

## ARE YOU COVERED BY AFFIRMATIVE ACTION REQUIREMENTS?

We generally talk about Affirmative Action requirements covering employers who have 50 or more employees, and a contract of \$50,000 or more with the Government or another Government contractor, or a financial institution that issues and pays savings bonds. However, there are a number of circumstances under which companies in different industries are covered for Executive Order 11246 and some that don't qualify for coverage. This information gives more details so you can determine whether or not your company is covered by Executive Order 11246 and must do a written Affirmative Action Plan.

Executive Order 11246 says a written plan must be developed by:

- a nonconstruction company that has 50 or more employees and a contract of \$50,000 or more with the government or another government contractor (subcontractor). Blanket purchase agreements will be aggregated to determine whether they meet the \$50,000 threshold, however, the period of aggregation is not limited to a 12-month period but to all transactions during the life of that contract. Once it's determined that a business is covered, all parts of that business are required to comply with the law. That means that OFCCP (Office of Federal Contract Compliance Programs) coverage can extend to businesses that do not directly hold a federal contract or subcontract, provided they are considered a "single entity" with a separately incorporated related business or organization that holds such a contract (e.g. parent-subsidiary corporate relationship). This is why subsidiaries with no government contracts must still do an AAP when another subsidiary falls under the jurisdiction. There is a five-factor test that is used by the OFCCP to decide whether a company will be considered a "single entity."
- Grants or cooperative agreements given by the government are not covered by this requirement. (However, OFCCP maintains the authority to review the agreement to determine if it meets the regulatory definition of a government contract.)
- Federal construction contractors are not required to develop a plan that is specific to that industry, but suppliers to construction contractors are covered under EO 11246 requirements.
- A financial institution that serves as a depository of federal funds in any amount, or serves as an issuing and paying agent for U.S. savings bonds, or subscribes to deposit insurance from the FDIC or NCUA, and has 50 or more employees are covered.
- OFCCP covers entities in State or local government that "participate" in work on or under a Government contract or subcontract.
- Hospitals that contract to provide services to federal employees are covered. They are not covered on the basis of receiving Medicare reimbursement.
- Property owners and managers who lease space to the government are covered. Building services companies are covered as subcontractors.
- Utility companies that provide services to the government are covered.
- Work done outside of the U.S. by employees who were recruited outside the U.S. is not covered.

Next time, we'll go over the requirements for coverage for a VEVRAA (Veteran) Plan and Section 503 (Disability) Plan, which are sometimes different than those for EO 11246.

OFCCP's jurisdiction is extensive and the details can be confusing. If you have questions, please feel free to contact Carol Reubel or Carolyn Potter at 513/679-4120 or Lori Hall at 614/538-9410.