

**ATTORNEY-CLIENT PRIVILEGED**

November 15, 2018

Mr. Marshall Parks  
Director of Human Resources  
University of Northern Colorado  
501 20th Street  
Greeley, CO 80639

**RE: Affirmative Action Plans**  
**Plan Year: 2017**

Dear Mr. Parks:

This summary letter is intended to help you implement your Affirmative Action Program; it is not meant as a “notice of violations.” We base our recommendations on how we have seen the OFCCP interpret regulations in the most recent audits, which does mean our advice will shift as needed from year to year, whether or not there have been any changes to the regulations themselves. While many sections of this summary letter cover formal regulations, we try to give specific best practice recommendations whenever we can.

This letter discusses areas of potential risk within University of Northern Colorado’s Affirmative Action Program, including:

- **Impact Ratio Analysis results** – Adverse impact indicators in hires and terminations
- **Compensation Analysis results** – Adverse impact indicators in females, males, and non-minorities
- **Self-Identifications forms** – Missing option to decline; Using required disabled ID form, When to offer applicants and employees an opportunity to self-Identify
- **EEO Policy Statement** – Missing protected class gender identity, where to review disabled/veterans affirmative action programs, pay transparency, and signature of highest ranking US official
- **EEO Policy** – Missing protected class gender identity, where to review disabled/veterans affirmative action programs, and pay transparency
- **Anti-Harassment Policy** – Missing protected classes, pay transparency, complaint procedures, and options for reporting
- **EEO statements** – Missing protected class gender identity; consistency
- **Purchase orders and subcontracts** – Missing EEO clause by reference
- **Recruitment Activities’ Log** – Not submitted
- **Application process** – Missing reasonable accommodation request in application process
- **Job postings** – Tagline missing from individual job postings; missing protected class gender identity
- **Testing practices** – Pre-employment testing and post-employment physicals
- **Personnel Review Log** – Not submitted
- **Manager evaluations** – Evaluation for adhering to EEO obligations
- **Notice to Employee of Their Right to Collective Bargaining** – Not posting
- **Required reporting** – Filing the Vets-4212
- **Applicant Data** – One-to-one applicant to hire ratios

Please carefully review this summary letter and update your exhibits, practices, and procedures accordingly. We have included recommendations for exhibits, practices, and procedures that either did not meet all of the regulatory requirements or best practices, or were not provided for review. Sample exhibits have been sent to you separately in ready-to-use formats. We would be happy to review and provide specific legal guidance on any exhibits, practices, or procedures that were not submitted during your plan preparation process; however, we will not amend and resend this summary letter unless there has been an error.

Additionally, please review your Affirmative Action Plan or Plans for accuracy and completeness. Our staff has reviewed the information, but we do not have firsthand knowledge of your workforce as you do.

**Please note that this summary letter and your supplemental reports are protected by attorney-client privilege.** Disclosure of your summary letter, supplemental reports and the underlying data to third parties may act as a waiver of that privilege; therefore, we advise you to use caution before sharing these materials. If any of these materials are requested by a government agency, contact Employers Council; we will provide you with copies that are appropriate for submission to the agency.

Let us know if you have any questions or concerns. I can be reached at 303-223-5319 or [klandin@employerscouncil.org](mailto:klandin@employerscouncil.org). Brian Ayers, our Managing Attorney, can be reached at 303-223-5306 or [bayers@employerscouncil.org](mailto:bayers@employerscouncil.org).

**IMPACT RATIO ANALYSIS:**

The Supplemental Reports, a component of your Affirmative Action Plan or Plans, include an Impact Ratio Analysis for the collection period of November 1, 2016 to October 31, 2017. The Impact Ratio Analysis determines if there is a statistically significant disparity amongst races and genders within employment activity. This report specifically assesses hiring, promotion and termination activity. The OFCCP questions any area where there is a standard deviation of 2.0 or more.

The following are statistically significant areas of concern:

Job Group	Employment Activity	Group Adversely Impacted	Standard Deviation
<b>1B Directors</b>	Hires	Males	-2.19
<b>2C Education Professionals</b>	Hires	Two+	-2.06
<b>2H Adjunct Faculty</b>	Hires	Minority	-2.57
<b>2H Adjunct Faculty</b>	Hires	Asian	-2.47
<b>2H Adjunct Faculty</b>	Hires	Two+	-3.30
<b>5E Temporary</b>	Hires	Two+	-2.08
<b>2A Admin Professionals</b>	Terminations	Two+	-3.34
<b>5 Sr Admin Support</b>	Terminations	Males	-2.46
<b>5C Admin Assistants III</b>	Terminations	Asian	-2.35

**Adverse Impact in Hires:**

If you have adverse impact in your hiring activity, you must be able to defend that you hired the best selection from the applicant pool. If you can prove and defend your selection as the best selection from the applicant pool, you will have a stronger defense in a compliance review. Consider:

- Are your disposition codes appropriately applied?
- Is there an unintentional de-selection based on race or gender in your hiring process?
- Are your basic qualifications a business necessity?
- Are your basic qualifications appropriately applied?

**Adverse Impact in Promotions:**

If you have adverse impact in your promotion activity, focus on how you notify employees of promotion and training opportunities. Consider:

- What is your announcement process?
- Were all employees given equal opportunity to apply?
- Can you produce a list of the employees who expressed interest in the position?
- Do you know why the other employees were not selected?
- Did you have a succession plan in place for the promotions in question?
- Were these career ladder promotions based on time in service?

**Adverse Impact in Terminations:**

If you have adverse impact in your termination activity, focus in separately on each type of termination. Know that the OFCCP will give the most attention to involuntary terminations and layoffs, because, unlike voluntary terminations, you have control over these. Consider:

- **Layoffs** – You need a clear record of the selection process demonstrating a clear business reason or non-discriminatory selection process. A layoff based on seniority, department, job title or performance is fine as long as it can be supported for all of the employees in the selection.
- **Involuntary Terminations** – The OFCCP looks for proof that company policies and procedures are being fairly and consistently enforced. Documentation is critical.
- **Voluntary Terminations** – Did the employee truly leave of their own volition? Use your exit interview process and document it.

**COMPENSATION ANALYSIS:**

The Supplemental Reports, a component of your Affirmative Action Plan or Plans, include a basic compensation analysis utilizing a t-Test. The *t-Test by Job Title* report determines if there is a statistically significant difference in the mean salary of males and females or minorities and non-minorities with the same job title. The OFCCP questions any area where there is a standard deviation of 2.0 or more.

The following are statistically significant areas of concern:

Job Title	Female Compensation Mean	Male Compensation Mean	Group Adversely Impacted	Standard Deviation
<b>Assoc Prof - Accounting</b>	132,122	166,005	Females	-2.39
<b>Assoc Prof - Biology</b>	79,747	89,070	Females	-2.08
<b>Custodian I</b>	27,026	28,035	Females	-2.09
<b>Faculty Full Benefits</b>	59,703	80,045	Females	-2.56
<b>Temporary Hourly</b>	53,278	33,641	Males	2.67

Job Title	Minority Compensation Mean	Non-Minority Compensation Mean	Group Adversely Impacted	Standard Deviation
<b>Police Officer I</b>	70,429	59,407	Non-Minority	2.18

You must be able to explain pay discrepancies using business neutral reasons. If you cannot do so, please contact Employers Council for further review. Employers Council offers pay equity analysis and compensation consulting services that can help you analyze your compensation structure and recommend any equity adjustments needed.

**COMPANY EXHIBITS:**

Employers Council requested to review University of Northern Colorado's documents subject to affirmative action regulations. The following company exhibits either were reviewed and did not meet all of the regulatory requirements or best practices, or were not provided for review. Please update your company exhibits according to the following recommendations.

**Self-Identification Forms**

You are required to invite applicants and employees to self-identify their race, gender, veteran status, and disability status. The self-identification forms for race and gender, veteran status, and disability status are included in the Sample AAP Exhibits in Word file under Appendix B.

You are required to ask for this information from all applicants, not just those selected for an interview. With online application systems, we recommend the use of a pass-through page that the applicant must complete before submission of the application. If resumes are accepted to a general email, we recommend generating a "bounce back" email. This is an email that automatically bounces back to each applicant with the self-identification forms. This is not the preferred method because it results in lower compliance results than the pass through website page.

It is best practice to invite employees to complete all three of the self-identification forms at once and at the same point in your onboarding process.

Do not guess the race, gender, veteran status, or disability status of applicants that decline to self-identify. If an applicant declines to self-identify, they should be marked as "unknown." If you have a significant number of "unknown" applicants, the OFCCP will question whether you are soliciting this information from applicants consistently and with good faith.

**Race & Gender Self-Identification Form:**

You are required to invite applicants and employees to self-identify their race and gender at two stages: the application stage and the post-offer/pre-employment stage.

When an employee declines to self-identify their race and/or gender, you must use your best guess based on visual observation to identify their race and/or gender.

All self-identification requests soliciting race and gender must include:

- **An option to decline**
- A note that completing the form is voluntary/optional
- A note explaining that this form is for affirmative action purposes
- A note that this information will be kept confidential
- All six designated race/ethnicity categories, each categories' prescribed definition, plus the option to mark more than one category and therefore, identify as two or more races

The self-identification form for race and gender should **NOT** include the option to self-identify as transgender. Affirmative action regulations recognize gender identity as a protected class in addition to sex, but do not mandate the collection of this information.

**Veteran Self-Identification Form:**

All self-identification requests soliciting protected veteran status must use the form created by the OFCCP with limited formatting modifications. You are required to use this form to invite applicants and employees to self-identify at two stages: the application stage and the post-offer/pre-employment stage.

Do not guess the veteran status of employees that decline to self-identify. If an employee declines to self-identify their veteran status, they should be marked as "unknown."

**Disability Self-Identification Form:**

All self-identification requests soliciting individual with disability ("IWD") status must use the form created by the OFCCP with **NO** modifications. You are required to use this form to invite applicants and employees to self-identify at three stages: the application stage, the post-offer/pre-employment stage, and the existing employee stage. The existing employee stage refers to the inquiry that occurs once every five years; at this stage, simply invite all existing employees to self-identify their disability status. In addition, at least once within the five years, you are required to remind employees that they may voluntarily update their disability status at any time.

Do not guess the disability status of employees that decline to self-identify. If an employee declines to self-identify their disability status, they should be marked as "unknown."

**When to invite applicants and employees to self-identify:**

Self-ID Invitation	Applicant Stage	Post-Offer/Pre-Employment Stage	Existing Employee Stage
Race & Gender	X	X	
Veteran	X	X	
Disability	X	X	X

**When you are required to guess, if an employee declined to self-identify:**

Self-ID Invitation	Applicant Stage	Post-Offer/Pre-Employment Stage	Existing Employee Stage
Race & Gender		X	X
Veteran			
Disability			

**EEO Policy Statement:**

The EEO Policy Statement is the memo that should be updated every year. A sample EEO Policy Statement is included in the Sample AAP Exhibits in Word file under Appendix A.

It must be posted where it is accessible to both employees and applicants. If you accept applications online, a link to your EEO Policy Statement is recommended. If applicants come on-site to submit or complete applications, the EEO Policy Statement must be posted in a location accessible to the applicant.

It must inform applicants and employees of when and where they can review the affirmative action program for veterans and individuals with disabilities.

It must be signed by the highest-ranking US official, for example, the CEO or President of the company.

It must include the Pay Transparency Nondiscrimination Provision and reference number. This provision must be included in exact words; please, review the sample EEO Policy Statement that is included in the Sample AAP Exhibits in Word file under Appendix A to verify that you are using the exact language for the Pay Transparency Nondiscrimination Provision.

**EEO Policy & Anti-Harassment Policy:**

The EEO Policy is the policy in your employee handbook. It is most often accompanied by your Anti-Harassment Policy. A sample EEO Policy/Anti-Harassment Policy is included in the Sample AAP Exhibits in Word file under Appendix A.

The EEO Policy must include the Pay Transparency Nondiscrimination Provision and reference number. This provision must be included in exact words; please, review the sample EEO Policy that is included in the Sample AAP Exhibits in Word file under Appendix A to verify that you are using the exact language for the Pay Transparency Nondiscrimination Provision.

The Anti-Harassment Policy must include the EEO statement, also known as the protected class list. It must define harassment and include examples. It must include a complaint procedure and two options of individuals to whom employees may report any harassment. It must contain a non-retaliation statement.

**EEO statements:**

EEO statements are also known as the protected class lists; they are included throughout several required company documents.

EEO statements must be consistent from document to document.

Your EEO statement needs to at least include: "...age 40 and over, color, disability, gender identity, genetic information, military or veteran status, national origin, race, religion, sex, sexual orientation or any other applicable status protected by state or local law." Be sure that your list is up-to-date with the newest additions of "gender identity" and "sexual orientation." Note that the "age 40 and over" and "genetic information" protected classes do not come from affirmative action regulations, but from other federal regulations that affirmative action employers fall under.

**Purchase Orders and Subcontracts:**

All purchase orders and subcontracts must include the EEO Clause by Reference. This clause must be included in exact words and in bold font; please, review the EEO Clause by Reference included in the Sample AAP Exhibits in Word file under Appendix A to verify that you are using the exact language within your purchase orders and subcontracts.



**COMPANY PRACTICES & PROCEDURES:**

Employers Council asked University of Northern Colorado questions about their practices and procedures that are subject to affirmative action regulations. The following company practices and procedures either were reviewed and did not meet all of the regulatory requirements or best practices, or were not provided for review. Please update your company practices and procedures according to the following recommendations.

**Recruitment Activities Log:**

You must implement a log to track your good faith outreach efforts. Good faith outreach efforts are activities you undertake to ensure that your applicant pool includes qualified diverse applicants. Your log must track the activity, date, description, and effectiveness of the activity. The sample log included in the Sample AAP Exhibits in Excel file on tab D demonstrates a best practice methodology of measuring the effectiveness of an activity.

**Application Process:**

You are required to offer applicants a method to request reasonable accommodation in your application process, whether your process is manual, in-house or online. If you accept applications at the worksite, we recommend having a designated HR representative that is available to assist an individual with a disability in completing an application, if necessary. The name and contact information of this employee should be clearly understood by the initial contact of the applicants. If you accept applications online, a phone number or email address to specifically request assistance or a reasonable accommodation in the application process should be published on the careers web page.

**Job Postings**

In order to sufficiently meet affirmative action regulations, it is recommended that all job postings clearly identify the minimum qualifications for the position.

**EEO Tagline:**

Every internal and external job posting or recruitment advertisement must include an EEO tagline. At a minimum your EEO tagline must either read: “We are an Equal Opportunity Employer, Females/Minority/Veterans/Disabled/Sexual Orientation/Gender Identity/Religion/National Origin,” or “We are an EEO Employer.” If you chose to list any of the aforementioned protected classes, you must list them all.

**Testing Practices**

Employment testing and physicals are highly scrutinized by the OFCCP and EEOC.

**Pre-Employment Testing:**

Pre-employment tests must be validated to the minimum qualifications of the position and analyzed for adverse impact. If there are indications of adverse impact in the testing process, you must be able to show that the test is the best way to screen applicants for the skills, knowledge and abilities that are being sought. Employers Council has a skilled testing unit that can assist you with testing validation, if needed.

**Post-Employment Physicals:**

Physicals can be conducted on all employees that have accepted a conditional offer of employment, as long as every employee in the same category or classification of job are receiving a physical exam. After employment begins, the employer can only require employees to take physicals if they are job related and consistent with business necessity.

We recommend that you maintain a clear and consistent policy on the administration of these physicals and, if at all possible, validate the physical for the position.

**Personnel Review Log:**

You must regularly review your personnel processes for potential inadvertent discrimination against protected classes. As a way of demonstrating this practice is in place to compliance officers, best practice is to implement a log to track any changes to your personnel policies and procedures that

occurred during each collection period. A sample log is included in the Sample AAP Exhibits in Excel file on tab B.

### **Manager Evaluations:**

When evaluating managers for adhering to EEO obligations, the evaluation should be based on their participation in the diversity recruiting efforts of the company and ensuring that employment selections are based on neutral selection criteria. Remember, quotas and selection based on any of the protected classes is strictly forbidden.

### **Notice of Right to Collective Bargaining:**

Federal contractors without collective bargaining agreements or with locations that are not unionized are required to post the Notice of Employees Rights under Executive Order 13496. Additional information regarding EO 13496 and the required posters are at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>.

### **Required Reporting**

#### **VETS-4212 Reporting:**

File the VETS-4212. It needs to be filed annually between August 1<sup>st</sup> and September 30<sup>th</sup> at <http://www.dol.gov/vets/vets4212.htm>.

*\*VETS-4212 federal contractors have a contract or subcontract with a value of \$100,000 or more that was entered into or modified after December 1, 2003.\**

### **COMPANY DATA:**

In order to run the necessary analyses and supplemental reports, Employers Council collected University of Northern Colorado's affirmative action employment data for the collection period of November 1, 2016 to October 31, 2017. The following company data either was reviewed and did not meet all of the regulatory requirements or best practices, or was not provided for review or analytical use. Please update your company data and recordkeeping practices according to the following recommendations.

### **Applicant Data:**

Applicant tracking and recordkeeping are critical portions of an affirmative action program. Applicant data is highly scrutinized by the OFCCP and EEOC, and failure to accurately track applicants may lead to technical violations during a compliance review.

You should not have one-to-one applicant-to-hire ratios. The OFCCP prefers to see a larger number of applicants being considered for each hire because this demonstrates compliance with a multitude of the affirmative action regulations.

If the analyses are revealing one-to-one applicant-to-hire ratios for requisitions where you know you considered multiple applicants, this is likely a result of those multiple applicants not self-identifying their race and/or gender. In these cases, the OFCCP will still closely scrutinize your compliance with the relevant affirmative action regulations, including questioning why applicants are not self-identifying. Please review the requirements for Self-Identification Forms under the Company Exhibits section.

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*If you receive a notice of audit, please notify our office before you send a copy of the plan or have any communication with the OFCCP.* Employers Council will provide you with guidance and copies of your plan, data, and/or exhibits that are appropriate for submission.



If you have questions about any of these analyses or recommendations, please feel free to call us. We are here to help you.

Sincerely,

**EMPLOYERS COUNCIL, INC.**

*Kimberly A. Landin*

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Enclosures