

REQUIRED, ELIMINATED, AND PERMITTED EMPLOYMENT COMPLIANCE OBLIGATIONS OF FEDERAL GOVERNMENT CONTRACTORS

DirectEmployers Association

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
HUMAN RESOURCES COMPLIANCE AND EMPLOYMENT DATA ANALYTICS

ALISSA A. HORVITZ
JAMES M. MCCAULEY

OCTOBER 23, 2025

MEET THE TEAM



ALISSA A. HORVITZ

MEMBER ATTORNEY

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on evaluating nondiscrimination and equal opportunity throughout all phases of employment using data and employment analytics. This includes analysis and advice regarding EEO in recruiting, hiring, promotions, terminations, and compensation (pay equity), as well as DEI reviews for government contractor employers seeking to unwind their compliance with EO 11246. Alissa also does live and virtual training on relevant employment law topics.

MEET THE TEAM



JAMES M. MCCAULEY

ASSOCIATE ATTORNEY

James McCauley is an Associate Attorney with Roffman Horvitz. James's experience includes evaluation and analysis of employment practices to ensure equal opportunity; preparation of EEO-1, VETS-4212, and California Pay Data Reporting filings; pay equity analyses; and analysis of applicant and hire records to address potential claims of hiring disparities.

OUTLINE

- Context of today's web seminar
- Required Obligations
- Eliminated Obligations
- Permitted Initiatives
- Other examples of unlawful practices

CONTEXT OF TODAY'S WEB SEMINAR

- Executive Order 14173
- Equal Employment Opportunity Commission Guidance
- Department of Justice Guidance
- OFCCP's invitation to explain how government contractors have unwound Executive Order 11246
- Inter-relationship between equal employment opportunity, affirmative action, and diversity
- Civil investigative demand letters
- OFCCP's proposals to rescind the EO 11246 regulations, modify the disability and veteran regulations, and eliminate or adapt the disability self-identification form

REQUIRED OBLIGATIONS

EO 14173 CERTIFICATION, FALSE CLAIMS ACT EXPOSURE

- Certification: The organization does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws
- False Claims Act Exposure

NO UNLAWFUL DEI CERTIFICATION

 An official website of the United States government



OFFICE of INFORMATION and REGULATORY AFFAIRS
OFFICE of MANAGEMENT and BUDGET
EXECUTIVE OFFICE OF THE PRESIDENT

Reginfo.gov

U.S. General
Services
Administration



Search: ☐ Agenda ☒ Reg Review ☐ ICR

[Home](#) | [Unified Agenda](#) | [Regulatory Review](#) | [Information Collection Review](#) | [FAQs / Resources](#) | [Contact Us](#)

Office of Information and Regulatory Affairs (OIRA)
Executive Order Submissions Under Review
October 21, 2025

DOD/GSA/NASA (FAR)

AGENCY: FAR
TITLE: Federal Acquisition Regulation (FAR); FAR Case 2025-004, Restoring Merit-Based Opportunity in Federal Contracts
STAGE: Interim Final Rule
RECEIVED DATE: 04/15/2025

RIN: [9000-AO77](#) Status: [Pending Review](#)

Economically Significant: No
LEGAL DEADLINE: None

COMPLIANCE OBLIGATIONS UNDER VEVRAA AND ITS IMPLEMENTING REGULATIONS

- Insert in full the equal opportunity clause found at 41 C.F.R. Section 60-300.5 or incorporate it by reference into subcontracts
- List all employment openings with the employment service delivery system
- In all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status (Taglines)
- Invite applicants and employees to self-identify their protected veteran status using a form that you develop
- Prepare a written affirmative action plan that implements the required obligations found at 41 Code of Federal Regulations Sections 60-300.44

VETERAN COMPLIANCE OBLIGATIONS (CONTINUED)

- Compliant EEO Policy
- Post the policy on bulletin boards/intranet; include hours and location when AAPs may be viewed
- Review of Personnel Processes
- Review of Physical and Mental Qualifications
- Reasonable Accommodation
- Anti-Harassment policy includes protected veterans
- External outreach and recruitment
- Written assessment of the effectiveness of each outreach initiative

VETERAN COMPLIANCE OBLIGATIONS (CONTINUED)

- Written notice to subcontractors, vendors, and suppliers regarding the organization's commitment to equal opportunity and requesting appropriate action on their part
- Internal dissemination
- Audit and reporting system
- Responsibility for implementation
- Training
- Data Collection, Veteran Hiring Benchmark
- Recordkeeping Requirements
- Vets-4212

DISABILITY COMPLIANCE OBLIGATIONS

- Largely the same as the veteran obligations, except that the obligation to list jobs with the state employment service delivery system is a veteran obligation, not a disability obligation
- The self-identification obligation (using OFCCP's form) under the disability regulations includes an obligation to take a baseline survey of all employees every five years
- You need to include “disability” in your EEO advertising tagline
- Instead of a Veteran Hiring Benchmark, the disability regulations require a disability utilization analysis
 - [Park the question regarding how to do the utilization analysis if we're not doing women and minority AAPs]

DISABILITY SELF-IDENTIFICATION

- Employers must use OFCCP's CC-305 form
- Proposed revisions:
 - Discontinue self-identification form
 - Remove obligations for disability data collection and utilization analysis
 - Retain requirement to annually assess effectiveness of efforts in identifying and recruiting individuals with disabilities

ELIMINATED OBLIGATIONS

ELIMINATED OBLIGATIONS

- Preparing an Affirmative Action Plan for Women and Minorities
 - Preparing a Workforce Analysis or Organizational Profile
 - The obligation to evaluate data using **job groups** [so, if we're not obligated to subdivide our data into job groups, or create job groups, how do we do the disability utilization analysis?]
 - The ability to prepare functional affirmative action plans
 - Preparing an Incumbency versus Availability Analysis only for women and minorities
 - Setting placement goals for women and minorities
- OFCCP's Annual Certification that the AAPs are current

PERMITTED INITIATIVES

PERMITTED (AND RECOMMENDED) INITIATIVES

- Analyzing compensation through a race and gender lens to ensure compliance with Title VII, Equal Pay, or state equal opportunity compliance obligations
- Using data analysis and statistical methodologies to evaluate whether decisions to hire, promote, and terminate comply with equal employment opportunity nondiscrimination obligations (pattern and practice of disparate treatment, disparate impact)
- Discuss Attorney-Client Privilege

PERMITTED INITIATIVES (CONTINUED)

- Maintaining dispositions developed under the Internet Applicant definition
- Conducting outreach and recruiting aimed at diverse populations (but not exclusively)
- Reaching out to campus groups that are aimed at certain populations (e.g., Society for Women Engineers)
- Maintaining Employee Resource Groups (so long as membership is open to all)
- Celebrations aimed at gender, racial, and ethnic groups' historical contributions (Black History Month, Hispanic Heritage Month, International Women's Month)
- Anti-bias trainings

PERMITTED INITIATIVES (CONTINUED)

Conduct your own risk assessments of permissible activities!

UNLAWFUL PRACTICES

EXAMPLES OF UNLAWFUL PRACTICES

- Preferential treatment (selection for interview, hiring, promotion, etc.) based on a protected characteristic
- Mandating diverse interview panels, diverse interview slates
- Gender- or Race-based internships, leadership development programs, mentoring programs, set aside for one race or gender
- Restricting access to facilities or resources based on a protected characteristic (note: single sex spaces such as bathrooms, locker rooms, breast feeding spaces – are lawful)

TIME FOR QUESTIONS AND ANSWERS

ALISSA A. HORVITZ

Member Attorney

(703) 752-3776

ahorvitz@roffmanhorvitz.com

JAMES M. MCCAULEY

Associate Attorney

(703) 752-3766

jmccauley@roffmanhorvitz.com

**THANK
YOU**