

Nine Affirmative Action Missteps to Avoid

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Who We Are



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At Vigilant, we counsel companies on complex employment issues, including affirmative action, across the Northwest and California

*The information presented here is not intended to be legal advice.
Karen is a member of the Oregon State Bar.*

The Nine Missteps to Avoid

- #9: Missing applicant notices
- #8: Outdated contract notices
- #7: Outdated veteran categories
- #6: Failure to state basic qualifications
- #5: Lack of outreach
- #4: Failure to monitor placement firm
- #3: Generic job titles
- #2: Poor applicant disposition reasons
- #1: Inaccurate data



Introduction

- Supply/service vs. construction
- Employer coverage
 - 50 employees and
 - \$50,000 (\$150,000 for vets)
- Enforced by OFCCP



#9: Missing applicant notices

- “EEO is the Law” poster and OFCCP supplement
- Disability accommodation invitation
- EEO tagline
- Pay transparency notice

“EEO is the Law” poster link

- We are committed to equal employment opportunity. For background, see the government posters, “[Equal Employment Opportunity is the Law](#)” and its accompanying [supplement](#).
- http://www.eeoc.gov/employers/upload/poster_screen_reader_optimized.pdf
- http://www.dol.gov/ofccp/regs/compliance/posters/pdf/OFCCP_EEO_Supplement_Final_JRF_QA_508c.pdf

Disability accommodation invitation



- If you have a disability and need a reasonable accommodation during the hiring process, please contact our Human Resources department by phone at XXX-XXX-XXXX or email at HR@OurCompany.com

EEO tagline on job ads

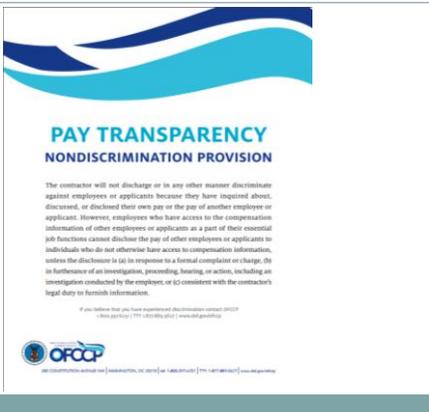


- Option #1: Equal opportunity employer, including vets and disabilities.
- Option #2: All qualified applicants will receive consideration for employment without regard to race/ethnicity, color, religion, sex, sexual orientation, gender identity, national origin, disability, protected veteran status, age, or any other status protected by law.

Pay transparency notice to applicants



- Option 1: “[Company Name] will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor’s legal duty to furnish information.”
- Option 2: For information on pay transparency nondiscrimination, see [this poster](http://www.dol.gov/ofccp/pdf/PayTransparencyNotice_JRFOA508c.pdf) from the federal government. (http://www.dol.gov/ofccp/pdf/PayTransparencyNotice_JRFOA508c.pdf)



**PAY TRANSPARENCY
NONDISCRIMINATION PROVISION**

The contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is in response to a formal complaint or charge, file in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

If you believe that you have experienced discrimination contact OFCCP
1-800-368-1070 | TTY: 1-800-845-6101 | www.ofccp.gov



OFCCP
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS



#8: Outdated contract notices

- Gender identity and sexual orientation
- Disability and vets should be in bold
- NLRA rights (if applicable)
- E-Verify obligations (if applicable)
- Whistleblower rights (DoD/NASA)
- Arbitration (DoD \$1 million)

Equal Employment Opportunity

- This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

Notice of Employee Rights under the National Labor Relations Act

- The provisions of 29 CFR Part 471, Appendix A to Subpart A (relating to the obligation to post a notice of employee rights under the National Labor Relations Act and to notify covered subcontractors of their obligation to do so) are incorporated by reference in this contract.

Employment Eligibility Verification (E-Verify)

- If this contract is covered by Executive Order 12989, then the Employment Eligibility Verification Clause required under Executive Order 12989 and the related Federal Acquisition Regulations (48 CFR 22.1800 et seq. and 52.222-54) are incorporated by reference.

Requirement to Inform Employees of Whistleblower Rights

- If this is a contract or subcontract for the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA), then according to 10 USC 2409, as described in Subpart 203.9 of the Defense Federal Acquisition Regulation Supplement, you must inform your employees in writing of their federal whistleblower rights and remedies in the predominant native language of the workforce.

Restrictions on the Use of Mandatory Arbitration Agreements for Defense Contractors

You agree not to:

- (1) Enter into any agreement with any of your employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration--
 - (i) Any claim under title VII of the Civil Rights Act of 1964; or
 - (ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or
- (2) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration--
 - (i) Any claim under title VII of the Civil Rights Act of 1964; or
 - (ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.



#7: Outdated veteran categories

- Disabled
- Active duty wartime or campaign badge
- Armed Forces Service Medal
- Recently separated

Active duty wartime or campaign badge

- Served **during** period of war:
 - **Korean Conflict:** June 27, 1950 – January 31, 1955
 - **Vietnam Era:** February 28, 1961 – May 7, 1975 for veterans serving in the Republic of Vietnam or August 5, 1964 – May 7, 1975 for all others
 - **Persian Gulf War:** August 2, 1990 – current
- Or in a campaign or expedition

Internet applicant examples



- Job: Journey-level Electrician.
- Basic qualifications: Electrician license & 5 years' experience as journey-level electrician.
- Rio: License? **Expired**. Experience? **10 years**.
- Micah: License? **Yes**. Experience? **2 years**.
- Barrett: License? **Yes**. Experience? **6 years**.
- Sam: License? **Yes**. Experience? **8 years**. **Declined interview; took another job.**



#5: Lack of outreach



- List jobs with state
- Notify state of contact info
- Establish relationships with outreach groups

Listing jobs with state



- All jobs on your payroll except jobs lasting 3 days or less, jobs filled internally, or jobs for executives and top management
- Review postings
 - EEO notices included?
 - Ability to download copy?

Notify state of contact info

- Federal contractor status and request for priority referrals of protected veterans
- Name and location of each hiring location within the state
- Contact information for the contractor official responsible for hiring at each location
- Any external job search organizations used to assist in hiring

Document outreach

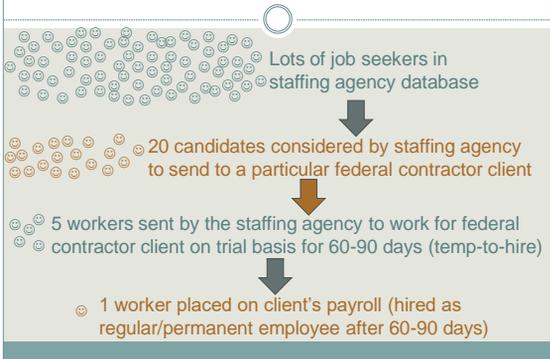
Date	Organization	Activity	Notes/Next Steps
1/19/16	Wash. Voc Rehab	3:30 p.m. Emailed John Evans	John replied via email 1/20; I described our jobs and he explained how he can help get the word out to qualified candidates with disabilities. I will email all future job postings to him.
1/21/16	U.S. Dept. of Veterans Affairs, Voc Rehab, for Wash.	10-10:30 a.m. phone call with Chip Kormas	Chip says he uses our state job listings to help qualified disabled veterans connect with us. He gave me names of two other resources to reach out to. I will contact each by end of January.



#4: Failing to monitor placement firm

- Gathering self-ID data
- Identifying candidates considered for sending to client

Staffing agency consideration stages





#3: Generic job titles

- Lead role
- Level of expertise
- Special skills
- Consistent pay

Job title examples

Job title	How useful?
Associate	Not at all
Engineer	A little better
Senior engineer	Better
Senior mechanical engineer	Even better
Senior mechanical engineer (cert. geometric dimensioning and tolerancing)	Best



#2: Poor applicant disposition reasons

- Need to be able to justify rejections
- Document stage and reason
- Standalone reason (noncomparative)
- Use notes for backup

Applicant disposition examples

Disposition reason	How useful?
Not as qualified as other applicants	Not at all
Application stage – job hopper	Okay
Application stage – job hopper (<1 year in any)	Better
Interview stage – poor answers	Not at all
Interview stage – vague answers	Okay
Interview stage – vague about reasons for leaving past jobs	Better



#1: Inaccurate data

- Applicants (date and job applied for)
- Temp-to-hire applicants
- Employee pay rates
- Job titles
- Promotions and transfers
- Hires, terminations, and roster

Inaccurate data: Applicants



- Date and job applied for
- Risks of “any job” applications
- What if someone applies for one job but is considered for a different job?

Inaccurate data: Promotions & transfers



- Need historical data (starting job)
- Capture all movement

Inaccurate data: Hires, terms, & roster



- Starting point: Roster from last year
- Plus hires
- Minus terminations
- Should equal new roster

The AAP should tell the story of what happened with each employee during the year

Take action to avoid these missteps!

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Questions?

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