

LABOR & EMPLOYMENT

ALERT

OFCCP COURTESY NOTIFICATIONS

By Kenneth A. Rosenberg and Jordan B. Kaplan

The Office of Federal Contract Compliance Programs (OFCCP) has begun forwarding courtesy notifications (previously known as “Corporate Scheduling Announcement Letters”) to federal contractors and subcontractors. These courtesy notifications are being sent by the OFCCP to advise contractors and subcontractors that they have been identified for possible scheduling of a supply and service compliance evaluation and to encourage those contractors and subcontractors to completely, accurately and timely produce materials and information relating to a forthcoming audit by the OFCCP. The OFCCP’s authority to perform affirmative action audits for covered federal contractors and subcontractors exists pursuant to: Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974.

It is of note that these notifications do not cover every possible audit of a contractor or subcontractor by the OFCCP. Among other events, the courtesy notifications do not provide notice for (1) monitoring activity during a conciliation agreement, (2) credible reports of an alleged violation of law or regulation, or (3) other agency initiative that is being pursued by the Director of the OFCCP. Accordingly, contractors and subcontractors should advise each establishment within their company that the OFCCP is issuing

these courtesy notifications and instruct them to contact their Human Resources Department in the event that one of its establishments receives a courtesy notification.

Additionally, in the event that a contractor or subcontractor receives a courtesy notification, it should take the following steps:

1. Begin collecting copies of its Affirmative Action Plans and raw data concerning applicants, hires, terminations, promotions and employee compensation.
2. Perform a workforce analysis to determine that the entity complies with all federal affirmative action requirements.
3. Prepare an “Impact Ratio Analysis” using its raw data to determine whether females, minorities and individual minority groups experience an adverse impact in hiring, promotion or termination.
4. Prepare a compensation analysis to determine if wage ranges, if any, are defensible.
5. Gather documentation of outreach efforts in job groups that do not meet availability percentages as to females and minorities.
6. Gather documentation as to outreach efforts with regard to veterans and individuals with disabilities.

7. Gather any EEO-1 Reports and Vets 100 or Vets 100A Reports that have been filed for the previous three years.

In the event a federal contractor or subcontractor receives a courtesy notification from the OFCCP and has questions or concerns regarding its affirmative action requirements or how to prepare for a potential audit, it should consult with counsel for guidance.

For more information about this Alert or if you have any questions or concerns, please contact Kenneth A. Rosenberg at 973.994.7510 or krosenberg@foxrothschild.com, Jordan Kaplan at 973.994.7819 or jbkaplan@foxrothschild.com or any member of Fox Rothschild's Labor and Employment Department.



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