

THE NATIONAL LAW REVIEW

More Transparency at the OFCCP: New Protocol to Standardize Use of Predetermination Notices

Friday, March 16, 2018

In a move toward greater transparency, the Office of Federal Contract Compliance Programs (OFCCP) recently issued [Directive 2018-01](#) affecting the use of predetermination notices (PDNs) in discrimination cases. OFCCP uses PDN letters to inform contractors of preliminary findings of employment discrimination. PDNs give “contractors 15 additional calendar days to rebut OFCCP’s proposed findings that sufficient evidence exists of discrimination.”

Effective February 27, 2018, the interim guidance comes “[a]s part of OFCCP’s ongoing efforts to achieve consistency across regional and district offices, increase transparency about preliminary findings with contractors, and encourage communication throughout the compliance evaluation process.”

PDNs: Previous Practices

In the past, OFCCP has selectively issued PDNs for potential systemic discrimination cases. OFCCP policy permitted regional and district offices discretion in whether to issue PDNs before issuing a Notice of Violation (NOV). As a result, certain regions used PDNs more routinely than others. It had become common in some regions for an NOV to be the first document issued to notify a contractor of a potential discriminatory issue. Additionally, PDNs could be issued without national office review.

PDNs: Changes in Protocol

Directive 2018-01 is intended to give staff, across all regions, a uniform protocol to follow when using PDNs in both individual and systemic discrimination cases. In addition, regional OFCCP offices will no longer have discretion as to whether to issue PDNs. According to OFCCP’s new approach, the agency will be required to issue PDNs in compliance evaluations of contractors if it believes discrimination findings may exist. Particularly, officers and staff “must issue PDNs at the conclusion of compliance evaluations where the contractors have not provided adequate explanations to proposed discrimination findings.”

The directive states that regional offices of the solicitor *must* review PDNs before submitting them to OFCCP’s national office for a review and a final decision. According to the directive, “[t]he use of the PDN encourages communication with contractors and provides them an opportunity to respond to preliminary findings prior to OFCCP deciding to issue an NOV.”

Directive 2018-01 is interim guidance that will be in effect until OFCCP revises the Federal Contract Compliance Manual (FCCM) of October 2014 to reflect this change in protocol.

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