

Federal Agency Reviews University Affirmative Action Program

Affirmative action duties in employment, a common topic in the workplace in recent years, can be traced back to 1965 when then-President Lyndon Johnson issued Executive Order 11246, entitled “Equal Opportunity of Federal Employment.” The Order remains in effect today, though it has been amended several times. Simply stated, it prohibits discrimination in employment by most federal contractors, including colleges and universities, and requires these contractor-employers to establish and carry out a program of affirmative action to benefit females and racial minorities.

The second duty created by the Order, affirmative action, goes beyond simple employment neutrality and nondiscrimination. It requires a contractor-employer to engage in initiatives to recruit, employ, promote, and retain qualified females and minorities. Those initiatives and efforts are to be incorporated into a written affirmative action plan (AAP), along with a statistical analysis of an employer’s workforce to determine whether its employment of protected group members is generally consistent with their availability within the relevant labor pool. This analysis, referred to as a “utilization” analysis, may require the employer to establish placement goals to increase the presence of protected group members in one or more of the job classifications in its workforce. An employer’s pool of actual applicants, hires, promotions, and terminations, as well as its compensation practices and data, must also be reviewed to insure that no adverse impact on females and minorities exists. An employer’s AAP, and the analyses included therein, must be updated and disseminated to both internal and external audiences annually.

Additional affirmative action duties are imposed on federal contractors by the Vietnam Era Veteran’s Readjustment Act of 1974 (VEVRA) with respect to several categories of “covered veterans” (disabled veterans, Armed Forces service medal veterans, recently separated veterans, and veterans who served during a war or in a campaign for which a campaign badge has been authorized). Furthermore, section 503 of the Rehabilitation Act of 1973 mandates affirmative action measures by a contractor-employer to benefit individuals with a disability. An employer’s AAP must address its obligations under VEVRA and section 503.

The federal agency charged with the responsibility of enforcing the Executive Order, by delegation by the Secretary of Labor, is the Office of Federal Contract Compliance Programs (OFCCP). One of the methods utilized by OFCCP is a compliance review or audit of a contractor-employer’s affirmative action documentation and practices. The University was reviewed previously by the OFCCP - in 1986, 1987, and 1989. No instances of non-compliance were found in the 1986 and 1989, and only minor issues were identified in 1987.

In July of last year, the OFCCP notified President Altenkirch that it would again conduct an audit of the University’s compliance with a contractor’s obligations under Executive Order 11246, VEVRA, and section 503. The review was carried out as a “desk audit,” with the University submitting to the OFCCP its AAP and various other documents (handbooks, job vacancy advertisements, compensation policies, maternity leave policies, etc.). Explanations were requested and provided regarding applicants not hired for particular jobs, for salary

differentials in similar positions, for certain terminations, for disability accommodation requests, and other matters. After submission of this information, follow-up queries were received from the OFCCP and a response provided. The UAH response team was led by Delois Smith and included representatives from the Provost's office, the Human Resources Office, and the Office of Counsel.

In March of this year, the OFCCP notified President Altenkirch that only a single problem area had been identified in the audit. Though an alternative method of applying for a job at UAH, other than by completing and submitting an application online, has been available to and used by disabled applicants, notice about such an alternative had not been sufficiently publicized. This issue was characterized by the OFCCP auditor as a "technical" violation. President Altenkirch immediately directed that notice of the alternative be posted both online and in other ways as a means of bringing this accommodation to the attention of disabled applicants. This and related remedial measures (*e.g.*, implementing a system for monitoring the effectiveness of the University's application process for disabled individuals) were quickly put into effect, and the OFCCP was notified in early April that the actions required of the University have been completed. The University is presently awaiting final correspondence from the OFCCP indicating that compliance review has been concluded.

The University has attempted for many years to carry out a commitment to enhance the diversity of its staff and faculty employee groups. While improvements can always be made, the generally favorable results of this OFCCP audit are certainly an indicator of the sufficiency of the University's affirmative action program and efforts.