Do you need to certify?

Understanding your affirmative action certification obligations within the OFCCP portal

Affirmative Action Compliance & The New OFCCP
Certification Portal Every Federal Government
Contractor Should Know About



AGENDA

- Who We Are ERA / ERA Affirmative Action HUB Diana Small, Director of HR Consulting Services
- Overview of the OFCCP Contractor Portal Tonya Stark , AA Compliance Consultant
 - 1. Account Creation & Registration Tips
 - 2. Reviewing & Updating Company & Establishment Tips
 - 3. Declaration & Certification Tips
 - 4. The Next Phase of the OFCCP Portal
 - 5. OFCCP Evaluation Outlook
 - 6. Benefits of AAP Compliance
 - 7. CSAL / Scheduling Letter
 - 8. Who should be counted as an employee in AAP reporting
 - 9. Helpful Links
- ERA Membership Model Diana Small, Director of HR Consulting Services
- Q&A





Employers Resource Association



Members Based Non-Profit HR Association

Regional Presence with a National Footprint for Select Services





Affirmative Action HUB

Need advice and assistance in fulfilling your organizations Affirmative Action requirements?

Your ERA AAP experts are one call away!





WHAT YOU NEED TO KNOW

☐ Federal contractors or subcontractors with 50 or more employees and a government contract valued at \$50,000 or more, are required to develop a written Affirmative Action Plan

WHAT WE OFFER

- AAP Plan Reports with your data
 AAP Audit Support; you received a notice now what?
- AAP Education (HR & Managers)
- AAP Update Alerts; Quarterly Webinars; We keep you informed

OUR AAP EXPERT TEAM

- Our AAP Expert Resources combined have over 50 years of AAP compliance experience
- ☐ ERA completes over 150+ AAP
 Plans each year for our members
- We offer the best of both worlds; a local presence supporting your AAP needs throughout the US for all of your locations



Disclaimer:

The contents of this presentation are intended to convey general information only and not to provide legal advice or opinions. Employers Resource Association is not a law firm and does not provide legal advice. Use of and access to this webinar and presentation do not create an attorney-client relationship between the reader/trainee/registrant and Employers Resource Association.







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Overview of the Contractor Portal



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OFCCP 3 PRIMARY LAWS ENFORCED

Executive Order 11246 1965, as amended

• Prohibits discrimination based on race, color, religion, sex, sexual orientation, gender identity or national origin; and, applicants and employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations

Section 503 of the Rehabilitation Act of 1973, as amended

• Prohibits discrimination of individuals with based on mental or physical disabilities. It also required reasonable accommodations unless employer can prove undo hardship to the company

Vietnam Era Veterans' Readjustment Assistance Act 1974, as amended

• Prohibits discrimination of protected veterans and requires that job openings be posted with an employment service delivery system (ESDS) which give preferences to veterans

OFCCP Jurisdiction Thresholds Infographic



OFCCP implements these three laws through regulations published in title 41, chapter 60 of the Code of Federal Regulations (CFR), available electronically at www.ecfr.gov. Parts 60-1 through 60-50 implement Executive Order 11246. Part 60-300 implements VEVRAA, and part 60-741 implements Section 503. For Example, 41 CFR part 60-2 contains the affirmative action requirements that are specific to federal supply and service contractors under EO 11246.

EQUAL EMPLOYMENT OPPORTUNITY POLICY: BASIC

It is the policy of "Company" not to discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity or sexual orientation, national origin, age, marital status, genetic information, disability, protected veteran status, or for inquiring about, discussing, or disclosing information about compensation. It is also the policy of "Company" to take affirmative action to employ and to advance in employment, all persons regardless of race, color, religion, sex, gender identity or sexual orientation, national origin, age, marital status, genetic information, disability, protected veteran status, or for inquiring about, discussing, or disclosing information about compensation and to base all employment decisions only on valid job requirements. This policy apply to all employment actions, including but not limited to recruitment, hiring, upgrading, promotion, transfer, demotion, layoff, recall, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship, at all levels of employment.



WHO IS REQUIRED TO HAVE WRITTEN AAPs AND USE THE CONTRACTOR PORTAL?

Supply & Service Contractor Thresholds for a Written AAP

Executive Order 11246 (Women & Minorities)

50 or more employees and a Federal contract or subcontract of \$50,000 or more in the aggregate over a 12-month period

Section 503 of the Rehabilitation Act of 1973 (Individuals with Disabilities)

50 or more employees and a Federal contract and subcontract of \$50,000 or more on a <u>single</u> contract in a 12month period Vietnam Era Veterans' Readjustment Assistance Act

50 or more employees and a Federal contract or subcontract \$150,000 or more on a <u>single</u> contract in a 12-month period

Currently, contractors who are "construction only" do not need to register and certify within the portal.

OFCCP Jurisdiction Thresholds Infographic



WHY IS OFCCP REQUIRING USE OF THE CONTRACTOR PORTAL?

- The OFCCP had no process for ensuring that the tens of thousands of establishments required to have a written AAP did so and was updating it annually.
- Tracking of subcontractors (No tier threshold)
- The OFCCP was auditing the same companies repeatedly resulting only 2% findings.
- In 2015, the U.S. Government Accountability Office (GAO) determined that close to **85 percent** of companies did not submit a written AAP within 30 days of receiving a scheduling letter.



WHAT IS THE CONTRACTOR PORTAL?

A new OFCCP platform where covered federal supply and service contractors and subcontractors must certify, on an annual basis, whether they are meeting their requirement to develop and maintain written AAP(s) annually.

When a contractor certifies, they are not only certifying to the written AAP but also to the continual maintenance/requirements of the program (i.e., annual audits, recordkeeping, outreach, goal assessment, internal/external discrimination, training, etc.)



OFCCP CONTRACTOR PORTAL TIMELINE



February 1, 2022 - Registration Opens

Federal Contractors will be able to visit and register their company and validate that their information is correct.



June 30, 2022 - Certification Period Ends

Federal Contractors will need to certify the status of their AAPs before the period ends.

Federal Contractors will be able to certify that status of their AAPs for each establishment and/or functional unit as applicable



March 31, 2022 - Certification Period Begins

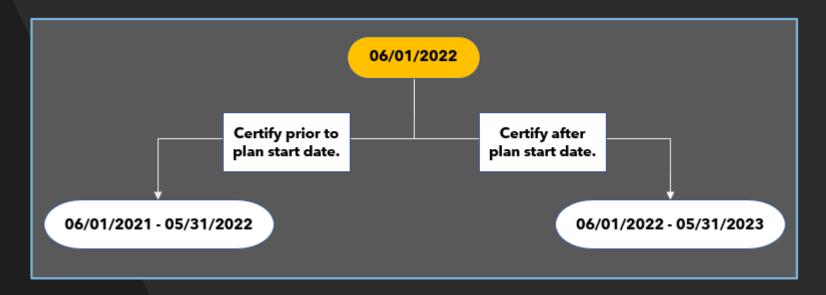
Contractors who certify that they just became a contractor within the past 120-days will have 90-days from the development of their AAPs to access the Contractor Portal and update their certification.



JUNE 1ST PLAN DATE (EXAMPLE)

For covered government contractors with a June 1 plan start date, will OFCCP require the 2021 or 2022 AAP to be certified?

Covered federal contractors and subcontractors are required to use the OFCCP Contractor Portal to certify whether they are currently meeting their requirement to develop and maintain annual AAPs. When a contractor selects a response to the certification statement through OFCCP's Contractor Portal, they are selecting the response that reflects their AAP status, as of the date they certify. For example, if a contractor with a June 1, 2022 AAP start date certifies when the Contractor Portal opens for certification on March 31, 2022, then the contractor would be certifying the 2021 AAP (effective June 1, 2021 through May 31, 2022). If the contractor certifies on or after June 1, 2022, it would be certifying the 2022 AAP (effective June 1, 2022 through May 31, 2023).





CONTRACTOR PORTAL PROCESS TIPS



ACCOUNT CREATION & REGISTRATION



REVIEW & UPDATE



CERTIFICATION & DECLARATION



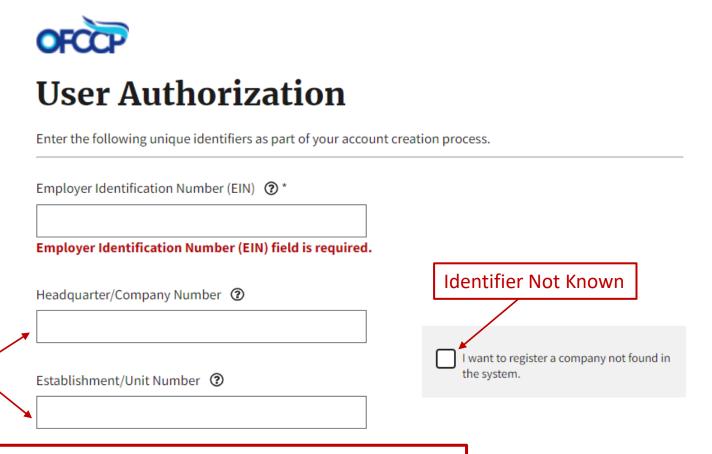
ACCOUNT CREATION & REGISTRATION TIPS



ACCOUNT CREATION & REGISTRATION TIPS

Headquarter/Company Number & Establishment/Unit Number fields may only allow you to enter the first 6 digits displayed in the upper lefthand corner of the 2018 EEO Report. There is a rumor that this has been fixed and you can now enter all 7 digits.

Entering the 2018 EEO **co** and **u Numbers** will pre-populate company data as of 2018s EEO-1 filing.



co=	GY19360
u=	GY19360

SECTION B - COMPANY IDENTIFICATION

RKWAY

)43

EQUAL EMPLOYMENT OPPORTUNITY 2018 EMPLOYER INFORMATION REPORT CONSOLIDATED REPORT - TYPE 2

RKWAY

SECTION C - TEST FOR FILING REQUIREMENT

1-Y 2-Y 3-Y DUNS NO.:079942718 EIN :611767919

ECTION E - ESTABLISHMENT INFORMATION

NAICS: 519130 Internet Publishing and Broadcasting and Web Search Portals Back

Continue



ACCOUNT CREATION & REGISTRATION TIPS

Create Parent Company

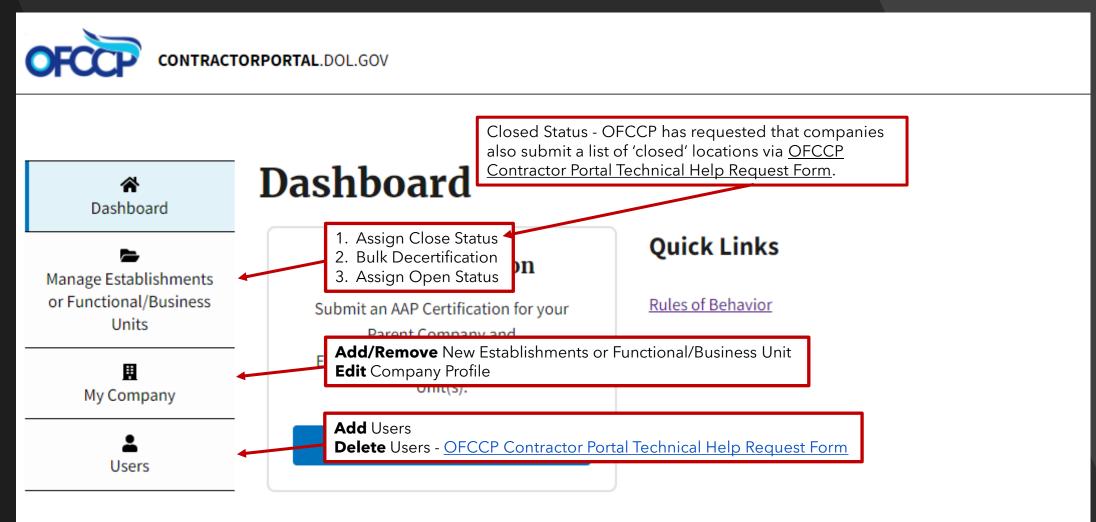
Company Information	Parent companies will need to be set up before subsidiaries.
Legal Business Name *	
Employer Resource Association	
Parent Name (As reported on the EEO-1 Report) *	
Employer Resource Association	
Company ID *	
HDQTRS	You can look up your company's DUNS number by visiting www.dnb.com.
Data Universal Numbering System (DUNS) *	
068943091	
The DUNS number for the Contractor Organization.	,
North American Industry Classification System (NAICS) *	
541612 - Human Resources Consulting Services (814)	
The NAICS field can not be null and must be selected from the search	n. You can search by the 6-digit value or the Code Name.
EIN Number *	
The Employer Identification Number (EIN), also known as the Federa] al Employer Identification Number (FEIN) or the Federal Tax Identification Number, is a unique nine-digit numb





All supply and service contractors and subcontractors that fall under OFCCP jurisdiction must update their Parent Company Profile and information on individual establishments and/or functional units. This may include adding, removing, or updating establishment records. Contractors can add establishments and/or functional units by following the steps for "Adding Establishment(s) or Functional/Business Unit(s) Records" in the Contractor User Guide.







- You will need to update 2018 headcount and establishment or FAAP
 data to reflect current headcount and current AAP establishments or
 FAAPs data. System is pre-populating Type 3 Headquarters and Type 4
 Establishments with 50 or more employees.
- If your company was not in existence in 2018 or didn't require an EEO report in 2018, you will have to enter company data and AAP establishments or FAAPs data manually.
- If you company was sold after 2018 EEO-1 data was submitted, you will have to register on the OFCCP portal by using the "Identifier Not Know" option. Enter your current EIN, check the "Identifier Not Known" box and select "Continue". You will have to enter company data and AAP establishments or FAAPs data manually.

- A parent company will need to be setup before subsidiaries.
- State Colleges/Universities are learning they share FEINs with others in the state system therefore requiring coordination; First one to register is being counted as the 'parent' and other campuses will need to be added as users.



- Admin Users can modify all records within the company, invite new users, and assign them establishment(s) or functional/business unit(s) to manage. Admin Users can change most data except for the FEIN. Contractors needing further assistance can do so by accessing the following link <u>Contractor Portal Contact Us</u>.
- Non-Admin User can only modify establishment(s) or functional/business unit(s) that an Admin User has assigned to them. A Non-Admin User can view all users associated with the Headquarters/Parent Company, but cannot modify, add, or assign users.
- It is recommended that contractors initially set up two Admin Users for the parent company. If a company only has one Admin User and that user leaves the company, a company representative will need to enter a request via OFCCP Contractor Portal Technical Help Request Form
- to remove the Admin User that left and assign a new Admin User.

Establishments or Functional/Business Units

+ Add New Establishment or Functional/Business Unit

Edit Company

HQ Establishment or Functional/Business Unit

Establishment or Functional/Business Unit Name *	Establishment or Functional/Business Unit ID	Parent Name (As reported on the EEO-1 Report)	Assignees	FTEs	PO Email	Status	Actions
Company Headquarters	HDQTRS	Employer Resource Association		250	stark@erahr.org	Not Certified	Edit

Additional Establishments or Functional/Business Units

Establishment or Functional/Business Unit Name &	Establishment or Functional/Business Unit ID	Parent Naire (As reported on the EE -1 Report) Assignees	FTEs	POC Email	Status	Actions
Chicago Establishment	CHIC001	Resource Association	100	jadams@erahr.org	Not Certified	Edit
<u>Cleveland</u> Establishment	CLEV001	Employer Resource Association	80	jdoe@erahr.org	Not Certified	Edit
Indianapolis Establishment	INDY001	Resource Association	50	jsmith@erahr.org	Not Certified	Edit



CERTIFICATION & DECLARATION TIPS



CERTIFICATION & DECLARATION TIPS

Certification Question

The contractor represents that:

- 1. Entity has developed and maintained affirmative action programs at each establishment, as applicable, and/or for each functional or business unit. See 41 CFR Chapter 60. (Compliant)
- 2. Entity has been party to a qualifying federal contract or subcontract for 120 days or more and has <u>not developed and maintained</u> affirmative action programs at each establishment, as applicable. See 41 CFR Chapter 60. (Non-Compliant)
- Entity became a covered federal contractor or subcontractor within the past 120 days and therefore has not yet developed applicable affirmative action programs. See 41 CFR Chapter 60. (Compliant - New Contractor)

Note: Covered contractors must develop an AAP within 120 days of entering a federal contract or subcontract. New contractors who select option three (3) will have 90 days from the development of their AAPs to access the Contractor Portal and update their certification.

Declaration Statement

The contractor represents that:

Who can certify and declare? The portal allows any user to certify and declare. Probably should be one of two Individuals. The person at the highest level of the organization or the "designated official"?

I attest that this Affirmative Action Program (AAP) certification is true and correct to the best of my knowledge. I understand that the penalty for making false statements with respect to this certification is prescribed in 18 U.S.C.1001.





SUBMIT CERTIFICATION TIPS

A	

Have you updated your Establishment or Functional/Business Unit records?

Before submitting your AAP Certification, navigate to your Dashboard to update Establishment or Functional/Business Unit details or create new Establishment or Functional/Business Unit records.

The following are Establishment or Functional/Business Unit record(s) linked to your profile which have not yet been certified. Please select the Establishment(s) or Functional/Business Unit(s) you would like to certify based on the responses from the prior screen.

Establishment or Functional/Business Unit Name	Establishment or Functional/Busir ss Unit Tumber	Physical Address
Chicago Establishment	CHIC001	123 Main Street Chicago, IL 60007 United States
Cleveland Establishment	CHEVON	123 Main Street Cleveland, OH 44101 United States
Company Headquarters	HDQTRS	1200 Edison Drive Cincinnati, OH, OH 45216 United States
Indianapolis Establish ment	INDY001	123 Main Street Indianapolis, IN 46077 United States



THE NEXT PHASE OF THE OFCCP PORTAL

- Written AAP(s) and supporting data uploads to the OFCCP portal
 - Prior to your next annual certification, the OFCCP will provide information about when companies will be required to begin loading plan data.



OFCCP EVALUATION OUTLOOK...

- The OFCCP has said that they may incorporate the AAP certification information as a criterion in its methodology for neutrally scheduling compliance evaluations so that contractors who have selected (option 2) of certification or have not certified are more likely to be scheduled for a compliance evaluation.
- In Q3 2021, the OFCCP announced that they are planning to hire 188 employees in the anticipation of conducting more evaluations.
- The OFCCP has communicated that the evaluations will primarily focus on people processes (hire, promoting, terminations, etc.) and pay equity (total compensation).

Fiscal Year	OFCCP FTE	Evaluations OF Comple	
2011	775	4,	014
2012	755	4,	007
2013	729	4,	110
2014	683	3,	987
2015	621	2,	718
2016	615	1,	151
2017	556	1,	142
2018	514		812
2019	500	1,	343
2020	472		320
2021	451	(Q1-Q2)	525



OFCCP IMPACT ON WORKFORCE 2011-21

Employees Receiving Monetary Relief



Over 272,000 – The number of employees and job seekers for whom OFCCP obtained financial relief, (2011 – 2021).

Monetary Relief



Over \$211 million – The dollar amount of the monetary relief that OFCCP obtained for employees and job seekers who were discriminated against, (2011 – 2021).

Job Opportunities and Salary Adjustments



Over 23,000 – The number of job opportunities and salary adjustments for individuals who had suffered discrimination, (2011 – 2021).

Scope of OFCCP's Reviews



Over 12.8 million – The number of workers at facilities that OFCCP reviewed for compliance, (2011 – 2021).

LINKS TO OFCCP FISCAL YEAR DATA TABLES

Supply and Service Compliance Evaluations Conducted
Construction Compliance Evaluations Conducted
Monetary Relief Obtained

Complaints Received, by Basis
Complaints Received, by Employment Practice
Complaint Investigation Outcomes



BENEFITS OF AAP COMPLIANCE

- AAPs are powerful instruments that help create a culture where discrimination is not tolerated.
- Increase employee performance, pride, satisfaction and engagement.
- The AA reporting provides managers and HR professionals better visibility into the workforce resulting in better workforce decisions.
- Continuation and addition of federal contracts.
- Reduces expensive legal claims of discrimination and harassment.



CORPORATE SCHEDULING ANNOUNCEMENT LIST (CSAL)

On May 20, 2022, OFCCP posted its first Corporate Scheduling Announcement List (CSAL) of FY22 for supply and service contractors. The list consists of 400 locations selected for a Compliance Review (Establishment Review), Corporate Management Compliance Evaluation, or Functional Affirmative Action Program Review.

In less than 45 days, contractors will receive a scheduling letter, via certified mail. Once a scheduling letter is received, the contractor has 30 days to respond to the OFCCP. The contractor's response will need to include a completed Affirmative Action Program (AAP) and supporting documents requested in the letter.

To see if your company was selected, you can access the list <u>here.</u>

The CSAL is not all inclusive. Example – If the OFCCP receives a compliant, they may send out a scheduling letter without including the contractor's name on any existing or future CSAL.



WHAT IS A SCHEDULING LETTER?

A scheduling letter is used by OFCCP to initiate a compliance

evaluation.

OMB NO. 1250-0003

Expires 04/30/2023

VIA CERTIFIED MAIL

(NUMBER)

RETURN RECEIPT REQUESTED

(Name of contractor official)

(Title of contractor official)

(Establishment Name)

(Street Address)

(City, State, Zip Code)

Sample Scheduling Letter and Itemized Listing

Dear (Name of contractor official):

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), selected your _________

[Insert: establishment located at (address), functional unit (name or description of functional unit), or corporate headquarters located at (address)] for a _______ [Insert: compliance review, functional affirmative action program (FAAP) compliance review, or corporate management compliance evaluation (CMCE)]. We are conducting this _______



When does OFCCP allow for extensions due to extraordinary circumstances?

OFCCP may grant an extension for submitting the scheduling letter and itemized listing data, including support data, in the event of extraordinary circumstances. Examples of extraordinary circumstances include, but are not limited to:

- Extended medical absences of key personnel
- Death in the immediate family of key personnel
- Localized or company-specific disaster affecting records retrieval such as a flood, fire, or computer virus
- Unexpected military service absence of key personnel
- Unexpected turnover or departure of key affirmative action official

Key personnel would include employees responsible for contractor compliance with OFCCP's regulations, such as the official designated by the contractor pursuant to 41 CFR 60-2.17(a), 41 CFR 60-300.44(i), and 41 CFR 60-741.44(i).



WHICH EMPLOYEES MUST THE CONTRACTOR INCLUDE IN AAP DATA?

The employee-level data must include, but is not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees on the contractor's payroll (W2). Contractors must provide employee-level compensation data for all of the employees included in the AAP workforce analysis/organizational display. The term "employee," as used in the AAP regulations in 41 CFR Part 60-2, is broad enough to include part-time, temporary and full-time employees. Therefore, OFCCP already requires contractors to include part-time and temporary employees in their AAPs. Item 19 seeks compensation data for "contract, per diem, or day laborers" as categories of temporary employees on the contractor's payroll.



INDEPENDENT CONTRACTORS (1099s)

Darden Factors - Used to determine if an IC should be counted as an employee in AAP reporting.

- 1. Right to control the manner and means by which work is accomplished.
- 2. The level of skill required to perform effectively.
- 3. Source of required instruments and tools.
- 4. Location of work.
- 5. Duration of relationship between parties.
- 6. The right of the employer to assign new projects to the worker.
- 7. The extent of the worker's control over when and how long to work.
- 8. Method of payment.
- 9. The worker's role in hiring and paying assistants.
- 10. Whether work is the regular business of the employer.
- 11. Whether the employer is in business.
- 12. The provision of employee benefits.
- 13. The tax treatment of the worker.

Use caution when treating independent contractors as employees!! If you treat an IC like an employee...they are your employee. They are entitled to employee rights covered under several laws and are entitled to benefits.



YOUR AFFIRMATIVE ACTION TEAM



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HELPFUL LINKS AND CONTACT INFO

OFCCP Contractor Portal

Contractor Portal User Guide

Registration Guide - 1 Page

<u>Certification Guide - 1 Page</u>

How-To Videos

Contractor Portal Contact Us

OFCCP Contractor Portal Technical Help Request Form

Ask OFCCP A Question Online

Toll-Free Help Line: 1-800-397-6251

Frequently Asked Questions (FAQs)

OFCCP Jurisdiction Thresholds Infographic

DUNS Look Up

All attendees will receive a pdf of this morning's webinar and a copy of ERA's AAP Compliance and Implementation Checklist







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- Roundtables
- Webinars
- HR Central Online Library
- Employee Handbooks
- Policy Review
- Compensation



HR Best Practices

- Employee Engagement Surveys
- Affirmative Action Plans
- Recruiting Services
- Compliance Services
- Custom Wage & Benefit Surveys
- HR On-Demand

HR Consulting Services



- Updates from CEO
- HR Alerts
- EEOC Alerts
- Weekly Hot Topic Emails
- HR Trends

News & Legal Updates







2022 Membership Initiative

Are you ready to take the plunge into HR excellence? Employers Resource Association has the expertise you're searching for and the incentive below to join!

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All new members are eligible for a special drawing for an off-site team building day!

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Introducing the <u>ERA REWARDS PROGRAM</u>-**Earn 20% off your next ERA membership** renewal for each new member you refer and registers with ERA!

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All new members are eligible for a special drawing for an off-site team building day!

New Member Reward

Become a Member today and choose from a complimentary service!

- Learning strategy analysis!
- > Engagement express survey!
- One hour consultation review with our Compensation experts!



Not Ready To Become A Member But Still Need AAP Help to Certify? NO WORRIES!!

For a limited time, Non-ERA Member attendees of today's PTAC webinar not interested in membership are eligible for a 25% discount off the Non-Member rate for a 2022 Certification Portal "Emergency" Affirmative Action Plan.

Act Now, this offer ends June 17th and is subject to the number of plans/plan size, prepared data, and ERA capacity limits due to demand.

Contact Us Today www.erahr.org membership@erahr.org







Questions?

For more information about anything discussed in this presentation, please contact us!



dianas@erahr.org carolynp@erahr.org Ihall@erahr.org tstark@erahr.org ddugan@erahr.org - Sales



888.237.9554







Don't Delay. Be a hero today!

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Join us on Tuesday, July 26th from 10:00AM - Noon EST for this Virtual event.

REGISTER HERE!



WE NEED YOUR FEEDBACK!

What are some additional ways that ERA can support your organization?

https://survey.sogosurvey.com/r/hRpOOW





SHRM CODE: 22-YTMME FOR 1.0 CREDIT

