OFCCP Eases Requirements for Contracts to Provide California Wildfire Relief

November 21, 2018

On November 20, 2018, the U.S. Department of Labor (DOL) announced plans to assist those affected by the California wildfires. The DOL’s actions include relief efforts by a number of agencies. In terms of federal contractors, the Office of Federal Contract Compliance Programs (OFCCP) temporarily suspended certain requirements, “allowing businesses involved in wildfire relief the ability to prioritize recovery efforts.”

In a national interest exemption memorandum to all contracting agencies of the federal government, Acting Director Craig Leen cited the “special circumstances in the national interest presented by the destruction caused by California Wildfires” as the reason behind the institution of a limited exemption and waiver from some of the requirements of the laws administered by OFCCP. The memorandum applies to new supply and service and construction contracts entered into between November 19, 2018, and February 19, 2019, specifically to provide California wildfire relief.

In particular, OFCCP granted an exemption and waiver of the requirement to develop written affirmative action programs. According to the memorandum, federal contracting agencies may use specified equal employment opportunity (EEO) clauses in covered contracts to provide California wildfire relief. Thus, relevant contractors may modify the EEO clauses in Federal Acquisition Regulation (FAR) sections as follows:

At the end of 52.222-26:

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the written affirmative action program required under the regulations implementing EO 11246.

At the end of 52.222-35:

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the written affirmative action program required under the regulations implementing VEVRAA.

At the end of 52.222-36:

Notwithstanding the provisions of this section, the contractor will not be obligated to develop the written affirmative action program required under the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended.
The memorandum also states that “[f]ederal supply & service and construction contractors will continue to be subject to the nondiscrimination requirements” of the three laws OFCCP enforces—Executive Order (EO) 11246, as amended; Section 503 of the Rehabilitation Act, as amended; and Section 4212 of the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA), as amended. The memorandum also states that contractors must still comply with three FAR requirements:

1. Posting the “Equal Opportunity is the Law” notice under EO 11246, Section 503, and VEVRAA
2. Recordkeeping and record retention requirements under EO 11246, Section 503, and VEVRAA
3. VEVRAA’s requirement regarding employment listings with the appropriate employment service delivery system

Acting Director Leen granted the exemption and waiver for three months—from November 19, 2018 to February 19, 2019. According to the memorandum, OFCCP may extend the exemption and waiver if “special circumstances in the national interest so require.”

OFCCP also issued frequently asked questions on the California wildfire national interest exemption.