

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 16-23

July 1, 2016

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Collecting Data in Connection with Fair Pay and Safe Workplaces
Executive Order

On July 31, 2014, the President signed the Fair Pay and Safe Workplaces Executive Order to promote federal government procurement from responsible sources who comply with labor laws, including the NLRA. The Executive Order creates in each federal agency a new position--a Labor Compliance Advisor, who will assist contracting officers in making their responsibility determinations of contractors by assessing whether the contractors' violations of labor law are "serious," "repeated," "willful," or "pervasive." The Executive Order contemplates that DOL, EEOC, and the NLRB shall make information concerning agency findings of labor law violations available to the Labor Compliance Advisors which is necessary for their assessments.

The Agency has correlated certain data points already tracked in the NxGen case management system for forwarding to Labor Compliance Advisors. However, beginning with complaints issued on or after July 1, 2016, the Agency will collect four additional data points, which are necessary to link the data in NxGen with the data gathered by the other enforcement agencies and with the data in the GSA acquisition systems. These four additional data points are:

- 1) Is the charged party employer a federal contractor now or in the past? If so, its Commercial And Government Entity ("CAGE") number;
- 2) The charged party employer's Data Universal Numbers System ("DUNS") number, if it has one;
- 3) The charged party employer's four-character DUNS number suffix (DUNS+4), if it has one;
- 4) The charged party employer's Employer Identification Number (EIN) or Taxpayer Identification Number (TIN).

Attachment 1 to this Memorandum is a fillable pdf form that charged party employers can use to furnish these four data points regarding their businesses.¹ Attachment 2 to this Memorandum is model language Regions should use at the time of merit determinations to solicit charged party employers to complete the form. Regions are encouraged to share information about the form and have charged party employers complete it earlier where practicable. In connection with updates to the NxGen case management system initiated on June 24, 2016, four fields correlating to the data points itemized above have been created. Upon determination that a complaint will issue in the absence of settlement, Regions should request charged party employers to complete and remit the fillable form. Regions should enter the information into the NxGen data fields as soon as practicable after receipt, and in any event no later than the issuance of complaint. Where Regions have requested the information but the charged party employer has not supplied it, Regions should indicate such by using a fifth field, also deployed in the latest NxGen release, which specifies that the information was requested and the charged party employer did not provide it. To the extent practicable, the Regions should continue to request this information and if the charged party employer eventually furnishes the information the Region should enter the data into the appropriate NxGen fields.

Attachment 3 to this Memorandum is how-to instructions with screen shots, explaining how to enter the data into the NxGen system to ensure its availability to Labor Compliance Advisors. Also any completed forms should be updated into NxGen. The requirement to enter this data is applicable to all cases where complaint issues on or after July 1, 2016.

If you have any questions, please contact your Deputy or AGC, or DAGC John Doyle.

/s/
A. P.

cc: NLRBU

¹ We intend the fillable pdf form and data-entry process described in this Memorandum as an interim solution. The NxGen team is in the process of designing an internet portal that will allow charged parties to enter this information, as well as commerce information, Notices of Appearance, Designation of Representatives for Service of Documents, through a wizard-like interface that will feed directly into the NxGen system from the authenticated portal, improving casehandling efficiency. The measures described herein are to be taken pending development and deployment of that interface so that Labor Compliance Advisors' ability to assess labor law compliance by potential contractors is not impaired in the meantime.

Business Identification Number Form

| | | |
|--|---------------------------|--------------|
| Name of Charged Party: | | Case Number: |
| 1. Does the charged party employer have a Commercial And Government Entity (CAGE) number, assigned to entities in connection with awards of contracts? a. If yes, what is the charged party employer's CAGE number? | | |
| 2. Does the charged party employer have a Data Universal Numbers System (DUNS) number? a. If yes, what is the charged party employer's DUNS number? | | |
| 3. Does the charged party employer have a DUNS plus 4 suffix? a. If yes, what is the charged party employer's DUNS plus 4 suffix? | | |
| 4. What is the charged party employer's Employer Identification Number (EIN) or Taxpayer Identification Number (TIN)? | | |
| Representative Submitting Information: | Representative Signature: | Date: |

E-mail to be sent upon Agent advising charged party employer representative of Regional Determination to Issue Complaint Absent Settlement:

The Region has made a determination to issue a complaint in the above-referenced case, absent prompt settlement. Pursuant to the Fair Pay Safe Workplaces Executive Order, the NLRB collects and remits certain information to a central database regarding companies against whom NLRB Regional Directors issue complaints. Labor Compliance Advisors with various federal agencies assess the data remitted to this database by the NLRB and other federal agencies to determine whether findings of labor and employment law violations disqualify employers from contracting with the federal government.

Please be advised that if you reach a resolution of this matter before the Region issues a complaint, such as by entering a pre-complaint informal settlement agreement with the Regional Director, no information on this case will be forwarded to this database.

You are requested to complete the Form 5554 and submit it to the Agency, preferably through the Agency's e-filing portal. This Form provides certain information to assist with administration of the Fair Pay Safe Workplaces Executive Order.

The information you provide will be forwarded to the database accessed by Labor Compliance Advisors in making their decisions regarding contracting, only if the Regional Director issues a complaint in this matter. If a complaint issues in this matter and you have not provided the requested information, the NLRB will transmit the information it does have about the case, along with notification that the NLRB requested you to provide additional information and you failed to do so. This information may be considered by the Labor Compliance Advisors in assessing whether the charged party employer will be eligible to contract with the federal government.

How To Enter FPSW Information

For all cases where complaint is contemplated to issue on or after July 1, 2016, Regions will send a fillable pdf form to charged party employers to collect information to complete four additional fields in NxGen soon after the Region's determination to issue complaint absent settlement. Regions should upload the completed form and enter the information into NxGen as soon as practicable after receipt, but no later than at the time of issuance of complaint. If the Region does not receive the information until after the issuance of complaint, it should upload the form and enter the information promptly.

To complete the additional data fields in NxGen:

Open the case in question in NxGen and click on the Participants tab and then click on the Account Name hyperlink for the Charged Party / Respondent

Henver electronics

Menu Query Participant List Case File E-File

Case Number: 14-CA-158229 Case Name: *

Status: * Open Charging Party/Petitioner:

IA Category: 2 Date Filed:

Barg Status: Filed Date + 120:

Case Team Participants Admin **Participants** Summary Case File Act

Menu New Query

| Participant Type | Account Name | Pr |
|----------------------------|--------------------|----|
| > Charging Party | | Me |
| Charged Party / Respondent | Henver electronics | |

The Global Account Screen will open. The Fair Pay Data fields are located on the right side of the screen. Place a check mark in the Fair Pay Data Requested check box and then enter the numbers provided by the Charged Party / Respondent in the DUNS#, DUNS+4, CAGE NO, and EIN/TIN fields. Use the breadcrumbs at the top of the screen to navigate back to the case.

Inquiries Home Cases Actions Tasks Suspensions Contacts Accounts Service Requests Hot Topics & Issues Analytics Document Names Reports Special Projects Target

Henver electronics

Menu New Query

Account Name: * Henver electronics Main Phone #:

Address Line 1: * 54354 Verber Drive State: * TX Main Fax #:

Address Line 2: Suite, 434 Zip Code: 98456 Deactivation Date:

City: * Dallas Country: *

Fair Pay Data Requested:

DUNS #:

DUNS+4:

CAGE No:

EIN/TIN:

Addresses Cases Contacts

| Menu | Add | Remove | Query | | | | | | | |
|---------|--------------------|----------------|--------|-------|----------|---------|------------|----------|-------------|--|
| Primary | Address Line 1 | Address Line 2 | City | State | Zip Code | Country | Start Date | End Date | Description | |
| > | 54354 Verber Drive | Suite, 434 | Dallas | TX | 98456 | | 1/11/2016 | | | |

PLEASE NOTE: If the account already has information and the response is different, the Region should call the charged party representative to resolve the discrepancy, before entering revised information.