

**AFFIRMATIVE ACTION PLANS ENTER THE ELECTRONIC AGE - SLOWLY**

The Office of Federal Contract Compliance Programs (OFCCP), the federal agency responsible for enforcing affirmative action plans and associated compliance requirements, tends to move slowly in issuing guidance to employers, like banks with more than 50 employees, who are subject to these requirements. However, in a briefing last week, OFCCP officials revealed plans to bring their enforcement activities into the electronic age.

- The OFCCP is developing guidance regarding employers' obligations to provide an effective, reasonable accommodation for disabled individuals who might otherwise be unable to **access online application systems** now extensively used by many organizations.
- The agency will shortly issue a directive regarding which **records may be kept electronically**, eliminating the need for keeping bulky hard copies of documents and logs. In the future, the OFCCP hopes to begin accepting electronic versions of affirmative action plans and other documents for review.

But with regard to other issues, the OFCCP still lags behind in implementing legislative changes, though promising updates soon. For example, there is still no definitive rule on whether the new race and ethnicity categories required on the annual EEO-1 form are required to be used in affirmative action planning. For now, employers may use either the old or the new categories. Similarly, the VETS-100 form has not yet been revised to comply with changes in the 2002 Jobs for Veterans Act.

Don't let the OFCCP's slowness in issuing guidance or revised forms lull you into thinking they have relaxed their enforcement activities. The agency is actively pursuing an initiative launched in 2006 to evaluate systemic discrimination in compensation. They do not disclose the triggers that would lead to a particular employer being investigated.

**Practice Pointers:**

- Ensure that any online application processes are accessible to disabled individuals, or provide an alternative application channel as an accommodation
- Continue to keep detailed hard copy logs of applications, hires, promotions, transfers and terminations, so that your affirmative action plan can be seamlessly updated at the end of the plan year, and you can document your affirmative action plan efforts for OFCCP review
- Conduct an audit of compensation to ensure there is no discrimination in pay against women or minorities performing the same or substantially similar work as white men

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