



AFFIRMATIVE ACTION UPDATE

This bulletin provides an update on relevant issues for contractors and employers who have subscribed to our Affirmative Action e-Bulletin. Please contact us if you have any questions about this bulletin or its effect on your business.

EEOC Implements Final Revisions To EEO-1 Report

On Friday, January 27, 2006, the U.S. Equal Employment Opportunity Commission (“EEOC”) announced the implementation of final revisions to the Employer Information Report, also known as the EEO-1 Report. The implementation of the final revisions marks the first major change to the employer survey in four decades. The new format will be required for the first time for the 2007 survey, which is due by September 30, 2007. Employers should use the current format for their 2006 EEO-1 submissions.

Since the EEO-1 must incorporate employment numbers from any pay period in July through September of the applicable year, employers need to have systems in place to capture the new required data by third quarter of 2007. In order to have complete reports, of course, employers will need to obtain the new required information on existing employees as well as new hires. The EEOC’s website contains a detailed Instruction Booklet that includes, in section 4, language that employers can use in their request for self-identification. The new report format, instructions, and explanation can be found on the EEOC’s web site at www.eeoc.gov/eeo1/index.html.

The changes to the EEO-1 Report’s **race and ethnic categories** include:

- * Adding a new category titled “Two or more races, not Hispanic or Latino;”
- * Deleting the “Asian and Pacific Islanders” category;
- * Adding a new category titled “Asians, not Hispanic or Latino;”
- * Adding a new category titled “Native Hawaiian or Other Pacific Islander, not Hispanic or Latino;”
- * Extending the EEO-1 data collection by race and ethnicity to the State of Hawaii; and
- * Strongly endorsing employee self-identification of race and ethnicity, as opposed to visual identification by employers.

The new EEO-1 Report's **job category** changes include:

- * Dividing "Officials and Managers" into two levels based on responsibility and influence within the organization: "Executive/Senior Level Officials and Managers" and "First/Mid-Level Officials and Managers"; and
- * Moving non-managerial business and financial occupations from the "Officials and Managers" category to the "Professionals" category.

OFCCP Proposes Regulations to VEVRAA

Continuing its pattern of taking actions that have been a long time coming (such as finalizing the "Internet Applicant" definition and finalizing revisions to the EEO-1), the OFCCP has proposed regulations aimed at implementing amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") that were made by the Jobs for Veterans Act ("JVA") in 2002. The proposed rule would apply only to Government contracts entered into on or after December 1, 2003; contractors having both contracts entered into prior to that date as well as afterwards would be subject to both the existing requirements and those established by the proposed regulations. The OFCCP is accepting comments on these proposed regulations through March 21, 2006.

The 2002 JVA amendments raised the coverage threshold from a contract of \$25,000 or more to a contract of \$100,000 or more. The JVA further changed the categories of covered veterans under VEVRAA, eliminating the category of Vietnam era veteran from coverage under VEVRAA and expanding the coverage of veterans with disabilities. JVA also modified the mandatory job-listing requirements for covered contractors so that listing job openings solely with America's Job Bank will no longer be sufficient to comply with the requirements of VEVRAA.

OFCCP's proposed regulations implement these changes. Additionally, under the proposed regulations, the OFCCP makes clear that contractors would be required to maintain an affirmative action plan under VEVRAA if they have 50 employees and a contract of \$100,000 or more. Thus, under the proposal, any contractor subject to VEVRAA will be required to develop a written affirmative action plan. You can visit

<http://www.dol.gov/esa/regs/fedreg/proposed/2006000440.pdf> to review a copy of the proposed regulations.

OFCCP Announces Record Financial Recoveries In Fiscal Year 2005

In an announcement published on its website today, OFCCP touts its record recovery of \$45,156,462 collected for 14,761 workers in Fiscal Year 2005. We have been stressing the OFCCP's clear move away from focusing on nuts-and-bolts technical affirmative action compliance to analyzing systemic discrimination, and the OFCCP's announcement today reinforces that trend, stating: "Of that record recovery, 97% was collected in cases of systemic discrimination, those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The \$45 million reflects a 42% increase over recoveries in FY 2000 and a 56% increase over FY 2001." The OFCCP is also feeling more confident about the methods it uses to select contractors for audits: "As a result [of changes made to OFCCP's establishment screening process], 12.4% of OFCCP's completed evaluations closed with a conciliation agreement, compared with 6.7% of OFCCP's completed evaluations closing with a conciliation agreement in fiscal year 2004." It appears that OFCCP is feeling quite satisfied with its new approach, and contractors should not expect that emphasis to change any time soon.

This Affirmative Action update was prepared by David J. Middlebrooks and Donna Eich Brooks, attorneys with the law firm of Lehr, Middlebrooks, Price & Vreeland. Donna can be reached for questions/further information at dbrooks@lmpv.com or at (205) 226-7120, and David can be reached at dmiddlebrooks@lmpv.com or at (205) 323-9262.

Lehr Middlebrooks Price & Vreeland, P.C.
P.O. Box 11945
Birmingham, AL 35202-1945
(205) 326-3002

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