

I Don't Think My Establishment Has To Have An AAP

Each nonconstruction contractor and subcontractor with 50 or more employees is required to develop a written Affirmative Action Program (AAP) for each of its establishments within 120 days from the start of the federal contract, if it:

- *Has a federal contract or subcontract of \$50,000 or more;*
- *Has government bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more;*
- *Serves as a depository of federal funds in any amount; or*
- *Is a financial institution that is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.*

If you feel as if these criteria above do not qualify you for the written AAP requirement, apply the Single Entity Test to cover your bases.

Single Entity Test

We don't do any government work here. Federal Government work is performed in some other division in another state. Are we subject to the equal employment laws enforced by OFCCP?

Yes. Generally speaking, once it has been determined that a business or organization is subject to the civil rights requirements enforced by OFCCP, all of the business's or organization's establishments or facilities will be subject to the same regulatory requirements, regardless of where the Federal contract is to be performed.

In addition, some businesses or organizations that do not independently hold Government contracts/subcontracts may still be covered under the laws enforced by OFCCP if they are considered a "single entity" with a related business or organization that holds such contracts. In such instances, OFCCP uses a "single entity" test to determine whether the businesses or organizations are so closely related that they may constitute a single entity for purposes of OFCCP jurisdiction. The test requires OFCCP to consider whether:

1. the entities have common ownership;
2. the entities have common directors and/or officers;
3. one entity has de facto day-to-day control over the other through policies, management or supervision of the entity's operations;
4. the personnel policies of the entities emanate from a common or centralized source;
and
5. the operations of the entities are dependent on each other, e.g., services are provided principally for the benefit of one entity by another and/or both entities share management, offices, or other services.

The test focuses primarily on whether the ownership, management, and operations of the separate entities are, in fact, sufficiently interrelated to warrant treating them as an integrated enterprise or a single entity. A business or organization need not meet all five factors to be considered a single entity with a covered Federal contractor. However, there is growing recognition that centralized control over labor relations and personnel functions is the most important factor. By way of example, say that two entities are under common ownership, with a common board of directors, and have a central corporate office that determines and issues personnel policy for both entities, and generally manages most personnel-related issues for both entities. At the same time, the operations of the two entities are not particularly dependent on each other. Despite the fact that one of the factors did not apply, the four factors that did outweigh the one that did not, so that the two entities being analyzed will most likely be considered a single entity.