



**DirectEmployers
Association**



How to Connect your AAP to Diversity & Inclusion Efforts

Presented By:

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- Questions can be asked using the Q&A panel and will be read aloud at the end of the session.
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Agenda

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I. A Contractor's Duty To Be Affirmative Beyond the Mere Non-Discrimination Command of Title VII

What is the purpose of your Affirmative Action Plan for Minorities/Women?

- There have always been two seemingly complimentary purposes:
 - Assists “Affirmative Action”
 - Assists contractors to “ensure” non-discrimination

I. A Contractor's Duty To Be Affirmative (Con't)

- First, let's "drill down" on what, exactly, you are trying to accomplish as an "affirmative action" contractor
 - "Affirmative Action" is officially undefined
 - Definition 1: means "taking positive steps to reduce and eliminate the barriers to employment and advancement in employment of protected groups"
 - (So, preventative maintenance/non-discrimination notion)

I. A Contractor's Duty To Be Affirmative (Con't)

- Second, you have to do something (can't just wait for complaints to roll in)
 - Executive Order 11246 (first sentence)

“1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action **to ensure** that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation and/or national origin.” (Emphasis added)

 - (So, one undertakes affirmative action, “to ensure” non-discrimination)

I. A Contractor's Duty To Be Affirmative (Con't)

2. Also assists contractors to “ensure” non-discrimination (“Scout” function)

See also [41 CFR Section 60-2.10](#)



II. The Two Places in Your AAP For Minorities & Women You Can Root Your D&I

a) If you have a Predicate for a Straight-Up Preference

(See DE Webinar: [*Doing Right the Right Way: Undertaking Lawful Race and Sex-Based Preferences in Employment in the U.S., October 15, 2020*](#))

- Annual Identification of Problem Areas
 - Annual internal audit to ensure no intentional discrimination (as to hires, promotions and involuntary terminations, and compensation)
 - » See, [*41 CFR Section 60-2.17\(b\)\(2\)&\(4\)*](#)
- Annual Hires [Disparity Analyses](#)
- Annual Promotions [Disparity Analyses](#)
- Annual Adverse Terminations [Disparity Analyses](#)

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts”:

“(c) **Action-oriented programs.** The contractor must develop and execute action-oriented programs designed to correct any problem areas identified pursuant to § 60-2.17(b) and to attain established goals and objectives. In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made **good faith efforts** (emphases added) to remove identified barriers, expand employment opportunities, and produce measurable results.” [41 CFR Section 60-2.17\(c\)](#)

II. The Two Places in Your AAP For Minorities & Women (Con't)

- b) In pursuit of “Good Faith Efforts” (con't):
 - A. The Traditional Approach: Identify which of the Five Reasons drove you to declare a “Placement Goal” for Minorities and/or Women, and then design a responsive Good Faith Effort:
 - 1) Inadequate Applicant Flow
 - 2) Good Applicant Flow, But Not Enough “Contender Candidates”
 - 3) Good Applicant Flow, Enough “Contender Candidates”, But Still Setting Placement Goals: The “Historical Baggage” Problem (as availability increases over time)
 - 4) Good Applicant Flow, Enough “Contender Candidates,” Good Selection Rate, No “Historical Baggage,” And Still Setting Placement Goals: The “Retention and Backfill” Problem
 - 5) None of the Above Problems, But Still Setting Placement Goals: Unlawful Employment Discrimination

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider:

- Does your company have a positive marketplace brand for your company hiring diverse employees?
- Does your company have a positive marketplace brand for your company promoting diverse employees?
- Does your company have a positive marketplace brand for your company retaining diverse employees?
- Are your diverse employees champions for your company as a place respectful of and supportive of diverse employees?
 - Do you know whether your diverse employees are champions for your company's diversity employment experience and results?

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- How is your company outreach in each labor market?
 - Are your Applicant Flow percentages at least equal to your Affirmative Action Plan's calculated availability for each Job Group in each local marketplace where your company has openings?
 - Do your AAPs gather together into “Job Groups” those “similarly situated” candidates your company hires and promotes?
 - Have you talked to your AAP preparer lately about customizing your AAPs to your current workforce hiring and promotion architecture and to not use a standard Job Group mask (“garbage in; garbage out”)?

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- Is your company's Offer percentage about equal to the percentage of “Applicants” available in each job classification you are filling in each local labor market where your company has openings?
- Has your company designed outreach programs which reach and are specific to each group of diverse Applicants (Veterans? Individuals with Disabilities? African Americans? Hispanics? Asians? Native Americans?)
- For example, DE's Ben (Mongo) Marich, a former combat Marine and its Veteran's Program manager, builds veteran recruitment pipelines for Member companies truly dedicated to Veteran hiring.

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- Has your company considered a “recruitment microsite” to reach targeted recruitment populations and tell your company’s story about its commitment to D&I, and its successes to date, and make real the sense of your company’s welcoming environment?
- Do you have a message from your CEO on your website showing your company’s commitment to diversity and inclusion?
- What about a video discussion among diverse employees about your company’s treatment of any special needs they have, i.e., accommodations for individuals with disabilities?
- Does your company do quality-control spot checks of rejected diverse candidates for hire and for promotion to ensure that race, sex and/or ethnicity are not among the reasons for rejection?

II. The Two Places in Your AAP For Minorities & Women (Cont')

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- In each AAP establishment where your availability percentages of diverse candidates are small, have you considered creating (or expanding) an intern pipeline program?
- In each AAP establishment where your availability percentages of diverse candidates for craft or technical blue-collar jobs is small relative to race, sex or ethnic population, has your company considered creating (or expanding) an apprenticeship pipeline program?
 - Has your company explored establishing formal Registered Apprenticeship programs?
 - Has your company explored establishing newly recognized “Industry Recognized Apprenticeship Programs” (“IRAPS”)?

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- Has your company collected turnover statistics, by job title and by race, sex, ethnicity to determine if your company is disproportionately losing diverse employees?
- Has your company deployed “Exit Interviews” of employees (or perhaps of salaried employees or of employees above a certain wage level) who have announced their intention to terminate their employment with your company?
- Is your company making or increasing cash gifts to Historically Black Colleges and Universities, or other vocational schools to help build pipelines of skill sets needed among diverse individuals?
- Is your company creating or increasing tuition reimbursement programs for employees?

II. The Two Places in Your AAP For Minorities & Women (Con't)

b) In pursuit of “Good Faith Efforts” (con't):

B. More Modern GFEs: A Check List To Consider (con't):

- If you have “checked all the boxes,” have you considered what else you are missing in each location where your company’s employment process is not selecting candidates for hire and/or promotion at parity with availability?

- Get your download of the D&I Checklist [here!](#)

Thank you!



Closing Notes

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