

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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OFFICE OF FEDERAL CONTRACT COMPLIANCE)	
PROGRAMS, UNITED STATES DEPARTMENT)	
OF LABOR,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
WMS SOLUTIONS, LLC,)	
)	
Defendant.)	
_____)	

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), by its attorneys, alleges that, at all times relevant hereto:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Executive Order 11246 (30 Fed. Reg. 12319), as amended (“Executive Order 11246” or “Executive Order”), and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.
2. This Court has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. § 60-1.26, 41 C.F.R. § 60-4.8, and 41 C.F.R. Part 60-30.
3. Defendant WMS Solutions, LLC (“Defendant” or “WMS”), is a staffing agency with a business office in Baltimore Maryland.
4. WMS provides laborers to contractors performing construction work, as that term is defined at 41 C.F.R. § 60-1.3, under Federal or federally assisted construction contracts in the

Washington, D.C. and Baltimore, Maryland areas. WMS' laborers specialize in asbestos removal work and demolition.

5. At all times relevant hereto, WMS held Federal or federally assisted construction contracts or subcontracts in excess of \$10,000.

6. WMS is a Government contractor or subcontractor within the meaning of the Executive Order.

7. WMS is subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and the implementing regulations issued thereunder.

8. The regulations issued pursuant to Executive Order 11246 provide at 41 C.F.R. § 60-4.1 that each employer with a Federal or federally assisted construction contract or subcontract of greater than \$10,000 is required to comply with the nondiscrimination provisions of Executive Order 11246 and its implementing regulations.

9. OFCCP conducted a compliance review of WMS beginning on February 23, 2012. As a result of this compliance review, OFCCP found that WMS violated the Executive Order in that WMS engaged in discriminatory hiring and compensation practices, failed to provide its Hispanic laborers with a workplace free of harassment, and failed to maintain its personnel and employment records as required by the Executive Order and its implementing regulations.

Discrimination in Hiring

10. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4(a)(1), WMS agreed not to discriminate against any employee or applicant for employment because of national origin.

11. During the period of February 1, 2011 through January 31, 2012, WMS discriminated against white, black, Asian, and American Indian/Alaskan Native applicants to be laborers, in favor of hiring Hispanic laborers. Upon information and belief, OFCCP alleges that this discrimination continues to the present.

12. Since at least February 1, 2011, hiring officials of WMS have determined which applicants are hired by WMS as laborers.

13. Since at least February 1, 2011, WMS failed to identify and provide complete relief including, but not limited to, a position, lost wages, interest, retroactive seniority and all other benefits of employment resulting from its discriminatory failure to hire white, black, Asian, and American Indian/Alaskan Native applicants to be laborers. Upon information and belief, OFCCP alleges that this failure continues to the present.

Discrimination in Compensation

14. Pursuant to Section 202 of the Executive Order, 41 C.F.R. § 60-1.4(a)(1) and 41 C.F.R. § 60-20.3(c), WMS agreed not to discriminate against any employee in assigning rates of pay or other forms of compensation because of sex or national origin.

15. During the period of February 1, 2011 through January 31, 2012, WMS discriminated against females based on their sex with regard to compensation. Specifically, WMS paid its female laborers less money per hour and assigned female laborers fewer hours of work than its male laborers. The resultant salary disparity remains after adjusting for differences in legitimate, pay-determining factors. Upon information and belief, OFCCP alleges that this discrimination continues to the present.

16. During the period of February 1, 2011 through January 31, 2012, WMS also discriminated against black and white laborers based on their national origin with regard to

compensation. Specifically, WMS assigned black and white laborers fewer hours of work than its Hispanic laborers. The resultant salary disparity remains after adjusting for differences in legitimate, pay-determining factors. Upon information and belief, OFCCP alleges that this discrimination continues to the present.

17. Since at least February 1, 2011, pay-deciding officials of WMS have exercised discretion when setting hourly rates of pay and assigning hours of work to laborers employed by WMS.

18. Since at least February 1, 2011, WMS has failed to identify and provide complete relief including, but not limited to, lost wages and salary adjustments, to the female, black, and white laborers who have been adversely affected by Defendant's aforesaid discrimination. Upon information and belief, OFCCP alleges that this failure continues to the present.

Failure to Protect Workers from Workplace Harassment

19. Pursuant to 41 C.F.R. § 60-1.4(a)(1), 41 C.F.R. § 60-1.32, and 41 C.F.R. § 60-4.3(a)7a, WMS agreed to maintain a harassment-free work environment at all worksites and in all facilities at which WMS' employees are assigned to work.

20. Since at least February 1, 2011, WMS has failed to ensure and maintain a working environment free of harassment, intimidation and coercion at all construction sites where WMS' employees work. Specifically, WMS' managers knowingly permitted supervisors of other contractors at such construction sites to verbally and physically abuse WMS' Hispanic laborers because of their national origin. For example, Hispanic laborers were addressed using racial slurs and were physically assaulted while at a worksite. Additionally, Hispanic laborers were shown videos of Hispanic workers being taken into custody and deported. Despite being aware of such harassment, WMS managers took no actions to stop the harassment of its Hispanic

laborers. In fact, after one Hispanic laborer reported physical abuse at the worksite to a WMS manager, WMS took no action. The laborer was later removed from the worksite by the other contractor and WMS took no actions to return this employee to the worksite or ensure that WMS employees were not subjected to further harassment at the worksite. Furthermore, WMS did not provide the employee with any additional work for several weeks. Since at least February 1, 2011, WMS has had no policy prohibiting workplace harassment and no established process by which WMS employees can report instances of harassing conduct. Upon information and belief, OFCCP alleges that these failures continue to the present.

Failure to Maintain Personnel and Employment Records

21. Pursuant to Section 202 of the Executive Order, 41 C.F.R. § 60-1.12(a), and 41 C.F.R. § 60-1.12(e), WMS agreed to preserve and maintain all personnel and employment records for a period of two years from the date of the making of the record or personnel action involved.

22. During the period of February 1, 2011 through January 31, 2012, WMS failed to preserve and maintain all personnel and employment records for a period of two years from the date of the making of the record or personnel action involved. Specifically, WMS failed to preserve copies of records pertaining to hiring, promotion, demotion, complaints, transfers, terminations, rates of pay or other terms of compensation; applications, resumes, and any and all expressions of interest through the Internet or related electronic data technologies; and records identifying job seekers contacted regarding their interest in a particular position.

Violations

23. Through the acts and practices described in paragraphs 10 through 22, above, WMS violated Executive Order 11246 and the regulations promulgated thereunder, as well as WMS' contractual obligations to the Federal Government.

24. Unless restrained by Administrative Order, WMS will continue to violate the obligations imposed upon it by Executive Order 11246 and the regulations promulgated thereunder.

25. All of the procedural requirements prior to the filing of this Complaint have been met. On November 21, 2012, OFCCP issued to WMS a Notice of Violations based upon its findings of violations of the Executive Order. Following the issuance of the Notice of Violations, OFCCP held four conciliation meetings and one conciliation conference call with WMS' counsel in an attempt to secure voluntary compliance. On September 10, 2013, OFCCP issued to WMS a Notice to Show Cause why enforcement proceedings should not be initiated based upon its findings of violations of the Executive Order. WMS did not respond to the Notice to Show Cause. On January 31, 2014, OFCCP issued to WMS an Amended Notice to Show Cause why enforcement proceedings should not be initiated based upon its findings of violations of the Executive Order. WMS' counsel confirmed receipt of the Amended Notice to Show Cause but otherwise did not respond to the Amended Notice to Show Cause. OFCCP has attempted to secure voluntary compliance through means of conciliation and persuasion. As part of its conciliation efforts, OFCCP provided evidence to WMS, including statistical evidence, demonstrating that, during the period of February 1, 2011 through January 31, 2012, white, black, Asian, and American Indian/Alaskan Native applicants to be laborers were being discriminated against in the hiring process because of their national origin; female laborers were

being discriminated against in their rates of pay and hours of work assigned because of their sex; black and white laborers were being discriminated against in their hours of work assigned because of their national origin; and Hispanic laborers were not being provided a working environment free of harassment, coercion, and intimidation because of their national origin. These efforts were unsuccessful.

Prayer for Relief

WHEREFORE, plaintiff OFCCP prays for a Decision and Order pursuant to 41 C.F.R. § 60-30.27 and 41 C.F.R. § 60-30.30, providing the following relief:

- 1) Permanently enjoining Defendant WMS, its successors, officers, agents, servants, employees, divisions, subsidiaries, and all persons in active concern with them from failing and refusing to comply with the requirements of the Executive Order and the regulations promulgated thereunder;
- 2) Requiring Defendant WMS to provide complete relief to the affected white, black, Asian, and American Indian/Alaskan Native applicants, including, but not limited to, a position, back pay, interest, front pay retroactive seniority and all other benefits of employment resulting from its discriminatory failure to hire them;
- 3) Requiring Defendant WMS to provide complete relief to the affected female employees, including, but not limited to, back pay, interest, front pay, salary adjustments, fringe benefits, seniority and all other benefits of employment resulting from Defendant's discrimination in compensation;

- 4) Requiring Defendant WMS to provide complete relief to the affected white and black employees, including, but not limited to, lost wages, interest, front wages, salary adjustments, fringe benefits, seniority and all other benefits of employment resulting from Defendant's discrimination in compensation; and
- 5) Requiring Defendant WMS to take at least the following actions to ensure and maintain a work environment free of harassment, intimidation, and coercion:
 - a. Develop a corporate-wide, zero-tolerance policy prohibiting harassment, intimidation, threats, retaliation, and coercion against any employee at any worksite. WMS' zero-tolerance policy will be in writing and will list the name, job title, and telephone number of the management official who is responsible and accountable for the company's compliance with EEO and affirmative action obligations and include a detailed description of the process for employees to make complaints concerning allegations of harassment, intimidation, retaliation, and coercion based on race, color, religion, gender, national origin, disability, or veteran's status. Additionally, WMS will distribute such policy in English and Spanish to all its employees and post and display the policy in both English and Spanish in a prominent place at each and every worksite where there are employees of WMS;
 - b. Provide to all WMS' managers and supervisors, and separately, to all WMS' other employees, training on equal employment opportunity and on the identification and prevention of harassment based on race,

color, religion, sex, national origin, disability, or veteran's status.

Such training must be provided immediately and annually thereafter;

- c. In no way retaliate, harass, or engage in any form of reprisal against any of its employees for opposing harassment or other forms of discrimination or participating in any investigation or inquiry into allegations of harassment or discrimination;
- d. Monitor all work sites where WMS' employees are working for the presence of any forms of harassment, intimidation, or coercion based on race, color, religion, sex, national origin, disability, or veteran's status, including but not limited to verbal, physical and visual forms, take corrective action to eliminate any such harassment, intimidation or coercion found, and document monitoring and any corrective action taken;
- e. Identify and inform employees of the name, job title, and telephone number of the WMS official for employees to contact to report and/or secure relief from such harassment;
- f. Immediately remove all racially and sexually demeaning displays from buildings and worksite where its employees work; and
- g. Continually inspect and remove from worksites where its employees work all demeaning racial and sexual drawings, photographs, artifacts and objects.

In the event Defendant WMS fails to provide relief as ordered, pursuant to 41 C.F.R.

§ 60-30.30, Plaintiff prays that Defendant be subject to the following:

- 1) An Order canceling all of Defendant's Government contracts and those of its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such Government contracts; and
- 2) An Order debarring Defendant and its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, from entering into future Government contracts until such time as Defendant satisfies the Director of the Office of Federal Contract Compliance Programs that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order and the regulations promulgated thereunder.

Plaintiff further prays for such other relief as justice may require.

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Respectfully submitted,

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U.S. DEPARTMENT OF LABOR

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