Rescission of the Rule
“Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption”

Stakeholder Briefing

March 2023
Presenters

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Overview

• Background
• Directive 2018-03
• 2020 religious exemption rule
• Rescissions
• Purpose
• Clarifications from Title VII case law
Background - OFCCP

- Legal authorities:
  - Executive Order 11246
  - Section 503
  - VEVRAA
Background – Religious Exemption

• Executive Order 11246 religious exemption

• Title VII of the Civil Rights Act of 1964 religious exemption
Directive 2018-03 and 2020 Religious Exemption Rule

• DIR 2018-03, Executive Order 11246 § 204(c) religious exemption, issued August 10, 2018

• “Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption,” in effect since January 8, 2021
Rescissions

• “Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption” (2020 religious exemption rule)
  • Rescission effective date: March 31, 2023

• DIR 2018-03, Executive Order 11246 § 204(c) religious exemption
  • Rescission effective date: March 1, 2023
Purpose

• Resolve confusion caused by 2020 religious exemption rule

• Reaffirm nondiscrimination protections for employees of federal contractors

• Return to long-standing OFCCP policy and practice of aligning Executive Order 11246 religious exemption with Title VII case law
Clarifications from Title VII Case Law: Qualifying Employers

An employer can qualify for the exemption if its purpose and character are primarily religious.
Clarifications from Title VII Case Law: Scope of Exemption

• Qualifying religious employers generally may make decisions about whether to employ individuals based on acceptance of and adherence to religious tenets.

• Qualifying religious employers may not insist on compliance with such tenets to the extent it would result in violation of the other nondiscrimination protections.
Requesting Religious Exemption

• No specific process for request

• Contact Compliance Officer to make request if scheduled for a compliance review

• Contact OFCCP anytime with questions

• Frequently asked questions - OFCCP website
Additional Information

• **OFCCP webpage dedicated to the rescission**
  (www.dol.gov/agencies/ofccp/religious-exemption)

  o Director Yang’s blog post
  o Rescission of 2020 Rule
  o Frequently Asked Questions
  o Notice of Rescission of Directive 2018-03

March 2023
Religious Exemption

Questions & Answers
Questions?
Toll-Free Help Line: 1-800-397-6251