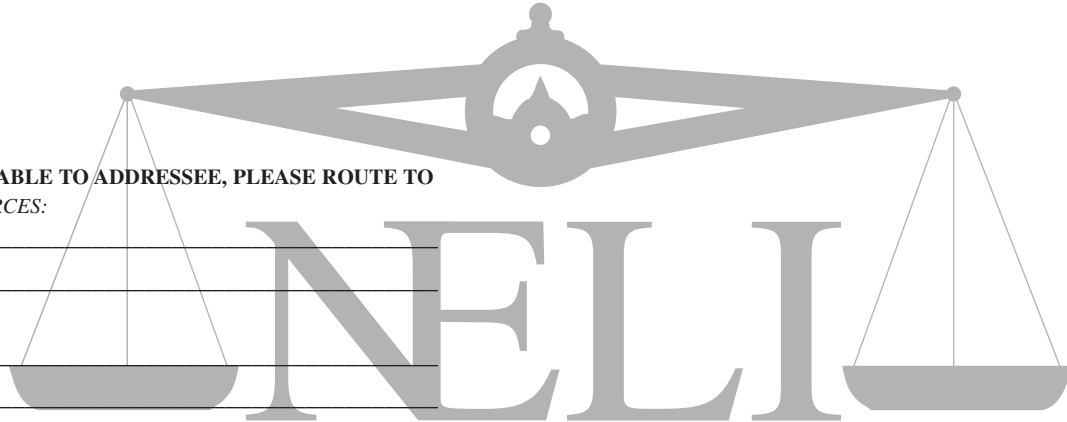


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# AFFIRMATIVE ACTION BRIEFING

*The Definitive Briefing Covering Significant New Developments and Priorities at OFCCP,  
Compensation Analysis After Ledbetter, Recent OFCCP Cases, Preferences Following Ricci,  
Disability Law/Rehabilitation Act Changes, Systemic EEO Enforcement, and Other Issues.*

San Francisco, California • October 7-8, 2010 • *Westin St. Francis*  
Austin, Texas • October 14-15, 2010 • *Four Seasons Hotel*  
Washington, D.C. • October 21-22, 2010 • *Westin D.C. City Center*  
Chicago, Illinois • October 28-29, 2010 • *Four Seasons Hotel*

OPTIONAL PRE-BRIEFING FULL DAY AA PRIMER

**AFFIRMATIVE ACTION WORKSHOP**

INCLUDING HOW TO WRITE AND REVISE AAPs

SAN FRANCISCO - OCT. 6 • AUSTIN - OCT. 13 • WASHINGTON, D.C. - OCT. 20 • CHICAGO - OCT. 27

## REGISTRATION AND ORDER FORM

Please accept my registration for the:

### 2010 AFFIRMATIVE ACTION BRIEFING/WORKSHOP

- San Francisco - Oct. 7-8, 2010 • Westin St. Francis  
 San Francisco - Oct. 6, 2010 - AA Workshop
- Austin - Oct. 14-15, 2010 • Four Seasons Hotel  
 Austin - Oct. 13, 2010 - AA Workshop
- Washington, D.C. - Oct. 21-22, 2010 • Westin D.C. City Center  
 Washington, D.C. - Oct. 20, 2010 - AA Workshop
- Chicago - Oct. 28-29, 2010 • Four Seasons Hotel  
 Chicago - Oct. 27, 2010 - AA Workshop

Affirmative Action Briefing Registration Fee ..... \$895.00  
Early Registration Fee ..... \$845.00  
(Payment received by Sept. 15, Sept. 22, Sept. 29, Oct. 6 respectively.)  
Affirmative Action Workshop Registration Fee ..... \$475.00

I am unable to attend, but wish to purchase the:

- Affirmative Action Workbook*  
 CD \$149.00  Print \$169.00 *or*  Both \$219.00 \_\_\_\_\_  
*Affirmative Action Resource Manual*  
 CD \$99.00  Print \$119.00 *or*  Both \$169.00 \_\_\_\_\_  
Colorado residents add sales tax (publications only) 7.3% Tax = \_\_\_\_\_  
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■ Do you require any accommodation, due to a disability, to attend this program?  No  Yes  
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### REGISTRATION INFORMATION

**Early registration is advised.** Registrations will be confirmed by e-mail or another method if requested. On-site registrations are subject to space availability.

**Registration Fee: \$895.00**

**Early Discounted Fee: \$845.00** if payment is received prior to September 15 (San Francisco), September 22 (Austin), September 29 (Washington, D.C.), October 6 (Chicago).

**Optional Affirmative Action Workshop Fee: \$475.00** Registration in the AA Workshop is optional. Please email [neli@neli.org](mailto:neli@neli.org) with any questions.

Registration fee includes non-refundable administrative fee (see cancellation policy below). **Payment in full is required prior to the Briefing.**

**Group Rates, Discounts and Substitutions** are available and permissible. Please email [neli@neli.org](mailto:neli@neli.org) for more information.

**Cancellation Policy:** Cancellations must be confirmed in writing and addressed to the Registrar. Registrations cancelled more than ten business days prior to the program may elect to receive a full fee credit, or a refund less a \$150.00 administrative fee. Those cancelled ten or fewer business days prior to the program will receive a fee credit, less a \$250.00 administrative fee. Transfers between cities must be pre-approved. Fee credits may be applied during the next 12 month period to any of the Institute's programs or publications. Paid no-shows will receive the program manual upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee.

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### HOTEL ACCOMMODATIONS

To receive NELI's preferred group rate, registrants must make their own room reservations directly with the hotel (not through a travel agent). Room blocks are limited and discounted group rates cannot be guaranteed after the listed cut-off dates, and may be fully booked even before then. Reserve early and state that you are attending NELI's *Affirmative Action Briefing* to qualify. If you experience difficulty securing a reservation, please call NELI for assistance. After the cut-off date, the hotels will only accept reservations at the discounted rate on a space available basis.

**San Francisco – Westin St. Francis**, 335 Powell Street, San Francisco, CA 94102 • (415) 397-7000 • Single/Double – \$279.00 (Traditional); \$309.00 (Deluxe) (exclusive of 15.6% tax)  
**Reservation cut-off date: September 15, 2010**

**Austin – Four Seasons Austin**  
98 San Jacinto Boulevard, Austin, TX 78701 • (512) 685-8100  
Single/Double – \$249.00 (Cityview) (exclusive of 15% tax)  
**Reservation cut-off date: September 22, 2010**

**Washington, D.C. – Westin Washington, D.C. City Center**  
1400 M Street, N.W., Washington, D.C. 20005 • (202) 429-1700  
Single/Double – \$265.00 (exclusive of 14.5% tax)  
**Reservation cut-off date: September 29, 2010**

**Chicago – Four Seasons Chicago**  
120 East Delaware Place, Chicago, IL 60611 • (312) 280-8800  
Single/Double – \$295.00 (exclusive of 15.4% tax)  
**Reservation cut-off date: October 6, 2010**

## 2010 AFFIRMATIVE ACTION PROGRAM AGENDAS

NELI's 2010 Affirmative Action Workshop addresses the fundamentals of the Executive Order Program which requires "contractors" to implement AAPs, how to draft a compliant AAP, the process the Office of Federal Contract Compliance Programs (OFCCP) follows in auditing AAPs for compliance, and the remedies and sanctions OFCCP can impose for non-compliance. Participation in the Workshop is recommended for those who need exposure to the fundamentals, or a refresher, before they attend the 2-day "Advanced Level" Briefing, which addresses many of the complex issues contractors must deal with on a day-to-day basis to ensure they are in compliance with OFCCP policies, procedures, and regulatory requirements.

### WEDNESDAY - OPTIONAL AFFIRMATIVE ACTION WORKSHOP

#### 7:45 Open Registration & Continental Breakfast

#### 8:30 Basics of the Executive Order Program Requiring Affirmative Action Plans

- A short history: FDR to Bush 43
- What is the basis for the Executive Order's authority?
- Who is covered? Size & type of contract
- How is a contractor defined? What about facilities with no government involvement? Subsidiaries? Offshore operations? Small facilities? What is an establishment? May I combine some into a single AA program?
- What is an AA program? At what locations are they required? How does it relate to remedying discrimination? What is a goal? Am I required to consider race or gender when meeting the goal?
- The 3 theories of discrimination law OFCCP prosecutes
- Remedies/Sanctions OFCCP Applies

*All Locations — Brian Bulger*

#### 10:45 Refreshment Break

#### 11:00 Essential Components of an AA Program

- Narrative
- Organizational Profile

*All Locations — John Fox*

#### 12:00 Luncheon (Hosted by NELI)

#### 1:00 Essential Components of an AA Program (cont'd)

- Job Groups
- Availability Analyses

#### 3:00 Refreshment Break

#### 3:15 Essential Components of an AA Program (cont'd)

- Utilization Analyses
- Goals and GFEs
- Advantages and pitfalls of using vendors and proprietary software to develop AAPs

#### 4:00 Summary of the OFCCP Audit Process

- How OFCCP selects contractors for its audit list
- The 3-part audit process
- Violation documents OFCCP uses
- How to prepare for an audit

*All Locations — Brian Bulger*

#### 5:00 Adjournment

### THURSDAY - AFFIRMATIVE ACTION BRIEFING

#### 7:45 Open Registration & Continental Breakfast

#### 8:30 Recent Major Developments at OFCCP

(Time has been set aside to respond to questions.)

- New and Refocused Priorities with Increased Funding and Staff
- New Investigative Procedures
- Data Collection Changes
- "Glass Ceiling" Enforcement
- Coordination with the EEOC and the Department of Justice
- Status of E-Verify
- Applicant Questions
- Focus on Construction Contractors Receiving TARP Funds
- Renewed Emphasis on Covered Veterans and the Disabled
- Executive Order 13496

*Patricia Shiu • Invited All Locations. Confirmed in San Francisco. Check other locations at [www.neli.org](http://www.neli.org)*

#### 10:30 Refreshment Break

#### 10:45 Selected Recent OFCCP Cases of Importance

- *TNT Crust* (systemic discrimination standards)
- *Bank of America* (Fourth Amendment procedural rules)
- *Bridgeport Hospital* (definition of subcontractor)
- *UPMC* (definition of federal subcontractor, distinguishing *Bridgeport*)
- Open Forum: Audience participants interactively discuss any applicable OFCCP cases and issues of interest

*All Locations — John Fox*

#### 12:00 Luncheon (Hosted by NELI)

## 2010 AFFIRMATIVE ACTION PROGRAM AGENDAS

### THURSDAY - CONTINUED

#### 1:00 New Compensation Analysis After *Ledbetter*

Examination of the impact of the *Lilly Ledbetter Fair Pay Act*, which rejected the U.S. Supreme Court's *Ledbetter* decision to dramatically expand the "continuing violation" theory and increase the period in which employees may go back in time to challenge pay discrimination, focusing on the numerous recent and often conflicting case law decisions the courts are now handing down and discuss what should be done to minimize liability for compensation and benefits decisions and "other practices" the Act now covers, the three ways an employee may go back in time and how far, how to calculate damages, whether and how to perform regression analyses, and whether to retain historical compensation records.

*All Locations — Brian Bulger*

#### 2:15 Other Developing Issues at OFCCP

- New Audit Selection systems
- Back to the Future: Again changed definition of "Who is an Applicant"
- Audit Processes Decentralized to Regions
- Partial Abandonment of Paragraph 11 Compensation Data audits
- Use of multi-racial "subgroup" in statistical analyses of discrimination
- OFCCP's New Damages Theories
- The story on OFCCP's Coverage of the Health Care Industry (The Tri-Care Story)

*All Locations — John Fox*

#### 3:30 Refreshment Break

#### 3:45 The Use and Mis-Use of Preferences in Employment Following *Ricci* / Role of Affirmative Action Plan and its Relation to "Diversity"

- Why race and sex-based recruitment preferences are not unlawful
- The differences between "recruitment" and "selection"
- Which selection preferences are never unlawful
- The two rationales which make selections based on race and sex lawful

*All Locations — John Fox*

#### 5:00 Adjournment

Patricia Shiu, Director, Office of Federal Contract Compliance Programs, has graciously agreed to speak in the Briefing and has thus far confirmed her participation in San Francisco. Please monitor NELI's website for additional location confirmations.

[www.neli.org](http://www.neli.org)

### FRIDAY - AFFIRMATIVE ACTION BRIEFING

#### 7:30 Open Registration & Continental Breakfast

#### 8:00 How the ADA Amendments Act Changed Disability Law and the Rehabilitation Act

In light of OFCCP's enforcement focus, discussion of the ADAAA's changes to the definition of "disability" and EEOC's proposed regulations under the ADAAA, including the definition of "major life activities," whether to analyze an individual as medicated, the meaning of "substantially limits," and the dramatic new definition of "regarded as" and how to avoid such claims, a brief overview of the trends on when an individual with a disability is considered "qualified," including what are "essential functions," and the latest developments on reasonable accommodation obligations.

*All Locations — David Fram*

#### 10:15 Refreshment Break

#### 10:30 Increased Systemic EEO Enforcement

With increased funding, more staff and experts, and new leadership, OFCCP and the Solicitor of Labor, as well as EEOC, are all ramping up and committed to substantially increasing their systemic enforcement efforts

of employers' hiring, promotion and compensation practices. We will thoroughly examine what this means for contractors and how they and their counsel can proactively analyze and address these issues, deal with systemic investigations by the agencies and also defend themselves during administrative and court enforcement proceedings. This segment also will address practical considerations of privilege and protection of internal analysis at the self-audit and prevention stage.

*San Francisco/Chicago — Jill Rosenberg*

*Austin — Gary Siniscalco*

*Washington, D.C. — Bill Doyle*

#### 12:00 Contractor Case Studies Dealing With Factual Scenarios Likely to Arise During an Audit

- OFCCP Notice of Desk Audit
- OFCCP On-Site Audit
- OFCCP Off-Site Analysis

*All Locations — John Fox, with audience participation*

#### 1:15 Adjournment

## FACULTY

**Program Chair: John C. Fox, Esq.** is a founding partner of Fox, Wang & Morgan, P.C., in San Jose, California. He specializes in all facets of employment law on behalf of public and private sector employers nationwide, including litigation in federal and state courts. Throughout his career, he has had a noted interest and specialization in affirmative action issues, which began shortly after entering private practice. He assisted in drafting one of the first manuals widely distributed on how to develop an AAP. In the early 80's, Mr. Fox served as Executive Assistant to OFCCP's Director, then Ellen Shong, where he was responsible for all enforcement and policy issues, including contacts with Congress, federal agencies and the White House. While with OFCCP, he drafted policy directives and proposed regulations which gave rise to this program series.

**BRIAN W. BULGER, Esq.**  
*Meckler Bulger Tilson Marick & Pearson  
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**JOHN C. FOX, Esq.**  
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San Jose, California*

**GARY R. SINISCALCO, Esq.**  
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**WILLIAM E. DOYLE, Jr., Esq.**  
*Morgan, Lewis & Bockius, LLP  
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**DAVID K. FRAM, Esq.**  
*National Employment Law Institute  
Denver, Colorado*

**PATRICIA SHIU, Esq., Director**  
*Office of Federal Contract  
Compliance Programs  
Washington, D.C.*

**JILL L. ROSENBERG, Esq.**  
*Orrick, Herrington & Sutcliffe, LLP  
New York, New York*

## AFFIRMATIVE ACTION WORKBOOK

(Available in print and searchable CD format.)

This Workbook is intended to serve as a reference guide to non-discrimination and affirmative action regulations and requirements pursuant to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Veterans Readjustment Assistance Act of 1974 (38 U.S.C. § 4212), as amended. Contributors are some of the most experienced practitioners in the field and include editor and primary author John C. Fox, of Fox, Wang & Morgan, P.C., David K. Fram, Director, ADA & EEO Services, NELI, and Gary R. Siniscalco, of Orrick, Herrington & Sutcliffe, LLP. *Together, they provide comprehensive Affirmative Action compliance advice in this one-of-a-kind Workbook.*

**Contents:** *Recent Major Developments at OFCCP • Compensation Analysis After Ledbetter • Recent OFCCP Cases • Preferences Following Ricci • Disability Law/Rehabilitation Act Changes • Systemic EEO Enforcement • and Other Issues*

Registrants of the Briefing will receive a copy of the Workbook. Those unable to attend may purchase the Workbook by completing the Registration/Order form in this brochure, by visiting [www.neli.org](http://www.neli.org), or by calling the Institute at (303) 861-5600.

## AFFIRMATIVE ACTION RESOURCE MANUAL

(Available in print and searchable CD format.)

This Manual is prepared especially for federal contractors and subcontractors, as well as those employers which are not contractors but wish to develop voluntary Affirmative Action Plans using federal contractor requirements under Executive Order 11246 as a model. Experienced Affirmative Action Program writers, planners and managers will also find this Manual useful to update or upgrade existing Affirmative Action Programs and to identify new approaches to affirmative action planning.

**Contents:** *Basics of the Executive Order Program Requiring Affirmative Action Plans • How to Write an Affirmative Action Plan -- A Step-by-Step Guide • Summary of the OFCCP Audit Process • Discrimination Law OFCCP Applies • Remedies and Sanctions*

Registrants of the Workshop will receive a copy of this Resource Manual. Those unable to attend may purchase the Manual by completing the Registration/Order form in this brochure, by visiting [www.neli.org](http://www.neli.org), or by calling the Institute at (303) 861-5600.

## CONTINUING LEGAL EDUCATION

NELI's programs are approved for CLE credit in all jurisdictions with mandatory requirements. Attorneys applying for credit should so indicate on the registration form. NELI will provide the necessary forms and a certificate of attendance. Registrants may be required to file for credit on their own behalf in some jurisdictions. NELI is a State Bar of California MCLE approved provider and is an HRCI/SHRM approved provider, as well as recognized by professional associations as an approved CEU/CPE provider. The AA Briefing will provide between 12-14.5 CLE hours; the AA Workshop will provide between 7-8.4 CLE hours.



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### PROGRAM CHAIR

JOHN C. FOX, Esq.  
*Fox, Wang & Morgan, P.C.*  
*San Jose, California*

### FEATURED SPEAKER

PATRICIA SHIU, Esq., Director  
*Office of Federal Contract Compliance Programs*  
*Washington, D.C.*

## 2010-2011 NELI PROGRAM SCHEDULE

### PUBLIC SECTOR EEO & EMPLOYMENT

#### LAW CONFERENCE

Washington, D.C., Aug. 19-20  
San Francisco, CA, Aug. 26-27

### AMERICANS WITH DISABILITIES ACT

#### WORKSHOP

San Francisco, CA, Aug. 31 • Seattle, WA, Sept. 2  
Los Angeles, CA, Sept. 8  
Boston, MA, Sept. 14 • Newark, NJ, Sept. 16  
Houston, TX, Sept. 20  
Washington, D.C., Sept. 24 • Denver, CO, Sept. 27  
Chicago, IL, Sept. 29

### CALIFORNIA WAGE & HOUR

#### TELECONFERENCE

September • Dates TBD

### EMPLOYMENT LAW CONFERENCE

Chicago, IL, November 11-12  
New Orleans, LA, November 18-19  
San Francisco, CA, December 2-3  
Washington, D.C., December 9-10

### EMPLOYMENT LAW BRIEFING

St. Petersburg Beach, FL, March 6-9, 2011  
Laguna Niguel, CA, March 20-23, 2011

### ADA & FMLA COMPLIANCE UPDATE

San Francisco, April 7-8, 2011  
Chicago, IL, April 14-15, 2011  
Washington, D.C., April 28-29, 2011

### EMPLOYMENT LAW WORKSHOP

San Francisco, CA, May 5-6, 2011  
Washington, D.C., May 12-13, 2011  
Chicago, IL, May 19-20, 2011

### EMPLOYMENT DISCRIMINATION LAW UPDATE

San Francisco, CA, July 14-15, 2011  
Chicago, IL, July 21-22, 2011  
Washington, D.C., July 28-29, 2011

For more information visit our website at [www.neli.org](http://www.neli.org)