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60-Second Memo

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Matthew J. Feery, Esq.

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More Means Less? The OFCCP Proposes Major Changes to Scheduling Letter to "Reduce" Burden on Contractors

By Matthew J. Feery, Esq.

It seems almost trite to joke that only the government would propose to lessen the reporting burden for employers by requiring that employers report more information. Yet, that is what the Office of Federal Contract Compliance Programs ("OFCCP") has done in its proposed changes to its Scheduling Letter, the current version of which expires on September 30, 2011. The proposed changes would broaden the scope and type of data the OFCCP asks for in Scheduling Letter responses, imposing new burdens on employers who contract with the federal government.

As background, Executive Order 11246 prohibits federal contractors from discriminating against applicants and employees on the basis of race, color, religion, sex, or national origin. The OFCCP administers Executive Order 11246 (as well as certain equal employment opportunity statutes covering the federal government), in part by conducting periodic compliance reviews of federal contractors. Whenever a federal contractor is selected for a compliance review, the OFCCP notifies the contractor of the review by what is called a Scheduling Letter. But the Scheduling Letter provides more than notice; however, it also provides employers with an itemized list of information that must be furnished to the OFCCP within 30 days of receipt of the Scheduling Letter..

The upcoming expiration of the current version of the Scheduling Letter has provided the OFCCP an opportunity to revisit the itemized listing in the Scheduling Letter, and on May 12, 2011, the OFCCP issued notice that it intended to broaden the nature and

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scope of the itemized listing. Under the proposed changes, federal contractors would be required to provide the following information to the OFCCP:

- Copies of all employment leave policies, including maternity leave policies, religious accommodation policies, and federal Family and Medical Leave Act policies. If these policies are in a handbook, the proposed changes would require the contractor to provide the entire handbook to the OFCCP.
- Applicable collective bargaining agreements.
- Detailed data for all employment activity, such as applications, hires, promotions, and terminations, broken down by job group and by job title. Moreover, the requested data is to be broken down into specified minority groups. Currently, contractors are only required to provide summary information on employment activity by either job group or job title and by race and gender, rather than by specific minority groupings.
- Specific demographic data on all employees who have been terminated in the previous affirmative action plan year, based on job group and job title on all employees who have left the contractor. Moreover, contractors must specify whether the employees were terminated voluntarily or involuntarily.
- Expanded required compensation information. Currently, contractors can provide summaries or aggregate data. But under the proposed changes, contractors would be required to provide the following for each employee as of the most recent February 1 calendar date: race/ethnicity, sex, hire date, job title, EEO-1 category, job group, and "compensation." The term "compensation" includes "base salary, wage rate, and hours worked." If any employee has "[o]ther compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime," then the contractor must list that information for each separate employee. Finally, the contractor must provide policies and documentation that explain the factors and reasoning used to determine compensation.

The OFCCP maintains that, despite requiring the production of greater and more detailed information, these new requirements will actually reduce the amount of time it takes for a contractor to respond to a Scheduling Letter-by 2 hours (from approximately 28 hours to 26 hours). This is supposedly due to the more extensive computer records kept by contractors, which make detailed data production possible.

Many contractors and potential contractors are wary of the new burdens the proposed changes could impose. Yet, contractors are not without redress; as with other proposed changes to federal regulations, there is a period of public comment on the OFCCP's

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proposed changes ([click here](#) for information on how to submit a comment). Interested contractors have until July 11, 2011, to make comments on the proposed changes.

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