



April 7, 2014

Debra Carr
Director, Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Avenue NW, Room C3325
Washington, DC 20210

Re: Department of Labor, Office of Federal Contract Compliance Programs Request for Information on Complaint Form CC-4, Complaint of Employment Discrimination by Federal Government Contractors and Subcontractors, Control number 1250-0002

Dear Ms. Carr:

Thank you for inviting comments on the Office of Federal Contract Compliance Program's (OFCCP) new Complaint Form CC-4, Complaint of Employment Discrimination by Federal Government Contractors and Subcontractors. The National Partnership for Women & Families appreciates OFCCP's effort to provide a clearer form to help complainants provide information about alleged discrimination. In particular, we write this letter to commend OFCCP for separately listing pregnancy as a basis of discrimination, and to urge OFCCP to more clearly identify the discriminatory actions an employer may take on one of these bases, including wage discrimination.

The National Partnership for Women & Families is a nonprofit, nonpartisan organization that uses public education and advocacy to promote fairness in the workplace, quality health care for all, and policies that help women and men meet the dual demands of work and family. Since our founding as the Women's Legal Defense Fund in 1971, we have fought for every significant advance for equal opportunity in the workplace, including the Pregnancy Discrimination Act of 1978, the Family and Medical Leave Act of 1993 (FMLA) and the Lilly Ledbetter Fair Pay Act of 2009. The National Partnership has devoted significant resources to combating sex, race, and other forms of invidious workplace discrimination.

The Complaint Form CC-4 collects information necessary for OFCCP to properly perform its important function of evaluating complaints of discrimination made by employees of contractors and subcontractors. Because the new form is clearer and more concise, the information collected from complainants will be clearer and of higher quality and utility. Making the additional improvements suggested herein will even further improve the quality and utility of the information collected. The information will therefore have great practical utility as it will enable OFCCP to perform more efficient and higher quality investigations to determine whether to pursue enforcement actions.

Specifically, the new form improves upon the existing Complaint Form CC-4 because it more clearly states the protected characteristics on the basis of which an employee may

face workplace discrimination. In particular, in response to “Why do you believe this company or employer discriminated against you?” the new form provides the option of responding by checking “Pregnancy.” There is ample support for listing pregnancy as a basis of discrimination. Pregnancy discrimination is a form of sex discrimination and therefore is prohibited by Executive Order 11246, as amended by Executive Order 11375. “Pregnancy” is properly listed separately from “Sex/Gender” because not all complainants may be aware that pregnancy discrimination is a type of sex discrimination. The Federal Contract Compliance Manual (the “Manual”) tells compliance officers that “discrimination on account of pregnancy, childbirth, childbearing capacity, or related medical condition is a form of unlawful sex discrimination.”¹ The Manual provides examples of pregnancy discrimination, including refusing to hire pregnant women or women of childbearing capacity or subjecting them to adverse employment treatment on this basis; denying an alternative job assignment or modified duties to a pregnant worker temporarily unable to perform some job duties because of pregnancy while such assignments or modifications are allowed for other workers; or firing a woman or requiring her to take leave because she becomes pregnant.² Since Executive Order 11246 as amended prohibits pregnancy discrimination, and the Manual instructs compliance officers regarding pregnancy discrimination, the complaint form should also list pregnancy as a basis of discrimination.

Although the proposed new form more clearly lists the bases of discrimination, including pregnancy, the new form does not state as clearly as the existing form the discriminatory actions an employer may take on one of those bases. The form OFCCP currently uses provides check boxes for complainants to use to indicate the actions the employer took or failed to take because of the employee’s protected characteristic (e.g., discrimination in hiring, termination, layoff, etc.). The new form addresses types of discriminatory actions in the instructions and as part of an open-ended question, but this is not as clear and straightforward as including check boxes. This omission may make it more difficult for the agency to quickly and easily categorize the type of discriminatory action an employee has faced, and similarly, may make it harder for an employee to succinctly express or categorize the discriminatory action(s) they believe they have faced. Therefore, in order to enhance the quality and clarity of the complaint form and the information collected, we suggest OFCCP include a modified form of the existing closed ended question: “What action(s) do you believe this company or employer took or failed to take that was discriminatory on the basis of the above characteristic or status? (more than one may be checked)” We then encourage OFCCP to list the actions along with corresponding check boxes. This closed ended question could be followed by the open-ended question included on the new proposed form, “Please describe below what you believe the employer did or failed to do to cause discrimination or retaliation.”

With respect to the list of actions included as answers to the closed-ended question, we recommend that the current action, “wages” be refined to specify “unequal payment of wages/salary/benefits” OFCCP has made efforts to address gender and other pay disparities in the federal contracting workforce, but there is much more work to be done in identifying and eliminating unlawful wage discrimination. Including a clear statement about unequal pay on Complaint Form CC-4 should be part of that effort. As the Department knows, pay discrimination, including in the federal contracting workforce, is a persistent problem. Nationally, women who work full-time are only paid 77 cents for every dollar paid to men who work full-time, resulting in a gap of more than \$11,500 each year; the gap is larger for women of color.³ The pay gap persists across nearly all occupations and within every

industry.⁴ Retaliation for sharing pay information is also a significant problem and yet there is currently no prohibition on employers who do so. A national survey conducted by the Institute for Women's Policy Research and Rockefeller Survey of Economic Security found that nearly half of all workers are either forbidden or strongly discouraged from discussing pay with their colleagues.⁵ Clearly listing "unequal payment of wages/salary/benefits" as a discriminatory activity on Complaint Form CC-4 will make clear to employers and employees that wage discrimination is illegal.

We appreciate the opportunity to submit comments. We support OFCCP's effort to develop a clearer standard complaint form to assist complainants in providing quality information that will have greater utility for OFCCP. In particular, we applaud OFCCP for separately listing pregnancy as a basis of discrimination. We strongly encourage the agency to ask in a closed-ended question about what discriminatory actions the complainant believes the employer took or failed to take, and to list the actions with check boxes, including the unequal payment of wages/salary/benefits. If you have any questions regarding these comments, please contact Sarah Fleisch Fink, Senior Policy Counsel at the National Partnership for Women & Families, at sfleischfink@nationalpartnership.org or 202.238.4852.

Sincerely,

The National Partnership for Women & Families

1 United States. Department of Labor. Office of Federal Contract Compliance Programs. (2013, July). *Federal Contract Compliance Manual* (p. 80). Retrieved 20 March 2014, from http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf

2 Ibid., pp. 80-81

3 U.S. Census Bureau. (2013). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-05: Work Experience in 2012 -- People 15 Years Old and Over by Total Money Earnings in 2012, Age, Race, Hispanic Origin, and Sex*. Retrieved 27 February 2014, from http://www.census.gov/hhes/www/cpstables/032013/perinc/pinc05_000.htm

4 U.S. Census Bureau. (2013). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-06: Occupation of Longest Job in 2012--People 15 Years and Over, by Total Money Income in 2012, Work Experience in 2012, Race, Hispanic Origin, and Sex*. Retrieved 20 March 2014, from http://www.census.gov/hhes/www/cpstables/032013/perinc/pinc06_000.htm; U.S. Census Bureau. (2013). *American Community Survey 1-Year Estimates 2012, Table S2404: Industry by Sex and Median Earnings in the Past 12 Months for the Full-Time, Year-Round Civilian Employed Population 16 Years and Over*. Retrieved 19 March 2014, from http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S2404&prodType=table

5 Hegewisch, A., Williams, C., & Drago, R. (2011, June). *Pay Secrecy and Wage Discrimination*. Institute for Women's Policy Research Publication. Retrieved 20 March 2014, from <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination>