



Office of Federal Contract Compliance Programs Changes Its Approach to Assessing Compensation Discrimination

Under Executive Order 11246 and its implementing regulations, federal contractors cannot discriminate in the rates of pay or other forms of compensation provided to their employees based on an employee being a particular race, gender, or ethnicity. The Office of Federal Contract Compliance Programs (“OFCCP”) sets the standards for evaluating whether contractors’ compensation systems and practices are in compliance with Executive Order 11246. The OFCCP is also responsible for applying those standards to review federal contractors’ compensation practices to look for any systemic compensation discrimination.

In 2006, the OFCCP issued the Interpretative Standards for Systemic Compensation Discrimination (“Compensation Standards”), as the standards for determining whether a contractor has engaged in compensation discrimination. The Compensation Standards provided standard analytical criteria for evaluating contractors’ compensation systems and practices.

OFCCP regulations require covered contractors to evaluate their own compensation systems to determine whether there are disparities based on gender, race, or ethnicity. In conjunction with the Compensation Standards, the OFCCP issued a set of guidelines, titled the Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with the Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Discrimination (“Voluntary Guidelines”), that offer suggested techniques for performing this self-monitoring. If a contractor’s compensation systems and practices reasonably met the standards set out in the Voluntary Guidelines, the OFCCP would consider the contractor’s compensation systems and practices to be in compliance with Executive Order 11246. In addition, if a contractor, in good faith, reasonably implemented the general methods outlined in the Voluntary Guidelines, OFCCP would coordinate its compliance monitoring activities with the contractor’s self-evaluation approach. This insured that the OFCCP and the contractor were applying the same statistical methods to determine whether any systemic discrimination had occurred.

Effective February 28, 2013, the OFCCP abandoned the Compensation Standards and the Voluntary Guidelines in favor of a new case-by-case approach to evaluating contractor compensation systems and practices. This policy shift is set out in Policy Directive 307, which can be found at: <http://www.dol.gov/ofccp/regs/compliance/directives/dir307.htm>.

Office of Federal Contract Compliance Programs Changes Its Approach to Assessing Compensation Discrimination

continued from page 1

The Compensation Standards and the Voluntary Guidelines will continue to apply to any OFCCP review scheduled, opened, or otherwise pending on February 28, 2013. The new approach announced under Policy Directive 307 will allow the OFCCP to conduct broader investigations using standards that are not as clearly identified as they were under the Compensation Standards and the Voluntary Guidelines. This has caused some human resources professionals concern because it eliminates a contractor's ability to rely on its existing self-assessment methods, and allows the OFCCP to apply standards for evaluating contractors' systems that are significantly different from those contractors use to evaluate themselves.

This change in policy is part of a larger effort on the part of the Obama administration to address compensation discrimination and pay disparity.



New Family Medical Leave Act Regulations and Poster

On February 6, 2013, the U.S. Department of Labor ("DOL") issued a final rule containing new regulations pertaining to the Family Medical Leave Act ("FMLA"). These new regulations took effect March 8, 2013, and relate to topics like qualifying exigency leave for parental care, military caregiver leave for a veteran, and job-protected leave for airline personnel and flight crews. The new regulations also clarify the impact of a service member taking leave under the Uniformed Services Employment and Reemployment Rights Act ("USERRA") on that individual's hours of service used to determine eligibility for FMLA leave. The DOL has created a useful chart comparing the former and new regulations regarding the topics covered under the final rule.

That chart can be found on the DOL website at: <http://www.dol.gov/whd/fmla/2013rule/comparison.htm>.

The final rule also requires all employers to post a revised FMLA poster starting March 8, 2013, which can be found at: <https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>. If you are not using the revised poster, you should start doing so immediately.

Employers Have to Switch Over to New Form I-9

On March 8, 2013, the U.S. Citizenship and Immigration Services (“USCIS”) released a new Form I-9. Form I-9 is used to verify the identity and employment authorization of individuals hired for employment in the U.S. All U.S. employers are required to complete a Form I-9 for each individual they hire for employment in the U.S.

Employers have until May 7, 2013, to start using the new Form I-9 for all new hires. The new form is two-pages long and includes expanded instructions and new fields for listing an e-mail address, phone number, and foreign passport in Section 1 of the form.

A copy of the new form can be found at: <http://www.uscis.gov/files/form/i-9.pdf>.

Customizable Seminars and Training Sessions

The lawyers of FEES & BURGESS, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. This wide field of knowledge enables us to provide quality training on various topics, including, but are not limited to:

Americans with Disabilities Act	International Contracting
Conducting Effective Workplace Investigations	Limiting Liability for Sexual Harassment
Construction Contracting	Managing Employee Use of Internet and E-mail in the Workplace
Diversity Training	Managing Gender Identity Issues in the Workplace
Electrical Manufacturing Services Contract	Reducing Employee Benefits Costs
Employment Law Survival Training for Managers	Reducing Risk in Purchasing Terms and Conditions
Ethics, Business Conduct and Compliance in Government Contracting	Reduction in Workforce Strategies
Immigration Compliance	Retaliation and Whistleblowers
Incoterms® 2010	Violence in the Workplace
Indemnity and Limitation of Liability Clauses	

For more information on these and other programs, please visit us online at www.feesburgess.com; contact us by e-mail at seminars@feesburgess.com; or by phone at (256) 536-0095.



HR CORNER

FEES & BURGESS, P.C.



Volume 9, Issue 2

April 2013

SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these newsletters, please e-mail newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

Michael L. Fees

mfees@feesburgess.com

Allen L. Anderson

anderson@feesburgess.com

Stacy L. Moon

smoon@feesburgess.com

Ryan G. Blount

rblount@feesburgess.com

FEES & BURGESS, P.C.

213 Green Street

Huntsville, Alabama 35801

Telephone (256) 536-0095

Facsimile (256) 536-4440

www.feesburgess.com

C. Gregory Burgess

gburgess@feesburgess.com

Jeffrey L. Roth

jroth@feesburgess.com

Allison B. Chandler

achandler@feesburgess.com

HR Corner should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only. Anyone needing specific legal advice should consult an attorney.

“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”

© 2013 FEES & BURGESS, P.C.