
CHAPTER: Compliance Laws and Regulations

SECTION: Equal Employment Opportunity

Section 410

Introduction

For the purposes of this section, the phrase “Equal Employment Opportunity” (or EEO) is used in reference to a number of Federal statutes, and their implementing regulations, enacted to achieve an equality of employment opportunity for all persons. The laws aim to achieve this objective by prohibiting employment-related decisions based on specified factors deemed unrelated to job qualifications and, in certain instances, by requiring special consideration of applicants from some historically employment-disadvantaged groups. Although the primary enforcement responsibility for these statutes and regulations has been assigned to other Federal agencies, it is important for examiners to have a basic knowledge of these requirements as they apply to savings associations. In addition, the OTS has regulations at §528.7 incorporating EEO protections found in other federal statutes, giving it direct supervisory jurisdiction in cases of alleged violations.

The laws described in this section on Equal Employment Opportunity are: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, and Executive Orders 11141 and 11246. Primary private sector enforcement of the first three laws rests with the Equal Employment Opportunity Commission (EEOC). Primary enforcement of the remaining laws, as they apply to private sector entities holding federal contracts, is assigned to the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

Regulatory Requirements

Note: The requirements are stated here in summary form. EEO laws and regulations contain many technical exceptions and special requirements that are beyond the scope of this section. Management and individual employees should be directed to consult with legal counsel or the Federal EEO enforcement agencies if in doubt about specific com-

pliance situations. Cities where EEOC offices are located are listed at the end of this chapter.

Title VII

Title VII of the Civil Rights Act of 1964, as amended, is the most comprehensive of the Federal EEO statutes in terms of the employment activities covered. Title VII prohibits employment-related decisions to be made on account of an applicant’s or an employee’s race, color, sex, religion, or national origin. If based on any of the protected factors, activities expressly prohibited by Title VII are: (a) any discrimination with regard to compensation, terms, conditions, or privileges of employment, and (b) any action to limit, segregate, or classify applicants or employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee.

In 1978, Title VII was amended to include the Pregnancy Discrimination Act. This amendment requires employers to treat pregnancy and pregnancy-related medical conditions the same as any other medical disability with respect to all terms and conditions of employment, including employee health benefits.

In general, any savings association or other private sector employer with 15 or more employees, any employment agency, any labor organization, and any federal, state or local government employer is subject to the prohibitions of Title VII. The 15-employee threshold test may, in certain cases, be applied on a consolidated basis for affiliated business units if such affiliates are deemed to operate as, or under the control of, a single entity with regard to employment policies and practices covered by Title VII.

It should be noted here that OTS Regulation 528.7, parallels in most respects the language of Title VII, and applies to all savings associations regardless of the number of employees.

Charges of unlawful discrimination or other prohibited practice must be filed with the EEOC

within 180 days of the alleged act. However, if the charging party has filed charges with a state or local fair employment practices agency, the time limit may be extended to 240 days, or as much as 300 days in some cases. A charge may be filed with the EEOC either by or on behalf of the aggrieved individual, or by or on behalf of an aggrieved class. The filing may be made in person or by mail with any EEOC field office. In most instances, by observing required filing deadlines, an aggrieved party preserves the right under Title VII to bring a private civil action in the United States district courts if satisfaction is not obtained through the EEOC.

Remedies under Title VII are tailored to specific findings of discrimination by EEOC or by the federal district courts. These remedies may include requiring an employer to end discriminatory practices and systems, and in some cases, to provide specific “make whole” compensation for victims of discrimination.

“Make whole” remedies may involve reinstatement, hiring, reassignment, promotion, training, seniority rights, backpay, and other compensation and benefits. Backpay awards under Title VII cannot accrue from a date more than two years prior to filing of a charge.

Title VII makes it unlawful for employers (and other covered parties) to retaliate against any individual who opposes unlawful employment practices or attempts to exercise his or her rights under the law.

Age Discrimination in Employment Act of 1967

The Age Discrimination Act protects employees 40 years of age and older from arbitrary age discrimination in hiring, discharge, pay, promotions, fringe benefits, and other aspects of employment. The law is intended to promote employment of older persons on the basis of ability rather than age, and to help employers and employees find ways to meet problems arising from the impact of age on employment. One explicit requirement of the Act is that employers must offer all employees and their spouses 65 years of age and older the same health coverage, under the same conditions, that is offered to employees under age 65.

In general, any member savings institution or other private sector employer with 20 or more employees; all federal, state, and local governments; employment agencies; and all labor organizations with 25 or more members or which provide personnel placement services; are subject to the provisions of this Act. Until 1990, mandatory retirement age provisions of certain collective bargaining agreements existing on June 30, 1986, may remain in force (but may not be renewed) for employees age 70 or older.

The law does not apply where age is a “bona fide occupational qualification,” although instances where an employer can prove age to meet the E.E.O.C. tests for a “BFOQ” will be rare. It also does not bar employers from differentiating among employees based on reasonable factors other than age, or from observing the terms of a bona fide seniority system or any bona fide employee benefits plan (e.g., retirement, pension, or insurance plan), except that no seniority system or benefits plan will excuse otherwise prohibited mandatory retirement or a refusal to hire.

A charge of unlawful age discrimination must be filed with the EEOC within two years of the alleged violation (three years if the violation is alleged to be willful). However, to preserve the right to file a private suit in United States District Court, the charge must be filed with the EEOC within 180 days. This deadline is extended if charges are filed under state age discrimination laws (if any) to the earlier of 300 days after the alleged act or 30 days after termination of proceedings by the state agency. In general, a private suit may not be filed until 60 days after filing of the complaint with the EEOC, and not at all if EEOC elects to pursue legal action itself.

Potential penalties for employer violations of the Age Discrimination in Employment Act include payment of damages, interest, liquidated damages, attorneys’ fees, and court costs. EEOC’s stated policy is to “seek full and effective relief for each and every victim of employment discrimination, whether it is sought in court or in conciliation agreements reached before litigation.”

Employers are prohibited from retaliating against any person who files a charge, participates in an investigation, or opposes an unlawful practice.

Equal Pay Act of 1963

The Equal Pay Act protects women and men who perform substantially equal work in the same work establishment against pay discrimination based on sex. This form of discrimination is also prohibited by Title VII. However, the specified penalties and remedies under the Equal Pay Act may make it a more attractive enforcement tool in cases where it can be applied.

The Equal Pay Act protects most private employees whose employers are covered by the Fair Labor Standards Act (FLSA). FLSA criteria for determining coverage are quite complex. However, most business entities subject to the FLSA will be aware of their standing and of the other requirements imposed on them by that statute. Examiners should assume that any member savings institution is subject to the FLSA unless the institution can demonstrate exempt status.

With respect to entities subject to the FLSA, the Equal Pay Act prohibits (1) employers from discriminating on the basis of sex in the payment of wages [defined to include all remuneration for work performed] to men and women performing substantially equal work in the same establishment, (2) employers from reducing wages of either sex to comply with the law, and (3) labor organizations from causing employers to violate the law. However, the law does not prohibit pay differences based on factors other than sex (e.g., seniority, merit, or systems that reward actual worker productivity).

Complaints under the Equal Pay Act may be made in person, by mail, or over the telephone to any field office of the EEOC. A local U.S. Department of Labor Wage and Hour Office will also accept complaints for forwarding to the EEOC. Lawsuits to enforce the provisions of the Act may be brought by the EEOC or, in conformity with EEOC rules, by individual complainants.

Penalties for employer violations of the Equal Pay Act may include payment of back wages, interest,

liquidated damages, attorneys' fees and court costs. Criminal penalties may also apply. Employers are prohibited from retaliating against any person who files a complaint or participates in an investigation under this Act.

EEO Laws Applicable to Federal Contractors

For purposes of these laws, a federal contractor is any legal person holding (a) any federally-assisted construction contract or (b) one or more contracts to provide goods or services to the federal government which in any 12 month period amount to transactions valued at \$10,000 or more. In addition, financial institutions serving as depositories for federal funds, or acting as issuing or paying agents for U.S. savings bonds or notes are considered to be federal contractors.

The FDIC, effective November 5, 1990, removed 12 CFR 385.4, which was formerly a FSLIC regulation (12 CFR 563.36) that had been transferred to the FDIC in August 1989. The former FSLIC regulation indicated that the U.S. Labor Department's Office of Federal Contract Compliance Programs had determined that FSLIC insurance was a contract for purposes of Executive Order 11246, and based on that determination, so did the FSLIC. The FDIC, on the other hand, had consistently held that government deposit insurance was not a contract for purposes of Executive Order 11246, and that insured institutions are not government contractors solely by reason of being FDIC-insured. Based on that longstanding position, the FDIC removed the transferred FSLIC regulation. An administrative law judge has ruled that government deposit insurance is not a contract for purposes of Executive Order 11246 in U.S. Department of Labor, Office of Federal Contract Compliance Programs v. USAA Federal Savings Bank (U.S. Department of Labor Case No. 87-OFC-87, October 4, 1990).

EEO provisions applicable to federal contractors pursuant to these laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP). Questions may be directed to the OFCCP by calling the nearest OFCCP area office or (202) 219-9475 in Washington, D.C. or by

writing to OFCCP at 200 Constitution Avenue, NW, Washington, D.C. 20210.

Executive Order No. 11141

This order prohibits age discrimination in employment activities engaged in by federal contractors.

Executive Order No. 11246

This order requires that covered contracts with the federal government contain an agreement that the contractor will not discriminate against any applicant or any employee because of race, color, religion, sex, or national origin. Further, the contractor must agree to take affirmative action to insure that applicants and employees are treated without regard to race, color, religion, sex, or national origin. Contractors must post equal employment opportunity posters, as prescribed by the OFCCP [41 CFR 60-1.42], in conspicuous places readily visible to employees and applicants, and must make affirmative equal employment opportunity statements in all recruiting advertisements. A contractor with 50 or more employees must develop a written affirmative action plan which provides in detail for specific steps to guarantee equal employment opportunity and which includes a table of job classifications in use.

Complaints under E.O. 11246 must be filed with any office of the OFCCP within 180 days of the alleged violation, unless the time for filing is extended by the Director. OFCCP enforcement remedies may include removal of contractors from lists of eligible bidders, cancellation of existing contracts, and suits brought by the Department of Justice for breach of contract.

Rehabilitation Act of 1973

This statute prohibits federal contractors [and the federal government and recipients of federal assistance] from discriminating against physically and mentally handicapped individuals in employment. Further, contractors must make special efforts to recruit, employ, train and promote qualified handicapped persons. Contractors with 50 or employees must maintain an affirmative action program setting forth the contractor's policies and practices to

employ and advance qualified handicapped persons.

A qualified handicapped individual is defined as a person capable of performing a particular job with reasonable accommodation to his or her handicap. Complaints under this Act, by applicants and employees, must be filed in writing with the Director, OFCCP, within 180 days of the alleged violation, unless an extension is approved by the Director.

Vietnam Era Veterans' Readjustment Act of 1974

This statute prohibits federal contractors [and the federal government and recipients of federal assistance] from discriminating against disabled veterans and Vietnam era veterans in employment. Further, contractors must make special efforts to recruit, employ, train and promote qualified disabled veterans and Vietnam era veterans.

Contractors with 50 or more employees are required to maintain an affirmative action program setting out the contractor's policies and practices to employ and advance qualified veterans covered by the Act. Employment opportunities for positions paying under \$25,000 annually must be registered by contractors with their state employment offices.

Disabled veterans are defined to be persons entitled to disability compensation under the rules of the Veterans Administration for disability rated at 30 per centum or more, or persons discharged from active duty for disability incurred or aggravated in the line of duty. Vietnam era veterans are defined as persons who (1) served on active duty for a period of more than 180 days any part of which occurred between August 5, 1964 and May 7, 1975 and were discharged therefrom with other than dishonorable discharge, or (2) were discharged from active duty for a service related disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

Complaints by applicants and employees under this Act may be filed in writing with the Veteran's Employment Service of the Department of Labor through a Local Veteran's Employment Representative at the local State employment office. Investigations and enforcement are by OFCCP.

Examination Objectives

To determine that the savings association is aware of and has established procedures to insure compliance with its EEO obligations.

29 U.S.C. 201 et seq. Equal Pay Act of 1963 (Public Law 88-38)

29 U.S.C. 791 et seq. Rehabilitation Act of 1973 (Public Law 93-112, as amended)

To determine that the savings association has adequate internal controls or reviews in place to detect deviations from its stated procedures.

38 U.S.C. 2011 et seq. Vietnam Era Veterans Readjustment Act of 1974 (Public Law 93-508)

Examination Procedures

1. Determine whether the board of directors and senior officers of the savings association are knowledgeable regarding their institution's EEO obligations.

Executive Order No. 11141 (Reprinted, 5 U.S.C.3301 (1982))

Executive Order No. 11246 As amended by Executive Order No. 12086 (Reprinted, 42 U.S.C. 2000(e) (1982))

2. Determine whether the savings association has established written policies and procedures designed to satisfy those EEO obligations.

Regulations

OTS Regulations (12 CFR):

Part 528.7 Nondiscrimination in Employment

3. Determine whether established policies and procedures are likely, if followed in practice, to result in EEO compliance and meet the overall affirmative action objectives of the savings association.

Equal Employment Opportunity Commission Regulations (29 CFR):

Parts 1600-1691 Guidelines, enforcement procedures, and reporting requirements imposed by the EEOC

4. Determine whether the savings association has implemented an internal review mechanism to identify and correct EEO errors and omissions in its handling of personnel matters.

Office of Federal Contract Compliance Programs Regulations (41 CFR):

Part 60-1 Obligations under Executive Order No. 11246, as amended

References

Laws

42 U.S.C. 2000e et seq., 78 Stat. 253 Title VII, Civil Rights Act of 1964, as amended (Public Law 88-352, as amended by P.L. 92-621, P.L. 93-608, P.L. 95-251, P.L. 95-555, P.L. 95-598, P.L. 96-191, and by Federal Reorganization Plan No. 1 of 1978 (43 FR 19807))

Part 60-250 Vietnam Era Veterans' Readjustment Assistance

Part 60-741 Rehabilitation [of Handicapped Individuals]

29 U.S.C. 621-634 Age Discrimination in Employment Act of 1967, as amended (Public Law 90-202, as amended)

48 CFR Part 22 [Federal Acquisition Regulations*]

* Title 48 CFR replaced Title 41 CFR Subtitle A, Chapters 1 to 49 for contracts established on or after April 1, 1984 (50 FR 26987, July 1, 1985).

Application of Labor Laws to Government Acquisitions Subpart 22.8-Equal Employment Opportunity Subpart 22.9- Non-discrimination Because of Age Subpart 22.13-Special Disabled and Vietnam Era Veterans Subpart 22.14-Employment of the Handicapped

Denver, CO
 Detroit, MI
 El Paso, TX
 Fresno, CA
 Greensboro, NC
 Greenville, SC
 Honolulu, HI
 Houston, TX
 Indianapolis, IN
 Jackson, MS
 Kansas City, MO
 Little Rock, AR
 Los Angeles, CA
 Louisville, KY

Philadelphia, PA
 Phoenix, AZ
 Pittsburgh, PA
 Raleigh, NC
 Richmond, VA
 San Antonio, TX
 San Diego, CA
 San Francisco, CA
 San Jose, CA
 Savannah, GA
 Seattle, WA
 St. Louis, MO
 Tampa, FL
 Washington, DC

EEOC - Voluntary Assistance Program

The EEOC offers a special program of educational and technical assistance to organizations employing 500 or fewer workers. Titled the "Voluntary Assistance Program," this effort is designed to assist small to mid-size employers who lack specialized in-house staff trained in EEO compliance. The program operates as a series of symposia held quarterly in various parts of the country. Senior EEOC officials share current information and general guidance regarding rights and obligations under federal laws prohibiting discrimination in employment.

Private sector employers and employees desiring additional information about EEOC policies may contact their nearest local office or call EEOC toll free at 800-USA-EEOC. Hearing impaired may contact EEOC's TDD number (202) 634-7057. Written questions should be mailed to any EEOC field office, or to the EEOC at 2401 E Street, NW, Washington, DC 20507.

At program seminars, EEOC officials deal only with generic issues. No specific information is requested from any attendee. The underlying theme of the program is simply that good EEO practices are good management practices. Additional information on upcoming seminars may be obtained by calling toll free 800-USA-EEOC, or writing to the Office of Program Operations, EEOC, 2401 E Street, NW, Washington, DC 20507.

Equal Employment Opportunity Offices

The EEOC has offices in the following cities:

Albuquerque, NM	Memphis, TN
Atlanta, GA	Miami, FL
Baltimore, MD	Milwaukee, WI
Birmingham, AL	Minneapolis, MN
Boston, MA	Nashville, TN
Buffalo, NY	Newark, NJ
Charlotte, NC	New Orleans, LA
Chicago, IL	New York, NY
Cincinnati, OH	Norfolk, VA
Cleveland, OH	Oakland, CA
Dallas, TX	Oklahoma City, OK