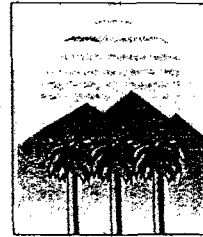


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Remember, federal affirmative action law is still in force

With the passage of Proposition 209 and the California Supreme Court's confirmation of its legitimacy, employers aren't sure if they need to keep a current affirmative action plan on file.

The repeal of affirmative action law under Proposition 209 applies only to certain state public sector employers and the California university system. The federal affirmative action law remains in force.

Federal contractors who employ 50 or more people and complete government contracts totaling \$50,000 or more per year (or who are first-tier subcontractors), must comply with Executive Order 11246. This regulation requires the implementation of an affirmative action plan.

An affirmative action plan, besides the boilerplate narrative, must have the following: 1) Workforce analysis. 2) Job group analysis. 3) Availability analysis. 4) Utilization analysis. 5) Goals and timetables.

The heart of any affirmative action plan is the availability analysis, which is the most complicated part of the plan. Affirmative action employers should attempt to have their workforce mirror that of the surrounding community.

This availability analysis calculation takes a look at the following elements: population, unemployment, workforce, people with requisite skills, promotables, schools and training.

The contractor then takes a look at the utilization of minori-

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lar job.

Through affirmative action, Corporate America strives to have a balanced workforce that mirrors the community from which it draws its resources.

If the number of minority and female workers is less than the availability rate, then goals are established to increase the number.

It is not a quota system. Companies must show a good faith effort by having within their pool of applicants, qualified minority and women candidates. Employers are not required to hire unqualified candidates.

The Office of Federal Contract Compliance Programs, an agency within the Department of Labor that monitors affirmative action plans, is operating as usual in spite of Proposition 209.

ties and women in each job group and compares this with availability — that is, the percentage of minorities and women in the relevant labor market that possess the requisite skills for a particu-

lar job. New rules went into effect Sept. 18. The OFCCP now conducts audits in stages. It may initially do an off-site analysis of the contractor's company. If this preliminary glimpse raises questions, OFCCP will schedule a desk audit on-site.

According to OFCCP guidelines, employers must maintain appropriate employment records for two years. The OFCCP requires access to computerized records that apply to the audit itself. They may take the data from the premises. The company can appeal such an action.

Failure to comply can carry stiff penalties. Companies that do not follow OFCCP regulations will incur a six-month disbarment from federal contracts. The penalty reflects a revision from the previous penalty, which was not fixed and varied depending on the violation.

As a consultant specializing in developing affirmative action plans (and as one who conducts the AAP workshops for The Employers Group), the number of OFCCP audits seems to be on the rise.

One client received a call from the Labor Department indicating the company had been selected for an audit this past summer. They contacted me and I completed their plan. When the human resources manager explained to the Labor Department that there was no one particular contract that was in excess of \$50,000, the Department decided not to conduct the audit.

In a recent Enforcement Strategy Executive Summary, OFCCP issued a number of initiatives that included the following: targeting contractors with a history of compliance problems, using "testers" to identify federal contractors that discriminate in hiring, focusing on corporations in a downsizing mode, conducting investigations of corporate-wide discrimination and deterring violations of substantial regulations.

The tester program has been used in some regions of the country. Equally qualified Black and White (or male/female) job applicants are sent to contractors to apply for the same job. A compliance review is scheduled if it appears that race or gender is a factor in the hiring decision.

Many people truly do not understand what affirmative action really means. They get the impression from the media that it's a quota system, fostering reverse discrimination and preferential treatment.

An interesting non-biased approach was recently demonstrated by symphony orchestras, which have been traditionally an all-male domain. Because of complaints of the lack of female representation, they came up with a solution which seemed fair.

Auditions are held behind a closed curtain for the prospective musician to perform. The decision to hire is made strictly on the quality of the performance. In doing this, the female

representation in the orchestra has increased significantly.

Another example of effective affirmative action at work requires a look into the nightly news broadcast. The major network news teams are often comprised of men and women and people of color. Do you think this happens by chance? It happens by design.

Affirmative action is about inclusion and access to power. It is designed to provide a bridge from what was to what could be in an ideal society.

For instance, it would be ideal if we were a color-blind society. Many, though, believe that corporate America still hires and promotes people who are like themselves.

Affirmative action is seen by many as a race and gender-conscious remedy designed to help women and minorities compete for a piece of the economic pie. It can easily be perceived as a less than ideal remedy, yet as long as ethnic bias and socioeconomic injustice are with us, some form of affirmative action is in order.

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