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### Comply or Die

March 01, 2010

By [Josh Viau](#)

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All contractors, no matter what market they serve, face a myriad of employment laws and regulations. For those contractors and subcontractors working on federal or federally funded projects, however, there are additional laws and regulations designed to promote government policies.

The laws and regulations apply to every aspect of the employment process, including hiring, firing and everything in between. These laws also usually apply to subcontractors that furnish supplies or services necessary to perform a federal contract. Failure to comply with these laws can lead to a variety of consequences, including lawsuits, criminal penalties, fines and debarment and/or cancellation of contracts. Compliance is essential to continue as a successful government contractor. And because many in the construction industry have quickly morphed into government contractors due to the recession, the subject is all the more important to review today.

The Office of Federal Contract Compliance Programs is the agency charged with ensuring that employers doing business with the federal government are in compliance with discrimination and affirmative action laws and regulations. The OFCCP administers Executive Order 11246, which requires that federal contractors implement and sustain affirmative action plans; Section 509 of the Rehabilitation Act of 1973; and the Vietnam Era Veteran's Readjustment Act of 1974.

Under new leadership and in the wake of the disbursement of an unprecedented amount of federal funds, construction contractors will be subjected to additional scrutiny. The OFCCP has announced plans to conduct at least 450 construction audits by the end of September 2010. The agency has indicated that it will routinely schedule desk audits and onsite reviews even when "indicators" of discrimination are not identified. To avoid excessive fines or the possibility of losing your government contracts, you must ensure that you are compliant in several areas.

**Affirmative-Action Plans** To comply with basic Equal Employment Opportunity Requirements, federal contractors must take certain actions designed to prevent discrimination and harassment. Federal contractors must also take actions to attract and place qualified minorities and females, considered underutilized in the construction industry.

Although covered construction contractors are not technically required to create written affirmative-action programs, they must take 16 affirmative-action steps as listed in the Technical Assistance Guide for Federal Construction Contractors, which can be found on the U.S. Department of Labor website.

The requirements range from actions as simple as posting EEO statements at the jobsite to documenting women and minority participation in on-the-job training programs. The most seemingly cumbersome aspect of the program is tracking minority applicant and employee information. Fortunately, there are several computerized programs and software packages to assist in maintaining and reporting such information.

Many states and some municipalities have similar affirmative-action requirements. A contractor who is in complete compliance with federal law, however, cannot assume that its plan will comply with state or local requirements. Especially if contracting with local governments, it is important to check for additional requirements.

E-Verify As of September 8, 2009, federal contractors and subcontractors are required to begin using the E-verify system to ensure that their employees are legally authorized to work in the United States. The E-verify system is a federal government online database that allows employers to verify employment eligibility by electronically comparing employee information taken from the Employment Eligibility Verification Form against the records in the Department of



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Veterans Under VEVRAA, federal construction contractors are also required to take affirmative steps to employ and advance qualified veterans. Certain federal contractors are required to annually report statistics on their veteran workforce through a VETS-100 report.



JOSH VIAU

Wage and Hour Laws Several wage and hour laws also apply to federal contractors. For example, the Davis-Bacon and related acts apply to federal contractors with contracts over \$2,000 for the construction, alteration or repair of public buildings or works. Contractors under these Acts must pay employees under the contract no less than the locally prevailing wages and fringe benefits for equivalent work on similar projects in the locality.

They must also post required notices at the work site. The Copeland "Anti-Kickback" Act prohibits federal contractors involved in building construction or repair from inducing employees to give up any compensation they are entitled to under any employment contract. The Act also requires contractors to submit weekly statements of compliance.

These are just a sampling of the many types of employment-related laws and regulations that apply to federal contractors. In addition, there are many non-employment related requirements designed to promote certain government initiatives. As always, it is best to seek the advice of a lawyer or government contracting expert to ensure you are in compliance and prepared to deal with a potential audit.

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