

OFCCP's Proposal Requiring Construction Companies to Submit Monthly Employment Utilization Report

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The Office of Federal Contract Compliance Programs (OFCCP) has proposed reinstating a monthly reporting requirement for federal construction contractors nearly 30 years after discontinuing it. The proposal requires covered construction contractors to file Form CC-257, a monthly submission reporting data on contractors' construction trade employees' hours worked by race and gender. OFCCP said the data can help it determine whether there are potential issues to investigate during a compliance evaluation.

Technical Assistance Guide

OFCCP requires contractors working on federal or federally assisted construction contracts of more than \$10,000 to take steps to ensure nondiscrimination and equal employment opportunities, as described in its Technical Assistance Guide's [16 specifications for contractors](#). Requirements include collecting and analyzing applicant and personnel data; actively participating in diversity recruitment and outreach; and sending notifications to employees, applicants, and vendors/subcontractors of the contractor's status as a federal contractor. When OFCCP audits an employer, it reviews compliance with these requirements and investigates potential discrimination based on employer submission of data and documents.

Form CC-257 Proposed New Reporting

If the proposal is implemented, covered construction contractors must report on Form CC-257 the number of employees and trade employees' hours worked by race and gender within each Standard Metropolitan Statistical Area (SMSA) or Economic Area (EA) each month. For contractors with employees working on multiple projects, either within a SMSA/EA or across several areas, gathering and preparing the relevant data each month may prove challenging.

Additionally, contractors must identify a project's "Megaproject" status. OFCCP's [focus on the construction industry continues](#) to increase in light of millions in new funding for construction projects under the Infrastructure Investment and Jobs Act. The revived and updated [Megaproject Program](#) focuses on projects of at least \$35 million, and OFCCP intends to be involved with covered contractors and subcontractors at the outset of the project, including regular meetings between OFCCP, contractors, and other stakeholders. Data from the Form will allow it to track effectiveness of outreach efforts and inform decisions regarding Megaproject resource allocation, program emphasis, and training efforts, OFCCP noted. Contractors would need to have each contract's Megaproject status for the Form.

Other Form reporting requirements include employers' unique entity identifier (UEI) or Data Universal Numbering System (DUNS) number, both of which OFCCP uses to identify entities doing business with the federal government, and a list of the federal agencies

funding their projects.

Many contractors may not have ready access to their UEI, DUNS number, list of funding agencies, or other required information for the Form. Therefore, it is important to prepared now to avoid delays if the proposal is implemented.

Contractor Community Comments

In response to OFCCP's call for public comments when it published the Form in the Federal Register, some commenters applauded the agency's proposal, stating that monthly data would give OFCCP more insight into the practices of construction contractors, allowing for better informed policies from the agency. Other commenters noted that OFCCP had not sufficiently described the utility of reinstating the requirement to justify the increased burden on the regulated community. Other concerned commenters focused on data privacy and security, requesting detailed treatment from OFCCP on how it will ensure the security of contractors' sensitive data.

Key Takeaways

Though it remains to be seen whether OFCCP will reinstate the Form as proposed or make changes based on the comments received, construction contractors should begin to prepare to submit the Form.

OFCCP's [Supporting Statement](#) predicts that the submitted Form will help OFCCP understand how work hours are distributed across the workforce and determine whether there are potential hiring or job assignment issues to investigate during a compliance evaluation. Therefore, it is critical that contractors ensure their monthly reports are vetted and accurate before submission. Depending on the number of covered contracts, reporting separately for each SMSA/EA can make gathering, vetting, and preparing data each month particularly challenging. Contractors can begin to ensure employees are properly classified with the accurate trade for each project within each SMSA/EA, particularly where employees perform duties under different trades across projects and areas.

Additionally, contractors should identify the relevant SMSA/EA for each project. This is important for contractors not only to prepare for the monthly report, but to be able to conduct the required analysis of employee hours worked by race and gender compared to market availability as required by OFCCP's 16 specifications.

Now is the time for construction contractors to determine where their compliance programs may need to be refreshed and begin working to fill in any compliance gaps.

Should you have any questions regarding compliance with the above, please reach out to a Jackson Lewis attorney for assistance.

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