

# Guide to the Basic EEO Requirements under Executive Order 11246 for Small Businesses with Federal Contracts

## TABLE OF CONTENTS

### *INTRODUCTION*

#### I. BASIC EEO REQUIREMENTS UNDER EXECUTIVE ORDER 11246

WHAT IS OFCCP?

HOW DO I KNOW IF I AM A FEDERAL CONTRACTOR OR SUBCONTRACTOR SUBJECT TO EXECUTIVE ORDER 11246?

WHAT ARE THE BASIC EEO REQUIREMENTS OF A FEDERAL CONTRACTOR?

DON'T DISCRIMINATE

POST EEO POSTER

INCLUDE THE EEO TAG LINE IN EMPLOYMENT ADVERTISING

KEEP RECORDS

PERMIT OFCCP ACCESS TO BOOKS AND RECORDS DURING A COMPLAINT INVESTIGATION AND COMPLIANCE EVALUATION

FILE AN ANNUAL EEO-1 REPORT

#### II. SUGGESTED EMPLOYER PRACTICES THAT FOSTER EEO

RECRUIT TO ATTRACT QUALIFIED CANDIDATES

AUDIT YOUR EMPLOYMENT PRACTICES TO PREVENT DISCRIMINATION

THREE KINDS OF SELF-AUDITS:

SELF-AUDIT AFTER OR BEFORE AN EMPLOYMENT DECISION

LOOKING AT YOUR ORGANIZATION AS A WHOLE

LOOKING AT THE EFFECT OF YOUR EMPLOYMENT PRACTICES OVER TIME

#### III. GETTING HELP FROM OFCCP

### *APPENDICES*

Contractors have considerable flexibility in devising practices and programs that promote equal employment opportunity. The employer practices found in the guide are illustrative and should not be construed as requirements. Moreover, this guide does not create new or change current legal requirements.

## I. Basic EEO Requirements under Executive Order 11246

### What is OFCCP?

OFCCP is an agency within the U.S. Department of Labor's Employment Standards Administration. OFCCP has a national network of six Regional Offices, each with District and Area Offices in major metropolitan cities.

OFCCP conducts compliance evaluations to determine whether a contractor is complying with its obligation to maintain nondiscriminatory employment practices. OFCCP also investigates complaints filed against a Federal contractor that suggest discrimination against a group of individuals or discrimination that is systemic in nature. If the complaint alleges that a Federal contractor discriminated against an individual, OFCCP will refer the complaint to the Equal Employment Opportunity Commission (EEOC) for processing.

OFCCP encourages voluntary compliance and provides compliance assistance regarding the requirements of the EEO laws that apply to Federal contractors and subcontractors.

You may find out more about OFCCP by accessing our website at <http://www.dol.gov/ofccp/index.htm>.

### How do I know if I am a Federal contractor or subcontractor subject to Executive Order 11246?

Basically, all Federal contracts and subcontracts are covered under Executive Order 11246 unless specifically exempted. Contracts and subcontracts of less than \$10,000 generally are exempt from coverage under Executive Order 11246, though some contracts under that amount are covered, e.g. bills of lading. The regulations implementing the Executive Order exempt certain contracts and categories of contracts. The regulations contain exemptions for contracts involving work performed outside the United States; certain contracts with State or local governments; contracts with religious corporations, associations, and educational institutions; and contracts involving work on or near an Indian reservation. For a description of the exemptions, see the regulations at 41 CFR 60-1.5 [http://www.access.gpo.gov/nara/cfr/waisidx\\_02/41cfrv1\\_02.html#60-1](http://www.access.gpo.gov/nara/cfr/waisidx_02/41cfrv1_02.html#60-1).

Additional assistance for determining whether a business is a Federal contractor may be found on DOL's e-laws website at [http://www.dol.gov/elaws/aud\\_fedcon.asp](http://www.dol.gov/elaws/aud_fedcon.asp).

**Here is an example of prohibited employment discrimination:**

Alpha Production Company needs to hire entry -level laborers. The job requires heavy lifting and physical exertion, but does not require any technical skill. Alpha Production believes that all of its employees should have a high school diploma. So the company does not consider applicants who did not finish high school for the laborer job.

The high school diploma requirement disqualifies a greater number of Hispanic candidates for the laborer job at Alpha Production than Non-Hispanic White candidates. According to the most recent Census data, in the counties from which Alpha Production draws its applicants for laborer jobs, 94.2% of the white population 18 years and older has completed high school, but only 46.9% of the Hispanic population 18 years and older has completed high school. Alpha Production could not provide a business justification for using the high school diploma requirement. Thus, Alpha Production has engaged in prohibited discrimination.

**Be Very Careful With Employment Tests:**

Professionally developed tests can be used to make employment decisions, so long as the tests are fair and nondiscriminatory. You should be aware of the legal requirements that apply when tests and other assessment instruments are used to select employees. We recommend reviewing the guide developed by O\*Net and titled Testing and Assessment: An Employer's Guide to Good Practices, which is available on the DOL website at <http://www.onetcenter.org/guides.html>. In addition, you might consult legal counsel or a Human Resource advisor before instituting any employment tests.

**Post EEO Poster**

Federal contractors are required to post OFCCP's Equal Employment Opportunity Poster in a conspicuous place. A good place to post it is in a locker or lunchroom or an area where employees can take breaks. You can obtain the Equal Employment Opportunity Poster by contacting the nearest OFCCP office. A Directory of OFCCP offices is found in Part III of this guide. You can see a sample poster on the OFCCP website at <http://www.dol.gov/regs/compliance/posters/pdf/eeopost.pdf>.

**Include EEO Tag Line in Employment Advertising**

Federal contractors are required to state in all solicitations or advertisements for employment that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

**Keep Records**

Federal contractors are required to maintain any personnel or employment records made or kept by the contractor.

**Examples of records that must be maintained:**

- 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

## II. SUGGESTED EMPLOYER PRACTICES THAT CAN HELP SMALL BUSINESSES COMPLY WITH SOME OF THE AFFIRMATIVE ACTION PROGRAM REQUIREMENTS

There are a number of actions a contractor might take to ensure that its employment practices are not limiting the employment opportunities of the members of any gender, race, or ethnic group. Following are examples of employer practices that foster equal employment opportunity and can help small businesses comply with some of their affirmative action program requirements.

### **Recruit To Attract Qualified Candidates**

Whether you are required to recruit broadly to address an identified problem in your workforce, or you just want to ensure that recruiting efforts reach all qualified applicants, the following practices are effective in promoting equal employment opportunity:

1. Identify several "recruitment sources" for women and minorities. Recruitment sources include schools, colleges, government agencies, such as the local employment service office, and community-based organizations that help minorities or women obtain job skills and employment. OFCCP makes this part easy – we provide a list in each geographic region of many recruitment sources. Just contact the OFCCP office nearest to your location and we'll send you a list. You don't have to use a recruitment source from the OFCCP list; it is just a list we have assembled to make it easy for you to identify possible recruitment sources. You may have, or find out about, some other recruitment source in your community that is not on the list – feel free to use them.
2. Send the recruitment sources a letter telling them about job openings and invite them to refer qualified applicants for the job. We have provided sample letters that you can use, or modify, as you like, at Appendix I and II. You should send the letters out in advance of the time you want to fill the job so that the recruitment source has enough time to refer applicants. Thirty days is ideal, but try to give as much advance notice as possible. Also, include in the letter a description of the job duties and a listing of any required job qualifications. Keep a file with a copy of all the letters you send out to recruitment sources – this will help you with the next step.

We find that it is often helpful to invite representatives of the recruitment sources to tour your facility and learn first-hand about what you do – this helps them explain to people what kind of employment opportunities you have. Furthermore, you can call the recruitment source and discuss the types of jobs that you have and the types of skills that applicants need.

3. Monitor whether the recruitment source was able to refer any qualified applicants for the jobs. If over several job openings, a recruitment source has not referred any qualified applicants, try a new recruitment source from the OFCCP list, or one that you have identified in another way.

- Were women and minorities **terminated**? What were the factors relied on in making the termination decisions? If the women and minorities were terminated for offenses similar to those committed by nonminorities or men who were not terminated, ask why. Review the factors used in making the termination decision to determine whether any of them were not really necessary for successful performance in the jobs from which the employees were terminated.

*This part of the audit should determine whether standards are being applied equally to all employees and whether minority and female employees are terminated in circumstances in which nonminorities or male employees would not have been terminated.*

- Keep records of what you did in the self-audit and document what results were found. If there are any decisions that seem suspicious and cannot be justified by legitimate factors, you should take action to correct the problem(s).
- Some additional steps to foster equal employment opportunity are:
  - Periodically provide training to supervisors on how to avoid unlawful employment discrimination when making employment decisions.
  - Establish EEO performance as a performance standard for managers and supervisors.

➤ **Self-audit where female and minority workers are or are not within your organization.**

Review where the female and minority employees work within your organizational structure. A helpful way to do this is to identify the gender, race, and ethnicity of each employee for each job within each department on an organizational chart. Look for concentrations of female or minority employees, especially in lower-paying jobs. Similarly, look for areas where female and minority employees seem to be absent or poorly represented, especially in higher-paying jobs. Also, look at the ways employees are promoted from lower ranking jobs to the higher-ranking jobs.

This self-audit may suggest potential problems that require further investigation. One common problem that might be uncovered by this self-audit is the practice of steering women to different jobs based on stereotypical beliefs about physical or intellectual qualifications, or temperament as well. For example, a manufacturing company has a number of openings for two entry-level jobs. One of the entry-level jobs involves heavy lifting and pays more than the other job. The manufacturer engages in sex-based discrimination when it hires only male applicants for the job that involves heavy lifting, and hires only female applicants for the other entry level job.

In general, jobs requiring the same qualifications and duties while having dissimilar rates of pay, promotional opportunity, access to training, better benefits / perks, etc., should be audited.

What is meant by similar pay rates: this refers to wage rate or salaries of the job titles that make up the job group. Large apparent differences in pay suggest an inappropriate job grouping.

What is meant by opportunities: this refers to the ability to take advantage of promotion and training opportunities, transfers, and other employment benefits. The employees in each of the grouped jobs should be eligible to be promoted to similar positions.

An illustration of how job titles may be grouped is provided in the sample AAP that is available at: <http://www.dol.gov/regs/compliance/ofccp/pdf/sampleaap.pdf>. You should note the examples shown on pages six and seven.

2. Keep track of the race, sex and ethnicity of all applicants for each job in the job group and keep track of the race, sex and ethnicity of all new hires and employees who were eligible for promotion into jobs within the job group. Maintain similar records of all employees whose employment is terminated.

### **III. GETTING HELP FROM OFCCP**

If you need help, contact us directly via letter, telephone (1-800-397-6251), or through our web site.

- The OFCCP web site offers a wide range of information relative to the laws and program areas that affect Federal contractors. You may access the web site at <http://www.dol.gov/ofccp/index.htm>.
- If you prefer, you may contact one of our Regional offices on the OFCCP web site at <http://www.dol.gov/contacts/ofccp/ofcpkeyp.htm> or you may contact one of our District/Area offices that services your local area, by selecting your State, at the web site <http://www.dol.gov/contacts/ofccp/ofniation2.htm> for compliance assistance.

APPENDIX II - Sample Letter to Community Based Organization

(Date)

(Mexican American Community Services Agency)

(Street Address)

(City, State Zip)

Dear (Mr. or Ms. Name of Contact Person):

(Name of Contractor) is an equal opportunity and affirmative action employer that does not discriminate in employment and ensures equal employment opportunity for all persons regardless of their race, color, religion, sex, national origin, or status as a qualified individual with a disability or Vietnam era or other protected veteran. (Name of Contractor)'s policy applies to all terms and conditions of employment. To achieve our goal of equal opportunity, we maintain an affirmative action program through which we take good faith efforts to recruit, hire and advance in employment qualified minorities, women, persons with disabilities, Vietnam era veterans, and other protected veterans. We would appreciate the Mexican American Community Services Agency's assistance in (Name of Contractor) efforts to achieve its affirmative action and equal opportunity goals.

Therefore, we request that the Mexican American Community Services Agency refer qualified minorities, women, persons with disabilities, and protected veterans for available positions at (Name of Contractor). We have enclosed a list of our current employment openings to enable the Mexican American Community Services Agency to better identify qualified applicants.

Although, we specifically have requested the Mexican American Community Services Agency to refer minority group members and women, (Name of Contractor) welcomes referrals of all qualified applicants regardless of their race, color, religion, sex, national origin, or status as a qualified individual with a disability or protected veteran.

Sincerely,

EEO Coordinator

cc: Enclosure