

D.C. District Court Finds That OFCCP Requirements Extend To Hospitals With HMOs

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The federal district court for the District of Columbia recently ruled that three hospitals were deemed to be subcontractors and subject to the Office of Federal Contract Compliance Program's (OFCCP) jurisdiction and reporting requirements because of the hospitals' contractual relationships with an HMO. As a result, the district court held that the hospitals were subject to the EEO and affirmative action requirements of an Executive Order 11246, the Rehab Act and VEVRAA.

In *UPMC Braddock v Harris*, the three hospitals subcontracted with UPMC Health Plan (Plan), an HMO, to provide medical products and services to federal employees covered by the Plan. None of the contracts between the hospitals and the Plan contained the mandatory language requiring the hospitals to comply with Executive Order 11246, the Rehab Act and VEVRAA. Such language imposes an affirmative obligation on all contractors, including subcontractors, to not discriminate and to take affirmative action to ensure applicants and employees are employed without regard to race, color, religion sex or national origin.

In 2004, the OFCCP notified the hospitals that they had been selected for a compliance review and requested each submit certain information demonstrating compliance with the EEO provisions of those laws. The hospitals responded by sending a joint letter, stating that they did not have government subcontracts and that therefore, they were not subject to OFCCP jurisdiction or the EEO requirements of the statutes or the Executive Order.

N early three years later, the OFCCP filed administrative complaints against the hospitals seeking to enforce the Executive Order, Rehab Act and VEVRAA. The hospitals maintained that that each did not hold subcontracts and, therefore, were not subject to OFCCP jurisdiction. The Department of Labor's Administrative Review Board (ARB) disagreed with the hospitals and entered an order permanently enjoining the hospitals from failing and refusing to comply with the requirements of the Executive Order, the Rehab Act and VEVRAA.

The hospitals filed suit, seeking review of the ARB's decision. The hospitals relied primarily on an earlier ARB decision, *OFCCP v Bridgeport Hospital*, which found that a hospital was not a federal subcontractor as a result of an insurance company's contact with the Office of Personnel Management (OPM). In the *Bridgeport Hospital* matter, it was determined that the hospital's agreement with the insurance carrier was to provide medical care to its participants, and that the carrier's contract with OPM was to provide medical insurance coverage to federal employees. However, in the *UPMC Braddock* matter, the federal district court determined that the Plan at issue agreed to provide medical services to federal employees because it agreed to service the function of an HMO.

The *UPMC Braddock* decision is one of a few victories by the OFCCP in its

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past efforts to have hospitals fall under that agency's jurisdiction and regulatory requirements.

