

# Affirmative Action SOLUTIONS

A Monthly Newsletter for "How to Write an Affirmative Action Plan"

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## INDEX

OFCCP Watch .....	1
• Department of Labor Reaches Out to Employers	
• Jimmy Dean Foods Settles OFCCP Discrimination Charges	
• EEOC Alleges Disability Bias at McDonald's	
Recruitment Resources .....	2
• Recruit Former Military Personnel	
Best Practices in Affirmative Action .....	2
• Ford Motor Company, Top Company for Diversity	
Ask the Expert .....	3
• OFCCP Audits on the Rise	
By the Book .....	4
• An Equal Employment Opportunity Policy That Works	



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## Department of Labor Reaches Out to Employers

Speaking before members of the U.S. Chamber of Commerce in April, U.S. Department of Labor (DOL) Secretary Elaine Chao announced a new compliance initiative to boost an employer's understanding of how to comply with the employment laws and regulations issued by the DOL. Chao told the Washington, D.C., crowd that, under the Bush Administration, the DOL has placed a significant emphasis on increasing its compliance assistance efforts to better protect the wages, health benefits, retirement security, and safety and health of America's workforce. "There is a new era of responsibility at the DOL to help the regulated community understand these exhaustive rules and regulations," Chao said, but she emphasized that increased compliance assistance does not replace or in any way detract from strong enforcement.

As part of the compliance drive, Chao highlighted the recently created Office of

Compliance Assistance Policy, housed in the Office of the Assistant Secretary for Policy. Chao also discussed two new compliance assistance tools, the *FirstStep* Employment Law Advisor and the *Employment Law Guide*.

The *FirstStep* Employment Law Advisor, available at <http://www.dol.gov/elaws>, is geared toward helping employers pinpoint which DOL laws apply to their businesses or organizations and providing easy access on how to comply with the laws' requirements. The *Employment*

*Law Guide* describes the DOL's main laws and regulations for employers needing basic information to develop wage, benefit, safety and health, and nondiscrimination policies for their businesses.

It is available online and in print in both English and Spanish. Copies are available free of charge by calling the Department's toll-free information service at (866) 4-USA-DOL.



## Jimmy Dean Foods Settles OFCCP Discrimination Charges

Jimmy Dean Foods, Newbern, Tenn., meat-processing plant will hire 48 women who applied for laborer jobs and pay them more than \$240,000 in back pay to settle discrimination charges by the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). The hiring discrimination alle-

gations against Jimmy Dean Foods, a division of the Sara Lee Corp., arose out of a compliance review conducted by the OFCCP that began in September 2000. The value of the settlement for the female job applicants who are hired is more than \$900,000 in annual earnings, according to the OFCCP.

## EEOC Alleges Disability Bias at McDonald's

The Equal Employment Opportunity Commission (EEOC) has charged a McDonald's restaurant in Northport, Ala., with disability discrimination under the Americans with Disabilities Act on behalf of Samantha Robichaud, a worker with a

port-wine stain covering a significant portion of her face. This was the first lawsuit filed by EEOC in Alabama involving facial disfigurement.

(continued on page 3)

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# Recruitment Resources

## Recruit Former Military Personnel

"Recruit transitioning and former military personnel with a specific, targeted approach," suggests Bill Gaul, president and CEO of The Destiny Group (<http://www.destinygrp.com>), San Diego, Calif., an Internet-based recruiting firm specializing in transition assistance to individuals with military experience in their background. Gaul gave these additional suggestions for recruiting military alumnae:

- Research is where it all begins. Visit military bases; advertise in military publications; and use search firms and online job posting/résumé database systems that specialize in this market.
- Understand the experiences and skills that are translatable to your field. Get former military personnel within your own organization to help train and assist your recruitment effort.
- Tap the contacts of former military hires. Add new recruitment materials. Create a "we hire military" Web page to showcase

successful former military employees and how the company embraces them. Link this page to online veterans and military sites for added exposure.

- Develop positive relations with your military hires. This goes a long way in creating the added momentum for an excellent long-term recruitment program. The military community is very close, and word travels fast. For many potential applicants leaving the military, there is some nervousness and anxiety about the change. If they can see that you are specifically targeting their skills and experience, they will rally around your company and seek opportunities.

"After working with thousands of transitioning military candidates over the years, I can say that companies who make a concerted effort to focus on and embrace the military community are well rewarded with many ready-made employees," said Gaul. The above strategies will help to get your program off its feet!

## Best Practices in Affirmative Action

### Ford Motor Company, Top Company for Diversity

Ford Motor Company, the world's second largest vehicle maker and the world's largest producer of trucks, has topped Diversity Inc.'s list of the top 50 companies for diversity. This was a major achievement because Ford Motor Company, according to Diversity Inc., ranked number 49 just a year ago. Last year's number 1, Fannie Mae, remained an impressive number 2 this year.

Diversity Inc. publishes information in print and online that targets senior management about the business benefits of diversity. The publisher asked companies under consideration for the diversity award 50 questions regarding the sex, race, and ethnicity of managers, directors, highly paid executives, new hires, and even those who had been laid off. Diversity Inc. also looked at how much advertising was directed at minorities, how much was spent on minority charities and suppliers, and whether diversity goals played a part in executive bonuses.

Ford Motor Company spends over \$3 billion a year with minority suppliers. Ford Motor Company was incorporated in 1903 when Henry Ford and 11 business associates signed the articles of incorporation. The Ford Motor Company's plant in Highland Park, Mich., introduced the first assembly line in 1913, which drastically reduced production time. As a result, more automobiles were made available at a lower cost.

At Fannie Mae, number 2 on Diversity's list, women make up 40 percent of their Board of Directors. However, in 2000, Fannie Mae paid a discrimination settlement of \$192.5 million. Coca-Cola ranked 18th this year and has appeared for the past three years on Diversity Inc.'s list.

### Diversity Inc.'s 2003 top 11 companies for diversity are:

- |                           |                      |                    |
|---------------------------|----------------------|--------------------|
| 1) Ford Motor Company     | 5) IBM               | 9) Bank of America |
| 2) Fannie Mae             | 6) SAFECO            | 10) Xerox          |
| 3) American Express       | 7) Deloitte & Touche | 11) Altria         |
| 4) Verizon Communications | 8) Eastman Kodak     |                    |

# Ask the **EXPERT**

## OFCCP Audits on the Rise

**Q:** What trends do you see in the OFCCP's audit process so far this year?

**A:** Now, in June 2003, we have a clearer picture as to what trends have emerged for the OFCCP and their plans for auditing federal contractors. Charles James, the National Director of the OFCCP, has laid out a new plan for reaching more contractors than ever before. HR managers all over the country are scrambling to meet audit deadlines. Historically, only a very small percentage of contractors were audited on an annual basis, but the new plan coming out of all the OFCCP regions is more far-reaching and the number of audits is on a steep incline. The new plan is to focus on "touching" more contractors with desk audits, while enhancing their positive compliance help, as opposed to selecting fewer contractors for lengthy on-site visits.

**Q:** How do a compliance check, desk audit, and formal audit, sometimes called a full compliance review, differ?

**A:** A compliance check is a 15-minute or less on-site visit to see if you have an Affirmative Action Program (AAP). The OFCCP's new approach to a desk audit is to have the contractor mail in the AAP for review. A formal audit occurs when an auditor comes to your facility and reviews the contractor's plan, checks postings, looks over the work environment, and possibly, interviews staff.

The OFCCP's new desk audit letter requests that the contractor send a series of documents to, the OFCCP for review. The documents requested typically include, but are not limited to, the: 1) current AAP, 2) EEO-1 report for the past three years, 3) collective bargaining agreement(s), 4) AAP goals for the preceding years, 5) progress on goals for the current year, data on employment activity (applicants, hires, promotions, terminations), and 6) annualized compensation data. This is a faster and easier way for the OFCCP to review contractor documentation and determine whether an on-site visit is needed.

**Q:** What will be the impact of the new auditing style used by the OFCCP?

**A:** The impact will be loss of control of important information that will be analyzed without the contractor being present. Second, if the OFCCP is performing fewer on-site visits and utilizing the new desk audits, then many more contractors have to produce AAPs on a timely basis. As the

gurus of the industry already know, a sizeable portion of federal contractors do not have current AAPs and they are now suffering the consequences of being unprepared.

As consultants, we have many clients who have received audit letters and are scrambling to complete current and preceding-year AAPs. This activity weighs heavily on both large and small contractors, but it seems to sting the smaller contractors more because of limited resources, time, and training. As consultants, we feel the pain of the smaller company's HR manager who battles with the tasks of not only HR, but also I.T. and Legal, while continuing to wear the various other hats of a small-company HR person.

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*This month's experts are Chris Lindholm, EEO manager, and Patrick Nooren, Ph.D., Executive Vice President of Biddle Consulting Group, Inc. Biddle Consulting is an Equal Employment Opportunity, Affirmative Action Planning, and Personnel Selection consulting and software development firm. Biddle Consulting Group, Inc., is located at 2868 Prospect Park Dr., Suite 110, Rancho Cordova, Calif. 95670. Mr. Lindholm and Mr. Nooren can be reached at (800) 999-0438, <http://www.biddle.com>.*

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## OFCCP Watch

*(continued from page 1)*

The suit alleges that McDonald's discriminated against Ms. Robichaud when it denied her the opportunity for promotion to a management position and constructively discharged her based solely on her disability. Ms. Robichaud alleged that she was removed from the front counter because of her appearance and was later constructively discharged when she was told that she would never be promoted to a management position because of her appearance. Ms. Robichaud initially accepted the position of cook when assured that she would have the opportunity for promotion to management. "One of the worst types of discrimination occurs when an individual with a cosmetic disfigurement is denied a job because of the unjustified belief that customers will be offended simply by seeing that person," said Charles Guerrier, Regional Attorney for the EEOC's Birmingham office. "The opportunity to make a living and succeed in the workplace is not restricted to models and movie stars but is the promise held out to every person with talent, skills, and ambition," he added.

### Tip of the Month

**For the latest update on the revised regulations on employing veterans, contract thresholds, and the new VETS-100 Form, see your new free biannual supplement to the *How to Write an Affirmative Action Plan* manual.**





## By the Book

### An Equal Employment Opportunity Policy That Works

Every employer covered by nondiscrimination and equal employment opportunity (EEO) laws is required to have an EEO policy. The policy should be in writing. If not, the OFCCP may issue a technical citation in the event of an on-site visit. The policy should be signed by the chief executive officer or head of your company.

#### What Should Be Included in Your EEO Policy?

**Your commitment to federal antidiscrimination laws.** Every EEO policy should state the corporation's commitment to federal antidiscrimination laws and include a statement that the company will enforce all laws that protect employees from discrimination in the workplace. There should be additional language that all personnel decisions affecting the terms and conditions of employment—including recruitment, hiring, training, transfer, compensation, promotion, terminations, layoffs, tuition assistance, and social and recreation programs—will be made without regard to race, color, national origin, religion, sex, age, disability, or veteran's status, except if a bona fide occupational qualification (BFOQ) exists.

**Your commitment to state antidiscrimination laws.** The corporation's commitment to state antidiscrimination laws should also be added to cover any classes or characteristics of employees that are protected by the laws of states (and municipalities) in which your company operates. For example, some states have antidiscrimination laws that protect employees on the basis of sexual orientation, marital or family status, and the presence of any illnesses or genetic traits such as HIV/AIDS and sickle-cell anemia.

**Other statements that must be included.** Additional statements must be made that overall responsibility for the EEO plan has been assigned to an EEO coordinator and to confirm the corporate and contractor commitment to EEO and to the affirmative action program. Include the name, title, and contact information of the person and department that maintains and monitors the policy. This is the person and the office responsible for answering any questions and the site where any alleged violations are reported. The procedure for reporting any violations should be spelled out so employees know what to do and where to go.

**The EEO Poster.** Your policy that "Equal Employment Opportunity is the Law" should be posted on your premises where it can be readily seen by employees and applicants for employment. A sample EEO poster is available on the U.S. Department of Labor's website at <http://www.dol.gov/esa/regs/compliance/posters/eoo.htm>.

**You must disseminate your EEO policy both internally and externally.**

#### Disseminating Your EEO Policy Internally

To disseminate the policy internally:

- Include the policy statement in your contractor's manual, company publications, annual reports, and published statements.

- Conduct special meetings with management personnel and with all other employees to explain the policy and the individual responsibility for its implementation.
- Discuss the policy at employee orientation and management training.
- Include the policy in union agreements and contractual provisions.
- Publish articles on the EEO program's progress and success in company publications.
- Make sure your company advertising and printed material reflects your company's EEO commitment and diversity.

#### Disseminating Your EEO Policy Externally

To disseminate the policy externally:

- Notify all recruiting sources of the policy and ask that women and minorities be actively recruited for all positions.
- Expressly state your Equal Opportunity (EO) policy in all employment advertisements.
- Incorporate the EEO clause in all purchase orders, leases, and contracts.
- Notify minority and women's organizations, community agencies and leaders, and secondary schools and colleges of the company policy.
- Send written notification of the policy to subcontractors, vendors, and suppliers. Request that they, too, comply.

#### Exemptions to the EO Clause

All contractors are required to insert an EO clause in their contracts, except for very limited exceptions:

- Transactions less than \$10,000 are exempt if the aggregate value of government contracts during a 12-month period does not exceed \$10,000. (A written AAP for women and minorities is not required unless the contractor has at least 50 employees and contracts worth more than \$50,000.)
- Contracts and subcontracts for indefinite quantities. An employer with open-ended contracts, requirement-type contracts, federal supply schedule contracts, call-type contracts, and a purchase notice agreement reasonably expected not to exceed \$10,000 in a 12-month period is exempt.
- Work outside the U.S. contracts and subcontracts to be performed outside the U.S. by employees not recruited within the U.S.
- Specific contracts and facilities may be exempt within the discretion of the OFCCP director only when special circumstances in the national interest so require.

### Take a Look At Your Book



For more information on the EEO Policy, see Chapter 2, pages 8–10, in your manual *How to Write an Affirmative Action Plan*. Sample EEO Policy letters and language are found in Chapter 2, pages 13–19.