

## OFCCP Champions The Rights Of Male Workers

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**Janilyn  
Brouwer Daub**  
Partner  
Higher Education  
Practice Co-Chair

Who said no one cares about the white male under 40? Take heart men – the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) cares about you and your employment rights.

As part of an affirmative action audit of a government contractor, OFCCP found that the contractor discriminated against males applying for entry-level positions that involved contact with the public. Perceptions that women have better customer service skills played into hiring decisions favoring women, found OFCCP. As a result, 200 qualified male applicants did not receive employment offers.

To remedy this, the contractor agreed to pay \$130,000 in back wages to nixed male applicants and make job offers to 18 qualified men who had not been offered positions.

What are the take-aways for federal contractors and subcontractors?

1. First, discard your old beliefs that OFCCP will ignore adverse impact affecting males and whites. As this settlement shows, OFCCP may pursue discrimination claims on behalf of groups that we might not traditionally think of as protected classes. This is a shift from past practice.

2. Second, don’t throw out *all* your old school thinking. As the settlement also demonstrates, OFCCP continues to focus on entry-level jobs to determine whether there is adverse impact on a particular group when comparing applicants to hires. This is OFCCP’s sweet spot in extracting settlements from contractors. Entry-level jobs tend to have a high volume of applicants and little criteria to differentiate a qualified candidate from an unqualified one. Accordingly, OFCCP likely has the volume of applicants to run sound statistical analyses and knows you’re going to have a tough time explaining why applicant No. 625 was not qualified for the entry-level job that requires candidates to do little more than demonstrate they are members of the human race.

To avoid or address adverse impact, contractors may want to thoughtfully define the minimum qualifications of entry-level jobs, set predetermined limits on the number of applications the contractor reviews if a high volume of candidates apply, and carefully track applicants, including assigning

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appropriate disposition codes. In the event of adverse impact affecting men or whites, don't assume OFCCP will ignore.