

**“YOU HAVE BEEN SELECTED!” (BY THE DOL, THAT IS)**

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At first blush this notification might prompt excited suspense but your glance to the letterhead reveals that you have, in fact, received notification of a compliance audit by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”). The Department intends to review some of your records and might even conduct an extensive, and intrusive, onsite review to determine whether your company is in compliance with the federal laws and regulations mandating equal employment opportunity and affirmative action with respect to women, minorities, qualified protected veterans, and qualified disabled individuals.

Record-keeping requirements and anti-discrimination laws and regulations apply to all businesses that are parties to federal contracts or subcontracts. The OFCCP administers and enforces these laws and, in connection with this responsibility, has the right to, and does, conduct periodic audits of company practices. The OFCCP wants to know whether you are in compliance with basic equal employment opportunity requirements. And if you have more than 50 employees or a contract worth \$50k or more, affirmative action requirements also apply.

Here are some tips to assure you come through that audit with flying colors:

- Don’t discriminate in any employment practice on the basis of any non-job-related characteristic.
- Post EEO posters, as well as the company’s affirmative action program, on all company bulletin boards.
- Include the EEO tagline (“We are proud to be an Equal Employment Opportunity/Affirmative Action employer”) in all employment advertising (including online), and on all employment application materials (including online).
- Maintain employment records for at least two (2) years from the date of making the personnel record or taking a personnel action, whichever occurs later. Your records should include:
  - Job descriptions;
  - Job postings and advertisements;

- Records of job offers;
  - Applications and resumes;
  - Interview notes;
  - Tests and test results;
  - Written employment policies and procedures;
  - Personnel files.
- File an annual EEO-1 report, VETS-100 report, and any other annual reports required by the Department. Check them out online at <http://www.eeoc.gov/eeo1survey/> and <http://vets.dol.gov/vets100/>.
  - Actively recruit to attract qualified minority and female candidates, and keep records to document your efforts.
  - Identify and communicate (in writing) with recruitment sources for women, minorities, veterans, and disabled individuals. (Your local OFCCP office can provide a list of recruitment sources.)
  - Audit your employment records and practices at least once a year to prevent discrimination and the appearance of documentation.
  - Look at your organization as a whole to see the effects of your employment practices over time. Watch out for innocent practices that have a discriminatory impact.
  - Periodically (but at least annually) provide management and employees training on equal employment opportunity and affirmative action practices.

#### Why Me?

You're in good company. Many companies receive notification of a "desk audit" by the Department to monitor compliance. The audit may be the result of an employee complaint; or it may simply be a random selection consistent with the Department's initiative to increase review and improve compliance.

#### What Should I Expect?

The compliance review process generally begins with a desk audit letter requesting that the contractor (or subcontractor) submit a variety of documents to the OFCCP for review, including:

- Current Affirmative Action Plan (AAP), covering women and minorities, and possibly individuals with disabilities and certain veterans (Do you even have one of those?);
- EEO-1 reports for the past three (3) years;
- Collective bargaining agreements;

- Progress on AAP goals for the current year and related data on employment activity (applicants, hires, promotions, terminations); and
- Compensation data.

You will be required to submit this material to a DOL representative, who may question discrepancies or request additional data. Next, you might be required to host a DOL representative for an onsite visit to your company. I suggest fresh coffee and a danish. It can't hurt.

#### How Does it End, and What's at Stake?

Generally, the DOL audit process concludes with one of three possible outcomes:

- A Certification of Compliance, which is rare and not likely;
- A Letter of Commitment (where deficiencies are found), requires you to commit (by written contract with the DOL) to ensure future compliance by specific actions (without any admission of liability or wrongdoing); or
- A Conciliation Agreement constituting a settlement between the DOL and the contractor. This usually occurs where more serious violations have been found. The Agreement identifies future reporting requirements.

In most extreme cases, where a settlement cannot be reached, the contractor may be subject to formal administrative enforcement procedures by the DOL. This means that your company might be suspended or banned from federal contracting and/or assessed significant fines. In these instances, a Danish isn't going to do it.

#### Where Can I Find More Information?

The Federal Contract Compliance Manual, published by the U.S. Department of Labor, is a comprehensive resource addressing federal contractor compliance and audit requirements. The manual is available online at:

<http://www.dol.gov/esa/regs/compliance/ofccp/fccm/fccmanul.htm>.