

## Insights: Alerts

# DOL Increases Focus on Employment Discrimination and Levies Financial Penalties for Federal Government Contractors

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In recent months, the U.S. Department of Labor (“DOL”) has increased its focus on and enforcement of anti-discrimination laws among federal government contractors, announcing large penalties against federal government contractors for alleged employment discrimination.

On October 31, 2023, the Department of Labor (“DOL”) penalized Boeing Distribution Services Inc. (“Boeing”), a global distributor of inventory solutions for aerospace equipment manufacturers holding contracts with several federal agencies and National Office Furniture, a subsidiary of Kimball International Inc., a combined total of \$635,000 for alleged hiring discrimination after they passed over minority and female job applicants for openings. The alleged hiring disparities were revealed during compliance reviews by the Office of Federal Contract Compliance Programs (“OFCCP”). In both instances, the OFCCP alleged that the companies discriminated against job applicants, violating Executive Order 11246, which prohibits federal contractors from engaging in employment discrimination. Consequently, the DOL and the employers entered into conciliation agreements whereby the employers agreed to pay back wages and interest to over 300 impacted applicants. These penalties were among 12 other conciliation agreements announced by the DOL and the OFCCP in October 2023, all stemming from hiring and compensation disparities.

Under the terms of the agreements, both companies must maintain a selection process, personnel practices, and hiring policies free from discrimination. The financial penalties and conditions outlined in the agreements serve as a warning that the DOL is now taking a more assertive approach toward its enforcement efforts.

Importantly, a review of OFCCP records shows an increase in conciliation agreements that include financial penalties over the past year. For example, Pitney Bowes agreed to pay \$1.6 million in back wages and interest to 468 affected job applicants, resulting in one of the most significant financial penalties to date. The DOL also announced a conciliation agreement with federal contractor Olin Corporation, resulting in more than \$630,000 in back wages and interest to be paid to roughly 300 applicants. In total, the DOL announced \$6.9 million in penalties in just October 2023 alone.

Aida Collins, the Southeast Regional Director of OFCCP, emphasizes that the DOL is committed to resolving discrimination issues and ensuring equal opportunity. Federal contractors, unlike private employers, are required to enhance their diversity in hiring. To meet this requirement, they must create affirmative action plans annually and fulfill various data collection and recordkeeping obligations. During its yearly compliance reviews, the OFCCP concentrates on these data collection and recordkeeping requirements. The agency looks for statistical disparities in hiring rates based on race and gender to ensure equal hiring opportunities.

## Takeaways

Federal contractors must adopt and maintain specific practices and procedures to avoid costly penalties from the DOL. In light of the DOL's increased enforcement of OFCCP compliance, federal contractors should consider taking the following actions to avoid penalties for hiring discrimination:

- Reviewing affirmative action plans;
- Carefully tracking the data collected during the hiring application process to ensure the records reflect why each applicant was selected;
- Training every person involved in the hiring process, such as human resources officers and recruiters; and
- Engaging in hiring practices that are unbiased towards any race or gender.

Knowledgeable counsel can help guide your organization through this changing enforcement landscape. Kilpatrick's Government Contracting and Labor & Employment groups can assist in evaluating your enforcement risks and help defend any action. Please reach out to any of the authors or your usual Kilpatrick contact with any questions.

## Related People

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