



NATIONAL EMPLOYMENT LAW INSTITUTE

36th Annual Advanced Level

AFFIRMATIVE ACTION UPDATE: THE OFCCP STILL IN TRANSITION

This ever-evolving program is molded to capture the complex compliance obligations OFCCP imposes by way of audit and regulation and to provide Government contractors timely and practical tools to implement current requirements.

Chicago, IL • October 18-19, 2018 • *Westin Michigan Avenue*

Austin, TX • October 25-26, 2018 • *Westin Austin Downtown*

NEW
HOTELS

Update approved for 12 - 14.5 CLE / PDC / CEU credits in all states.

Pre-Update Full Day

AFFIRMATIVE ACTION WORKSHOP

Including How to Write and Update AAPs

Chicago - October 17 • Austin - October 24

PROGRAM CHAIR

JOHN C. FOX, Esq.
Fox, Wang & Morgan P.C.
Los Gatos, California

REGISTRATION FEE FOR THE UPDATE INCLUDES:

- Exceptional networking opportunities with faculty and participants, including a luncheon on Thursday.
- Expanded continental breakfast service each day.
- Spontaneous information exchanges with contractors and industry colleagues from around the country available only at a “live” presentation.
- The 36th Annual Affirmative Action Workbook in both searchable PDF and print formats -- **The** definitive Affirmative Action publication! The Workbook is available for purchase if you can't attend the program.
- 12 to 14.5 CLE / PDC / CEU hours depending upon your jurisdiction. (The Workshop provides an additional 7-8.5 CLE / PDC / CEU hours.) NELI will file in as many jurisdictions/states as you are licensed for no additional charge.

Please visit our website at www.neli.org for complete program information.

REGISTRATION AND ORDER FORM

Please accept my registration for the:

2018 AFFIRMATIVE ACTION UPDATE / WORKSHOP

- Chicago, IL, October 18-19 • *Westin Michigan Avenue*
 Chicago, IL, October 17 • AA Workshop

- Austin, TX, October 25-26 • *Westin Austin Downtown*
 Austin, TX, October 24 • AA Workshop

Affirmative Action Update Registration Fee: \$995.00

Early Registration Fee: \$945.00
(Paid Registration received by cut-off date below.)

Affirmative Action Workshop Registration Fee: \$595.00

PROGRAM PUBLICATIONS:

- I am unable to attend. Please send me the:

Affirmative Action Workbook (Day 2 and 3)

- PDF \$169.00 Print \$189.00 or Both \$229.00 _____

Affirmative Action Resource Manual (Day 1)

- PDF \$99.00 Print \$119.00 or Both \$159.00 _____

Shipping and Handling (\$13.00 for print copy, no charge for PDF) _____

Colorado residents add 7.4% sales tax (publications only) _____

TOTAL = _____

Method of Payment (Prepayment is required):

- Check Enclosed Visa MasterCard AMEX Discover

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Please print or type the following information:

NOTE: Name & street address required for UPS delivery of publications.

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Signature _____ Date _____

E-Mail _____

(Note: Confirmations and program announcements sent via e-mail.)

Do you require any accommodation, due to a disability, to attend this program? No Yes

(Describe) _____

CLE CREDIT: Provide state(s) and bar number(s).

REGISTRATION INFORMATION

Early registration is advised. Registrations will be confirmed by e-mail. On-site registrations are subject to space availability.

Affirmative Action Update Registration Fee: \$995.00
Early Discounted Fee: \$945.00

Early Registration Cut-Off Dates

Chicago - September 26
Austin - October 3

Affirmative Action Workshop Fee: \$595.00

Registration Fee includes non-refundable administrative fee (see Cancellation Policy below). **Payment in full is required prior to the programs.**

Group Rates, Discounts and Substitutions are available and permissible. Email neli@neli.org for more information.

Cancellation Policy: Cancellations must be confirmed by email to our 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 materials upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee. Any refunds will be processed after the conclusion of the program series.

Please e-mail neli@neli.org for available discounts!

REGISTRATION PROCEDURE

MAILING ADDRESS:

NELI, P.O. Box 1189, Golden, Colorado 80402

PHONE: (303) 861-5600

8:00 a.m. - 4:00 p.m. Monday - Thursday Mountain Time

8:00 a.m. - 12:00 p.m. Friday Mountain Time

FAX: (303) 861-5665

INTERNET: www.neli.org

EMAIL: registrar@neli.org

HOTEL ACCOMMODATIONS

For NELI's group rate, reservations must be made directly with the hotel (not through a travel agent). Room blocks are limited and group rates cannot be guaranteed after the listed cut-off dates, and may be fully booked before then. Reserve early and state that you are attending NELI's *Affirmative Action Update*. If you experience difficulty, please call NELI. After the cut-off date, reservations at the group rate are on a space available basis.

Chicago - Westin Michigan Avenue

909 North Michigan Avenue, Chicago, IL 60611

(312) 943-7200 • (888) 627-8385

Run-of-House Room - \$279.00 (plus tax)

Reservation cut-off date: September 25, 2018

Austin - Westin Austin Downtown

310 East Fifth Street, Austin, TX 78701

(512) 391-2333 • (866) 716-8108

Run-of-House Room - \$319.00 (plus tax)

Reservation cut-off date: October 3, 2018

• Lower room rates may be available on hotel websites •

2018 AFFIRMATIVE ACTION PROGRAM AGENDAS

- The Workshop explains why Government contractors are subject to OFCCP authority, the details of how to build affirmative action plans, and the *How To's* of effectively executing an AA program.

WEDNESDAY - AFFIRMATIVE ACTION WORKSHOP *Chicago & Austin*

7:45 Workshop Check-In & Continental Breakfast

8:30 AAP Architecture Issues:

All The Details OFCCP Has Not Written Down

- Which companies are covered by OFCCP?
- Who is required to create Affirmative Action Plans?
 - AAP Year date
 - Contractors - Subcontractors
 - Facilities with no government involvement
 - Subsidiaries - Offshore operations - Small facilities
 - Can some facilities be combined into a single AAP?
 - Who should be in the AAP and who should not be in the AAP?

10:30 Refreshment Break

10:45 Essential Components of an AA Program

- Narrative
- Organizational Profile
- Job Groups and Job Group Analyses

12:00 Luncheon (Hosted by NELI)

*Workshop Instructors:
Both Locations - John Fox & Candee Chambers*

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

- Availability Analyses
- Utilization Analyses
- Placement Goals
- AAPs for Protected Veterans and Individuals with Disabilities

3:00 Refreshment Break

3:15 Implementation of Your AAP

- Preparing and scrubbing your data to go into the AAP
- Required Disparity Analyses
 - Applicant Flow - How this differs from your "expressions of interest"
 - Hires Analyses - What if there are internal candidates?
 - Promotions Analyses
 - Terminations Analyses
- What do you do with your AAP once completed?
 - Recruiters
 - Legal Department
 - Recordkeeping obligations
 - Executive Summary
 - Semi-annual updates

5:00 Adjourn

- The two-day "Advanced Level" Update provides up-to-the-minute coverage of the ever-evolving developments at OFCCP with "practical" guidance focusing on what federal Government contractors must do to be compliant.

THURSDAY - AFFIRMATIVE ACTION UPDATE

7:45 Program Check-In & Continental Breakfast

8:30 What's On the OFCCP Director's Desk

- The Current State of the OFCCP
 - OFCCP After Ondray Harris
 - What has the Trump Administration Accomplished So Far?
 - OFCCP's Strategic Direction for the Future Under its New Director
 - OFCCP's Position on Apprenticeship Training Projects
 - OFCCP's Plans for Contractor Incentive Awards
 - The federal Government Contractor's Bill of Rights
- Both Locations - Craig Leen*

10:30 Refreshment Break

The faculty will address questions from the floor or in writing as time permits.

10:45 Recent Significant OFCCP and EEOC Developments

- The Importance of OFCCP's New Use of "Pre-Determination Notices"
 - OFCCP's audit algorithm for Supply & Service contractors made transparent, and what it means to you
 - No end in sight for "Deep Dredge" Audits
 - The 4 "False-Positive" analyses OFCCP still uses in Failure-to-Hire audits
 - And How to Combat Each of Them
 - The 3 "False-Positive" analyses OFCCP still uses in compensation audits
 - And How to Combat Each of Them
 - What has happened to the Trump Administration's EEOC nominees and why
 - What Commission reforms are delayed by the lack of a Republican quorum and how to handle the delay
- Both Locations - John Fox*

12:00 Luncheon (Hosted by NELI)

THURSDAY - CONTINUED

1:00 Using Apprentice Programs to Help Satisfy OFCCP Compliance Obligations

- How the Administration has made apprentice programs a key policy initiative at OFCCP
- How Affirmative Action compliance obligations are connected to Apprentice Programs
- Apprentice training models from vestibule training to registered apprentice programs to Co-Ops
- Apprenticeships for Individuals with a Disability
- The Monsanto Corporation Model
- How to get started

Both Locations - Candee Chambers

2:00 Into the Lion's Den Part I: Why Pay Equity Programs Should Go Much Farther and Much Deeper, Much Sooner Than You Think

This presentation will help you:

- Identify more robust state laws and increased stakeholder interest drivers which make pay equity analyses more important than ever
- Understand how a pro-enforcement, more plaintiff-oriented analysis would apply to your data, your pay policies and your programs, and can give you an important edge in the current pay-equity environment
- Find common weak links in compensation program design and implementation which can increase your risk and costs, while emerging best practices promote transparency, consistency, and increased gender and other forms of equity

Both Locations - Pam Coukos

3:15 Refreshment Break**3:30 Defending Trump Administration OFCCP Audits**

- What to do when OFCCP's CSAL comes in
- How to interpret and respond to the current OFCCP Notice of Desk Audit
- Pitfalls to avoid when responding to OFCCP's Audit Letter
- The best way to respond to OFCCP's para 18 request for statistical information regarding hires, promotions and terminations
- The best way to respond to OFCCP's para 19 request for compensation documents
- How to handle OFCCP's current style of "Deep Dredge" audits
- Do you try to model what OFCCP is doing with your company's hiring and compensation data, or wait for OFCCP to make the first move?

Both Locations - Candee Chambers

5:00 Adjourn**PROGRAM CHAIR**

John C. Fox, Esq., is the President of Fox, Wang & Morgan P.C., in Los Gatos, California, in the heart of the Silicon Valley. Mr. Fox is an across-the-board employment lawyer who leads large and complex litigation matters in state and federal courts, in cases involving trade secrets, wage-hour and discrimination class actions, employee misclassification, wrongful termination, corporate investigations, OFCCP audits and the use of statistics in employment matters. He provides business and strategic advice for a wide range of companies relating to employment practices and helps build employment systems in a way designed to minimize legal risk.

FRIDAY

7:30 Continental Breakfast**8:00 Into the Lion's Den Part II: How the Plaintiff's Bar is Now Attacking Algorithmic Hiring Processes**

- The attack on the use of allegedly age and demographically-bracketed social media hiring ads on Facebook
- How the Plaintiff's Bar is attacking modern corporate hiring systems

Both Locations - David Lopez (Invited)

9:15 Talent Acquisition Rules of Engagement: When Can You Use the "Rooney Rule?"

- Under what circumstances is use of the "Rooney Rule" unlawful? Under what circumstances may companies lawfully interview based on race, gender and/or ethnicity?
 - Does the way your company recruits and interviews matter and affect the legal conclusion?
 - Is there a difference between the "Rooney Rule" and telling recruiters to "cast their recruitment nets wider" to more diverse talent pools?
 - A re-cap of Title VII law prohibiting race-conscious preferences in employment, including how to calculate a "manifest imbalance" analyses (private sector) or a "strong basis in evidence" analyses (public sector)
- Both Locations - John Fox & Candee Chambers*

10:30 Refreshment Break**10:45 How to Prepare a Database for the Statistical Analysis of Pay Equity**

We'll cover the structure of pay analyses today and the data that every company should be gathering, organizing and coding to be able to run a meaningful analysis either for their private use or to withstand an OFCCP audit, and also identifying employer practices that undermine the quality of their data.

Both Locations - Cary Elliott

12:00 The Current OFCCP Litigation Report and Revelations About What the In-Progress Trials Teach About OFCCP Audit Policies and What the Solicitors are Advising OFCCP About Title VII Law

- The *Baker DC* case: OFCCP needs a "Warrant" to come on-site
- The *Analogic* case: First OFCCP compensation case to be tried
- The *Google* case: OFCCP needs a "Subpoena" to obtain documents after its audit Scheduling Letter
- The *JBS (Hyrum)* case: OFCCP's view that corporate Disposition Codes are irrelevant, subjective decision-making systems are inherently unlawful, and that companies do not need recruiters
- The *Enterprise Rent-A-Car* case: OFCCP's view that corporate Disposition Codes are irrelevant, subjective decision-making systems are inherently unlawful and that companies must just hire proportionally to the race/sex/ethnicity of their applicant flow minus those who Self-Select Out of the selection process

Both Locations - John Fox

1:15 Adjourn

PROGRAM CHAIR

JOHN C. FOX, Esq.

Fox, Wang & Morgan P.C., Los Gatos, California

FACULTY

PAMELA COUKOS, Esq., Ph.D.

*Working IDEAL
Washington, DC*

CARY ELLIOTT, Ph.D.

*Resolution Economics
Washington, DC*

**CANDEE J. CHAMBERS,
SPHR, SHRM-SCP, SR. CAAP**

*DirectEmployers Association
Indianapolis, Indiana*

CRAIG LEEN, Esq.

*OFCCP
Washington, DC*

DAVID LOPEZ, Esq.

*Rutgers University
Newark, New Jersey
(Invited)*

CONTINUING LEGAL EDUCATION / PDC / CEU CREDIT

The one-day **Workshop** will provide **7-8.5 CLE / PDC / CEU hours** and the two-day **Update** will provide **12-14.5 CLE / PDC / CEU hours**, depending upon the jurisdiction. NELI applies for credit from all MCLE states. Contact us for approval status. For CLE credit, complete box on registration form. NELI will provide certificates of attendance. NELI is a State Bar of California MCLE approved provider, is recognized by most professional associations as an approved CEU/ PDC / CPE provider in this industry, and is an approved provider of SHRM and HRCI for recertification credit.

AFFIRMATIVE ACTION PUBLICATIONS

AFFIRMATIVE ACTION WORKBOOK

Thursday/Friday participants will receive this Workbook. Available in print and searchable PDF format.

Completely revised, the 36th Annual Affirmative Action Workbook supports this year's Affirmative Action Update agenda. We wish to thank John C. Fox, Esq. with Fox, Wang & Morgan, P.C., editor of this Workbook, for his diligent work and contribution to the program series.

Contents: *What's On the OFCCP Director's Desk • Recent Significant OFCCP and EEOC Developments • Using Apprentice Programs to Help Satisfy OFCCP Compliance Obligations • Into the Lion's Den Part I: Why Pay Equity Programs Should Go Much Farther and Much Deeper, Much Sooner Than You Think • Defending Trump Administration OFCCP Audits • Into the Lion's Den Part II: How the Plaintiff's Bar is Now Attacking Algorithmic Hiring Processes • Talent Acquisition Rules of Engagement: When Can You Use the "Rooney Rule?" • How to Prepare a Database for the Statistical Analysis of Pay Equity • The Current OFCCP Litigation Report*

Print Version: \$189.00 • Searchable PDF: \$169.00

Print & PDF: \$229.00

AFFIRMATIVE ACTION RESOURCE MANUAL

Wednesday Workshop participants will receive this Manual. Available in print and searchable PDF 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. The chapter containing a Model Affirmative Action Program has been revised and updated to provide a boiler-plate AAP which conforms with all current requirements from the OFCCP.

Contents: *Analysis of the Executive Order Program Requiring Affirmative Action Plans • Affirmative Action Plans for Minorities and Women: A Step-by-Step Guide • Essential Components of an AA Program • Implementation of Your AAP • AAPs for Protected Veterans and Individuals with Disabilities • Miscellaneous Documents re: Affirmative Action Compliance • Instructive Power Points for this Manual*

Print Version: \$119.00 • Searchable PDF: \$99.00

Print & PDF: \$159.00

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P.O. Box 1189
Golden, CO 80402
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