

OFCCP Mid-Atlantic Region Issues Scheduling Letters

By Adam Santucci

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This post was contributed by Rick L. Etter, Esq. of McNees Wallace & Nurick LLC's Labor and Employment Group.

The Office of Federal Contract Compliance Programs (OFCCP) recently issued scheduling letters from its offices throughout the Mid-Atlantic Region. The OFCCP sends a scheduling letter to notify a government contractor or subcontractor that a particular establishment has been selected for a compliance evaluation. In response to the scheduling letter, the contractor or subcontractor must submit its written Affirmative Action Program (AAP) along with supporting information, including detailed data on compensation, hiring, promotion, and termination decisions. A sample scheduling letter can be [viewed here \(pdf\)](#).

Make no mistake, an OFCCP scheduling letter should be treated in the same manner as a class action lawsuit because that is exactly what it is. A quick review of the OFCCP's recent press releases highlights the agency's focus on pursuing high-dollar awards from entry-level failure to hire cases. The OFCCP uses the information obtained from the scheduling letter to identify personnel decisions that cannot be supported by documentation and then relies on statistics to establish systemic discrimination. For this reason, you should perform your own statistical analyses prior to submitting your response to the OFCCP. More importantly, we strongly recommend that such statistical analyses be coordinated by counsel and protected by the attorney-client privilege. While there are a number of vendors and consultants who offer compliance review support as part of their AAP services, their work is not protected by the attorney-client privilege and is therefore discoverable by plaintiff's attorneys and may be available to the public under the Freedom of Information Act (FOIA).

McNees Wallace & Nurick can guide you through the OFCCP's compliance evaluation. If you receive a scheduling letter, you should immediately contact Rick Etter or Schaun Henry because you have only 30 days to submit your response.

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