

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
Delta Dental of California

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Delta Dental of California (Delta Dental) corporate headquarters located at 100 1st Street San Francisco, CA 94105-2634, beginning on October 8, 2020. OFCCP found that Delta Dental failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, and its implementing regulations at 41 CFR 60-741.

OFCCP notified Delta Dental of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on October 20, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and Delta Dental enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for Delta Dental's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Delta Dental violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Delta Dental's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Delta Dental will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Delta Dental of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Delta Dental agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Delta Dental submits its final progress report required in Section IV, below, unless OFCCP notifies Delta Dental in writing before the expiration date that Delta Dental has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Delta Dental has met all of its obligations under the Agreement.
10. If Delta Dental violates this Agreement:
 - a. The procedures at 41 CFR. 60-741.63 will govern:
 - i. OFCCP will send Delta Dental a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. Delta Dental shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If Delta Dental is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - iv. In the event of a breach of this Agreement by Delta Dental, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.

- b. Delta Dental may be subject to the sanctions set forth in 41 CFR. 60-741.66, and/or other appropriate relief for violating this Agreement.
11. Delta Dental does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to “days” in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Technical Violations and Remedies

1. **Violation 1:** During the period January 1, 2019 through June 30, 2020, Delta Dental failed to invite its applicants for employment, after an offer of employment had been made and before the applicant began work, to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60-741.42(b).

Remedy 1: Delta Dental will invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60-741.2(g)(1)(i) or (ii). All invitations to self-identify will be made using the OMB-approved form for this purpose (available on the OFCCP website). Furthermore, Delta Dental will keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

2. **Violation 2:** During the period January 1, 2017 through May 22, 2018, Delta Dental failed to document and maintain the required data pertaining to applicants and hires, in violation of 41 CFR 60-741.44(k).

Remedy 2: Delta Dental will document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-741.44(k): the number of applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired.

3. **Violation 3:** During the period January 1, 2019 through June 30, 2020, Delta Dental failed to assess their external outreach and positive recruitment efforts for its effectiveness and document its review for a period of three (3) years, in accordance with 41 CFR 60-741.44(f)(4). Specifically, Delta Dental documented their external outreach and positive recruitment efforts, but did not assess for effectiveness in 2017 and 2018.

Remedy 3: Delta Dental will document all activities it undertakes to comply with its external outreach and recruitment efforts, document these activities, assess their effectiveness, and maintain those documents for a period of three (3) years, in accordance with 41 CFR 60-741.44(f)(4).

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Delta Dental agrees to retain all records relevant to the violation(s) cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Delta Dental will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Delta Dental Reports.**

Delta Dental agrees to furnish OFCCP with the following report during the Monitoring Period. The report will contain the documentation specified according to the dates scheduled:

Progress Report 1: Due on December 1, 2022 covering the period of November 1, 2021 through October 31, 2022.

- a. Pursuant to Remedy 1: Documentation that Delta Dental has invited each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform them whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60-741.2(g)(1)(i) or (ii). All invitations to self-identify will be made using the OMB-approved form for this purpose (available on the OFCCP website). Furthermore, Delta Dental will keep all self-identification information

confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

- b. Pursuant to Remedy 2: Documentation that Delta Dental has conducted the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-741.44(k): the number of applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired.
- c. Pursuant to Remedy 3: Documentation that Delta Dental has conducted all activities it undertook to comply with its external outreach and recruitment efforts, assessed their effectiveness; and maintained those documents for a period of three (3) years, in accordance with 41 CFR 60-741.44(f)(4).

Delta Dental will submit the report to Quanda Evans, Acting Portland Area Office Director, Seattle District Office, 300 Fifth Avenue, Suite 1100 Seattle, WA 98104 or at (b) (7)(C), (b) (6)@dol.gov. Delta Dental and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Delta Dental provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and Delta Dental believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Delta Dental will provide such reports to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will promptly notify Delta Dental of the FOIA request and provide Delta Dental an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Delta Dental’s final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Delta Dental in writing within sixty (60) days of the date of the final progress report that Delta Dental has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Delta Dental within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Delta Dental has met all of its obligations under the Agreement.

V. SIGNATURES

The person signing this Agreement on behalf of Delta Dental personally warrants that he or she is fully authorized to do so, that Delta Dental has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Delta Dental.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Delta Dental of California 100 1st Street San Francisco, CA 94105-2634.

(b) (7)(C), (b) (6)

Michael Hankinson
EVP, Chief Legal and Compliance Officer
Delta Dental of California
San Francisco, California

DATE: November 15, 2021

(b) (7)(C), (b) (6)

Quanda Evans
Acting Portland Area Director
Office of Federal Contract
Compliance Programs
Seattle District Office

DATE: November 16, 2021

(b) (7)(C), (b) (6)

Leigh Jones
District Director
Office of Federal Contract
Compliance Programs
Seattle and Portland Offices

DATE: _____