

March 23, 2020

Virtually Open for Business – the EEOC, OFCCP, and State Fair Employment Agencies

On March 20, 2020, the Office of Federal Contract Compliance Programs (OFCCP) became the latest federal agency to address their operations in light of the COVID-19 emergency. The Equal Employment Opportunity Commission (EEOC) issued their announcement on March 17, 2020. Essentially, the OFCCP, EEOC, and most state agencies are continuing at least some operations, although they have either completely moved to teleworking and/or closed their offices to all or unscheduled visitors.

EEOC

The EEOC has issued press releases and sent emails in both English and Spanish advising the public that they are continuing their work on current charges, accepting new charges through their public portal, and scheduling intake interviews over the telephone. The agency also is cognizant of the need to provide continued guidance to employers and employees. On Saturday, the EEOC issued an update to their 2009 Pandemic Preparedness in the Workplace and the Americans with Disabilities Act guidance addressing the COVID-19 pandemic. Earlier in the week, the EEOC issued guidance on Americans with Disabilities Act, the Rehabilitation Act, and COVID-19. The agency also plans to post an on-line webinar on Friday, March 27, addressing questions about COVID-19 and federal EEO laws.

As part of their on-going operations, the EEOC has continued to work on obtaining approval for the Employer Information Report (EEO-1). In September, the EEOC requested public comment on its plan to cease gathering pay data (EEO-1 Component 2) and return to gathering only demographic data in broad categories (EEO-1 Component 1). On Friday, March 20, the EEOC submitted a formal request to the Office of Management and Budget for a three-year approval to collect only EEO-1 Component 1 information. Interested parties will have until April 22, 2020 to submit written comments and recommendations on the proposal. The text of the notice and instructions on submitting comments can be found [here](#).

Related Practices

Affirmative Action Compliance
COVID-19 Resource Center
Labor & Employment Relations

OFCCP

The OFCCP also remains fully functional and is continuing with compliance reviews, focused reviews, and complaint investigations. However, the required on-site portion of the Section 503 or Vietnam Era Veterans' Readjustment Assistance Act focused reviews and any other compliance review or complaint investigation on-site activity will be conducted using "every alternative resource available, such as WebEx, Skype, and phones." The Agency also will be "flexible" with employers where employees are not immediately accessible for interview, urging contractors with open evaluations and investigations to contact their local OFCCP point of contact to check on the status.

There is one area where OFCCP operations are not business as usual. OFCCP Director Craig Leen has invoked the national interest exemption to Executive Order 11246, VEVRAA, and Section 503 to provide "coronavirus relief." The coronavirus relief exempts **new** supply and service and/or construction contracts created March 17, 2020 through June 17, 2020 from the affirmative action requirements. Contractors **remain** bound by the anti-discrimination requirements of these laws. Contractors that are unsure if their new contracts qualify for the exemption should check for waiver language in their contracts. The specific language is found in the National Interest Exemption Memo.

The OFCCP also recently announced the creation of the OFCCP Contractor Compliance Institute. The newly-formed Institute website already has available a two-hour, five-module course on understanding how to be compliant with the laws enforced by the OFCCP. Your HR employees likely have plenty to do in these challenging times; however, perhaps some team members can find time to take the training course—it should be a good introduction to the OFCCP and their expectations.

State FEP Agencies

At this time, most state fair employment practice agencies appear to be working remotely. Even in states where only essential businesses may remain open, it appears that agencies are accepting and investigating charges. In other states, several agencies indicate that they are holding mediations over the phone or via virtual software, and some may be holding some in-person hearings (but liberally granting requests for extensions or telephonic participation). Of course, operational status may change quickly. For example, although the Wisconsin Equal Rights Division website states that hearings are continuing, we understand from an Administrative Law Judge that all hearings may have been postponed until after May 10, 2020.

Given the current uncertainty, any company with a pending deadline with a state FEP agency should e-mail the investigator, mediator, or ALJ for clarification rather than assuming that their deadline has been extended. If the company does not have the contact information for one of these individuals, the employer should call or email the relevant office.

Related People

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