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Update on Affirmative Action for Federal Contractors

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On August 21, 2026, the Department of Labor published a final rule rescinding the affected regulations for the former Executive Order 11246 from President Lyndon B. Johnson. These regulations went into effect on October 26, 2026.

In summary, federal contracting obligations have shifted from requiring affirmative efforts to increase employment opportunities for women and minorities to a system focused primarily on nondiscrimination and certification of compliance with antidiscrimination laws.

Background

For fifty years, federal contractors were subject to certain Affirmative Action requirements through President Johnson's Executive Order 11246. That Order required every covered federal contractor to include an Equal Opportunity clause in its contracts to ensure applicants and employees are not discriminated against based on race, color, religion, sex, sexual orientation, gender identity, or national origin.

Contractors with fifty or more employees and a contract of $50,000 or more also had to prepare and maintain Affirmative Action programs and comply with the Office of Federal Contract Compliance Programs ("OFCCP") for evaluation. Beyond requiring contractors to refrain from discrimination, the Order created affirmative duties and requirements to establish placement goals designed to increase employment opportunities for women and minorities where underutilization was found.

2025 Update

In January of 2025, President Trump issued Executive Order 14173, revoking the former Affirmative Action obligations for federal contractors in relation to sex and race. Covered contractors no longer are required to prepare Affirmative Action plans for women and minorities, conduct utilization analyses, establish placement goals, or submit to OFCCP reviews of Affirmative Action programs.

However, **protections for veterans and the disabled remain** through the former Order's revocation since those rights were created by statute and not by executive order. For example, 29 U.S.C. § 793 remains in effect and requires federal contractors to take Affirmative Action to employ qualified individuals with disabilities. Similarly, 38 U.S.C. § 4212 still memorializes Affirmative Action as it relates to qualified covered veterans.

Executive Order 14173 not only revoked President Johnson's Executive Order 11246, but it created new obligations for current federal contractors. Now, every grant or award must include:

1. A certification that compliance with federal antidiscrimination laws is material to the federal government's payment decisions under the False Claims Act, and

2. A certification that the contractor does not use any program that promotes diversity, equity, and inclusion (“DEI”) and violates applicable antidiscrimination law.

It is important to note that the False Claims Act exposes contractors to liability for making knowingly false statements.

Summary

Before 2025	After 2025
Federal contractors had to maintain affirmative action programs for women and minorities.	These requirements have been revoked.
Federal contractors had to comply with OFCCP review of race and sex-based Affirmative Action efforts.	These requirements have been revoked. Federal contractors must now certify compliance with federal antidiscrimination laws and that any DEI programs comply with those laws.
Affirmative Action obligations existed for women, racial and ethnic minorities, veterans, and individuals with disabilities.	Only the statutory Affirmative Action obligations relating to veterans and individuals with disabilities remain.

Federal contracting obligations have shifted from requiring affirmative efforts to increase employment opportunities for women and minorities to a system focused primarily on nondiscrimination and certification of compliance with antidiscrimination laws.



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