

Under new leadership, OFCCP issued its first Directive. [OFCCP Directive 2018-01](#).

In Summary

The Directive addresses two official Notices (Letters sent Certified Mail/Return Receipt Requested) a contractor never wants to receive. One or both are received during an audit when OFCCP believes discrimination may have occurred:

- **PDN** – Pre-Determination Notice
- **NOV** – Notice of Violation

PDN means OFCCP analyzed data and made a preliminary determination that discrimination may have occurred in some aspect of employment—hiring, promotion, pay, termination, etc. A contractor has 15 days after receiving a PDN to rebut the determination. This is where detailed documentation either serves the contractor well or doesn't. If rebuttal is acceptable, the issue goes away.

NOV means OFCCP didn't find the rebuttal acceptable and continues to believe discrimination occurred. Step two is now implemented and the NOV arrives, further detailing the alleged discrimination and what OFCCP requires as a remedy. (Backpay, interest, preferential hiring, job reinstatement, staff training, recordkeeping changes, etc.).

Why This Is Noteworthy

It's a reminder that there are best practices that may diminish the probability a PDN might be issued during audit.

Best Practices

- Conduct analyses—at least annually but preferably more often—to determine if there is adverse impact.
- If there is adverse impact in employment practices, focus on identifying:
 - Which applicant or employee groups are adversely affected
 - The individual decision-making steps causing adverse impacts
 - Any changes that could be made to policies, practices, recordkeeping, etc. that might eliminate or diminish adverse impacts
- Look at the severity of adverse impacts. For those showing two or more standard deviations, take a second or third look.
- Be sure the official definition of “applicant” is followed when coding applicant entries. Non-applicants don't belong in analyses and can skew outcomes. (Reminder) Among all recordkeeping and documentation HR is concerned about, applicant documentation should still be near the top of the list. Financial settlements involving applicant discrimination are still at the top of OFCCP's list.

Interesting Tidbit

It's curious that OFCCP would issue this first Directive on the subject of discrimination. Is there an underlying message that audits will focus more on possible discrimination? There are a lot of other "transparency and consistency" issues that could have been addressed, having much broader applicability to contractors. I find this curious and you may too.