

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

CARDINAL HEALTH EI PASODON HASKINS

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated Cardinal Health El Pasodon Haskins (Cardinal Health) located at 1520 Don Haskins, El Paso, TX 79936, beginning on September 18, 2020. OFCCP found that Cardinal Health failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its implementing regulations at 41 Code of Federal Regulations (C.F.R.) Chapter 60.

OFCCP notified Cardinal Health of the specific violations found and the corrective actions required in a Notice of Violation (NOV) issued on February 3, 2022.

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

II. General Terms and Conditions

1. In exchange for Cardinal Health's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Cardinal Health violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Cardinal Health'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. Cardinal Health 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 Cardinal Health of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Cardinal Health and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Cardinal Health 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.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, 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.
8. This Agreement becomes effective on the day it is signed by the Houston District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Cardinal Health submits its final progress report required in Section IV, below, unless OFCCP notifies Cardinal Health in writing before the expiration date that Cardinal Health 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 Cardinal Health has met all of its obligations under the Agreement.
11. If Cardinal Health violates this Agreement:
 - a. The procedures at 41 C.F.R. § 60-1.34 will govern:
 - i. OFCCP will send Cardinal Health a written notice stating the alleged violation and summarizing any supporting evidence.
 - ii. Cardinal Health 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 Cardinal Health 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 Cardinal Health, 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 agreed to in the Agreement.
- b. Cardinal Health may be subject to the sanctions set forth in Section 209 of E. O. 11246, 41 C.F.R. 60-1.27, and/or other appropriate relief for violating this Agreement.
12. Cardinal Health neither admits nor denies any violation of the E. O. 11246, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
 13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
 14. 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.
 15. Each party shall bear its own fees and expenses with respect to this matter.
 16. 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.
 17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, 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.

Technical Violations and Remedies

1. **VIOLATION:** Cardinal Health failed to preserve personnel or employment records in accordance with the requirements of 41 CFR § 60-1.12, 60-3.4 and 60-3.15. Specifically, during the period September 23, 2018 through September 23, 2020, Cardinal Health did not require the third party agency acting on its behalf to capture the race, gender and ethnicity of all job seekers and Internet applicants, nor did Cardinal Health collect and maintain all records produced and used in the selection process by the temporary agency. A review of the applicant log provided by the temporary agency revealed applicant data primarily included one applicant for each hire (i.e. one-to-one hiring in temporary positions found in Job Groups 5A Administrative Support Workers and 2A Professionals where each temporary applicant that applied was subsequently hired). Other indications that the entire pool was not submitted include Job Group 7B Operatives, where the

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REMEDY: Effective immediately, Cardinal Health will ensure that records are collected and maintained in accordance with the requirements of 41 CFR § 60-1.12, 60-3.4 and 60-3.15. For any record made, Cardinal Health will identify the gender, race and ethnicity for employees, and where possible for each job seeker or Internet Applicant, including job seekers and Internet applicants that apply for temporary positions. Cardinal Health will also conduct an adverse impact analysis on at least an annual basis for purposes of determining whether adverse impact exists against applicants based on race, gender, or ethnic group in hiring, promotion, termination, and other personnel activities, including opportunities for temporary employment. These analyses will be done by job for each group constituting at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, Cardinal Health will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, Cardinal Health will validate the component(s) in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures that do not result in adverse impact.

2. **VIOLATION:** Cardinal Health failed to include an acceptable Identification of Problem Areas section in its Affirmative Action Program (AAP) as required by 41 CFR § 60-2.17(b). Specifically, Cardinal Health failed to identify the absence of black employee representation in its workforce. Cardinal Health has zero black employees in its workforce of 248 employees.

REMEDY: Effective immediately, Cardinal Health will address the absence of black representation in its workforce in the Identification of Problem Areas section of its AAP.

3. **VIOLATION:** Cardinal Health failed to develop and execute action-oriented programs designed to correct problem areas identified as required by 41 CFR § 60-2.17(c). Cardinal Health failed to develop and execute action-oriented programs designed to increase the representation of black employees at its El Pasodon Haskins facility. Specifically, Cardinal Health included general outreach sources developed by the corporate office in its AAP, as opposed to executing outreach efforts for black applicants specifically located in the El Paso, TX labor area when opportunities became available.

REMEDY: Effective immediately, Cardinal Health will develop and execute action-oriented programs specifically designed to increase the representation of black employees in its overall workforce at the El Pasodon Haskins facility.

III. OFCCP Monitoring Period

1. **Recordkeeping.** Cardinal Health agrees to retain all records relevant to the violation 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. Cardinal Health will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Cardinal Health Reports.**
 - a. **Schedule and Instructions.** Cardinal Health agrees to furnish OFCCP with the following reports during the Monitoring Period according to following schedule:

Pursuant to Violations 2 and 3, Cardinal Health will submit the following documentation 30 days from the effective date of this Agreement:

1. **Modifications to the Identification of Problem Areas and the Action-Oriented Programs Section of Cardinal Health's current Minority and Female Affirmative Action Program, recognizing the absence of blacks in the workforce and the specific recruitment efforts that will be taken in the El Paso, TX area to increase the representation of blacks in the workforce.**
2. **Pursuant to Violation 1, Cardinal Health will submit two semi-annual progress reports to OFCCP. The first semi-annual progress report will be due seven months from the effective date of this Agreement and cover the six-month period from the effective date of the Agreement. The second report will be due 30 days after the end of the subsequent six-month period. The following information will be included in each semi-annual report:**

1. A log of all job seekers during the relevant review period, including job seekers for temporary employment. This log will include name, race, gender and ethnic group; recruitment source; disposition; job group, position applied for; and position hired into, if applicable;
2. The total number of applicants and hires by job group, race, gender, and ethnicity during the reporting period, including temporary workers;
3. For each job group, the results of Cardinal Health's analysis as to whether its total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, on those members of groups set forth in 41 CFR § 60-3.4B. Cardinal Health must combine the data for the second report with the data from the previous report to analyze at least a 12-month period.
4. For each case where the total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, the results of Cardinal Health's evaluation of the individual components of the selection process for adverse impact; and
5. The corrective actions Cardinal Health implemented upon determining that any component of the selection process has an adverse impact on a particular race, gender or ethnic group.

Cardinal Health will submit reports to Karen N. Hyman, District Director, OFCCP Houston District Office, 2320 La Branch Street, Suite 1103, Houston, TX 77004 and (b) (6), (b) (7)(C)@dol.gov. Cardinal Health 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 Cardinal Health provides in accordance with this Agreement are customarily kept private or closely-held, and Cardinal Health believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Cardinal Health will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

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 Cardinal Health's final progress report as set forth in Section II, Paragraph 10 above. If OFCCP fails to notify Cardinal Health in writing within sixty (60) days of the date of the final progress report that Cardinal Health 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 Cardinal Health within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Cardinal Health has met all of its obligations under the Agreement.

IV. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Cardinal Health El Pasodon Haskins.

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Mr. Eric Myers
VP, Associate General Counsel
Cardinal Health El Pasodon Haskins
El, Paso, TX

DATE: 3/9/22

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

Karen N. Hyman
District Director
Houston District Office

DATE: 03/31/2022

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

LaToya Smith
Assistant District Director
Houston District Office

DATE: 03/31/2022

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

(b) (6), (b) (7)(E)
Compliance Officer
Houston District Office

DATE: 03/11/2022