

Major Changes in Affirmative Action Requirements for Federal Contractors

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On January 21, President Trump signed an executive order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (the Order), revoking Executive Order 11246, the long-standing order that required federal contractors to engage in affirmative action, including by annually developing Affirmative Action Plans (AAP’s) concerning women and minorities. The Order further mandates that the Office of Federal Contract Compliance (OFCCP) immediately cease promoting diversity, investigating federal contractors for affirmative action compliance, and allowing or encouraging federal contractors to engage in workforce balancing.

Below are several key points that manufacturers who are federal contractors need to know:

- Federal contractors are no longer required to create an AAP about women and minorities. However, this Order does not impact the affirmative action obligations stemming from the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) for protected veterans or the obligations under Section 503 of the Rehabilitation Act of 1973 for individuals with disabilities. Further, this Order does not absolve contractors of any obligations they may have under state law if they are also state contractors or any other applicable legal obligations.
- The Order prohibits federal contractors from considering “race, color, sex, sexual preference, religion, or national origin in their employment, procurement or contracting practices in ways that violate the [n]ation’s civil rights laws.” Additionally, the Order states that federal contract recipients will be required to certify that they do not operate diversity, equity, and inclusion (DEI) programs “that violate any applicable Federal anti-discrimination laws.” Importantly, this does not wholly prohibit employers from having DEI-related policies and practices; rather, it prohibits only those that could be found to violate anti-discrimination laws, such as race-based quotas.
- The Order provides contractors with a 90-day grace period during which they *may* continue to comply with the original regulations. Contractors should use that time to audit their policies and practices under attorney-client privilege to evaluate compliance with this order.

In addition, manufacturers that are not federal contractors may also be impacted by this Order. The Order scrutinizes DEI efforts in the private sector and requires federal agencies to, among other things, report a list of large corporations and organizations that should be subject to civil compliance investigations based on unlawful DEI programs. Accordingly, manufacturers may also want to consult

with legal counsel about their DEI initiatives to ensure they are lawful.

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