

PRESENTED AT

24th Annual Labor and Employment Law Conference

June 12-13, 2017

Austin, TX

Affirmative Action Compliance Guide For Federal Contractors and Subcontractors

Derek T. Rollins

Author Contact Information:

T. Scott Kelly
Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.
Birmingham, AL 35203
scott.kelly@ogletree.com
(205) 986-1024

Derek T. Rollins
Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.
Austin, TX 78701
derek.rollins@ogletree.com
(512) 344-4702

AFFIRMATIVE ACTION COMPLIANCE GUIDE

**FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS
(Supply and Service Only)**

Version 17 – 04.04.17

For questions or comments please contact OFCCPInfo@ogletreedeakins.com.

Please note that OFCCP periodically updates its guidance on the affirmative action regulations.
Visit <http://www.dol.gov/ofccp/regs/compliance/faqs/offaqs.htm> for updates.



AFFIRMATIVE ACTION COMPLIANCE GUIDE

FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS

(Supply and Service Only)

WHO MUST COMPLY:

The regulations set forth below apply to supply and service contractors and subcontractors. Construction contractors have different regulatory requirements. Please let us know if you need a guide to construction contractor requirements.

- Executive Order 11246 applies to Companies with federal contracts or subcontracts which total more than \$10,000. [41 C.F.R. § 60-1.5]¹ Covered contractors with 50 or more employees and at least one government contract or subcontract of \$50,000 or more must develop, maintain, and annually update a written affirmative action program (AAP) for minorities and females. [60-2.1]
- Section 503 of the Rehabilitation Act of 1973 applies to Companies with at least one federal contract or subcontract in excess of \$15,000. [60-741.4(a)] Covered contractors with 50 or more employees and at least one government contract or subcontract of \$50,000 or more must develop, maintain, and annually update a written affirmative action program (AAP) for individuals with disabilities (IWDs). [60-741.40(b)(1),(3)]
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) has a higher monetary threshold. This Act applies to contractors with at least one federal contract or subcontract of \$150,000 or more. [60-300.4; *see also* 80 Federal Register 38293 (July 2, 2015); Federal Acquisition Regulation 2.101] Covered contractors with 50 or more employees must develop, maintain, and annually update a written AAP. [60-300.40(a)]

¹ All regulatory citations are contained within Volume 41 of the *Code of Federal Regulations*.

TABLE OF CONTENTS

	<u>Page</u>
I. <u>General Obligations</u> -----	1
II. <u>Affirmative Action – Written Program Requirements</u> -----	6
III. <u>Recordkeeping Obligations</u> -----	11
IV. <u>Executive Orders and Other Requirements</u> -----	14
<u>Exhibit 1 – Sample EEO/AA Policy</u> -----	17
<u>Exhibit 2 – Sample EEO Language</u> -----	18
<u>Exhibit 3 – Sample Union Notification</u> -----	20
<u>Exhibit 4 – Sample Notification to Workforce Agencies</u> -----	21
<u>Exhibit 5 – Sample Letter to Recruiting Source</u> -----	22
<u>Exhibit 6 – Sample Vendor Notification</u> -----	23
<u>Exhibit 7 – Pay Transparency Nondiscrimination Provision</u> -----	24
<u>Exhibit 8 – Sample Self-ID Form</u> -----	25
<u>Exhibit 9 – Sample Assessment of Outreach & Recruiting</u> -----	28
<u>Exhibit 10 – Sample Self-Audit Checklists</u> -----	29
<u>Exhibit 11 – Sample Data Collection Form</u> -----	35



**AFFIRMATIVE ACTION COMPLIANCE GUIDE
For Federal Contractors and Subcontractors**

I. GENERAL OBLIGATIONS

Obligation	Person Responsible	Completed?
<p><u>Non-Discrimination Policy</u> <i>[Disability regulation; also applies if subject to Veterans regulations; may consider including in Minorities/Females AAP]</i></p> <p>Adopt and post a notice of the nondiscrimination policy in conspicuous places available to employees and applicants for employment. §§ 60-300.5(a)(9), 60-741.5(a)(4).</p> <p>See Exhibit 1 (Sample EEO/AA Policy).</p>		
<p><u>EEO is the Law Poster and Supplement</u></p> <p>Ensure that job seekers applying electronically are provided an opportunity to view the “EEO is the Law” poster (and, as applicable, the supplement) during the application process. Providing a link to an electronic poster will suffice.</p> <p>The current poster and supplement can be found on OFCCP’s website at http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.</p> <p>The supplement must be used if the Company enters into a new or modified contract exceeding \$10,000 on or after January 11, 2016.</p>		

Obligation	Person Responsible	Completed?
<p><u>EEO Clause</u></p> <p>Ensure that the appropriate equal opportunity clause is included in purchase orders and subcontracts for goods and services necessary to the performance of a government contract. Portions of the EO clause must be in bold font. Different language is required depending on the value and date of the subcontract/purchase order. §§ 60-300.5(d), 60-741.5(d)</p> <p>See Exhibit 2 (Sample EEO Language).</p>		
<p><u>Union Notification</u></p> <p>If applicable, notify unions representing employees at any site that the Company is an equal opportunity/affirmative action employer and request their cooperation. Maintain documentation of this notice. §§ 60-300.5(a)(10), 60-741.5(a)(5).</p> <p>See Exhibit 3 (Sample Union Notification).</p>		
<p><u>EEO Tag Line</u></p> <p>Include in all solicitations for applicants a statement that qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability. §§ 60-300.5(a)(12); 60-741.5(a)(7).</p> <p>Acceptable verbiage includes, but is not limited to:</p> <ul style="list-style-type: none"> • Equal Opportunity Employer/Disabled/Veterans [or Vets] • “_____ provides equal employment [and affirmative action] opportunities to applicants and employees without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.” 		

Also available as part of the eCourse

[2017 Employment Law Update: Public Sector Employment, Federal Contractors, Joint Employers, Pay Equity, and Whistleblowers](#)

First appeared as part of the conference materials for the
24th Annual Labor and Employment Law Conference session
"Federal Contractor Update"