

## **Plan/Prevent/Protect: "Affirmative Action for Everybody!"**

By Robin E. Shea on October 25, 2010



The U.S. Department of Labor is planning to impose new “affirmative action” requirements on employers, requiring them to develop “plans” to address workplace safety, equal employment opportunity, and wage and hour/employee classification issues.

For the most part, these requirements – called [“Plan/Prevent/Protect”](#) – will not be limited to federal contractors but, rather, will apply to all employers covered by the relevant laws.

The proposed changes are dramatic, and shift from what the DOL calls “catch me if you can” (in other words, employer is presumed compliant unless the government is given reason to believe otherwise) to “Plan/Prevent/Protect” (in other words, employer is presumed guilty unless it can prove otherwise). “[E]mployers and other regulated entities will be asked to assemble plans, create processes, and designate people charged with achieving compliance,” says the DOL, and “*compliance will be non-negotiable . . .*” (Emphasis added.)

**The “Plan” component** will require employers to enlist employees in “identifying and remediating risks of legal violations and other risks to workers.” The plans must be made available to the workers “so they can fully understand them and help to monitor their implementation.”

**The “Prevent” component** will require employers to “thoroughly and completely implement the plan in a manner that prevents legal violations. . . . The employer . . . cannot draft a plan and then put it on a shelf. The plan must be fully implemented . . . .”

**The “Protect” component** will require employers to ensure “that the plan’s objectives are met on a regular basis. Just any plan will not do. The plan must actually protect workers from violations of their workplace rights.”

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In the context of compliance with the Fair Labor Standards Act, Plan/Prevent/Protect will require that employers provide information to employees about how their pay is calculated, and prepare a "classification analysis" with respect to any job that it treats as FLSA-exempt. Of course, the analysis will have to be made available to the employees and the government. The DOL will issue proposed regulations on Plan/Prevent/Protect at some unspecified point in the future.

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