

\$40 Million In Employment Discrimination Settlements For Department Of Labor Watchdog In FY2019

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Fiscal Year 2019 was a record-setting year for the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). OFCCP's mission is to ensure nondiscrimination and equal opportunity employment by federal contractors and subcontractors, who are prohibited from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

2019 was OFCCP's most successful for both compliance assistance and enforcement. Enforcement proceedings resulted in \$40,569,816 in monetary settlements, over \$16 million more than FY 2017, the next-highest year.

OFCCP's FY 2019 success was in part because of the newly implemented Early Resolutions Procedures program (ERP). OFCCP created the ERP to conserve OFCCP and contractor resources and encourage settlement early in the review process. The ERP works to ensure corporation-wide compliance with nondiscrimination regulations. Through the ERP, a contractor with multiple establishments can work with OFCCP to resolve noncompliance issues with an Early Resolution Conciliation Agreement (ERCA). Under an ERCA, a contractor agrees to resolve noncompliance corporation-wide, rather than just at the single location under audit.

Further, through the ERP, contractors are required to submit corporate-wide reports to OFCCP for five years after settlement, ensuring continued compliance. After settlement, corporations are exempt from additional evaluations for five years. This year, the ERP has led to various, significant corporate-wide settlements between contractors and OFCCP.

The largest FY 2019 settlements through the ERP include:

- \$4.2 million with Bank of America

The Bank of America settlement resolved alleged race and gender-based hiring discrimination violations at locations across the country and includes back wages and interest. Under the

agreement, the bank will monitor hiring practices around the country and hire a consultant to assess its hiring practices for five years.

- \$7 million with Dell Technologies

The Dell settlement resolved alleged race and gender-based wage discrimination and includes lost wages, interest, and benefits. The corporation also agreed to assure that all employees are given equal employment opportunities.

- \$9.995 million with Goldman Sachs & Co. LLC

The Goldman Sachs settlement resolved findings of race and gender-based wage discrimination. The corporation agreed to pay make-whole relief including back pay and interest to roughly 600 workers in its New York City headquarters and revise its current affirmative action programs.

In October 2019, OFCCP reached a \$5 million settlement with Intel Corp. through the ERP.

At the beginning of FY 2020, OFCCP reached a large settlement with Intel Corp. through the ERP. The settlement resolved alleged systemic race and gender-based pay discrimination in Arizona, California, and Oregon. The corporation agreed to pay \$3.5 million in back pay and interest and at least \$1.5 million over the next five years for pay-equity adjustments for U.S. employees in engineering positions. According to OFCCP Regional Director Jane Suhr, Intel is one of the first corporations to agree to take multiple active steps to guarantee pay equity.

What can corporations do to avoid noncompliance penalties from OFCCP?

To avoid noncompliance penalties from OFCCP, corporations must avoid intentional or unintentional discrimination in hiring, wages, and opportunity. To ensure compliance, corporations should:

- Review hiring and application data to confirm that no group is disproportionately left out or disadvantaged at any point;
- Ensure that employees responsible for hiring apply hiring criteria [equally to all groups](#) throughout the process;
- Evaluate compensation guidelines to avoid [wage discrimination](#);
- Examine access to opportunities related to compensation, including training, [promotions](#), and assignments to assess whether any groups are not afforded the same opportunities as others; and
- Visit OFCCP's Contractor Assistance Portal, an online help desk with questions.

Government contractors should be vigilant to avoid discrimination at federal contracting sites, evaluating compliance at all establishments regularly. If discrimination exists at one site, it likely

exists at others. As established by OFCCP's FY 2019 record year and its strong start for FY 2020, contractors are on notice that noncompliance can lead to hefty settlements and financial penalties.

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