

PERSONNEL NOTEBOOK

For Your Most Important Resource—The Human Resource

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AFFIRMATIVE ACTION PROGRAMS

Part I. What They Are and the Love/Hate Relationship We Have With Them

Every school child knows that in the United States discrimination in employment based on race or sex is illegal. Using race or sex as a factor when advertising or hiring employees is forbidden under numerous federal and state requirements.

Yet, according to a Wall Street Journal report, many companies including Burger King and the Chicago Sun Times, openly recruited executives and professionals on a women only or minority only basis. Some companies stated that they did not want to waste their time interviewing men, others stating "we will interview men but we are only going to hire women." Yet the EEOC (Equal Employment Opportunity Commission) took no action against them.

In the famous "Bache" case, a white male was refused admission to the college of his choice when a lesser qualified minority was selected. A Supreme Court case ruled in his favor. Yet when it was reported that the U.S. Department of the Interior and the IRS both had standing written policies forbidding the hiring or promotion of white males without special approval, while rewards were offered for doing so with minorities and females, the federal government also accepted this!

The inconsistencies on both sides of the affirmative action issue are hard to understand. So let me state at the onset that clearly, affirmative action is a good concept, a great program, one that has worked and continues to benefit society. However, there are extremists on both sides of this issue; and when extremists are placed in positions of power, you have another beneficial program

being distorted and misused. What's the problem here? Let's first start with the basics. Here's our outline:

- I. What is an Affirmative Action Program (AAP) and what does it require?
- II. Who has to do them?
- III. Why all the controversy?

In Part II, our next issue of *Personnel Notebook*, we will cover:

- IV. How do you create your own AAP?
And the forms, those mysterious missing forms.

I. What is an Affirmative Action Program (AAP) and what does it require?

By definition an AAP is "a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures, plus such efforts, is equal employment opportunity. ...and thus to achieve prompt and full utilization of minorities and women at all levels and all segments of its workforce where deficiencies exist."

By legislative process: In 1964, Congress passed the Civil Rights Act forbidding discrimination against minorities and women. The bill was passed with the public warning that if this action did not produce improvements in the employment of women and minorities, then more stringent legislation would follow.

In September 1965, with little success resulting from the new law, an Executive Order was issued. (An Executive Order is a policy established by the President without the benefit of congressional or democratic vote. An Executive Order is only enforceable in and on federal government controlled domain, such as federally-funded contracts.) Executive Order 11246 mandates that all government agencies must require their federal contractors to take affirmative action to recruit and employ workers without regard to race or sex.

By October 1978, no significant improvements in minority employment had resulted, so along comes Executive Order 12086. This Order assigned the enforcement of all affirmative action (AA) to the Department of Labor (DOL) and further that all AA must be submitted to the DOL as written programs within 120 days of a company gaining a federal contract. All these responsibilities were then assigned to an entity within the Department of Labor called the "Office of Federal Contract Compliance (OFCCP)."

The regulations and the debates that followed the Order spelled out clearly that no discrimination or favoritism or quotas would be allowed. They stated specifically that although good faith effort would be demanded, the goal would be to create opportunities for women and minorities not to guarantee numerical results or individual job success.

The regulations also spelled out what elements the AAP was to include. The elements clearly defined an "outreach" type procedure based on non-discrimination. Those procedures are to:

1. State your written commitment to the cause of equal employment opportunity (see page 3).
2. Assign an individual in your company to be the Equal Employment Opportunity (EEO) Officer. That person's job being the responsibility of managing the AAP (see page 3).

3. Conduct a workforce analysis of your employees to identify the women and minorities and their job levels in your company.

4. Compare the percentages of women and minorities utilized in your workforce to the availability of women and minorities in your labor market (the geographical area from which you draw your employees).

5. Describe the results and if there are more women and/or minorities available in your area than are represented in your company, than that "underutilization" must be identified.

6. Describe the affirmative action you intend to take to improve or resolve that underutilization at each level in your company.

Your intentions, what you intend to do to resolve that underutilization, constitutes your affirmative action program. That program is guided by the non-discrimination laws we just reviewed. In addition, there is a list of eight options from which you determine how you intend to gain the employment of those minorities and females that were available but which you did not hire. (Note: that list of 8 options has recently been reduced to 2 options, plus any other which you can justify. These will be reviewed in Section IV, the next issue.

The program processes are to:

- A. Spread the word of your job openings to areas where minorities and women are assured to see them.
- B. Simplify the process of application for all candidates.
- C. Without any racial or sexual preference, select the candidates for hire based on ability and a fair and proper selection criteria.
- D. Once employed, encourage minorities and women as well as all other employees to improve skills, take advantage of training opportunities and apply for positions of opportunity when available.

E. Establish programs that draw minority and women candidates to apply, programs that provide training opportunities, mentor programs, tuition aid, cross training, seminars inside and outside the company, and also establish career planning programs. If at the end of the AAP year you have not been successful, assess all you have done and redetermine how you will proceed with your next AAP. One must be completed after each year.

Again, you may not use race or sex as a criteria for employment decisions. However, if you have been formally declared guilty of racial or sexual discrimination, you may be ordered to hire minorities or women by quotas. Or if you have been charged with discrimination and are seeking a settlement, you may then voluntarily elect to hire by race and sex as a negotiated settlement to resolve the case.

II. Who has to do them?

Employers with a federal contract of \$50,000 or more and with 50 or more employees (centrally employed within 50 miles of each other) are required to submit a written AAP within 120 days of being granted the contract.

III. Why all the controversy?

There are two different camps locked into position on this issue of affirmative action. The first camp is identified as those who follow the regulations as stated above. The second camp represents those who feel that the terms "good faith effort," "voluntary non-discrimination," "outreach" and "opportunities for advancement" are inadequate methods even though these are required by law. This second camp wants to cut to the chase and simply get the desired results by selectively hiring by race and sex, only they want it to be the race and sex they choose. They want quotas, targeted hiring, set asides for protected classes and guaranteed successes, as opposed to offered opportunities.

All these are against the law. Camp No. 2 wants another executive order requiring hiring and promotion, etc., by race and sex. Both camps are

firmly entrenched. That's the controversy. In the confusion, extremists on the right want to "throw out the baby with the bath water" and end all Affirmative Action Programs including the spreading of the openings to minority communities. Extremists on the left as stated want to "discriminate in reverse" to end discrimination.

In Part II of Affirmative Action Programs, we will cover how to create AAPs and why there are no government forms to use.

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