
Overview of Affirmative Action Plans

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An Affirmative Action Plan (AAP) is a formal, written document that defines an employer's program to hire, promote and retain women and minorities. Depending on the individual employer's circumstances, a program to hire, promote and retain individuals with disabilities and protected veterans may be required. The AAP will include the employer's analysis of workforce data to determine underutilization and the good faith efforts of the employer to correct any deficiency. The AAP must be complete, reasonable, and acceptable according to standards defined by the Office of Federal Contract Compliance Programs (OFCCP).

Completeness -The AAP should be current and all required elements are included.

Reasonableness - Workforce analysis, utilization analysis and goals must be performed in accordance with the regulations of [Revised Title 4 and 41CFR 60-2](#). Goals must be significant, measurable, and attainable.

Acceptable - Workforce analysis must list the job title with wage and salary, its department or organization unit, unit supervision and lines of progression, and total number of incumbents per EEO-1 categories. The utilization analysis must categorize job groups by composition, availability, and underutilization of minorities and women.

Once the initial analysis and establishment of goals is completed, the employer must then make a good faith effort to achieve the goals. The AAP is updated on an annual basis to track the progress of achievement of the goals defined in the plan. If any goals are not achieved, the employer must provide documentation of efforts to achieve the goals.

Good-faith effort to meet AAP goals include, but are not limited to:

- Establishing a method to inform internal candidates about open positions
- Developing programs to encourage internal candidates to apply for open positions
- Using recruitment sources listed in the AAP plus additional sources as required
- Recruiting at high school, trade schools, colleges and universities which enroll large numbers of women and minorities
- Providing training opportunities for women and minorities
- Ensuring that managers and recruiters are familiar with [EEO policies](#) and that all selection criteria and procedures are non-discriminatory

A key component of the AAP plan is linkage between the employer's goal to hire, retain, and promote women and minorities, and the ability to work effectively with community recruitment resources. Once an employer has identified job groups where there was hiring, promotion or high turnover and plan goals were not met, it is critical the appropriate community recruiting resources are identified and a relationship established. Community recruiting resources can also provide guidance on how to encourage female and/or minority applicants.

Significant community groups concerned with equal employment opportunity include:

- Urban League
- National Association for the Advancement of Colored People (NAACP)
- League of United American Citizens (LULAC)
- National Organization of Women (NOW)

Local chapters of these groups are excellent resources for recruiting. Additional resources including schools and colleges that traditionally have a high percentage of minority or women students, local faith-based groups, industry trade groups, and job boards targeting a specific demographic.

Employers with more than 100 employees must also complete, in addition to the Affirmative Action Plan, adverse impact analysis on employee selection procedures. Employers must review hiring practices and selection criteria on an annual basis using the federal Uniform Guidelines to ensure that there is no adverse impact on the employment opportunities of members of a race, sex, or ethnic group. The Uniform Guidelines are applicable for all selection procedures used to make employment decisions including hiring, retention, promotion, transfer, demotion, dismissal, and referral. Selection procedures include, but are not limited to:

- Interviews
- Application Forms
- Work Samples
- Physical Requirements
- Evaluations of Performance
- Assessment and Skill Testing
- Work Performance during probation or training periods

Sample Components of Affirmation Action Plans

- Organization Profile
- Job Group Analysis
- Utilization Analysis
 - Placement of Incumbents in Job Groups
 - Determination of Availability
 - Comparison of Incumbency to Availability
- Placement Goals
- Designation of Responsibility for Implementation
- Identification of Problem Areas
- Action Oriented Programs
- Designation Responsibility for Managers and Supervisors
- Statement on Training
- Internal Audit and Reporting System Notice
- Guidelines on Discrimination (Religion and National Origin)
- Supporting Documentation
 - Copies of Letters Sent to Supplies and Vendors
 - Copies of Letters Sent to Recruiting Sources
 - Copies on Contracts with EEO clause included
 - Copies or Records of Training for Managers and Employees
 - Personnel Activity Report for Plan Year
 - Applicant Flow Log
 - Analysis of Program Progress

Additional Sample Component for Affirmative Action Plans Required by Section 503 and VEVRA (Individuals with Disabilities and Veterans)

- Policy Statement
- Review of Personal Processes
- Review of Physical and Mental Job Qualification Standards
- Reasonable Accommodations Statement
- Harassment Prevention and Prohibition against Retaliation
- External Dissemination Statement
- Internal Dissemination Statement
- Responsibilities of Managers and Supervisors
- Company Invitation to Self Identify

**The sample components are provided for illustrative purposes only. When preparing an Affirmative Action Plan the employer must ensure the plan is customized to the employer's organizational structure, policies, practices and programs and workforce data. Additional supporting documents may be necessary to support the progress to goals and required activities.*

EEOC/OFCCP Affirmative Action Plan Requirements Q&A

What is Affirmative Action?

Affirmative action means to take proactive steps to hire, train, retain, and promote individuals from groups who may have been traditionally discriminated against on the basis of sex, race, disability and other characteristics. Affirmative action is more than equal employment opportunity. Equal employment opportunity requires that employers eliminate discriminatory conditions and treat all employees equally in the workplace. Affirmative action requires that the employer complete analysis on the workforce to determine where women, minorities may be underutilized; to develop a set of policies and procedures to promote the hiring, promotion and retention of women, minorities, individuals, and veterans; and to set specific goals to correct any deficiency in the underutilization of women and minorities.

Who is required to have an Affirmative Action Plan?

Affirmative Action Plans are required by federal and/or state law for governmental contractors and subcontractors, as part of a conciliations agreement with a federal or state agency, or by court order. Some employers may voluntarily adopt Affirmative Action Plans to create a more diverse and balance workplace. Employers are required to meet affirmative action requirements if they do business with the government and are covered by the Federal Rehabilitation Act of 1973, the Vietnam Era Readjustment Act of 1974, or by Executive Order 11246.

OFCCP administers these laws and has issued regulations implementing each of them. Contractors' and subcontractors' affirmative action obligations vary depending on the size of the contract and the number of employees.

Contracts for \$10,000 or More

An employer with more than 15 employees and a contract amounting to \$10,000 or more must take affirmative action to employee disabled individuals. (Federal Rehabilitation Act of 1973)

If an employer has a government contract amounting to \$10,000 or more, that contractor is required to include an equal opportunity clause in each subcontract or purchase of more than \$10,000. The clause must state that the contractor will not discriminate on the basis of race, sex, color, creed, religion, or natural origin, and will take positive actions to hire applicants and equally treat employees during employment. Subcontractors who sign contracts with an equal opportunity clause have the same obligations as the contractor. (Executive Order 11246)

An employer who entered into a federal contract prior to 2003 for \$10,000 or more must also provide affirmative action programs targeting certain veterans. (Vietnam Era Readjustment Act of 1974)

Contracts for \$50,000 or More

Employers with more than 50 employees and government contracts or subcontracts in the amount of \$50,000 or more must have a formal, written Affirmative Action Plan for women, minorities, and disabled individuals.

The Affirmation Action Plan for women and minorities must set out goals for hiring and promotion in job categories where women and minorities are underutilized. Specific information on the regulations (Revised Order Number 4) and the development of a plan in accordance with 41CFR 60-2 are available on the Department of Labor website: www.dol.gov.

The Affirmative Action Plan for disabled individuals must set forth the employer's policies and practices implementing affirmative action, but do not require specific numerical goals.

An Affirmative Action Plan for veterans is required for employers who have more than 50 employees and have a contract of \$100,000 or more entered into after December 1, 2003.

Employers may create one Affirmative Action Plan that covers women, minorities, individuals with disabilities, and veterans.

Who is the OFCCP?

The Office of Federal Contracts Compliance Programs is part of the Employment Standards Administration of the U.S. Department of Labor. The Office ensures that contractors who do business each year with the federal government not only do not discriminate, but actively seek to hire, promote and retain all qualified workers without regards to race, sex (gender), color, religion, national origin, disability, Vietnam era, or disabled veteran's status.

EEOC/OFCCP Affirmative Action Plan Requirements Q&A (continued)

What is the definition of employee for Affirmative Action Plans?

In preparing a written Affirmative Action Plan, an employer looks at the individuals on their last payroll occurring before the beginning date of their new AAP plan year. The requirement to have an Affirmation Action Plan is based on the number of full-time employees. However, the OFCCP does not provide specifically guidance on the definition of a full-time employee. Whether or not an employee is considered full-time or part-time is based on the employer definitions of the classification.

How is the plan year defined?

The plan year is defined by when the program for Affirmative Action was instituted by the employer.

How is underutilization defined and used in an Affirmative Action Plan?

Underutilization is present in a job group if the number of women or minorities in a job group is less than what would be expected based on the availability percentage. Declaration of underutilization does not indicate that discrimination has occurred by the employer; instead it is a term used within Affirmative Action Plan document to enable company to apply good faith efforts to ensure equal opportunity.

Does the OFCCP audit employers for Affirmative Action Plan compliance?

The OFCCP typically audits employers required to have an Affirmative Action plan on a periodic basis usually not more frequently than every two years. However reports of discrimination or other complaints may trigger an audit. Audits are conducted as a "desk review" in which the OFCCP officer conducts analysis on material provided by the employer and "on-site investigation" in which the OFFCP officer conducts interviews with staff, observes practices and procedures on site. Additional information on audits can be found in the in the Federal Contracts Compliance Manual. (<http://www.dol.gov/ofccp/regs/compliance/fccm/fccmanul.htm>)

Resources

Federal Affirmative Action Plans

- Compliance Assistance <http://www.dol.gov/ofccp/regs/compliance/ofcccomp.htm>
- New Contractors Guide http://www.dol.gov/ofccp/TAguides/New_Contractors_Guide.pdf
- EEO Posters <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>

For assistance with state required affirmative action plans please visit the specific state's Department of Labor or EEOC website.

The information provided is not a substitute for legal advice where the facts and circumstances warrant. KPA recommends that users should always consult his or her own legal or other professional advisors and discuss the facts and circumstances that apply to the specific situation. HotlinkHR clients are automatically enrolled in a retainer with either Fine, Boggs & Perkins LLC or with Ford & Harrison LLC, and may consult them through the HR Advice Service included with HotlinkHR. The information provided through KPA webinars, resource guides, white papers or HotlinkHR Support ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS AND KPA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE INFORMATION PROVIDED.



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