OFCCP Announces Relief From AAP Requirements For COVID-19 Related Federal Contracts

Monday, March 23, 2020

Last week, the Office of Federal Contract Compliance Programs (OFCCP) announced that for the three month period from March 17, 2020 to June 17, 2020, it will provide a temporary exemption to certain federal contracting requirements. The exemption is related to work under federal construction and service/supply contracts to provide COVID-19 relief. Under the exemption and waiver, covered federal contractors will not be required to perform various affirmative action obligations required under Executive Order 11246, Section 503 of the Rehabilitation Act, and Section 4212 of the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA). OFCCP has stated the three month exemption period may be subject to further extension.

Covered federal contractors and subcontractors – generally meaning those entities with at least 50 employees and that provide goods and services to a federal entity under a contract satisfying a certain minimum value – are obligated to fulfill certain equal employment opportunity and affirmative action requirements. These
obligations include maintaining programs to recruit and advance qualified minorities, women, persons with disabilities and covered veterans. A central component of satisfying these obligations is the annual development of an affirmative action plan(s) for each facility of at least 50 employees addressing the company’s profile for these protected classes.

As the affirmative action plan process can be onerous and may chill the willingness of certain companies to perform needed services related to COVID-19, the exemption applies to all of the affirmative action requirements under Executive Order 11246, VEVRAA, and Section 503 of the Rehabilitation Act. However, federal contractors remain obligated to comply with applicable federal, state and local civil rights law. Similarly, federal contractors remain required to abide by the nondiscrimination and non-retaliation obligations of OFCCP regulations, i.e., they must not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or protected veteran status. If an entity provides services under a federal contract that covers both COVID-19 relief and other purposes, the exemption does not apply.

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