



# Affirmative Action and Compliance

## Summer Highlights

### OFCCP's New Compensation Directive # 307

The OFCCP has formally rescinded its 2006 pay discrimination enforcement guidance documents and replaced them with a more aggressive standard intended to more effectively target pay discrimination. Directive 307, Procedures for Reviewing Contractor Compensation Systems and Practices, gives the OFCCP access to a variety of new investigative and analytical tools, allows for the investigation of systemic, smaller unit and individual discrimination, and permits them to evaluate, on a case-by-case basis, information from the contractor regarding the factors considered in making compensation decisions.

What does this mean for you? Effective February 28th, 2013, the OFCCP can use all available evidence to uncover any and all forms of pay discrimination. They can tailor their approach to the facts of a particular case, comparing individual pay differences to whatever means needed. Expect the Compliance Officer to do the following:

- Conduct a preliminary analysis of summary data
- Conduct an analysis of individual employee-level data
- Determine the approach from a range of investigations and analytical tools
- Consider all employment practices that may lead to compensation disparities
- Develop pay analysis groups
- Investigate systemic, small group, and individual discrimination
- Review and test factors before accepting factors for analysis
- Conduct onsite investigation, offsite analysis, and refinement of the model

How do you prepare? Document, document, document. Be prepared to justify compensation decisions. This should start with documenting the salary decision at the time of hire and follow the employee throughout his career to include:

- Responsibility
- Skill
- Education
- Performance Review Outcomes
- Promotions
- Training Opportunities
- Shift Differentials
- Revenue Production
- Assignment to a "High-potential" List
- Work Environment

### Stay Informed

Don't be caught unaware. Make it a practice to visit the OFCCP's website on a regular basis. You need to stay abreast of regulation changes and learn about the types of infractions that companies are being cited for. The OFCCP won't buy that you were unaware of a regulation. As a federal contractor, it is YOUR responsibility to stay in the know.



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## New 2010 Census Data

**O**n May 15, 2013, the OFCCP announced that contractors must start using the new 2010 Census EEO Tabulation no later than January 1, 2014. E. K. Ward & Associates has been very proactive in this regard, having started using the new tabulation at the beginning of 2013 to ensure that their clients' availability estimates were based on the most current EEO Tabulation. The 2010 EEO Tab replaces the former Census 2000 Special EEO File that has been used since 2005. Although the differences between the two tabulations are not particularly extensive, approximately 80% percent are an exact match to 2000, and the other 20% are new codes, codes that were split, and codes that were combined.

### **New Occupation Samples:**

- Emergency Management Directors
- Compensation & Benefits Managers
- Training & Development Specialists
- Information Security Analysts
- Web Developers
- Agricultural & Biomedical Engineer
- Nurse Anesthetists
- Nurse Practitioners & Nurse Midwives
- Flight Attendants
- Ambulance Drivers & Attendants

### **Sample Split Codes:**

- Medical Assistants and Other Healthcare Support Occupations
  - Medical Assistants
  - Medical Transcriptionists
  - Pharmacy Aides
  - Veterinary Assistants and Laboratory Animal Caretakers
  - Phlebotomists
  - Healthcare Support Workers, All Others

### **Sample Combined Codes:**

- Chief Executives + Legislators
- Lawyers + Judges, Magistrates & Other Judicial Workers
- Nuclear Engineers + Miscellaneous Engineers
- Market & Survey Researchers = Market Research Analyst & Marketing Specialist or Miscellaneous Social Scientists, including Survey Researchers

### **Population Increases:**

- Overall population increased 9.7% (27.3M)
- Minority population grew 28.8% while "White alone, Not Hispanic" grew only 1.2%
- Hispanic and Asian population have the highest growth rates (~ 43%)
- The Black population experienced the second smallest growth rate (12%)

### **EEO-I Representation by Gender and Race**

- Minorities as a group increased in all EEO-I categories.
- Female representation increased in four EEO-I categories.
  - Officials and Managers
  - Professionals
  - Technicians
  - Service Workers
- Representation for women decreased in the Administrative and Clerical category, and in four other categories: Sales, Craft, Operatives, and Laborers

### **What you need to know....**

Our AAP software allows the automatic conversion of your old codes to the new codes when creating a new affirmative action plan. Any census codes that need to be reviewed because of the expansion of census assignment options will be flagged and reviewed with you to provide an appropriate and suitable match. The incorporation of the new 2010 EEO-I tab continues to allow for customization of recruitment areas to ensure accurate availability estimates based on unique recruitment activities.

Expect the new census data to have a significant impact on your AAP results, especially for minorities. Prepare your senior leadership and managers by discussing the continued importance of minority and female outreach efforts.

If you have any questions about how the 2010 Census affects your Affirmative Action Planning efforts, please contact us.

## Latest on Corporate Scheduling Announcement Letters (CSALs)

The OFCCP has sent a second set of CSALs providing advance notice of federal contractors targeted for an audit. The first mailing was sent mid-November 2012. The second mailing was sent at the end of March, 2013. If you received a CSAL at any of your facilities (either November or March), it is more than likely that you will be audited prior to the end of the OFCCP's fiscal year, September 30, 2013.

Important things to note:

- The second mailing does not supersede the first mailing.
- CSALs were sent via regular mail and addressed to the Human Resources Director. If you have facilities with no HR Dept, the letter can be easily lost in the company mail cycle. Make sure the appropriate personnel are aware of such correspondence.
- The advance notice letter (CSAL) is followed by the "scheduling letter."
- Federal contractors do not have to receive CSALs in order to be selected for an audit.
- Upon receipt of the "scheduling letter", you have 30 days to submit your AAP to the OFCCP.

## Staying Ahead of Proposed Reg Changes for Veterans and Disabled

The OFCCP continues to work toward implementing proposed regulations for both Veterans and Persons with Disabilities. It is anticipated the revised rules will eliminate the "good faith effort" standard and require contractors to establish specific numerical recruitment and placement goals for both qualified veteran and disabled applicants and employees. Needless to say, documentation and measurement metrics is all important in demonstrating outreach and staying in compliance. To avoid violations due to lack of outreach and recruitment in achieving hiring goals, be sure to:

- Document all outreach and good faith efforts with emphasis on veterans and individuals with disabilities. Get assistance from local veteran and disability organizations
- Document all accommodation requests, denials and outcome
- Measure referrals and hires of veterans and individuals with disabilities, as well as minorities
- Ensure your website or application process is accessible for persons with disabilities, and that it promotes the company as a Veteran and Persons with Disabilities friendly workplace.
- Ensure job descriptions reflect physical and working conditions, as well as specific job functions and qualifications. Avoid generic job descriptions.

## EEO-1 Reporting Update

E. K. Ward & Associates has learned that the EEOC is resetting all company passwords for logging in to this year's EEO-1 online filing system, and that all companies with existing EEO-1 accounts will be affected by this reset. According to agency officials, it has been a number of years since company passwords have been reset, and the EEOC believed it necessary to reset them to ensure security and confidentiality. The EEOC assures us there is no need for companies to contact the EEOC to obtain their new password. Rather, the new password will be contained in the annual letter the EEOC sends to companies at the start of the EEO-1 filing season, which usually begins on or about July 1. We encourage our clients to be on the lookout for this letter, as it will contain the information needed to begin the 2013 filing process.

## Criminal History Checks and Adverse Impact

**D**o you use criminal history checks in your selection process? If so, you need to know that the EEOC recently updated its policies related to the use of criminal history. If Adverse Impact is discovered in the selection process that is related to the use of a criminal history check, be prepared to defend your decision by following these best practices:

### *General*

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decision-makers about Title VII and its prohibition on employment discrimination.

### *Developing a Policy*

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
  - Identify essential job requirements and the actual circumstances under which the jobs are performed.
  - Determine the specific offenses that may demonstrate unfitness for performing such jobs.
    - Identify the criminal offenses based on all available evidence.
  - Determine the duration of exclusions for criminal conduct based on all available evidence.
    - Include an individualized assessment.
  - Record the justification for the policy and procedures.
  - Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decision-makers on how to implement the policy and procedures consistent with Title VII.

### *Questions about Criminal Records*

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

### *Confidentiality*

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.
- Note and keep a record of consultations and research considered in crafting the policy and procedures.

For more information, go to:

[http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm#VIII](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#VIII)

**Disclaimer:** This document is meant only as a guide based on practical recommendations for AAP compliance. The information is not intended to be, nor does it constitute legal advice. It is recommended that your Affirmative Action Plan compliance procedures and all employment policies, procedures and practices be reviewed by your in-house counsel or other legal counsel with qualifications background and experience in AAP compliance.