

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
UPMC Mercy

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the UPMC Mercy establishment located at 1400 Locust Street, Pittsburgh, PA 15219 beginning on May 14, 2018. OFCCP found that UPMC Mercy failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and the implementing regulations at 41 CFR Chapter 60.

OFCCP notified UPMC Mercy of the specific alleged violations and the corrective actions sought in a Notice of Violation (NOV) issued on July 7, 2022, and in a Show Cause Notice issued on October 24, 2018, and Amended Show Cause Notices issued on June 25, 2021, and August 4, 2022.

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 UPMC Mercy 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 UPMC Mercy's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, and VEVRAA based on the violations alleged in the NOV and SCNs. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if UPMC Mercy 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 UPMC Mercy'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. UPMC Mercy 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 UPMC Mercy of its obligation to fully comply with the requirements of E.O. 11246, VEVRAA, or Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. UPMC Mercy 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 Regional 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 UPMC Mercy submits its final progress report required in Section IV, below, unless OFCCP notifies UPMC Mercy in writing before the expiration date that UPMC Mercy 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 UPMC Mercy has met all of its obligations under the Agreement.
10. If UPMC Mercy violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, and 41 C.F.R. 60-300.63 will govern:
 - i. OFCCP will send UPMC Mercy a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. UPMC Mercy 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 UPMC Mercy 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 UPMC Mercy, 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. UPMC Mercy may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. UPMC Mercy does not admit, and, in fact, denies any violation of the Executive Order 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 OFCCP.
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. Alleged Technical Violations and Remedies

1. **Violation:** During the period July 1, 2016 to June 30, 2017, UPMC Mercy failed to perform in-depth analyses of its personnel activity adequately, in violation of 41 C.F.R. § 60-2.17(b). Specifically, OFCCP alleges that UPMC Mercy failed to evaluate its hires to determine whether there were gender-, race-, or ethnicity-based disparities in the Care Attendant, Transporter, Gift Shop Clerk, and Teacher's Aide positions.

Remedy: UPMC Mercy will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exists, as required by 41 C.F.R. § 60-2.17(b).

UPMC Mercy will have a consultant review its recruiting, screening and hiring practices, including the use of artificial intelligence, algorithms, automated systems, or other technology-based selection procedures and strive in good faith to increase the company-wide pipeline of Black employees within the Care Attendant, Transporter, Gift Shop Clerk, and Teacher's Aide positions.

IV. Enhanced Compliance Provisions.

UPMC Mercy will evaluate the policies and procedures related to its total employment process to ensure compliance with E.O. 11246, and VEVRAA. Within sixty (60) days after the Effective Date of this Agreement, UPMC Mercy will submit to OFCCP a proposal that describes the methodology to be used in the evaluation. The proposal will estimate the time necessary to conduct a comprehensive evaluation of UPMC Mercy's equal opportunity practices and policies and write a report containing findings and recommendations. The evaluation and recommendations will cover the following areas:

- A. Development and documentation of specific job-related criteria based on objective standards for basic and preferred qualifications to be used to select and/or eliminate from further consideration persons expressing an interest in employment at each step of the hiring process (i.e., application screen, interview, post-offer screen, etc.).
- B. Procedures to recruit, screen, interview, select, reject, and hire applicants without regard to race/ethnicity, gender, sexual orientation, gender identity, color, national origin, religion, disability status and status as a protected veteran.
- C. Procedures to ensure that persons expressing an interest in employment are tracked and dispositions are documented consistently at each step in the hiring process.
- D. Procedures to ensure that each step of the total selection process is analyzed and that information on individual components of the process are collected, maintained and available for submission to OFCCP upon request.
- E. Procedures to ensure that adverse impact analyses are conducted in accordance with 41 CFR Part 60-3, including evaluation of the individual components and qualifications if statistical disparities exist.
- F. Evaluation of recruitment efforts (methods and sources) for qualified individuals with disabilities and qualified protected veterans.
- G. Procedures to ensure that documents are retained in accordance with 41 CFR 60-1.12, 60-3, 60-300.80 and 60-741.80.
- H. Procedures to ensure consistency in the application of each step of the selection process across requisitions for the same job title, along with training for human resources officials, recruiters, and hiring managers, to ensure that these steps are followed consistently. This should also include a review of any structured interview guides, to ensure that they are followed consistently and hiring officials are trained.
- I. Procedures to ensure that a standardized, consistent methodology is used to create requisition pools. UPMC Mercy will clearly document that methodology and provide training for human resources officials and hiring managers to ensure that it is followed consistently.

J. Procedures to review physical and mental job qualification requirements to ensure that all requirements are necessary to perform the essential functions of the job.

K. Procedures for preparing Job Group 901 Service Worker – Clinical Support jobs, and/or for the job groups to which those jobs have gone if a job group re-structuring has subsequently occurred for career advancement to higher level jobs.

L. Procedures for ensuring that any potential staffing agencies used by UPMC Mercy are routinely notified of its equal employment opportunity and affirmative action obligations, and that the required equal opportunity clauses/language under Executive Order 11246, Section 503, VEVRAA and Executive Order 13496 are included in the sub-contracts awarded to any staffing agencies.

Within thirty (30) days of the conclusion of UPMC Mercy's internal evaluation, UPMC Mercy will submit a report to OFCCP to include the following:

- a. A description of the evaluation conducted.
- b. A summary of UPMC Mercy's findings regarding its current policies and practices.
- c. Findings and recommendations regarding each of the items set forth in Section IV above, as well as any other items included in the proposal.
- d. Any additional recommended actions or revisions to UPMC Mercy's policies, practices, and procedures to ensure equal opportunity and affirmative action.

Upon receipt of the report, UPMC Mercy and OFCCP will negotiate in good faith any amendments to the recommendations outlined.

Modifications to Employment Practices and Policies. Within one hundred twenty (120) days of OFCCP's acceptance of UPMC Mercy's report, UPMC Mercy agrees to implement all recommended actions and revised policies and practices detailed in the final report.

Training. Within twelve (12) months of the Effective Date of this Agreement, UPMC Mercy will provide training to all recruiters and hiring managers. This training will include a review of UPMC Mercy's equal employment opportunity obligations and recordkeeping requirements. UPMC Mercy will provide OFCCP with documentation to confirm that the training was completed.

V. OFCCP Monitoring Period

1. **Recordkeeping.** UPMC Mercy agrees to retain all records relevant to the violations 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. UPMC Mercy will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **UPMC Mercy Reports.**

UPMC Mercy agrees to furnish OFCCP with two (2) reports during the Monitoring Period.

- a. Progress Report 1: Due on January 31, 2025, covering the period of July 1, 2024 through December 31, 2024.
- b. Progress Report 2: Due on January 31, 2026 covering the period of January 1, 2025 through December 31, 2025.

Each report will contain the documentation specified according to the dates scheduled:

- a. Documentation of the implementation of each of the mutually agreed upon employment practices/policies and training described in Section IV above during this report period.
- b. Violations 1: An applicant flow log for Care Attendant, Transporter, Gift Shop Clerk, and Teacher's Aide positions that includes for each applicant, the: name; race/ethnicity; gender; date of application; job title applied for; referral source; date of hire (if applicable); job title hired into (if applicable); and reason for rejection (if applicable). The results of UPMC Mercy's in-depth analyses of its total employment process for these positions to determine whether and where impediments to equal employment opportunity exists. If adverse impact is found, documentation that UPMC Mercy evaluated each step of the total selection process, including evaluation of the individual components and qualifications if statistical disparities exist.

UPMC Mercy will submit reports to: (b) (6), (b) (7)(C) Compliance Officer, OFCCP Pittsburgh District Office, 1000 Liberty Avenue, Room 2103, Federal Building, Pittsburgh, PA 15222 or via e-mail at (b) (6), (b) (7)(C)@dol.gov.

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 UPMC Mercy's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify UPMC Mercy in writing within sixty (60) days of the date of the final progress report that UPMC Mercy 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 UPMC Mercy within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines UPMC Mercy has met all of its obligations under the Agreement.

VI. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and UPMC Mercy.

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

John Innocenti
President
UPMC Mercy Hospital
Pittsburgh, Pennsylvania

DATE: _____

3/13/2024

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

Samuel Maiden
Regional Director
OFCCP, Mid-Atlantic Region

DATE: _____

03/15/2024