



**Redstone**  
Government Consulting

# **HR Survival Guide for Government Contractors**

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# Regulations Applicable to Government Contractors

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1. Executive Order 11246
2. Section 503 of the Rehabilitation Act of 1973
3. The Vietnam Era Veteran's Readjustment Assistance Act (VEVRAA) of 1974
4. The McNamara-O'Hara Service Contract Act (SCA)
5. The Davis Bacon and Related Acts
6. Executive Order 13627 – Anti Human Trafficking
7. Drug-Free Workplace Act of 1988



# OFCCP

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Mission Statement: At the Office of Federal Contract Compliance Programs (OFCCP), we protect workers, promote diversity and enforce the law. OFCCP holds those who do business with the federal government (contractors and subcontractors) responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discharging or otherwise discriminating against applicants or employees who inquire about, discuss or disclose their compensation or that of others, subject to certain limitations.

- **EO 11246**
- **Section 503 of the Rehabilitation Act of 1973, amended**
- **The Vietnam Era Veterans' Readjustment Assistance Act of 1974**

# What Does “Affirmative Action” Mean?

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- Affirmative action requires government contractors to take affirmative steps to develop programs, policies and procedures for proactively recruiting, hiring, training and promoting women, minorities, people with disabilities and veterans to ensure that all individuals have equal opportunities in employment.
- Although EEO and affirmative action are primarily matters of legal compliance, they do help create a workplace that is more supportive and diverse.



OFCCP	EO 11246	Section 503	VEVRAA
Prohibits discrimination and requires affirmative action for...	race, color, religion, sex or national origin	individuals with disabilities (IWDs)	protected veterans
Basic Requirement Threshold	Federal service and supply contracts and federally assisted construction contracts totaling more than \$10,000 (Note: Construction contracts have additional specifications.)	A contract of more than \$15,000	A service and supply contract or construction contract of \$150,000 or more.
Affirmative Action Plan Threshold	An aggregate sum of \$50,000 or more in supply and service contracts AND at least 50 employees	A contract of more than \$15,000 AND 50 or more employees	A service and supply contract or construction contract of \$150,000 or more AND 50 or more employees.

Highlights of Basic Requirements	EO 11246	Section 503	VEVRAA
Refrain from discrimination and take affirmative steps	X	X	X
Incorporation of EEO clause into contracts and subcontracts	X	X	X
Recordkeeping & Retention	X	X	X
Job postings must contain EEO Clause	X	X	X
Posting of notices	X	X	X
Provide OFCCP access to records and worksite/s	X	X	X
Uniform guidelines on selection criteria	X		
Annual Reporting			X
Providing Reasonable Accommodation		X	
List employment openings with ESDS			X

Highlights of Additional Requirements (AAP)	EO 11246	Section 503	VEVRAA
Annual Reporting	X		
Written Affirmative Action Plan	X		
AAP available to applicants and employees		X	X
Inviting voluntary Self ID pre and post offer		X	X
Annual Reporting	X		



# What is an Affirmative Action Plan?

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- An AAP outlines an organization's programs, policies and procedures for proactively recruiting, hiring, training and promoting women, minorities, people with disabilities and veterans to ensure that all individuals have equal opportunities in employment.
- An AAP is designed to evaluate the contractor's initiatives and strategies to achieve equal employment opportunities and includes a statistical analysis of the representation of women and minorities in the contractor's workforce, as compared with the general representation of individuals with similar skills in the relevant labor market.
- An AAP also provides a road map for management to correct problem areas and support recruitment goals.



Required Components of AAP	EO 11246	Section 503	VEVRAA
Organizational Profile (Organizational Display or Workforce Analysis)	X		
Job Group Analysis	X		
Placement of Incumbents into Job Groups	X		
Determining Availability to Incumbency	X		
Placement Goals	X		
Designation of Responsibility	X	X	X
Identification of Problem Areas	X		
Action-Oriented Programs	X		
Internal Audit and Reporting System	X	X	X
Compensation Analysis	X		

Required Components of AAP (continued)	EO 11246	Section 503	VEVRAA
Policy Statement		X	X
Review of Personnel Processes		X	X
Review of Physical and Mental Job Qualifications		X	X
Reasonable Accommodation Data		X	X
Harassment Procedures		X	X
External Dissemination of Policy, Outreach, Recruitment – Assessment and Documentation		X	X
Internal Dissemination of Policy		X	X
Training		X	X
Data Collection Analysis		X	X



Required Components of AAP (continued)	EO 11246	Section 503	VEVRAA
Utilization Goals		X	
Benchmarks for Hiring			X

# OFCCP Compliance Review Checklist

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- Have you designated responsibility?
- Are policy statements posted with confirmation of support of highest-level executive?
- Are your subcontractors and vendors aware you are an Affirmative Action Employer?
- Do your employment advertisements include appropriate EEO verbiage?
- Do you provide for alternate method of applying for a position?
- Are your open positions posted with the state Job Service Offices?
- Is your employee relations environment monitored?
- Is your community outreach documented?



# OFCCP Compliance Review Checklist

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- Are required postings accessible to employees and applicants?
- Is your recruitment process documented and followed by all hiring managers?
- Are applicants, hires, terminations, promotions, transfers tracked?
- Do you offer the opportunity for applicants and employees to self-identify?
- Have you maintained AAP-related records?
- Can you prove there is no adverse impact in your hiring process?
- Do you have a formal written plan with analysis, established goals and progress to goals?

# OFCCP Compliance Review Checklist

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- Have you provided training and reviewed goals with Executive Committee members and Department Heads?
- Have you completed annual EEO-1 and VETS reporting?
- Have you reviewed your job descriptions?
- Are you tracking accommodation requests and outcomes?
- Have you provided anti-harassment training?
- Have you analyzed your compensation?



# The McNamara-O'Hara Service Contract Act (aka Service Contract Labor Standards)

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SCA applies to every federal contract entered into by the US or the District of Columbia, "... the principal purpose of which is to furnish services in the US through the use of service employees." FAR 22.1003-1

Who is a service employee?

"...any person engaged in performance of contract, except employees who qualify for exemption as bona fide executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541)."

# SCA – Who Decides Applicability?

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- Contracting agencies have initial responsibility for determining whether SCA applies
  - Contractors should be on notice – know what to look for and when to ask questions!
- DOL has the authority for determination of SCA coverage
- Final rulings may be appealed to the Administrative Review Board (ARB)



# SCA – How Do You Know?

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- The SCA FAR Clauses should be in the Solicitation (FAR 52.222-41)
- Check your GSA Schedule!
  - GSA directed many contractors to include a matrix in their GSA schedule:
    - All SCA applicable labor categories
    - The SCA equivalent labor classification
    - The Wage Determination(s) upon which the “offered” prices are based

# SCA – Major Provisions

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- Wage Determinations specify the minimum wages and fringe benefits
- FLSA minimum wages for contracts of \$2,500 or less
- Record keeping and posting requirements
- Safety & Health



# SCA – Wage Determinations

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- Minimum rates of pay
- Fringe Benefits
  - Health & Welfare
  - Vacation vesting requirements
  - Holidays
  - Sick Leave
- Uniform allowance
- Hazard duty pay

# SCA – Classification of Employees

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Employees are classified based on the job descriptions listed in the SCA Directory of Occupations.

## The Directory of Service Contract Act Occupations

<https://www.dol.gov/whd/regs/compliance/wage/SCADirV5/SCADirectVers5.pdf>

It is **essential** that an employer have access to the job descriptions for the various classes of employees.

If a class of service employee is not listed, consider the Conformance Process.



# SCA – Keep Good Records and Provide Notifications

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- Basic records such as name, address and social security number of each employee must be maintained for three years from completion of the work. In addition, the following records must also be maintained for 3 years:
  - The correct work classification(s), wage rate(s) and fringe benefits provided (or cash equivalent payments provided in lieu of fringe benefits);
  - The total daily and weekly compensation of each employee;
  - The number of daily and weekly hours worked by each employee;
  - Any deductions, rebates or refunds from each employee's compensation;

# SCA – Keep Good Records and Provide Notifications

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- Any list of a predecessor contractor's employees which had been furnished showing employee's length of service information;
- A list of wages and fringe benefits for those classes of workers conformed to the wage determination attached to the contract;
- Provide notice to employees
- Flow down to subcontractors



# The Davis Bacon and Related Acts

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- Applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2000 for the construction, alteration, or repair of public buildings or public works
- Must pay laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, per the Wage Determination
- Employees must be paid no less often than weekly and payroll must be certified
- Compliance with Copeland “Anti-kickback” Act
- Contract Work Hours and Safety Standards Act applicable if contract amount is in excess of \$100,000

# Executive Order 13627 – Anti-Human Trafficking in Persons in Federal Contracts

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- Final rule amending the Federal Acquisition Regulation was issued to implement Executive Order 13627, “Strengthening Protections Against Trafficking in Persons in Federal Contracts” and Title XVII of the National Defense Authorization Act
- New rule effective March 2, 2015 applies to contracts performed domestically, as well as those involving international performance
- Applies to Government Contractors with Contracts in excess of \$2,000



# FAR 52.222-50(b)

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Per FAR 52.222-50(b), Contractors, Subcontractors and their agents are prohibited from:

- Engaging in severe forms of trafficking in persons during the period of performance of the contract
- Procuring commercial sex acts
- Using forced labor
- Destroying, concealing, confiscating or otherwise denying access to the employee's identity or immigration documents

## FAR 52.222-50(b)

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- Using misleading or fraudulent practices when recruiting employees or offering employment
- Charging employee recruitment fees
- Failing to provide return transportation or pay for the cost of return transportation upon the end of employment for Non-US citizens
- Providing or arranging housing that fails to meet the host country housing and safety standards
- Failing to provide an employment contract, recruitment agreement or other require work document in writing



# Compliance Plan and Certifications

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- Policy in place and communicated to employees
- Notify contracting agency of any credible information received
- Compliance plan maintained and annual certification required if contract for services to be performed or supplies to be acquired, other than COTS, outside the US with estimated value of contract in excess of \$5000,000

# Drug-Free Workplace Act of 1988

## 48 CFR 52.223-6/FAR 23.506

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Applies to organizations that have contracts with the federal government in excess of the simplified acquisition threshold, and all organizations that receive federal grants, regardless of size.

- Prepare and distribute a formal drug-free workplace policy statement
- Establish a drug-free awareness program
- Ensure all employees understand their own reporting obligations
- Must notify federal contracting agency within 10 days, of a covered employee's criminal drug violation conviction
- Must take direct action against an employee for a workplace drug violation conviction
- Continue to make ever effort to meet the requirements of the Drug-Free Workplace Act



# Need Help?

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