.

Please note that this page provides general information. It is not intended to substitute for the actual law and regulations regarding the program described herein.

If you have additional questions about jurisdiction thresholds, please contact us at 1-800-397-6251, TTY 1-877-889-5627.



OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS
U.S. Department of Labor

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