



**Get Ready for 2024:**

**OFCCP Update & DEI Compliance Strategies**

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**PART I: OFCCP Update**



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**FY 2023 OFCCP Highlights**



- » Overhaul of Predetermination Notice Rule
- » Renewed focus on Construction Reviews
- » Expanded Scheduling Letter for Supply & Service Compliance Reviews
- » Continued Focus on Compensation



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**PDN Rule Gutted** 

- No longer requires OFCCP to include a discussion of the qualitative and quantitative evidence that supports the alleged violations
- No longer requires OFCCP to demonstrate that the alleged disparity is practically significant
- District and Regional Offices are no longer required to obtain the Director's approval before issuing a PDN or an NOV
- Contractors have only 5, instead of 30, calendar days to respond. Extensions will be granted for good cause only
- OFCCP may issue a SCN without first issuing a PDN or an NOV
- OFCCP may identify additional violations in a subsequent NOV or SCN without issuing an amended PDN



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**So Many Scheduling Lists** 

- » FY 2023
  - » OFCCP Issued 4 Scheduling Lists
    - » 2 Supply & Service\*
    - » 1 Construction
    - » 1 Mega Construction
- » FY 2024 to Date
  - » OFCCP has Issued one Mega Construction List
    - » Includes 12 sites

\* FY 2023 Supply & Service Release 2 = New Scheduling Letter



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**Biggest Change in 2023?**

**The New Scheduling Letter**



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### New Expanded Scheduling Letter – Plan Ahead

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- » Increased focus on **documentation** demonstrating
  - » Development, execution, and assessment of action-oriented programs under all three laws
  - » Where individual groups are underutilized, documentation of steps taken to determine whether and where impediments equal employment opportunity exist
  - » Documentation of outreach and recruiting efforts and assessment of those efforts
  - » Assessment of personnel processes, policies, and relevant trainings



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### Additional Support Data Required

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- » Documentation of promotion policies and practices, EEO policies (two years), AI tools, reasonable accommodations requested and provided
- » Prior year promotion data
- » Assessment of personnel process
- » Documentation related to AI tools



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### Compensation

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- » Description of compensation process
- » **Two** snapshots of compensation for:
  - » W-2 employees
  - » Contract employees
  - » Per diem employees
  - » Temporary workers
- » **Compensation Assessment**



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**Compensation Assessment: 41 CFR 60-2.17(b)(3)**

- » 41 CFR 60-2.17(b)(3) requires that Contractors annually perform some type of pay assessment.
  - » Contractor may choose the method of assessment.
  - » Document the assessment and steps taken to address any identified pay disparities.
  - » Consider using simple techniques such as cohort review and average pay ratio review.
- » Compile policies and procedures related to compensation and performance appraisal processes.
- » When suggesting SSEGs and control factors, be prepared to provide documentation to support contractor's position.

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**Tips for Being Audit Ready in 30 Days**



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**Immediate Steps Contractors Can Take Now to be Audit Ready**



- » Meaningfully tailoring the generic narratives provided by AAP vendors to tell the contractor's compliance story.
- » Develop a protocol for retaining records of action-oriented programs undertaken during the AAP year.
- » Gather relevant policies and training materials for submission to OFCCP
- » Determine scope of a 2.17(b) assessment to address any "problem areas"

**2.17(b) Assessments**

**Recruiting Assessment:** Establish a process to evaluate the effectiveness of outreach and recruiting efforts under EO 11246, Section 503, and VEVRAA. For example, consider tracking the (1) number of individuals who attended each recruiting event or applied in response to a particular outreach effort, (2) number of minimally qualified applicants from each referral source, and/or (3) level of public engagement with the recruiting page on the company's website. Document any changes to the outreach and recruiting strategies and add it to your narratives. Develop a protocol for retaining records of action-oriented programs undertaken during the AAP year.

**Assessment of Personnel Activities:** With assistant of counsel, conduct a privileged review of statistical disparities in hiring, promotion, and termination activity. Document non-discriminatory reasons for any disparities. Discuss with counsel any areas of concern in advance of a compliance review.

**Compensation Assessment:** Prepare documentation of a compensation assessment. The assessment may be statistical and/or anecdotal. A statistical approach does not have to be a regression. The assessment can be as simple as cohort analysis or a wage gap calculation. Investigate any irregularities. An anecdotal assessment may include a review of applicable policies and practices to ensure they align with current practices.

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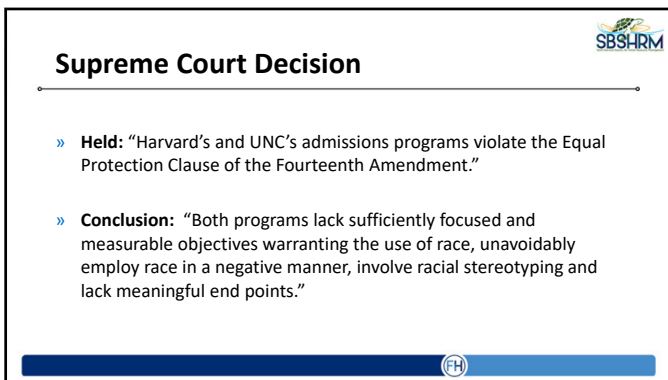
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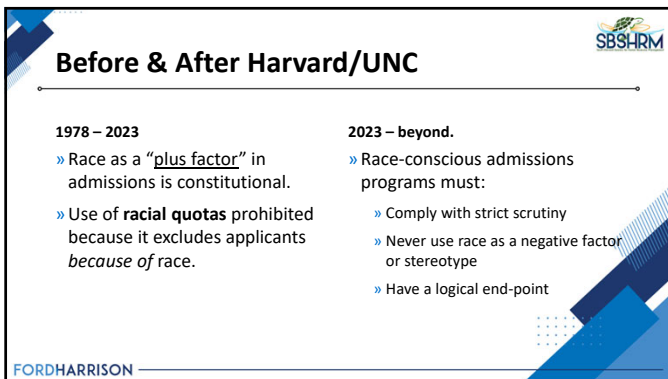
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### Impact on Employers – Not Much

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- » It has always been unlawful to:
  - » use race to satisfy a quota;
  - » set aside positions to only be filled by diverse hires; and/or
  - » consider race as a deciding or “plus” factor.
  
- » Title VII prohibits protected class-based decision making



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### Best Practices for Employers

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- » Seek and communicate strong support and commitment from top leadership, including CEOs and senior executives, are crucial for the success of DEI initiatives.
- » Use data to identify gaps and measure progress.
- » Review and revise recruitment and hiring practices to ensure that they are equitable and bias-free.
- » Provide ongoing DEI training for all employees, including leadership.

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### Best Practices for Employers Continued

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- » Confirm there are no hiring quotas or set asides for specific groups
- » Evaluate voluntary AAPs with the assistance of counsel
- » Revisit DEI&B Strategic Objectives
- » Continue vendor/supplier diversity initiatives
- » Remember diversity encompasses everyone
- » Finally, Consider auditing your programs and initiatives for legal compliance



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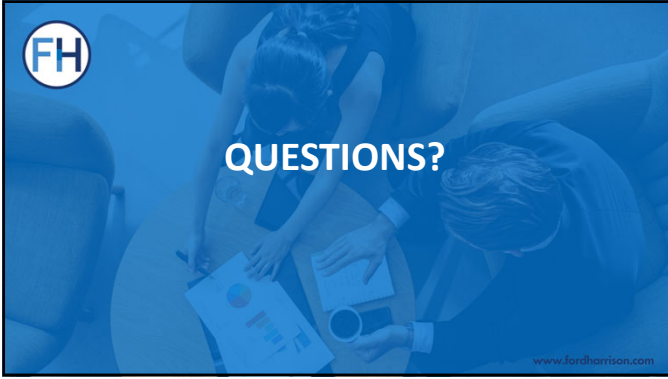
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