



WHAT TO EXPECT WITH THE LATEST GOVERNMENTAL INITIATIVES FOLLOWING THE 2020 ELECTION

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ABBREVIATIONS

Er	= Employer
Kor	= Contractor
MOU	= Memorandum of Understanding
NOV	= Notice of Violation
NSC	= Notice to Show Cause
OFCCP	= Office of Federal Contract Compliance Programs
OPM	= Office of Personnel Management
PDN	= Pre-Determination Notices
SCOTUS	= Supreme Court of The United States
USDOJ	= United States Department of Justice

I. HOW THE TRANSITION WILL PHYSICALLY WORK

Every Presidential Candidate has a Transition Team

Ted Kaufman, a long-term Biden aide and former US Senator from Delaware, is heading up former Vice-President Biden's Transition Team

Main job is to pick the approximately 4,000 political appointees who will run the Biden Administration

- over 1200 appointees will require the "Advice and Consent" of the Senate
- Usually about 20% of the Transition Team ends up in a high-level job in the agency they help to transition



I. HOW THE TRANSITION WILL WORK (con't)

Article II, Section 2, Clause 2 of the Constitution:

“The President] shall have Power, by and with the Advice and Consent of the Senate, to * * * **and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint** Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, **and all other Officers of the United States**, whose Appointments are not herein otherwise provided for, and which shall be established by Law: **but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”** [emphases added]



I. HOW THE TRANSITION WILL WORK (con't)

- Secondary job of the Transition Team is to meet with outgoing Administration officials to get up to speed about issues on the table to insure a clean “baton handoff” to the incoming Administration
- This will NOT be a cooperative and congenial transition from Team Trump to Team Biden
- Other than the security agencies (Department of Homeland Security; DoD; CIA; National Security Agency; etc), the Biden transition teams will likely NOT gain physical access into the federal government and will likely be starting fresh on January 20, 2021 (Inauguration Day)

I. HOW THE TRANSITION WILL WORK (con't)

U.S. DEPARTMENT OF LABOR BIDEN-HARRIS TRANSITION TEAM

The Department of Labor team will also review the Equal Employment Opportunity Commission, the Federal Mine Safety and Health Review Commission, the Pension Benefit Guaranty Corporation, the Federal Labor Relations Authority, the National Mediation Board, the Federal Mediation and Conciliation Services, the Railroad Retirement Board, and the National Labor Relations Board.

IT'S A TEAM OBAMA REUNION!



I. HOW THE TRANSITION WILL WORK (con't)

U.S. DEPARTMENT OF LABOR BIDEN-HARRIS TRANSITION TEAM

Name:	Most Recent Employment:	Source of Funding
Chris Lu, Team Lead	FiscalNote	Volunteer
Jennifer Abruzzo	Communications Workers of America	Volunteer
Mary Beech	Northeastern University	Volunteer
Jessica Chu	Amalgamated Transit Union International	Volunteer
Michele Evermore	National Employment Law Project	Volunteer
Jocelyn Frye	Center for American Progress	Volunteer
Tanya Goldman	Center for Law and Social Policy	Volunteer
Viv Graubard	New America	Volunteer



I. HOW THE TRANSITION WILL WORK (con't)

U.S. DEPARTMENT OF LABOR BIDEN-HARRIS TRANSITION TEAM

Name:	Most Recent Employment:	Source of Funding
Deborah Greenfield	Self-employed	Volunteer
Seth Harris	Self-employed	Volunteer
Micheal Hazard	United Association	Volunteer
Nadia Marin-Molina	National Day Laborer Organizing Network (NDLON)	Volunteer
Patricia Moscoso	State of California	Volunteer
Seema Nanda	Self-employed	Volunteer
Raj Nayak	Self-employed	Volunteer



I. HOW THE TRANSITION WILL WORK (con't)

U.S. DEPARTMENT OF LABOR BIDEN-HARRIS TRANSITION TEAM

Name:	Most Recent Employment:	Source of Funding
Shaun O'Brien	American Federation of State, County and Municipal Employees	Volunteer
Josh Orton	United States Senate, Office of Senator Bernie Sanders	Transition — PT Fund, Inc.
Doug Parker	State of California, Department of Industrial Relations	Volunteer
Lynn Rhinehart	Self-employed	Volunteer



I. HOW THE TRANSITION WILL WORK (con't)

U.S. DEPARTMENT OF LABOR BIDEN-HARRIS TRANSITION TEAM

Name:	Most Recent Employment:	Source of Funding
Ann Rosenthal	Self-employed	Volunteer
Robin Runge	The Solidarity Center	Volunteer
Patricia Smith	National Employment Law Project	Volunteer
Jenny Yang	Urban Institute	Volunteer

I. HOW THE TRANSITION WILL WORK (con't)

- The current political appointees will start leaving in droves between now and January 20, 2021 as they find new jobs (little reason to stay and “go down with the ship”)
- Any political employees still remaining on-roll lose their jobs at the moment the new President is sworn in
- When the last political appointee in a sub-component federal agency (like OFCCP) leaves, a senior career employee runs the agency in an “Acting” capacity and reports to the remaining political appointees until the last political employee leaves the building. Then, the career employees report to the Transition Team until the Cabinet-level appointee (The Secretary of Labor in the case of USDOL) is sworn in and takes his/her seat and brings along his/her political appointee managerial team in coming weeks/ months

I. HOW THE TRANSITION WILL WORK (con't)

- Patty Davidson, OFCCP's career Deputy, will likely become the Acting Director of OFCCP until TEAM Biden arrives at OFCCP
- The OFCCP Director has never sat for "Advice and Consent"
- S/he should, unless the Senate exempts the position from A&C
- This becomes important if Republicans win 51 or more Senate seats following the two January 5, 2021 Senate race run-offs in Georgia

I. HOW THE TRANSITION WILL WORK (con't)

- CURRENT SENATE TALLY: 50 Republicans vs 46 Democrats + 2 Independents (who typically caucus with the Democrats) = 48
- Two open Senate seats in Georgia: going to a January 5, 2021 run-off
 - Very unusual to have both Senate seats from same state open at the same time. (Senate 6-year terms are staggered to avoid this)
 - Republican incumbent Kelly Loeffler filled a Senate vacancy last year, so she is running as an incumbent, but has not previously won an election
- The Republicans have two advantages: they are incumbents, and no Libertarians are running against them to siphon off votes which will now likely go to Republicans



II. THE BIDEN POLICY AGENDA FOR HIS FIRST TWO YEARS REQUIRES THE SENATE TO BE DEMOCRAT CONTROLLED

A 50-50 tie gives the Senate to Biden (since the VP, Kamala Harris) would cast any tie-breaker votes in her capacity as the VP

■ However, there are some wrinkles:

- The two (left of center) Independents, including Bernie Sanders (I-Vermont), typically caucus with the Democrats (but not always reliable Democrat votes, but usually so)
- But, Sen Collins (R-Maine) will vote with Democrats from time-to-time
 - So, if the Democrats picked up one of the Georgia Senate seats, then the addition of the two Independents and occasionally Collins would get the Democrats to 50 votes [46 (Democrats) + 2 (Independents) +1 (GA) +1 (Collins)]



II. BIDEN NEEDS SENATE CONTROL (con't)

- But, if Bernie Sanders resigns his Senate seat to become the Secretary of Labor, the **Republican** Governor of Vermont would appoint a (presumably Republican) replacement until the 2022 mid-term elections
- Republicans could thus end up with 53 Senate seats thru at least 2022:
 - 50 currently ready to be seated on January 4, 2021
 - + 2 Georgia seats (heavy maybes)
 - + 1=Bernie Sander's seat (if he goes into the Biden cabinet w/Republican replacement)

II. BIDEN NEEDS SENATE CONTROL (con't)

Two bad things happen to Biden if the Senate is Republican controlled:

- 1) Biden cannot force legislation through: must bargain with Republicans who can stop legislation Biden proposes: Biden would either have to come to the middle or try to force a limited number of objectives through his (soon to be) hobbled Executive Branch of Government
- 2) Biden could not get his 1200+ Advice and Consent political appointees approved timely, and many will not be approved at all

II. BIDEN NEEDS SENATE CONTROL (con't)

Note the delays the Democrats were able to force on President Trump (even though the Republicans have controlled the Senate for the last 6 years):

- Almost 700 federal government Advice & Consent positions remain vacant (= over 1/2 of Trump's A & C political appointments)
- EEOC Commissioners took 18 months to confirm and seat
- USDOJ Assistant Attorney General for Civil Rights took over a year

II. BIDEN NEEDS SENATE CONTROL (con't)

PUNCHLINE for OFCCP:

If the Senate is 51, or 51+, Republicans next year, Biden will either have to scale back his political agenda by moving to the middle, or will have to drive any aggressive agenda through Executive Branch action as President Obama was forced to do for the last 2 years of his Presidency

In either event, OFCCP will be “THE TIP OF THE SPEAR” in TEAM BIDEN’S civil rights agenda because he can control it and drive it forward without the Senate



II. BIDEN NEEDS SENATE CONTROL (con't)

- NOT SO OSHA: Biden needs A and C to seat the Assistant Secretary of Labor for OSHA
- NOT SO Wage-Hour: Biden needs A and C to seat the Wage Hour Division Administrator
- NOT SO USDOJ: Biden needs A and C to seat the Assistant Attorney General for the Civil Rights Division

II. BIDEN NEEDS SENATE CONTROL (con't)

- NOT SO EEOC (but The President may identify The Chair)

The Commission:	Term Ends:	Political Party
Jocelyn Samuels, Commissioner	July 1, 2021	D
Janet Dhillon, Chair	July 1, 2022	R
Charlotte A. Burrows, Commissioner	July 1, 2023	D
Keith E. Sonderling, Vice Chair	July 1, 2024	R
Andrea R. Lucas, Commissioner	July 1, 2025	R

II. BIDEN NEEDS SENATE CONTROL (con't)

- NOT SO NLRB (but The President may identify The Chair)

Members:	Term:	Political Party
William J. Emanuel	August 27, 2021	R
John F. Ring, Chairman	December 16, 2022	R
Lauren M. McFerran	December 16, 2024	D
Marvin E. Kaplan	August 27, 2025	R

II. BIDEN NEEDS SENATE CONTROL (con't)

The Senate's control of legislation and of high-level Presidential appointments to the Executive Branch of Government is a central part of the "balancing of power" our Founding Fathers consciously and very purposely wrote into the Constitution given their fear of centralized tyrannical control by Kings.

It is this "balancing of power," dispersing power across not only the three branches of the federal government (Executive; Legislative and Judicial) but also further balancing legislative power between the House of Representatives and the Senate, which has caused political scientists to constantly marvel for over 200 years



II. BIDEN NEEDS SENATE CONTROL (con't)

The mistake of President Trump, and the seeming coming mistake of former Vice President Biden, is the failure to answer this question:

“Where is the mandate?”

With razor-thin victory margins in 2016 and 2020, neither Trump nor Biden may claim a strong victory. A small margin of victory does not mandate far-reaching changes

So, the instruction of the American people in 2016, and even more so in 2020, was to steer to the middle...not to the far right or the far left

II. BIDEN NEEDS SENATE CONTROL (con't)

Return of Obama EEO and Affirmative Action policies?

Return of Obama Employment Law policies?

Return of Presidential Executive Orders to attempt to end-around
Senate blockades of Congressional Legislation?

Return of the “Blacklisting” Executive Order?

Rescission of Trump Executive Order 13950 (D&I training)?

Rescission of Trump Executive Orders Advancing Religious
Freedoms? (EO 13926: 20-6-2; EO 13831: 18-5-3)



III. 2020 DEMOCRATIC PARTY PLATFORM

BUILDING A STRONGER, FAIRER ECONOMY

<https://www.demconvention.com/wp-content/uploads/2020/08/2020-07-31-Democratic-Party-Platform-For-Distribution.pdf>

- Raising Wages and Promoting Workers' Rights
- Enacting Robust Work-Family Policies
- “A new economic contract that raises wages” p. 14
- “One that at last supports working families and the middle class by securing equal pay for women and paid family leave for all” p. 14

III. 2020 DEMOCRATIC PARTY PLATFORM

ACHIEVING UNIVERSAL, AFFORDABLE, QUALITY HEALTH CARE

☐ Protecting LGBTQ+ Health

- ☐ “We condemn the Trump Administration’s discriminatory actions against the LGBTQ+ community, including the dangerous and unethical regulations allowing doctors, hospitals, and insurance companies to discriminate against patients based on their sexual orientation or gender identity. Democrats will reverse this rulemaking and restore nondiscrimination protections for LGBTQ+ people and people living with HIV/AIDS in health insurance, including coverage of all medically necessary care for gender transition. We will also take action to guarantee that LGBTQ+ people and those living with HIV/AIDS have full access to needed health care and resources, including **by requiring that federal health plans provide coverage for** HIV/AIDS testing and treatment and HIV prevention medications like PrEP and PEP, **gender confirmation surgery, and hormone therapy.**” [emphases added] p. 33



III. 2020 DEMOCRATIC PARTY PLATFORM

HEALING THE SOUL OF AMERICA

☐ Protecting Americans' Civil Rights

- ☐ “Democrats are committed to ending discrimination on the basis of race, ethnicity, national origin, religion, language, gender, age, sexual orientation, gender identity, or disability status. **We will appoint U.S. Supreme Court justices and federal judges who look like America** (emphases added), are committed to the rule of law, will uphold individual civil rights and civil liberties as essential components of a free and democratic society, and will respect and enforce foundational precedents, including *Brown v. Board of Education* and *Roe v. Wade*.” p. 39

III. 2020 DEMOCRATIC PARTY PLATFORM

HEALING THE SOUL OF AMERICA (con't)

□ Achieving Racial Justice and Equity

- **“Historic wrongs and abuses perpetrated against Native Americans, two and a half centuries of slavery, a hundred years of Jim Crow segregation, and a history of exclusionary immigration policies have created profound and lasting inequities in** income, wealth, education, **employment (emphases added)**, housing, environmental quality, and health care for communities of color. Democrats are committed to standing up to racism and bigotry in our laws, in our culture, in our politics, and in our society, and recognize that **race-neutral policies are not sufficient to rectify race-based disparities. (emphasis added)** **We will take a comprehensive approach to embed racial justice in every element of our governing agenda, including in jobs and job creation (emphasis added)**, workforce and economic development, small business and entrepreneurship, eliminating poverty and closing the racial wealth gap, promoting asset building and homeownership, education, health care, criminal justice reform, environmental justice, and voting rights. Democrats will ensure federal data collection and analysis is adequately funded and designed to allow for disaggregation by race and ethnicity, among other important factors, to better design policies to address the needs of the most vulnerable communities and make informed policy choices.” p. 40



III. 2020 DEMOCRATIC PARTY PLATFORM

HEALING THE SOUL OF AMERICA (con't)

Protecting Women's Rights

- “Democrats will fight to guarantee equal rights for women, including by ratifying the Equal Rights Amendment and at long last enshrining gender equality in the U.S. Constitution. **We will take aggressive action to end pay inequality, including by increasing penalties against companies that discriminate against women and passing the Paycheck Fairness Act.**” (emphasis added) p. 42

Protecting LGBTQ+ Rights

- “We will ensure that all transgender and non-binary people can procure official government identification documents that accurately reflect their gender identity. We will stop employment discrimination in the federal government, and will restore full implementation of President Obama’s executive order prohibiting discrimination by federal contractors on the basis of sexual orientation and gender identity.”** (emphasis added) p. 42-43



III. 2020 DEMOCRATIC PARTY PLATFORM

HEALING THE SOUL OF AMERICA (con't)

☐ Protecting Disability Rights

- ☐ “Democrats will fully enforce the Americans with Disabilities Act, the Individuals with Disabilities Education Act, the Fair Housing Act, the Civil Rights of Institutionalized Persons Act, Section 504 of the Rehabilitation Act, the Mental Health Parity and Addiction Equity Act, and the Help America Vote Act, among other bedrock statutes protecting the rights of people with disabilities. We will oppose any efforts to weaken enforcement of the Americans with Disabilities Act. We will ensure non-discrimination in access to health care, building on the protections for people with disabilities enshrined in the Affordable Care Act. We will ensure every federal agency aggressively enforces the integration mandate affirmed in the Olmstead decision, and repair the damage done by the Trump Administration. **We will rigorously enforce non-discrimination protections for people with disabilities in** health care, **employment (emphases added)**, education, and housing, and ensure equal access to the ballot box.” p. 43

IV. THE HULLABALOO OVER EO 13950

- 1) OFCCP is now enforcing EO 13950 in addition to EO 11246
- 2) EO 13950 prohibits some employment training EO 11246 does not address
- 3) EO 13950 creates the phrase “Divisive language,” defines it and prohibits it
- 4) EO 13950 does not prohibit D&I training, only “divisive” training
 - OFCCP has set up a Hotline which has received over 150 both Executive Order 13950 and Executive Order 11246 Complaints. OFCCP is investigating
 - OFCCP has published a Request for Information (RFI) asking Kors and employees to voluntarily submit examples of D&I training materials

IV. THE HULLABALOO OVER EO 13950 (con't)

- 5) Tina Williams, OFCCP's Director of Policy, announced two weeks ago at **Disability: IN** that OFCCP is now planning "D&I Focused Reviews"
- 6) OFCCP Director Craig Leen responded to Co-Chair Candee Chambers' question at last week's 39th Annual National Employment Law Institute's (NELI) ***Affirmative Action Briefing*** that OFCCP was indeed intending to audit Kor D&I training materials during the upcoming (Spring 2021?) D&I Focused Reviews
- 7) NOTE: OFCCP has always used EO 11246 to prohibit and prosecute unlawful Kor training materials based on race, sex and/or ethnicity. OFCCP will continue that tradition whether the alleged victims are Black, Hispanic, Asian, Native American or White



IV. THE HULLABALOO OVER EO 13950 (con't)

- 8) “Implicit bias” training only violates EO 11246 when it unlawfully advocates employment action based on race, sex, national origin, color and/or religion

“Implicit bias training” may, however, ALSO violate EO 13950 unrelated to EO 11246

-FOX PREDCTION: The Courts will strike down as violative of the First Amendment that portion of EO 13950 which prohibits “divisive training” not unlawful pursuant to EO 11246

-Remember: SCOTUS has upheld even the burning of the US Flag in protest as protected First Amendment speech



IV. THE HULLABALOO OVER EO 13950 (con't)

- 9) The challenge, generally, of implicit bias is five-fold:
- a) No common definition
 - b) No legal support for the concept
 - c) Little scientific basis; few peer reviewed scientific studies to support whatever definition (there are studies, but very few peer reviewed; some divergent)
 - d) If one infused with “implicit bias” has no “intent,” as apparently all definitions state, any legal challenge must then be framed as an “adverse impact” case...which OFCCP rarely ever brings and is relatively easy to defend under EO 11246
 - e) If everyone is infused with “implicit bias,” as most definitions state, then everyone is biased...begging the metaphysical question “what is reality?”



IV. THE HULLABALOO OVER EO 13950 (con't)

10) Some popular implicit bias definitions:

Kirwan Institute definition: “Also known as implicit social cognition, implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.

The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.”



IV. THE HULLABALOO OVER EO 13950 (con't)

10) Some popular implicit bias definitions (con't):

Kirwan definition (con't)

“A Few Key Characteristics of Implicit Biases

- **Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges. (emphasis added)**
- Implicit and explicit biases are related but distinct mental constructs. They are not mutually exclusive and may even reinforce each other.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that favor our own ingroup, though research has shown that we can still hold implicit biases against our ingroup.
- Implicit biases are malleable. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned through a variety of debiasing techniques.”



IV. THE HULLABALOO OVER EO 13950 (con't)

10) Some popular implicit bias definitions (con't):

Verywellmind definition: “An implicit bias is an unconscious association, belief, or attitude toward any social group. Due to implicit biases, people may often attribute certain qualities or characteristics to all members of a particular group, a phenomenon known as stereotyping.^[fn omitted]”

It is important to remember that implicit biases operate almost entirely on an unconscious level. While explicit biases and prejudices are intentional and controllable, implicit biases are less so.

A person may even express explicit disapproval of a certain attitude or belief while still harboring similar biases on a more unconscious level. Such biases do not necessarily align with our own sense of self and personal identity. In many cases, people can hold positive or negative associations with regards to their own race, gender, religion, sexuality, or another personal characteristic.”

IV. THE HULLABALOO OVER EO 13950 (con't)

10) Some popular implicit bias definitions (con't):

Verywellmind definition (con't):

“Causes:

While people might like to believe that they are not susceptible to these biases and stereotypes, **the reality is that everyone engages in them (emphasis added)** whether they like it or not. **This reality, however, does not mean that you are necessarily prejudiced or inclined to discriminate against other people. (emphasis added)** It simply means that your brain is working in a way that makes associations and generalizations.

In addition to the fact that we are influenced by our environment and stereotypes that already exist in the society into which we were born, it is generally impossible to separate yourself from the influence of society.” (emphasis added)



IV. THE HULLABALOO OVER EO 13950 (con't)

Links to selected writings about Executive Order 13950

- [President Trump's signing of EO 13950](#)
- [Details of EO 13950](#)
- [OFCCP had already set up a telephone Hotline for EO 13950 Complaints](#)
- [OFCCP had crossed swords with Microsoft and Wells Fargo re race-based hiring](#)
- [OFCCP's Launch of its EO 13950 Landing Page](#)
- [OFCCP's issuance of FAQs on Sex Stereotyping Related to EO 13950](#)
- [OFCCP's publication of a Request for Information about D&I Training](#)



V. OFCCP'S CURRENT COMPLIANCE EVALUATION JUNGLE

Will the Current 12 Types of OFCCP Investigations Survive?

Compliance Review: Supply & Service

Focused Review: D&I

Compliance Review: Construction

Focused Review: Accommodation

Focused Review: Section 503

Compliance Check: Construction

Focused Review: Protected Veterans

Compliance Check: Supply & Service

Focused Review: Promotions

Complaint Investigation

Corporate Management Compliance Evaluation

Functional Affirmative Action Plan



VI. CRAIG LEEN'S 4 "PILLARS": THE STRATEGIC PLAN

- Leen's Pillar 1: **TRANSPARENCY**
- Leen's Pillar 2: **CERTAINTY**
- Leen's Pillar 3: **EFFICIENCY**
- Leen's Pillar 4: **RECOGNITION**



VI. LEEN'S PILLAR 1: TRANSPARENCY

❑ OFCCP Help Events

❑ Friday, October 4, 2019: OFCCP begins events to assist KORs prepare for Focused Reviews (<https://directemployers.org/2019/10/07/ofccp-week-in-review-october-7-2019/>)

❑ Wednesday, October 23, 2019: Town Hall for Academic Institutions (<https://directemployers.org/2019/10/28/ofccp-week-in-review-october-28-2019/>)

❑ Craig Leen Public Speeches

❑ Monday, July 6, 2020: NILG speech introducing regular inclusion of Section 503 Focused Reviews and Promotion Focused Reviews (<https://directemployers.org/2020/07/13/ofccp-week-in-review-july-13-2020/>)



VI. LEEN'S PILLAR 1: TRANSPARENCY (con't)

❑ Preferences in Employment Issues

- ❑ Wednesday, October 6, 2020: OFCCP issues requests related to “Implied” race-based employment preferences at Wells Fargo and Microsoft (<https://directemployers.org/2020/10/12/ofccp-week-in-review-october-12-2020/>)
- ❑ Concern as to how private employers institute racial or gender preferences in hiring
- ❑ Monday, July 6, 2020: OFCCP seeks to connect HBCUs, HACUs, and TCUs to Federal Contractors (<https://directemployers.org/2020/07/13/ofccp-week-in-review-july-13-2020/>)

VI. LEEN'S PILLAR 1: TRANSPARENCY (con't)

❑ Resources for Contractors

- ❑ Tuesday, December 17, 2019: New Section 503 Focused Review Guide and Standard Compliance Evaluation Report form (<https://directemployers.org/2019/12/23/ofccp-week-in-review-december-23-2019/>)
- ❑ Friday, February 21, 2020: OFCCP launches Contractor Compliance Institute (<https://directemployers.org/2020/02/24/ofccp-week-in-review-february-24-2020/>)
- ❑ Monday, July 6, 2020: Report of registrations to Contractor Compliance Institute (<https://directemployers.org/2020/07/13/ofccp-week-in-review-july-13-2020/>)

VI. LEEN'S PILLAR 1: TRANSPARENCY (con't)

❑ Resources for Contractors (cont'd.)

- ❑ Monday, May 4, 2020: OFCCP launches webpage with resources for Federal Contractors and workers related to past drug misuse (<https://directemployers.org/2020/05/11/ofccp-week-in-review-may-11-2020/>)
- ❑ Tuesday, August 4, 2020: OFCCP webinar regarding conciliation, mediation, and Ombuds service (<https://directemployers.org/2020/08/10/ofccp-week-in-review-august-10-2020/>)
- ❑ Monday, August 31, 2020: OFCCP webinar regarding TRICARE compliance assistance (<https://directemployers.org/2020/09/08/ofccp-week-in-review-september-8-2020/>)

VI. LEEN'S PILLAR 1: TRANSPARENCY (con't)

❑ Resources for Contractors (cont'd.)

- ❑ Wednesday, September 9, 2020: OFCCP bulletin on accommodation strategies during COVID-19

(<https://directemployers.org/2020/09/14/ofccp-week-in-review-september-14-2020/>)

- ❑ Monday, September 28, 2020: OFCCP hotline set up to combat race and sex stereotyping

(<https://directemployers.org/2020/10/05/ofccp-week-in-review-october-5-2020/>)

❑ 2020 Corporate Scheduling Announcement List

- ❑ Monday, September 21, 2020: Notice explaining revisions to CSAL that could result in more than five OFCCP “instigations” occurring simultaneously

(<https://directemployers.org/2020/09/21/ofccp-week-in-review-september-21-2020/>)



VI. LEEN'S PILLAR 2: CERTAINTY

❑ Final and Proposed Rules Issued by OFCCP

- ❑ Monday, December 30, 2019: Proposed Rule codifying procedures for Predetermination Notices and Notices of Violation (<https://directemployers.org/2019/12/30/ofccp-week-in-review-december-30-2019/>)
- ❑ Thursday, July 2, 2020: Final Rule establishing OFCCP lacks authority over federal health care providers participating in TRICARE (<https://directemployers.org/2020/07/06/ofccp-week-in-review-july-6-2020/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

- ❑ *The Center for Investigative Reporting, et al. v. U.S. Dept. of Labor*, Case No. 4:19-cv 01843-KAW (N.D. Ca. December 10, 2019)
 - ❑ Tuesday, December 10, 2019: OFCCP required to disclose EEO-1 Reports as they lack trade secret and commercial information exempt from FOIA production (<https://directemployers.org/2019/12/30/ofccp-week-in-review-december-30-2019/>)
- ❑ **New Technical Assistance Guides**
 - ❑ Friday, October 11, 2019: TAG for Educational Institutions (<https://directemployers.org/2019/10/14/ofccp-week-in-review-october-14-2019/>)
 - ❑ Wednesday, November 13, 2019: TAG for Construction Contractors (<https://directemployers.org/2019/11/18/ofccp-week-in-review-november-18-2019/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ New Technical Assistance Guides (cont'd.)

- ❑ Wednesday, August 5, 2020: TAG regarding information for employees as to use of codeine, oxycodone, and other opioids (<https://directemployers.org/2020/08/10/ofccp-week-in-review-august-10-2020/>)
- ❑ Wednesday, August 5, 2020: TAG for health care providers regarding helping current and former patients who have used opioids stay employed (<https://directemployers.org/2020/08/10/ofccp-week-in-review-august-10-2020/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ FAQs

- ❑ Friday, October 18, 2019: Contractors Prohibited from Discriminating Against Qualified Individuals Known to be a Spouse of a Protected Veteran Under VEVRAA
(<https://directemployers.org/2019/10/21/ofccp-week-in-review-october-21-2019/>)
- ❑ Wednesday, October 7, 2020: OFCCP Issued FAQs on Sex Stereotyping Related to Executive Order 13950
(<https://directemployers.org/2020/10/12/ofccp-week-in-review-october-12-2020/>)
- ❑ Friday, June 26, 2020: Updated FAQs regarding OFCCP's Scheduling Letter and Itemized Listing
(<https://directemployers.org/2020/06/29/ofccp-week-in-review-june-29-2020/>)



VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ FAQs (cont'd.)

- ❑ Friday, August 28, 2020: New FAQ on Affirmative Action Plan treatment of non-binary employees
(<https://directemployers.org/2020/08/31/ofccp-week-in-review-august-31-2020/>)
- ❑ Wednesday, September 23, 2020: FAQs related to Focused Reviews on promotions and Section 503 accommodations
(<https://directemployers.org/2020/09/28/ofccp-week-in-review-september-28-2020/>)
- ❑ Wednesday, October 7, 2020: FAQs on sex stereotyping related to Executive Order 13950 (<https://directemployers.org/2020/10/12/ofccp-week-in-review-october-12-2020/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ Executive Orders

- ❑ President Trump Revokes Executive Order 13495 regarding non-displacement of qualified workers under service contracts (<https://directemployers.org/2019/11/12/ofccp-week-in-review-november-12-2019/>)
- ❑ President Trump issues Executive Order 13940 directing federal departments and agencies to review contracts and subcontracts regarding use of temporary foreign labor (<https://directemployers.org/2020/08/24/ofccp-week-in-review-august-24-2020/>)
- ❑ President Trump issues Executive Order 13950 related to content of diversity and inclusion training Federal Contractors and Subcontractors provide (<https://directemployers.org/2020/09/28/trump-issues-executive-order-13950-to-combat-race-and-sex-stereotyping-imposing-new-requirements-on-government-contractors/>)



VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ Opinion Letters

- ❑ November 12, 2019: OFCCP2020-1: Employers participating in SkillBridge program insufficient to render employer subject to OFCCP jurisdiction (<https://directemployers.org/2019/11/12/ofccp-week-in-review-november-12-2019/>)

❑ Updated Forms

- ❑ OMB approval of modified Voluntary Self-Identification Form for individuals with disabilities (https://www.dol.gov/agencies/ofccp/self-id-forms?utm_campaign=&utm_medium=email&utm_source=govdelivery)
- ❑ Thursday, April 9, 2020: OFCCP request for comments to revision of OFCCP Complaint Form involving employment discrimination (<https://directemployers.org/2020/04/13/ofccp-week-in-review-april-13-2020/>)



VI. LEEN'S PILLAR 2: CERTAINTY (con't)

❑ Directives

- ❑ Friday, November 8, 2019: Directive 2020-01 regarding nondiscrimination verbiage for employment of spouses of protected veterans

(<https://directemployers.org/2019/11/18/ofccp-week-in-review-november-18-2019/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

☐ Notices

- ☐ Monday, November 25, 2019: OFCCP Will Not Use Component 2 Data (<https://directemployers.org/2019/11/25/ofccp-week-in-review-november-25-2019/>)
- ☐ Monday, December 23, 2019: OFCCP update of Federal Contractor Compliance Manual (<https://directemployers.org/2020/01/06/ofccp-week-in-review-january-6-2020/>)
- ☐ Wednesday, March 18, 2020: Temporary exemption from certain federal contracting requirements due to COVID-19 national emergency (<https://directemployers.org/2020/03/23/ofccp-week-in-review-march-23-2020/>)
- ☐ Wednesday, March 25, 2020: Clarification of national interest exemptions (<https://directemployers.org/2020/03/30/ofccp-week-in-review-march-30-2020/>)



VI. LEEN'S PILLAR 2: CERTAINTY (con't)

☐ Notices

- ☐ Monday, April 13, 2020: OMB finalizes six OFCCP Scheduling Letters for OFCCP to use through April 2023
(<https://directemployers.org/2020/04/13/the-big-reveal-three-updated-three-new-ofccp-audit-scheduling-letters-go-live/>)
- ☐ Tuesday, March 31, 2020: VEVRAA benchmark for hiring lowered
(<https://directemployers.org/2020/04/20/ofccp-week-in-review-april-20-2020/>)
- ☐ Friday, May 8, 2020: Voluntary Self-Identification of Disability Form revision finalized (<https://directemployers.org/2020/05/11/ofccp-week-in-review-may-11-2020/>)
- ☐ Thursday, August 27, 2020: Temporary exemption from certain federal contracting requirements due to Hurricane Laura
(<https://directemployers.org/2020/08/31/ofccp-week-in-review-august-31-2020/>)

VI. LEEN'S PILLAR 2: CERTAINTY (con't)

- **Tuesday November 3, 2020: OFCCP Issued a New 158 Page OFCCP [Supply & Service Technical Assistance Guide](#)** (The Table of Contents alone is 3 ½ pages: Load your paper trays!)

VI. LEEN'S PILLAR 3: EFFICIENCY

- ❑ Monday, March 2, 2020: OFCCP Action Plan in response to 2019 Town Hall meetings (<https://directemployers.org/2020/03/09/ofccp-week-in-review-march-9-2020/>)
- ❑ Monday, June 29, 2020: OFCCP announced results of its Early Resolution Procedures process established by Directive 2019-02 (<https://directemployers.org/2020/07/06/ofccp-week-in-review-july-6-2020/>)
- ❑ Monday, September 14, 2020: OFCCP seeking comments on authorization for an annual, online Affirmative Action Program certification process and submission of AAPs electronically (<https://directemployers.org/2020/09/14/ofccp-week-in-review-september-14-2020/>)

VI. LEEN'S PILLAR 3: EFFICIENCY (con't)

Directives related to Efficiency

- Friday, April 17, 2020: Directive 2020-02 regarding efficiency in Compliance Evaluations (<https://directemployers.org/2020/04/20/ofccp-week-in-review-april-20-2020/>)
- Friday, April 17, 2020: Directive 2020-03 regarding pre-referral mediation program (<https://directemployers.org/2020/04/20/ofccp-week-in-review-april-20-2020/>)
- Friday, April 17, 2020: Directive 2020-04 regarding Ombuds service protocol (<https://directemployers.org/2020/04/20/ofccp-week-in-review-april-20-2020/>)

VI. LEEN'S PILLAR 3: EFFICIENCY (con't)

- a) OFCCP, EEOC & USDOJ Just Signed a [Memorandum of Understanding](#)
 - b) Why the need to Update the 2011 MOU between OFCCP & EEOC?
 - c) Why the need to add USDOJ?
 - d) Why the need to give OFCCP back its authority to investigate individual Complaints arising under EO 11246?
 - e) Why is EEOC Commissioner Charlotte A. Burrows so unhappy with the MOU?
 - f) Let's go over the details of "Dual-Filed" Complaints/Charges and "Joint or Coordinated Investigations."
- Monday, October 26, 2020: EEOC to Discuss MOU with USDOL & USDOJ (<https://directemployers.org/2020/11/02/ofccp-week-in-review-november-2-2020/>)

VII. CALIFORNIA WILL REQUIRE PAY AND HOURS WORKED DATA CONFIDENTIALLY REPORTED IN A NEW EEO-1 COMPONENT 2 “LOOK-A-LIKE” REPORTING LAW

California’s new EEO-1 Component 2 “look-a-like” “hours worked” and “pay data” reporting requirement contained in [Senate Bill-973](#) mandates employers of California employees to report to California EEO officials by March 31, 2021 if they have 100 or more employees.

DirectEmployers wrote this up in a lengthy Blog, so click [here](#) for details.



VII. CA COMPONENT 2 “LOOK-A-LIKE” (con’t)

Open question as to non-California employers: **Do I have to report if I have 100 or more employees in my company, but fewer than 100 employees in California?**

Nobody knows. The worry is that the California Department of Fair Employment & Housing (DFEH), which is the entity to which companies will report their hours worked and pay data, will attempt to exert “extra-territorial” reach by seeking to compel employers with 100 or more employees to report even if they have fewer than 100 employees in California. DFEH will need to issue clarifying Rules very soon to allow employers to either prepare to file or to resist.

VII. CA COMPONENT 2 “LOOK-A-LIKE” (con’t)

If your company resists filing, the Blog explains that DFEH could seek a court order to compel your company to file and your company would have to pay the state of California’s attorneys’ fees if DFEH were successful

California’s exertion of extraterritorial reach, were DFEH to seek to exert itself outside of California, would more likely than not violate both the Interstate Commerce Clause and the Due Process Clause of the United States Constitution

THANK YOU!
QUESTIONS?

