

NEW OFCCP DIRECTOR APPOINTMENT SIGNALS RENEWED FOCUS ON PAY DISCRIMINATION

Jan 29, 2021

President Biden's appointment of Jenny Yang to Director of the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") on his first day in office signals a new direction in federal equal employment opportunity enforcement. Prior to this appointment, Director Yang had a career as a plaintiff's attorney before being appointed to Chair of the Equal Employment Opportunity Commission ("EEOC") under the Obama administration. Notably, during Director Yang's time as Chair of the EEOC, the agency introduced a highly contested requirement for employers to disclose certain employee pay data when filing EEO-1 Reports.

We expect that many of the Biden administration's equal employment initiatives, including a renewed emphasis on pay discrimination, will be vetted through the OFCCP by Director Yang. The EEOC may not experience as much of an immediate sea change since the Republican EEOC commissioners will remain in place through 2022.

Importantly, the OFCCP has the authority to audit private employers' hiring and pay practices if the employer falls within the agency's jurisdiction, which is broadly defined and applies to approximately 25% of private employers. For example, a private employer is a government contractor or a subcontractor under the OFCCP's jurisdiction if it has 50 or more employees and \$50,000 in work that qualifies as a government subcontract or contract. A company that provides a service to a government contractor or supplies a component part to a government contractor would also likely fall under the OFCCP's jurisdiction as a covered subcontractor. Even employers who do no more than sell merchandise or products at a military exchange may also be subject to the OFCCP's jurisdiction. Similarly, most financial institutions fall under the OFCCP's jurisdiction by virtue of their relationship with the FDIC.

Given the OFCCP's anticipated focus on pay discrimination claims, this may be a good time for covered employers to prioritize efforts to conduct internal privileged compensation analyses. Conducting a compensation analysis and taking any corrective actions before an OFCCP audit will ensure an employer's compensation data is defensible before it is submitted to the OFCCP. Additionally, many employers prefer to incorporate any needed compensation adjustments into

their annual compensation review in order to avoid shining a spotlight on any potential discrepancies.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers determine whether they fall within the OFCCP's jurisdiction and conduct compensation analyses. If you or your organization would like more information or assistance on these topics, please contact an attorney in the Labor and Employment practice group or your regular Bryan Cave Leighton Paisner LLP contact.

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