

Office of Federal Contract Compliance Programs

Directive (DIR) 2018-01



U.S. DEPARTMENT OF LABOR Office of Federal Contract Compliance Programs

A Directive (DIR) is intended to provide guidance to OFCCP staff or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations.

Effective Date: February 27, 2018

1. **SUBJECT:** Use of Predetermination Notices (PDN)
2. **PURPOSE:** To establish the consistent use of PDNs for discrimination cases, both individual and systemic.
3. **REFERENCE:** Federal Contract Compliance Manual (FCCM) (October 2014).
4. **AFFECTED POLICY:** FCCM, § 8E, Predetermination Notice (October 2014).
5. **BACKGROUND:** A PDN is a letter that OFCCP uses to inform federal contractors and subcontractors ("contractors") of the agency's preliminary findings of employment discrimination. In recent years, OFCCP has typically reserved use of the PDN for systemic discrimination cases and permitted regional and district offices discretion in whether to issue the PDN prior to issuing a Notice of Violation (NOV).

As part of OFCCP's ongoing efforts to achieve consistency across regional and district offices, increase transparency about preliminary findings with contractors, and encourage communication throughout the compliance evaluation process, OFCCP is instituting a uniform approach to the use of PDNs in compliance evaluations where the agency believes discrimination findings may exist.

This directive is intended as interim guidance until OFCCP revises the FCCM to reflect this change.

6. **ROLES AND RESPONSIBILITIES:**

- A. **Regional and Field Managers:** It is the responsibility of regional and district directors to ensure that regional and field staff issue PDNs consistent with the policy stated in this directive.
- B. **Regional and Field Staff:** It is the responsibility of compliance officers and other employees responsible for issuing PDNs to act in accordance with the policy stated in this directive.
- C. **National Office:** It is the responsibility of OFCCP's national office to review all PDNs and provide a decision to the regional and field managers about the use of PDNs.

7. **POLICY:** OFCCP will issue PDNs for preliminary individual and systemic discrimination findings identified during the course of compliance evaluations. The use of the PDN encourages communication with contractors and provides them an

opportunity to respond to preliminary findings prior to OFCCP deciding to issue an NOV. Regional discretion is no longer permitted.

Compliance officers and other responsible staff must issue PDNs at the conclusion of compliance evaluations where the contractors have not provided adequate explanations to proposed discrimination findings. The PDN, in the form of a letter from OFCCP to the contractor, provides the contractor 15 additional calendar days to rebut OFCCP's proposed findings that sufficient evidence exists of discrimination.

The appropriate regional Office of the Solicitor must review PDNs before they can be submitted to OFCCP's national office for a review and final decision.

This directive supersedes contrary guidance in the FCCM or any other agency guidance with which it conflicts. Letter 27 of the FCCM has been revised to reflect this policy (see attachment).

Any NOV not yet issued must be held and a PDN issued in its place to allow contractors an opportunity to respond to the agency's preliminary findings.

8. **ATTACHMENT:** FCCM, L-27 (revised), Predetermination Notice

/S/

Ondray T. Harris
Director
Office of Federal Contract Compliance Programs

Note: To be mailed by certified mail, return receipt requested.

[Date]

[Name of CEO]
[Title of CEO]
[Company Name]
[Street Address]
[City, State, Zip Code]

Re: Compliance Evaluation of (insert name of contractor)
OFCCP No. _____

Dear (Mr. or Ms. _____):

On (insert date), the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), began a compliance evaluation of (insert name of contractor) compliance with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and their implementing regulations at 41 Code of Federal Regulations (CFR) Chapter 60. (Insert name of contractor), hereinafter referred to as the "contractor," is a federal contractor pursuant to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and their implementing regulations at 41 CFR Chapter 60.

The purpose of this Notice is to inform you of the findings which, if not adequately rebutted, will establish that discrimination occurred (or is occurring) at the contractor's establishment.

(Present the evidence discrimination)

(If there are additional violations or deficiencies, including technical violations, present them here)

Please be advised that this is a preliminary determination based on available information. You now have the opportunity to provide additional information or documentation that you believe we should consider before a final determination is made. We ask that you respond to this Notice within 15 calendar days from receipt of this letter. If you do not respond, we will incorporate the

preliminary finding(s) made in this Notice into a final Notice of Violation (NOV). You will receive the NOV by certified mail. If you have any questions, please call Compliance Officer (insert name of compliance officer), or his or her immediate supervisor, (insert name of District Director or Assistant District Director) at (insert District Office or /Regional Office phone number).

Sincerely,

(Insert name of the District Director or Assistant District Director)
District Director

cc: [insert name of the head of establishment]
[insert name of the designated representative]

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Last updated on February 27, 2018

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