

Employment Law

Affirmative Action

Overview

An Affirmative Action Plan (AAP) is a written document including goals and objectives which delineates the steps an employer will take to provide equal opportunity within its workforce. The three federal laws that require contractors to have written AAPs are Executive Order 11246, the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act.

The requirements for written affirmative action plans apply to contractors or subcontractors with annual federal contracts totaling \$50,000 or more and at least 50 employees. These contractors and subcontractors must create and implement AAPs annually. The plans consist of statistical analysis of the employer's "underutilization" of individuals from certain protected classes and include the steps that will be taken to improve their representation in the employer's workforce. Separate AAPs must be created for women, minorities, Vietnam era and disabled veterans, and disabled individuals. Although the plans must be written each year, they do not have to be filed with the Office of Federal Contract Compliance Programs (the agency that oversees the contracts) until an audit is conducted.

Equal employment opportunity laws such as Title VII of the Civil Rights Act and the Americans with Disabilities Act do not require employers to create written AAPs.

Frequently Asked Questions

Are all employers required to have a written affirmative action plan?

No. Only three federal laws require contractors to have written AAPs: Executive Order 11246, the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act. Although not required specifically by the law, since 1974, the Equal Employment Opportunity Commission (EEOC) has also encouraged other employers to create voluntary affirmative action plans if an analysis of their labor force shows a deficiency in the percentages of minorities, women, veterans, disabled or other groups historically discriminated against. Several states also have AAP requirements that apply primarily to state agencies.

What employers are covered by AAP requirements?

Applies to federal contractors and subcontractors with 50 or more employees or with contract exceeding \$50,000. All financial institutions with 50 or more employees that issue or act as the pay agent for U.S. Savings Bonds and Savings Notes in any amount must also have an AAP.

What are employer responsibilities under AAPs?

Requires covered employers to not discriminate in employment, but also to develop an affirmative action plan (AAP) that establish goals and timetables to achieve equal opportunity employment.

Affirmative action plans impose a duty on employers, employment agencies and labor unions to take steps to improve work opportunities. Separate AAPs must be created for women, minorities, Vietnam era and certain other veterans, disabled individuals or other groups previously discriminated against.

What must an AAP include?

Written affirmative action plans must include:

- Analysis of minorities, women, veterans, and disabled individuals in all major categories;
- Explanation of why these classes of individuals are underutilized;
- Goals and time tables to correct deficiencies; and
- Internal auditing and reporting systems to measure a plan's effectiveness.

How is an AAP developed?

The primary objective of an AAP is to clearly communicate that a company is an equal opportunity employer and to make certain that all human resource decisions are consistent with that message.

- Identify underutilization according to department and job categories that have fewer minority, women, veterans, or disabled persons than would reasonably be expected by other companies in the relevant labor market. The following information should be gathered from the local labor market (some of this can be obtained at the local Job Service or Department of Employment Security):
- The percentage of each of the above listed groups in the total population;
- The percentage of each group in the work force;
- The percentage of unemployment for each group;
- The availability of minorities, women, veterans or the disabled with the required skills; and
- The availability of promotable and transferable employees in each group within the employer's work force.
- Determine the cause for under utilization and create a written explanation for the discrepancy.
- Develop goals and timetables for increasing the percentage of women, minorities, veterans and the disabled in every job category in which they are underutilized. Develop both long-range goals and short-term benchmarks in reaching equal employment of women and minorities in "reasonable" relation to the overall labor-force participation of minorities and women.
- Develop and issue a written equal opportunity policy and affirmative action plan. The policy statement should be disseminated to employees by top management. The policy and plan should also be communicated externally to business partners and the public.
- Develop and implement specific programs to eliminate discriminatory barriers and achieve its goals. The barriers that need to be examined include recruiting and selection procedures, promotions and transfers, wage and salary structure, benefits, layoffs and recalls, discharges, and disciplinary actions.
- Develop supportive in-house and community programs such as supervisory training, personal counseling, transportation, day-care centers, and housing.
- Establish an internal audit and reporting system to monitor and evaluate progress in each aspect of the affirmative action program.

Developing an affirmative action plan can be time consuming and expensive. Companies realize that they spend a great deal of resources in order to develop, implement and maintain a plan, and some have chosen to outsource their AAP in order to reduce costs and increase compliancy.

How often should AAPs be updated?

Affirmative action plans should be updated every year. They are usually not audited by the Office of Federal Contracts and Compliance Programs (OFCCP) more than once every two years.

What federal agency monitors AAP compliance?

The Office of Federal Contracts and Compliance Programs (OFCCP) is the regulatory body responsible for monitoring compliance to affirmative action.

What happens if a company does not comply with its AAP?

The OFCCP may suspend, terminate, or cancel the employer's contract, and declare them ineligible to compete for future federal contracts for noncompliance with the order.

Are there any posting requirements associated with these laws?

Yes. Employers must display the poster "[Equal Employment Opportunity is the Law](#)" in a common location accessible by employees and job applicants.

Jurisdiction Specific Impact

Employers should consult all applicable state and local fair employment practice laws to determine if there are any additional requirements.

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