



Legal Alert: EEOC and OFCCP Publish Revised Memorandum of Understanding Regarding Coordination of Efforts

11/17/2011

Executive Summary: For the first time in twelve years, the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) have issued an updated memorandum of understanding (MOU) that outlines how the agencies will coordinate their enforcement efforts and share information regarding discrimination claims under Title VII and Executive Order 11246.

The MOU between the EEOC and OFCCP was last revised in 1999. The updated MOU, which was published in the November 16, 2011 Federal Register, includes the following updates: using contemporary office names and titles; designating a "Coordination Advocate" at both agencies; reorganizing and/or condensing language for clarity; streamlining the Compliance Coordination Committees; and clarifying the complaint/charge referral procedures.

Information Sharing

The MOU states that the agencies will share "any information relating to the employment policies and/or practices of employers holding government contracts or subcontracts that supports the enforcement mandates of each agency as well as their joint enforcement efforts." Examples of such information include:

- affirmative action programs;
- annual employment reports;
- complaints;
- charges;
- investigative files; and
- compliance evaluation reports and files.

Under the MOU, the OFCCP agrees to make documents available to the EEOC that relate to the enforcement or administration of any laws enforced by the EEOC, including Title VII, the Equal Pay Act (EPA), the Age

Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act of 2008 (GINA), the Americans with Disabilities Act (ADA) and EO 12067. The EEOC agrees to make available to the OFCCP documents relating to the enforcement and administration of EO 11246, the affirmative action provisions of the VEVRA, Section 503 of the Rehabilitation Act, and EO 12067.

Confidentiality

When the EEOC provides information to the OFCCP, the confidentiality requirements of sections 706(b) and 709(e) of Title VII apply to that information. If the OFCCP receives the same information from an independent source, Title VII's confidentiality provisions will not apply. The OFCCP will, however, comply with the confidentiality requirements imposed by the Trade Secrets Act or the Privacy Act.

When the OFCCP obtains information from its processing of the Title VII component of a dual filed charge, or when the OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, the OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of the Civil Rights Act.

Compliance Coordination Committees

The MOU states that the OFCCP and the EEOC will establish procedures for notification and consultation at various stages of their compliance activities to develop potential joint enforcement initiatives, increase efficiency, ensure coordination and minimize duplication. Such procedures include the establishment of ongoing Compliance Coordination Committees and requirements for notification of each other when the agencies resolve a charge or complaint.

Procedures

The MOU sets forth procedures for the receipt, investigation, processing, and resolution of complaints filed with the OFCCP as well as dual-filed complaints/charges. Additionally, the MOU states that the OFCCP will retain, investigate, process, and resolve allegations of discrimination of a systemic or class nature on a Title VII basis in dual filed complaints/charges. The OFCCP will refer to the EEOC individual allegations of Title VII violations. The MOU also provides that if an individual who has already filed an OFCCP complaint/charge that is dual-filed under Title VII subsequently files a Title VII charge with the EEOC covering the same facts and issues, the EEOC will forward the charge to the OFCCP for consolidated processing.

Coordination Advocate

The MOU provides that within 60 days of its November 7 effective date, each agency will designate a "coordination advocate" to assist with understanding and complying with the updated MOU.

Employers' Bottom Line:

In most cases, employers may not be directly impacted by the MOU; however, it serves to reinforce the relationship between the EEOC and the

OFCCP and their continued interest in sharing information. The shared information could result in more aggressive enforcement by both agencies against employers whom they believe are gross violators of the law. Additionally, the MOU emphasizes the fact that the OFCCP will focus on systemic discrimination cases and not the investigation of individual charges.

If you have any questions regarding the MOU or other labor or employment related issues, please contact [Linda Cavanna-Wilk](mailto:lcavanna-wilk@fordharrison.com), lcavanna-wilk@fordharrison.com, [Karen Tyner](mailto:ktyner@fordharrison.com), ktyner@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.