



AFFIRMATIVE ACTION UPDATE:

This bulletin provides an update on developments Affirmative Action subscribers. Please contact us if you have any questions about these regulatory developments or about their effects on your business.

The OFCCP Finally Rescinds The EO Survey

A bit of good news on the regulatory front – albeit somewhat overdue. After years of making clear that its heart just wasn't in the EO Survey, the OFCCP has finally issued a rule formally rescinding the survey. The OFCCP never utilized the EO Survey, which was developed in 1999 under the Clinton Administration, as an enforcement tool. In a rule published on September 8, 2006 in the *Federal Register* and made effective that same day, the OFCCP noted that the survey “fails to provide value to either OFCCP enforcement or contractor compliance.” The OFCCP concluded that “the EO survey misdirects valuable enforcement resources,” and “imposes a significant burden on contractors.” The agency estimated that it took the average respondent 21 hours to complete the mandatory survey.

The OFCCP cautioned that the contractor community should not construe the rescission of the EO Survey as indicating a lack of commitment to enforcing equal employment opportunity, noting that the agency had recovered a record \$45.2 million for victims of discrimination in its last fiscal year. Instead, the OFCCP said that eliminating the survey would allow it to focus on other enforcement methods that are effective, including an evolving contractor selection system, a case management system that focuses on detecting potential systemic discrimination at an earlier stage in the review process, and its new compensation review guidelines.

Recordkeeping Garners Increasing Attention

The OFCCP continues to focus on accurate and complete recordkeeping as the real key to an effective equal employment opportunity and affirmative action program. Recordkeeping violations continue to be the most frequently cited violation by OFCCP compliance personnel.

Contractors need to review their records retention policies and make sure they know how long to retain records. Executive Order 11246 requires employers of 150 or more to retain most employment records for two years and smaller employers – those with fewer than 150 employees – to maintain most of them for one year. If there is an "open action" (where the OFCCP has scheduled either an evaluation or contract review), all relevant records must be preserved until that action is resolved.

It is also critical for contractors to document their efforts to obtain race and gender data. You may not be successful in obtaining this information from some applicants, but you can at least maintain evidence that you did your part in soliciting the data.

Hold The Dates!

Mark your calendars for your choice of two upcoming Lehr Middlebrooks & Vreeland, P.C. seminars tailored for HR professionals in the affirmative action and government contractor arenas. Detailed information and registration forms will be sent out the first week of October. In the meantime, be thinking about which of the following seminars you will want to attend in November:

THURSDAY, NOVEMBER 9, 2006:
**AFFIRMATIVE ACTION FOR THE SAVVY EMPLOYER: STAYING UP TO DATE ON
THE CHANGING OFCCP LANDSCAPE**

Bruno Conference Center
St. Vincent's Hospital
806 St. Vincent's Drive
Birmingham, AL 35205

This three-hour program is geared to the those professionals who have an understanding of affirmative action basics and are looking to increase their effectiveness in managing OFCCP compliance efforts. David Middlebrooks and Donna Brooks will lead this session, focusing on recent regulatory and policy changes. We'll talk about where the dust has settled regarding the Internet Applicant regulation and the final rules on compensation analysis, and give you strategies for handling the OFCCP's new approach to enforcement. Each attendee will receive comprehensive written

materials. The fee for the program is \$100 per attendee and \$50 for each additional attendee from the same employer.

WEDNESDAY, NOVEMBER 15, 2006:
GOVERNMENT CONTRACTOR UPDATE
Holiday Inn Express
3808 University Drive
Huntsville, AL 35816

This full-day program will cover the same affirmative action matters addressed in the November 9, 2006 Birmingham seminar, but will also cover the Service Contracts Act, the Davis Beacon Act, and other employment issues such as USERRA, whistleblowing, and ethical issues. David Middlebrooks and Donna Brooks will lead this session, joined by Lyndel Erwin, former District Director of the Wage & Hour Division of the U.S. Department of Labor. Each attendee will receive comprehensive written materials. The fee for the program is \$150 per attendee and \$70 for each additional attendee from the same employer; you can also choose to attend either the morning or afternoon session only for \$100 per attendee and \$50 for each additional attendee from the same employer.

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

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