ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

CLIENT UPDATE

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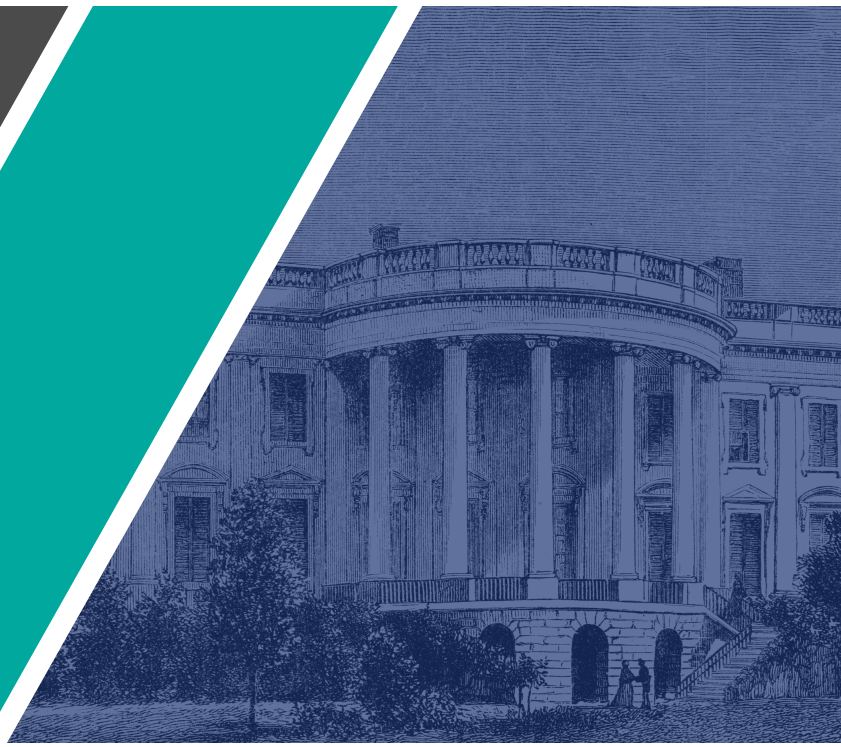

RECENT COMPLIANCE DEVELOPMENTS

This Client Update discusses the following recent developments:

1. OFCCP announcement of revised dollar thresholds for VEVRAA and Section 503 compliance obligations;
2. Former EEOC and OFCCP officials' publication of response to Attorney General Pam Bondi's July 2025 "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," providing context and guidance to employers regarding lawful diversity, equity, and inclusion (DEI) practices; and
3. EEOC guidance regarding anti-American national origin discrimination.

1. The OFCCP Issues Jurisdictional Dollar Threshold Update

The OFCCP announced last week that as of October 1, 2025, the dollar thresholds that trigger EEO compliance obligations on government contractor employers increased from $150,000 to $200,000 for the veteran compliance obligations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and from $15,000 to $20,000 for the disability compliance obligations implementing Section 503 of the Rehabilitation Act. These increases arise out of the Federal Acquisition Regulatory (FAR) Council's 5-year review of acquisition-related threshold amounts tied to an inflationary adjustment law.

- The Affirmative Action Program requirements for Section 503 remain the same (50 or more employees and a single contract of $50,000 or more), but the Affirmative Action Program requirements for VEVRAA change to 50 employees and a single contract of $200,000 or more.
- Moreover, in summer 2026, when government contractor employers must decide whether to file a VETS-4212 report by the September 30 deadline, the threshold for the VETS-4212 report also increased to $200,000 as of October 1, 2025. The VETS-4212 requirement is tied to the same inflationary adjustment law as the VEVRAA requirements.
    - The OFCCP's VETS-4212 frequently asked questions state "if the company does not have a current contract that meets the reporting threshold, as of January 1 with the federal government, it does not need to file a VETS-4212 for the current filing cycle."
    - Thus, if an organization has a federal contract or subcontract of $200,000 or more on January 1, 2026, it will need to file a VETS-4212 come summer 2026 when the VETS-4212 filing portal opens.

The OFCCP developed a new "Jurisdictional Thresholds" infographic available on its website to assist in determining when OFCCP regulations apply to contractors doing business with the federal government. https://www.dol.gov/agencies/ofccp/jurisdictional-thresholds

The other important take-away from this announcement is that the OFCCP still expects federal government contractors and subcontractors, including construction employers, to comply with its implementing regulations, including the requirement to prepare annual affirmative action plans for protected veterans and individuals with disabilities. Also, it clarified that the OFCCP remains the federal agency overseeing these obligations.

2. Former EEOC and OFCCP Officials Issue Response to DOJ July 2025 Memo on "Unlawful Discrimination"

On November 18, 2025, EEO Leaders, an organization comprised of Democratic-aligned former EEOC and OFCCP officials, published a response ("EEO Leaders Response" - https://www.eeoleaders.org/eeoleadersstatements) to the Department of Justice's ("DOJ") July 2025 Memorandum titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination."

The EEO Leaders Response rebuts many inferences from the July DOJ memo that suggested a broad array of DEI practices are unlawful. The EEO Leaders Response highlighted the lawfulness of the following key practices:

- Recruitment
    - Expanded outreach strategies designed to achieve a broad applicant pool are clearly lawful and advance nondiscrimination goals.
- Hiring
    - Using cultural competency as a hiring criterion is entirely consistent with equal employment opportunity.
    - The Supreme Court has explicitly approved of using individualized descriptions of personal experiences for merit-based evaluation (citing the majority opinion in SFFA v Harvard - https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf - at page 230).
    - Employers can and should actively evaluate applicant pools, interview panels and candidate slates, if applicable, as well as other aspects of the hiring process, to ensure they reflect a commitment to equal opportunity for all.
- Inclusive and Welcoming Workplaces
    - Standard employer approaches to employee resource groups make them inclusive of all employees and aligned with legal requirements of opportunity for all.
    - Courts – and the EEOC – have clearly approved of well-designed training programs to support non-discriminatory and inclusive workplaces that address racial, gender-based, and other forms of bias.

- Rights of Transgender Employees
    - Transgender employees' right to use facilities consistent with their gender identity has been upheld by courts and the EEOC.
- Protecting the Right to Raise Discrimination Concerns Free from Retaliation
    - It is illegal to retaliate against employees for any protected activities raising concerns about discrimination – whether those concerns align with the government's viewpoint on DEI or oppose it.

EEO Leaders Response, page 2.

EEO Leaders' Response cautions employers against abandoning proactive efforts, such as running data analyses of employment decisions and practices, to ensure equal employment opportunity:

> "Decades of experience have shown how proactive work to expand opportunity and prevent discrimination supports sound risk management. This work includes, for example, reviewing internal data on hiring practices, evaluating pay equity, and assessing employee engagement – as well as promoting inclusive culture, training on respectful workplaces, and strengthening trust and feedback processes through employee resource groups. The work also encompasses key policy innovations such as expanding recruitment sources and updating hiring and promotion practices to ensure they promote equal opportunity. Since many of these practices are designed to result in more equitable workplaces and reduce the likelihood of discrimination, employers may face additional risk if they dismantle those programs."

EEO Leaders Response, page 4. EEO Leaders published two additional documents: "The Time is Now – Fight Back / Move Forward" (https://www.roffmanhorvitz.com/documents/fight-back-move-forward.pdf) and its executive summary (https://www.roffmanhorvitz.com/documents/exec-summary-fight-back-move-forward.pdf).

3. The EEOC Issues Technical Assistance Document Regarding Anti-American National Origin Discrimination

Consistent with its new enforcement priorities and restored quorum, the Trump Administration's EEOC issued guidance last week regarding anti-American national origin discrimination. The guidance is grounded in broad, unsubstantiated assertions regarding discrimination against American workers:

> "Unlawful bias against American workers, in violation of Title VII, is a large-scale problem in multiple industries nationwide. Many employers have policies and practices preferring illegal aliens, migrant workers, or non-immigrant guest workers (guest worker visa holders) over American workers – in direct violation of federal employment law."

Implicit in this initiative is the administration's desire to use complaints of anti-American national origin discrimination to assist with its broader efforts related to illegal aliens and undocumented workers. But the guidance also repeats thinly veiled political messaging talking points that are ungrounded from common employer practices and that grossly exaggerate problems. Some employers in some industries may rely heavily on the H-1B visa program, but that program has its own safeguards and approval mechanisms to diminish the impact on American workers. I-9 documentation requirements and E-Verify prevent employers from hiring undocumented workers. It seems doubtful that many employers are preferring non-American workers based on or because of their national origin. If non-American workers are hired based on job-related criteria and the employer's business needs (i.e., the availability of qualified interested jobseekers), then the practice is consistent with Title VII and other equal employment opportunity laws.

The EEOC is correct in reminding all employers that customer or client preference, lower labor costs, or stereotypical beliefs about the work habits of individuals with a particular ethnicity or national origin does not excuse discriminatory decisions. However, those cautionary statements prevent unlawful discrimination in every direction, not just against American workers.

- Discrimination against applicants and employees because of the country in which they were born or from which they are immigrating is unlawful, whether it pits applicants and employees from different countries against one another, or it pits American workers against foreign workers.

- Employers similarly should be aware that advertisements containing unlawful citizenship requirements not only violate Title VII but may also violate immigration laws enforced by the Department of Justice.
    - Very few employers – mostly those with Department of Defense contractual security clearance requirements or International Traffic in Arms Regulations (ITAR) requirements – can impose a "U.S. Person" requirement as a basic qualification on a job opportunity advertisement.
    - U.S. Citizen is different from a U.S. Person. A "U.S. Person" includes U.S. citizens, lawful permanent residents (green card holders), and individuals granted asylum or refugee status.
    - If you start advertising for "citizens," thinking that you are following the EEOC's guidance to avoid discriminating against American workers, you may be violating Title VII by discriminating against green card holders, asylees, and refugees.
- In the effort to avoid discriminating against American workers, it's just as important to remember that imposing "citizenship" requirements also has legal consequences.

Despite the EEOC's emphasis on anti-American national origin discrimination, employers need to be careful of overreading the EEOC's guidance and the administration's stance on immigration. An employer who makes employment decisions that infer lawful worker status or alignment with the preferred policies of the administration by hiring fewer individuals with a "non-American" national origin is in explicit violation of Title VII's prohibition against discrimination on the basis of national origin.

Assuming that most employers have not preferred non-American workers over American workers, a danger of this document is that employers correct something that is entirely lawful and by doing so engage in practices that are plainly unlawful.

Please contact any of the Roffman Horvitz attorneys listed below if you have questions about this Client Update.

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