



April 7, 2020

Mr. Craig E. Leen
Director, Office of Federal Contract Compliance Programs
United States Department of Labor
Via email - Gean.Lisette@dol.gov (Lisette Gean, OFCCP Chief of Staff)

Re: March 17, 2020 National Interest Exemption Memorandum

Dear Director Leen:

The 56 undersigned civil rights and worker rights organizations write to express our deep concern about the U.S. Department of Labor Office of Federal Contract Compliance Programs' March 17, 2020 [decision](#) to temporarily exempt and waive certain affirmative action obligations connected to supply, service, and construction federal contracts specifically to provide coronavirus relief. While a robust federal response to the coronavirus pandemic is essential, there is no justification for suspending crucial civil rights protections during this public health emergency.

As organizations deeply committed to ensuring equal opportunity in employment, we urge OFCCP to rescind its March 17, 2020 memo as it is unnecessarily broad, will cause significant harm to marginalized workers hardest hit by the current crisis, and contravenes the OFCCP's mission of "protect[ing] workers, promot[ing] diversity and enforc[ing] the law." At a minimum, OFCCP should take immediate steps to mitigate the long-lasting harm that will arise from this exemption.

The pandemic and its economic repercussions are disproportionately impacting people of color and other historically marginalized communities, and the federal government must do everything to ensure that federal contractors responding to COVID-19 are affirmatively recruiting and promoting the employment opportunities created by this crisis to those most impacted. The March 17, 2020 memo, however, does the opposite.

The March 17th memo waives critical obligations under Executive Order 11246, as amended (E.O. 11246); Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and the Vietnam Era Veterans' Readjustment Assistance, as amended (VEVRAA). Collectively these laws prohibit federal contractors from discriminating against employees and applicants because of their race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status. These laws also require government contractors to undertake affirmative efforts to ensure that equal opportunity is provided in all aspects of employment, including recruitment and hiring.

The waiver suspends the following obligations under E.O. 11246, Section 503 and VEVRAA:

- 1) Written affirmative action plans



- 2) Affirmative outreach and recruitment efforts targeting underrepresented groups
- 3) Important requirements to post EEO policy statements
- 4) Listing job openings with state workforce agencies
- 5) Inclusion of anti-discrimination notices in job postings
- 6) Providing notices to recognized unions about the employer's affirmative action and anti-discrimination policies
- 7) EEO-1 filing requirements for employers with less than 100 employees
- 8) On-site audit access

The waiver is unjustifiably broad because it undermines both affirmative action and anti-discrimination obligations and because compliance with many of these obligations—such as the requirements to list openings with state agencies, inform employees of the employer's anti-discrimination and affirmative action policies, and provide notices to unions of anti-discrimination and affirmative action policies—require minimal resources.

Furthermore, these exemptions not only apply to federal contractors but also to the subcontractors with whom they do business. The waivers will discourage covered employers responding to the coronavirus pandemic from casting a wide net to recruit diverse workers from historically underrepresented populations. They will also keep contractor and subcontractor workers and their union representatives in the dark about their legal rights and make enforcement of affirmative action regulations even more difficult.

The current pandemic has resulted in the shutdown of wide segments of our economy, including the travel, retail, restaurant and hospitality industries and is severely impacting vulnerable workers, including Black and Latinx workers, women, people with disabilities and LGBTQ people who experience heightened rates of workplace exploitation and discrimination. It has also resulted in a significant uptick in explicit discrimination and harassment against the Asian American and Pacific Islander community. In the last two weeks of March, nearly [10 million](#) people applied for unemployment benefits due largely to layoffs prompted by the coronavirus pandemic. Though this number is unprecedented, the number of people who have lost jobs because of the crisis is [likely much larger](#) as state unemployment agencies have struggled to process claims.

Not surprisingly, these massive lay-offs are [disproportionately impacting](#) Black and Latinx workers including [women of color](#) who are overrepresented in low-wage service jobs. Furthermore, racial minorities are [about twice as likely to subsist on poverty-level wages](#) as compared to their white counterparts and as a result have fewer savings and resources upon which they can rely to weather this crisis, especially when those resources may have to be spent on unexpected emergency costs such as medical care, medication and increased supplies of food. Workers with disabilities are also disproportionately impacted by the pandemic. Though people with disabilities [constitute about 12 percent of working-age Americans](#), they make up [half of all](#)



[those living in long-term poverty](#). People with disabilities are more likely than those without disabilities to [work low-wage jobs](#), which have been the hardest hit by the crisis.

As the economy barrels into a recession, there are, and will continue to be, fewer hiring opportunities for vulnerable workers who have suddenly found themselves unemployed and without any source of income. One of the few areas of job growth will be among federal contractors seeking to respond to the coronavirus crisis. The trillions of dollars the federal government is pumping into the economy is an unprecedented measure representing remarkable opportunities for private businesses. OFCCP must ensure that working people experiencing high levels of job loss and most vulnerable to a recession are not left out of the response and recovery effort.

By suspending the critical affirmative action programs, the OFCCP will cause substantial harm to the communities hardest hit by the economic and health crisis in direct contradiction to its stated mission and purpose. A failure to ensure equity in contractor hiring will reinforce and exacerbate existing economic and health disparities. If marginalized workers are frozen out of job opportunities and health benefits, they face the prospect of losing their savings, their homes, and the opportunity to build wealth.

It is far harder for a family to recover economically from disaster if they have been forced to spend their already scarce resources trying to survive. In the wake of the 2008 financial crisis, for example, Black Americans not only lost a larger proportion of their wealth than did white Americans—they were also hurt more in the long run: the median wealth of Black Americans continued to decrease even after white Americans began to recover. Given the bleak economic predictions for the year and the likelihood that the already staggering unemployment rates will continue to rise, we can expect that the current crisis will be even greater if the federal government maintains its suspension of affirmative action regulations.

This Administration must learn from the severe unemployment rates Black Americans faced in New Orleans following Hurricane Katrina, when OFCCP similarly issued a national interest exemption waiving affirmative action obligations for federal contractors providing disaster relief. While unemployment rates for Katrina evacuees averaged [15.4 percent](#), Black evacuees were [5 times](#) more likely to be unemployed than white evacuees.

To that end, we ask that the OFCCP undertake immediate action to:

- Rescind the March 17, 2020 memorandum. If it is left in place, do not extend the waiver beyond the current three-month period expiring on June 17, 2020 and narrow the waiver to exclude obligations that can be accomplished with minimal resources such as those highlighted above. Extending the waiver would represent a significant departure from precedent, as OFCCP did not extend its limited waiver following Hurricane Katrina. Furthermore, the longer that the waiver is in place, the more likely it is that people of color and others will be irreparably harmed by the loss



of vital economic opportunities. The exemption waives even the most basic compliance obligations and does nothing to increase contractor efficacy. Quite the opposite, it disincentivizes contractors from casting a wide net when recruiting to attract qualified, diverse candidates and may serve only to worsen the already stark racial and gender wealth gaps.

- Provide transparency in how the “national interest” exemption is applied for the duration of the exemption. The OFCCP should maintain an online, publicly-available list of all contractors benefitting from the exemption, including the purpose of the contract, the basis for determining that the contract is to provide Coronavirus relief, the value of the contract and any subcontractors involved.
- Require all federal contractors covered by the exemption to record and retain relevant personnel data, including compensation, hiring, promotion, and termination data ordinarily reported on affirmative action plans and EEO-1 filings and to relevant enforcement agencies.
- Exercise oversight over the federal agencies determining which contractors are eligible for the exemption since they have broad discretion. Specifically, DOL should provide clear and objective guidelines for agencies to ensure that a national interest exemption is not being used as a pretext to excuse companies from important diversity and anti-discrimination obligations.

We urge the OFCCP to not abandon its goals of promoting diversity and protecting workers during this pandemic by rescinding or not extending this exemption, and to work swiftly to help blunt and possibly reverse the extensive economic harm that vulnerable workers are currently experiencing.

Please contact Dariely Rodriguez, Director, Economic Justice Project, or Noah Baron, Counsel of the Lawyers' Committee for Civil Rights Under Law to discuss this matter prior to Wednesday, April 15, 2020. Thank you for your time and consideration.

Sincerely,

Lawyers' Committee for Civil Rights Under Law

Absolute Mediation and Arbitration Services, LLC

Alianza Nacional de Campesinas

American Association of People with Disabilities

Autistic Women & Nonbinary Network

Bazelon Center for Mental Health Law



Center for Disability Rights

Disability Rights North Carolina

Disabled In Action of PA

Equal Rights Advocates

Equality California

Futures Without Violence

GA ADAPT

Hispanic Federation

Human Rights Campaign

International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers

Justice for Migrant Women

Lambda Legal

LatinoJustice

The Leadership Conference on Civil and Human Rights

League of Women Voters of the United States

Made Welcome

Movement Advancement Project

Multicultural Efforts to End Sexual Assault (MESA)

NAACP

NAACP Legal Defense and Educational Fund

National Action Network

National Asian Pacific American Women's Forum (NAPAWF)

National Center for Transgender Equality

National Council of Jewish Women

National Employment Law Project



National LGBTQ Task Force
National Partnership for Women & Families
National Taskforce on Tradeswomen Issues
National Urban League
National Women's Law Center
National Workrights Institute
North Central PA ADAPT
Organizacion en California de Lideres Campesinas, Inc.
PA ADAPT
Paralyzed Veterans of America
Partnership for Inclusive Disaster Strategies
PFLAG National
Philly ADAPT
Poverty & Race Research Action Council
Silver State Equality-Nevada
Social Cohesion Resources
SPLC Action Fund
Texas Women in Trades
Tradeswomen Inc.
Union for Reform Judaism
United Brotherhood of Carpenters and Joiners of America
US International Council on Disabilities
Women Employed
Working IDEAL
World Institute on Disability