



WORKPLACE JUSTICE

ELIMINATING OFCCP WOULD HARM WORKING PEOPLE AND UNDERMINE EQUAL EMPLOYMENT OPPORTUNITY

The Trump Administration is proposing to eliminate the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor and reassign its functions to the Equal Employment Opportunity Commission (EEOC). This would be a grave mistake.

OFCCP and EEOC pursue distinct yet complementary missions. Whereas the EEOC seeks to remedy complaints of discrimination in employment, OFCCP oversees the employment practices of federal contractors who are required to proactively monitor workplace diversity and pay equity, to make a meaningful effort to recruit qualified applicants from groups who are underrepresented in their workplaces, and to break down barriers to equal opportunity for veterans and individuals with disabilities. As a result, the two agencies have developed different areas of expertise and use different enforcement approaches.

Federal contractors are appropriately held to especially high standards of workplace fairness given that they are entrusted with taxpayer dollars. Transferring OFCCP's extensive knowledge of the federal procurement process and responsibility for systemic review and analysis to the already resource-strapped EEOC is likely to result in a significant net reduction in federal investment in ensuring that federal contractors promote equal employment opportunity on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, disability or status as a protected veteran.

That is why there is strong bipartisan [opposition](#) to merging these agencies with both civil and workers' rights organizations as well as business groups such as the [Chamber](#)

of Commerce and SHRM voicing their concerns. When groups that are usually on opposite sides of policy issues agree that a proposal is fundamentally misguided, policymakers must pay attention to avoid disastrous results.

1. OFCCP enforces rights beyond those that the EEOC enforces and its staff possesses extensive training and expertise in the procurement process that EEOC staff does not have and would take years to develop.

- OFCCP enforces the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 ("VEVRAA"), and Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 ("Section 503"). In addition to protecting Vietnam Veterans from discrimination, VEVRAA and its implementing regulations require federal contractors to take affirmative steps to recruit, train and promote qualified veterans and provide disabled veterans with reasonable accommodations to do their jobs. And Section 503's implementing regulations require contractors to invite applicants and employees to voluntarily self-identify as individuals with a disability, and establish a seven percent utilization goal for qualified individuals with a disability. By contrast, the EEOC enforces no laws nor does it have expertise in these particular areas.
- OFCCP enforces explicit protections against discrimination based on sexual orientation and gender identity. Though the EEOC has recently interpreted the sex discrimination prohibition in Title VII of the Civil Rights Act of 1964 to cover discrimination based on sexual orientation and gender identity, ongoing litigation means that protection remains uncertain.
- OFCCP protects employees of federal contractors who inquire about compensation from discrimination. More specifically, it prohibits federal contractors and subcontractors from discharging or otherwise discriminating against their employees and job applicants for discussing, disclosing, or inquiring about compensation. The laws



that EEOC enforces do not provide the same absolute protection against discrimination for discussing compensation.

2. OFCCP does not just remedy individual instances of discrimination, but rather works with contractors to ensure that they meet higher standards of fairness and opportunity with regard to their employment practices.

- When companies are awarded federal contracts, they not only agree to refrain from discrimination based on protected classes, they agree also to take affirmative steps to promote employment opportunities for individuals who are members of certain underrepresented groups. OFCCP ensures that they use a broad set of tools to help attract and find diverse applicant pools and its regulations require federal contractors to regularly review their hiring, pay and promotion practices to promote workplace diversity and pay equity. The EEOC enforces no such proactive requirement.¹
- While EEOC is a complaint-driven agency whose focus is on investigating and resolving specific charges alleging unlawful discrimination, OFCCP's primary role has always been to work with contractors to ensure that they voluntarily comply with federal EEO laws without the need for costly and disruptive litigation. OFCCP's website contains substantial technical and compliance assistance for federal contractors, and the agency provides webinars, training programs, and numerous opportunities for contractors to obtain individual compliance assistance, including a toll-free help line. Even after OFCCP finds that violations have occurred, it resolves the vast majority of its cases without resorting to litigation. For example, OFCCP filed lawsuits in only four of the 51 cases it settled for monetary relief in FY 2016 and FY 2017 to date; the rest were resolved through voluntary conciliation agreements.

3. OFCCP's primary mission, unlike that of the EEOC, is to undertake systemic compliance reviews, which identify hiring and wage discrimination.

- Through its comprehensive compliance reviews, OFCCP compares the composition of the pool of applicants for a contractor's open positions with the composition of the group who were hired, and the wages of employees of

one race, sex, or national origin with those of employees of other groups. If those comparisons indicate possible unlawful discrimination, OFCCP further examines the contractor's practices and works with the contractor to eliminate any discrimination identified.²

- By contrast, the EEOC's enforcement is almost entirely reliant on complaints and cannot request data about matters that are not raised by the charge. Because applicants and employees are unlikely to know the reason they weren't hired or how their wages were set, EEOC receives relatively few charges of hiring or wage discrimination.³
- OFCCP can also initiate targeted compliance reviews taking into account the prevalence of concerning practices, geography, time since most recent review, or other agency priorities.

4. In addition to seeing back-pay, benefits and wage adjustments. OFCCP has authority to debar contractors from future federal contracts, a powerful tool to urge compliance with the laws and regulations governing federal contract employment; the EEOC has no such authority.

5. Pursuant to longstanding working agreements, OFCCP and the EEOC already closely coordinate to avoid duplication of effort.

6. The EEOC does not have the capacity to absorb OFCCP's many unique functions.

- OFCCP currently has about 600 full-time equivalent employees, and they have responsibility to oversee approximately 25 percent of the civilian labor force. This is an extensive work-load that an already over-burdened EEOC does not have the capacity to absorb, especially in light of the draconian budget cuts contemplated by the Administration and Congress.
- The EEOC has a heavy workload and has been struggling with a significant backlog of cases in recent year. In fiscal year 2016, the EEOC received 91,503 charges and resolved 97,443 charges, but the backlog is still significant, with 73,508 cases unresolved. EEOC has been flat funded for over seven years and does not have the capacity to absorb OFCCP's distinct and important role.

1 Research has found that requiring contractors to pay more attention to their diversity and EEO performance pays off. In particular, employers who are federal contractors subject to these requirements have better records when it comes to diversity and compliance with equal employment opportunity laws than employers who are not federal contractors. Kurtulis (2012) (more women and minorities in higher skill jobs at federal contractors compared with non-contractors between 1973 and 2003); Dobbin & Kalev (2006) (OFCCP compliance reviews improved subsequent levels of workforce diversity); Leonard (1984) (employment of women and minorities higher for federal contractors).

2 For FY 2017 information about OFCCP findings, see: <https://www.dol.gov/ofccp/foia/foiareadingroom/index.html#F1>.

3 For EEOC charge statistics, see: <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.

