

Key Requirements of OFCCP's New Audit Scheduling Letter for Construction Contractors

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The Office of Federal Contract Compliance Programs (OFCCP) released a revised Scheduling Letter and Itemized Listing for construction contractors on Oct. 2, 2024, that will require contractors to provide significantly more detailed data and documents with the initial audit submission than ever before. The new Scheduling Letter is effective for all construction audits initiated “on or after October 1, 2024.” Importantly, contractors have only 30 calendar days from receipt of the Scheduling Letter to submit their audit materials.

OFCCP has not historically audited construction contractors as often as supply and service contractors, and many construction contractors are therefore unaware of their obligations. OFCCP, however, is increasing the number of audits of construction contractors. In 2024, the agency said it intends to focus audits on two published lists of high-value construction projects of \$35 million or more (also called Mega projects).

The Scheduling Letter newly requires construction contractors:

- To report on any artificial intelligence, algorithms, or other automated systems in its hiring process. Contractors must identify all selection procedures used to fill relevant positions in the Standard Metropolitan Statistical Area (SMSA) selected for audit, including *all* tests used in the hiring process (whether or not the test is technology-based). Importantly, contractors must also provide evidence that any tests or selection procedures were validated (in accordance with 41 CFR 60-4.3(a)7.k and 41 CFR 60-3).
- To provide total regular and overtime wages in addition to wage rates, as well as additional types of pay, such as bonus. Each component of pay must be separately reported on each construction project within the SMSA identified in the Scheduling Letter.
- To provide employment activity data that include all trade employees, even those involved in supervising, inspecting, or engaging in “other onsite functions incidental to the actual construction.” Contractors also must report on employee lay-offs, including the former employee’s name, trade/job title, gender, race/ethnicity, the date of and the reason for the layoff, and recall eligibility.
- To submit antiharassment policies, policies on EEO complaint procedures, policies on employment agreements impacting employees’ equal opportunity rights and complaint processes, “and any other EEO policies.”
- To demonstrate the company is monitoring its personnel/employment activities to ensure that seniority practices, job classifications, work assignments, and other personnel practices did not have a discriminatory effect, and that the company’s EEO policy and related obligations are being fulfilled.

- For contractors with federal direct or subcontracts other than federally assisted contracts, related to Section 503 and VEVRAA AAPs for individuals with disabilities and protected veterans, respectively, to include an assessment of personnel policies, identification of problem areas, and an evaluation of effectiveness of outreach for veterans and individuals with disabilities.

As construction contractors will need to provide significantly more data and documents to OFCCP, contractors should begin preparing now because not all required documentation may be easily accessible. For example, employers should begin gathering information to determine how many and what types of technical and non-technical tests are used in the hiring process for trade employees. Additionally, employers can ensure accurate reports are available for employee regular and overtime wage rates, as well as total compensation for base pay, overtime, and bonus pay. These reports also must be vetted and reconciled with relevant employee hour reports, which may be housed in different internal systems.

Please reach out to your Jackson Lewis attorney if you would like assistance with your company's affirmative action compliance or an OFCCP audit.

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