

compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. * * *

compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

§ 60-741.69 Intimidation and interference.

Subpart E—Ancillary Matters

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

§ 60-741.80 Recordkeeping.

- (1) Filing a complaint;
- (2) Assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;
- (3) Opposing any act or practice made unlawful by the act or this part or any other Federal, State or local law requiring equal opportunity for disabled persons; or
- (4) Exercising any other right protected by the act or this part.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance review has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance review or action until final disposition of the complaint, compliance review or action. The term "personnel records relevant to the complaint, compliance review or action" would include, for example, personnel or employment

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

EFFECTIVE DATE NOTE: At 70 FR 36266, June 22, 2005, §60-741.69 was amended by revising paragraph (a)(2), effective July 22, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 60-741.69 Intimidation and interference.

(a) * * *
(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

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§ 60-741.70 Disputed matters related to compliance with the act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the act and this part. Any disputes relating to issues other than

§ 60-741.81

records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided*, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after August 29, 1996.

EFFECTIVE DATE NOTE: At 70 FR 36266, June 22, 2005, § 60-741.80 was amended by revising the last two sentences of paragraph (a), effective July 22, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 60-741.80 Recordkeeping.

(a) * * * Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term "personnel records relevant to the complaint, compliance evaluation or action" will include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

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§ 60-741.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance reviews and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. Information obtained in this manner shall be used only in connection with the administration of the act, the administration of the Americans with Disabilities Act of 1990 (ADA) and in furtherance of the purposes of the act and the ADA.

EFFECTIVE DATE NOTE: At 70 FR 36266, June 22, 2005, § 60-741.81 was amended by revising the first sentence, effective July 22, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 60-741.81 Access to records.

Each contractor must permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. * * *

§ 60-741.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.