

OFCCP Issues Two New Directives

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) recently announced two new directives focused on ensuring equal employment opportunity and religious freedom. The equal employment opportunity directive (2018-04) calls for focused reviews of contractor compliance with federal anti-discrimination laws, and the religious freedom directive (2018-03) incorporates recent developments protecting the rights of religion-exercising organizations and individuals.

Federal contractors are required to take affirmative steps to ensure equal opportunity in their employment processes. OFCCP enforces federal laws that prohibit federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, and status as a qualified individual with a disability or protected veteran. Contractors and subcontractors also are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

Directive 2018-04

Through this directive, the OFCCP will implement a comprehensive initiative by directing a portion of future scheduling lists (starting in Fiscal Year 2019) to include focused reviews for contractor compliance with (1) Executive Order 11246; (2) Section 503 of the Rehabilitation Act of 1973, as amended; and (3) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. The focused reviews will be conducted by OFCCP going onsite and doing a comprehensive review of the particular authority at issue. "For example, in a Section 503 focused review, the compliance officer would review policies and practices of the contractor related solely to Section 503 compliance. The review would include interviews with managers responsible for equal employment opportunity and Section 503 compliance (such as the ADA coordinator) as well as employees affected by those policies. OFCCP would also seek to evaluate hiring and compensation data, as well as the handling of accommodation requests, to ensure that individuals with disabilities are not being discriminated against in employment."

The focused reviews will be selected from the same neutral system used to create OFCCP's supply and service scheduling list. OFCCP staff is directed to develop a standard protocol for conducting focused reviews and to make this information publicly available in FAQs prior to the next scheduling list being used.

Directive 2018-03

The "religious freedom" directive instructs OFCCP staff to take into account recent U.S. Supreme Court decisions and White House Executive Orders that protect religious freedom and afford broad anti-discrimination protections to religion-exercising organizations and individuals under the U.S. Constitution and federal law. President Trump has issued Executive Orders "making clear the Administration's commitment to robust protections for religious freedom, as well as ensuring a level playing field for faith-based organizations to compete for federal grants, contracts, programs, and other funding opportunities."

OFCCP directives provide guidance to OFCCP's staff and federal contractors on enforcement and compliance policy or procedures. They do not change existing laws or regulations governing OFCCP's programs and do not establish any legally enforceable rights or obligations.

If you have any questions about this Information Memo, please contact [Larry P. Malfitano](#) any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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