2015 Alaska State HR Conference

Affirmative Action Update: The Road Ahead

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September 24, 2015

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AGENDA

- Audits
  - Focus
  - Hot buttons
  - Scheduling letter
- The road ahead
- Q&A

THE NEW AUDIT

OFCCP Trends

- Targeting by industry and company
- Death by supplemental data requests
- Requesting impact ratio analysis in the audit
  - Produce under attorney client privilege only
- Minority goals now required in Puerto Rico and Hawaii
- Focused on changes by your company to comply

OFCCP Audit Focus

- Much more involved audits
- Audit fewer contractors but at more locations
- Routine audit is now :
  - $30,000-$50,000 internal costs if nothing is wrong
  - Average time 2 years
  - 5-10 supplemental data requests
- Adverse impact analysis

OFCCP Audit Focus

- Outreach
  - Looking for real engagement
  - Low-tech relationships
  - Effectiveness
- Increased emphasis on technical compliance
- Recordkeeping – takes on new importance with new regulations and audit focus

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OFCCP Audit Focus

- If violations found
  - Technical violations = 2 to 3 additional audits
  - Monetary violations = 5 to 6 additional audits
- Manage audits carefully

AUDITS: HOT BUTTONS

- Compliance evaluations (audits) are a whole new landscape
- Some things stay the same: top 2 violations
  - Recruitment – Still #1
  - Recordkeeping

AUDITS: HOT BUTTONS

- Data issues
- Applicant pool size
- Use of technology
- Outreach, outreach, outreach
- Compensation (sort of...)
- Scheduling letter

HOT BUTTON ISSUE: DATA

- Data issues are one of contractors biggest risks
- During an audit, it is not what you do; it is what the data shows that counts

No data = No defense

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DATA: WHAT YOU MAY NEED IN AN AUDIT

- Resumes
  - All those that applied
  - All those considered that met basic qualifications
- Job descriptions, including basic qualifications
- All listing info (what and where)
- Candidate flow
  - Candidate name and status
  - Definition of the status/stage
  - Why did they drop out & at what stage
    - Rejection and withdraw reason codes

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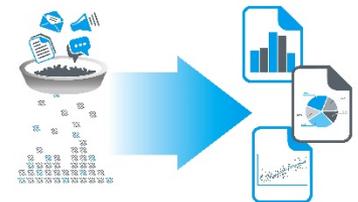
DATA: WHAT YOU MAY NEED IN AN AUDIT

- Race, sex, ethnicity, veterans, disability status
- Outreach efforts
  - Important to track letters sent, events attended, postings, etc.
- Promotions, terminations, transfers, hires
- Reasonable accommodation requests and results
  - Applicants and employees
- Compensation data

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WHAT DO WE SEE: DATA ISSUES

- Inaccurate and incomplete recruitment data
  - Disposition codes are not complete or correct
  - Applicant pools not accurate
    - Evergreen requisitions
    - Matching in ATS
  - Stage tracking is incomplete
    - Not an accurate "story" of the process
    - Only tracking the hire
    - Test results not tracked

Sorry
No Data Available

- AA report errors
  - Duplications
  - Incorrect mapping to job groups, locations, AAP plan, etc.
  - Evergreen requisitions reporting

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Data Issues: Best Practices

- Ensure HR and talent acquisition teams understand recordkeeping and compliance obligations
- Tie together technology, process, and compliance training
  - Recruiters track information at a much higher rate if they understand why it is important
- Create compliant processes for multi-hire or evergreen requisitions
  - Multi-hire/evergreen processes are notorious for creating bad data

Data Issues: Best Practices

- Audit data periodically
  - Don't wait until you receive an audit scheduling letter
  - Adjust as you go…
    - If you find problems, fix them
  - Outreach tracking
  - Job listings
  - Testing
- Audit ATS – remember recruitment findings #1
  - Disposition codes
  - Prescreening
  - Recruitment stages
    - Are they set as mandatory

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SOLUTIONS
PROBLEMS

HOT BUTTON ISSUE: APPLICANT POOL SIZE

- How you define an applicant and protect that definition can dramatically impact you in an audit

- Big numbers are bad numbers
  - Larger the applicant pool, the greater your risk
  - Statistical analysis is used in the vast majority of OFCCP conciliation agreements
  - It all comes down to math

- We see inflated applicant pools all the time in audit support

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Hot Button Issue: Applicant Pool Size

- How is data analyzed?
  - Job group
- Job groups are groupings of similar jobs
  - COW principal
    - Content
    - Opportunity
    - Wage
- Each job title is assigned into a job group
- The titles aggregate up – so numbers can get big quickly

WHAT DO WE SEE: APPLICANT POOL SIZE

- Not applying the internet applicant ruling
  - Expresses interest
  - Considered
  - Meets basic qualifications
  - Does not withdraw prior to offer

WHAT DO WE SEE: APPLICANT POOL SIZE

- Common ways to erode definition
  - Review resumes prior to applying
  - Manually adding to ATS
  - Referrals
  - Misuse of disposition codes/basic qualifications
- Common ways to expand definition
  - Misclassify applicant (basic qualifications)
  - Pre-screening tools in ATS

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APPLICANT POOL SIZE: BEST PRACTICES

- The proper use of disposition codes and a data management technique (DMT) are two of the best ways to limit the applicant pool
- Use disposition codes to "knock-out" those who don't meet the 4 prongs of the Internet Applicant Rule
- Well-defined and documented basic qualifications
- Importance of training for talent acquisition team cannot be over-stated

SOLUTIONS

PROBLEMS

APPLICANT POOL SIZE: BEST PRACTICES

- Don't miss the first step: require candidates to apply online in order to be considered
  - If you have an online career site, otherwise, follow your definition
  - Watch out for referrals
  - Manual additions to ATS

Hot Button Issue: Use Of Technology

- Poor use of technology can prevent you from complying with regulations

- Improper implementation of Applicant Tracking Systems (ATS) is one of the most common issues

- Both inadequate and poor implementation of existing technology can really cost you in an audit

WHAT DO WE SEE: USE OF TECHNOLOGY

- HRIS not setup to support AAPs
- Outdated ATS workflows
- Career sites and applications with barriers to persons with a disability
- Test career site and application for universal design
- Poor implementation of ATS
- Not auditing technology prior to an audit

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USE OF TECHNOLOGY: BEST PRACTICES

- Update your HRIS
- Map out current recruitment process & compare against your ATS
- Don't just accept ATS vendor defaults
  - Steps/statuses
  - Disposition codes
  - Reports
  - If it doesn't match your process…it doesn't work
- New career site requirements –audit

USE OF TECHNOLOGY: BEST PRACTICES

- Customize reporting for what you need
  - Historical stage data
  - Candidate source
  - Exports for AAP creation
  - Auditing for ensuring compliance with recruitment team
- After any changes to your systems, provide team with training and incorporate recruitment compliance

Hot Button Issue: Outreach

- Most likely you will need more budget
- If you aren't doing something new each year, you should
  - Off-loading to a vendor… won't solve issue
  - Post and pray isn't enough
  - Contact your ESDS yearly **"at a minimum"**
- Document, document, document

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Hot Button Issue: Compensation

They aggressively go after it, but…..

- Still not effective in finding pay disparity
  - Only ½ of 1% of all audits have resulted in compensation violations from 2009 to 2014
- Smaller job groups are your best defense
- More to come

NEW SCHEDULING LETTER

New Scheduling Letter

- Effective October 1, 2014
- If any requested data is computerized
  - Must submit in electronic format
  - Caution- how will you submit- FTP/CDrom
- Big changes in scheduling letter
  - New section on Section 503
  - New section on Section 4212
  - Robust compensation data request
- Expanded requests: 22 items vs. 11
  - 22 paragraphs

You're Getting Audited

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NEW SCHEDULING LETTER

- Compensation data: Paragraph 19
  - Largely expanded compensation request
  - Employee level data
- Includes temporary, per diem, part-time and contract employees
- Broad definition of compensation
  - Base salary and/or wage rate & hours worked in typical week
  - Bonus, incentives, merit increases, overtime, commission pay, etc.

New Scheduling Letter

- May provide any additional data factors used to determine compensation
    - Education, experience, location, performance ratings, etc.
- Documentation/policies related to compensation practices should be included
- Compensation data at the employee level:
    - Job Group
    - Job Title
    - EEO-1 category
    - Race, ethnicity, gender
    - Hire date

NEW SCHEDULING LETTER

- Personnel activity
  - Applicants, hires, promotions, terminations
  - Data only: not analyses
- Submit by job group <u>or</u> job title
  - Carefully review formation of job groups
- Definition of a promotion(s) requested
- Termination- not defined
  - Which will you provide?
    - Involuntary terminations
    - Voluntary terminations

New Scheduling Letter

- Activity data:
  - All data (applicants, hires, promotions, terminations, hires) by race and ethnicity vs. total minority
  - Only 5 race categories:
    - No two or more option
    - Groups Pacific Islanders with Asians
  - "Unknowns" for race/ethnicity and gender submitted

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New Scheduling Letter

- Section 503 & 4212 requests - new
  - Documentation of actions taken to comply with the audit and reporting system requirements
    - Most recent assessment of personnel processes
      - Date assessment completed
      - Actions taken/changes made
      - Date of next assessment
    - Most recent assessment of physical and mental qualifications
      - Date assessment completed
      - Actions taken/changes made
      - Date of next assessment

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New Scheduling Letter

- Section 503 & 4212 requests – new
  - Documentation of new data metrics
  - Reasonable accommodation policies
  - All reasonable accommodation requests received
    - Accommodations given/denied
  - Results of your evaluation of your outreach and recruitment efforts
- Section 503 Utilization Analysis
- Section 4212 Benchmarks

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THE ROAD AHEAD

DOL Remains Busy

- Forthcoming Equal Pay Report
- Fair pay and Safe Workplaces
- Executive Order 13672 on LGBT workplace discrimination
- Executive Order 13658 on Minimum Wage
- 4212 Report
- New EEO-1 requirements

PROPOSED EQUAL PAY REPORT

- Proposed rule making stage- expected date has come and gone…..
- Would add the new Equal Pay Report requiring contractors/sub contractors to provide summary compensation data
- Don't worry yet about the EPR
  - May go final as of 11/2015

E.O. 13672: Gender Identity/Sexual Orientation

- E.O. 13672 went into effect on April 8, 2015
- Prohibits federal contractors and subcontractors from discriminating on the basis of sexual orientation or gender identity
- Covers new or modified contracts at $10,000 or more

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E.O. 13672

- Changes to contractors
  - E.O. clauses in contracts/subcontracts/purchase orders updated to include sexual orientation and gender identity
  - EEO statements updated to include sexual orientation and gender identity
  - EEO is the Law poster will have a supplement and/or be updated soon. Once update/supplement is available, contractors should update all current posters accordingly
  - Corporate benefits to same-sex couples are same as provided to opposite-sex couples

E.O. 13658: Minimum Wage

- E.O. 13658 became effective January 1, 2015 establishing a minimum wage for contractors/subcontractors of $10.10 an hour

- Beginning January 2016, and annually thereafter, an amount for the hourly minimum will be set by the Secretary of Labor

- DOL under the Wage and Hour Division not the OFCCP

E.O. 13658

- What contracts are covered
  - Contracts for construction covered by Davis-Bacon Act (DBA)
  - Contracts covered for services by the Service Contract Act (SCA)
  - Concessions contracts – food, lodging fuel, souvenirs, etc.
  - Contracts to provide services in Federal buildings/lands

E.O. 13658

- What workers are covered
  - Workers performing on or in connection with covered contracts entitled to: 1) FLSA minimum wage; 2) service employees who are entitled to prevailing wages under SCA; and 3) laborers and mechanics who are entitled to prevailing wages under DBA
  - All time spent performing on or in connection with the covered contracts
  - If worker is entitled to a wage rate higher than the EO minimum wage pursuant to another Federal, State or local law then the worker must be paid the higher wage

Vets-4212 Report

- Vets 100A is now Vets-4212 Report
- More closely aligned with new regulations
- Terminology:
  - VEVRAA to 4212
- Applies to reports filed in 2015
- 10 or more locations- must file electronically.
- Due in 6 days!

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NEW EEO-1 REQUIREMENTS

- EIN is now a required field
- New requirements surrounding NAICS and establishments
  - "Company locations with same address and same NAICS code must consolidate those locations into one record."
  - Options:
    - Change NAICS
    - Consolidate
    - Request special reporting procedure from JRC (Joint Reporting Committee)

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