

LEGAL UPDATES

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Services

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Labor & Employment
OFCCP Compliance

Workplace Diversity,
Equity, & Inclusion

Professional

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OFCCP Investigates Companies for Diversity Hiring Plans

Earlier this month, the Wall Street Journal reported that the Department of Labor Office of Federal Contract Compliance Programs (OFCCP) launched probes of two large companies, challenging their diversity initiatives to increase the number of Black individuals in leadership positions.

In June 2020, the companies under investigation each announced a plan to “double” the number of Black individuals in leadership positions over a period of 5 years. One company blog post indicated that their initiative sought to address racial injustice and inequity. Similarly, the second company characterized its plan as part of its goal of becoming a more “diverse and inclusive company.” Statements purportedly made by the OFCCP indicate that the agency interprets such pledges as implying that the employment actions are being taken on the “basis of race.” The agency has opened inquiries into the companies’ employment practices under Executive Order 11246, admonishing the companies that numerical commitments may violate Title VII and that quotas are prohibited.

OFCCP has consistently encouraged contractors’ efforts to recruit minorities and women into their ranks so that the composition of a contractor’s workforce reflects, over time, the composition of qualified workers in the relevant labor market from which applicants are recruited and selected. OFCCP has also consistently held that hiring quotas, rather than recruiting goals, are illegal employment discrimination in violation of Title VII and Executive Order 11246.

The current investigations are a reminder to avoid applying affirmative action programs and/or diversity goals in a way that could be considered preferential hiring. We stand behind our clients in their efforts to continue to promote diversity in compliance with U.S. employment laws.

Contact us

If you have questions about your obligations as a federal government contractor or about implementing diversity and inclusion programs in light of recent events, contact Molly Kurt, Sonni Nolan or your Husch Blackwell attorney.

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