

January 2003

Trends in Compliance

2002 was a challenging year for most American companies. As you tightened your belt and faced your business hardships, you may have noticed that the EEOC and the OFCCP did not go away! Ten of my client companies went through OFCCP audits last year (with no payouts or violations to date!) and here's what we've noted as compliance trends:

Spot Checks

These continue to be utilized by the OFCCP. These visits are 5-15 minute visits with all going well if you have your AAP and all its elements in place. However, the spot check is focusing on some new things. Are you listing your jobs with the state unemployment office? Are you preserving all employment records for 2 years if you have a contract of \$150,000 or more and 1 year if you have less? Have you offered any accommodations to disabled applicants and employees? Do you have your compliance posters up? Are you filing EEO-1, Vets 100 and keeping I-9s in good order? If you don't have your AAP prepared or are lacking any of these items, expect a lengthier audit in the future. There are a bunch of new inexperienced compliance officers at OFCCP.



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The HR consultant's advice: keep your AAP up to date; maintain applicant flow; post your jobs with the state; keep a log of any accommodations requested and made. Call now to get your January 2003 plan updated and let me assist you through any audits you have.

The EO Survey

These are supposedly back! The OFCCP targeted half of all contractors about a year

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Cost Savers

An ounce of prevention can save you a lot of pain and money. In these tough economic times, the tendency is to cut all that we can away from budgets. However, the following can ultimately be cost-savers for your organization:

Train! Train! Train!

Your organization should regularly provide EEO and sexual harassment awareness training for all managers. If not done every year, training should at least be done every two years. Employees should also be made aware of policies and reporting procedures. This can be done through employee orientation or training sessions.

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Services Offered:

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- Third Party Investigations
- Compliance Review of Your Organization
- EEOC Charge Response Training

- Respectful Work Environments
- Sexual Harassment Awareness/Prevention
- Performance Management
- Effective Interviewing

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Word is that surveys will be sent out again in 2003.

We won't get updated employment statistics until 2004.

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and a half ago. The other half were supposed to get surveys but there was uproar from the business community and they were halted (my own personal opinion was the method for data collection had to have overwhelmed the agency). Word is that they will be sent out again in 2003.

The HR consultant's advice: the focus of the survey is on internal equity between males/females, minorities/non-minorities – include equity analysis as a regular part of your HR management. Keep employment records, especially applicant flow, and other employee and transactional data clean. Call if you need help completing your survey.

What's an Applicant?

This is still the million dollar question and the answer is somewhere between people who are interviewed for a position and everyone who hit your employment web site. A bunch of government agencies are putting their heads together to come up with a definition they can all live with and say they may publish it by May 2003. Don't hold your breath. I expect that by the time they figure it out, the administration will have changed again and they'll be back to the drawing board.

The HR consultant's advice: steer the course with the definition you've established. The "penalty" for not defining it correctly is to change the process or report to the OFCCP. The "penalty" for adverse impact if you've widened the pool with unqualified applicants could be back pay and job offers for previous applicants. Let me help you manage the flow of information to the OFCCP if audited.

2000 Census

I know that you are all probably expecting that we would see the 2000 census more closely to the year 2000. However, we won't get updated employment statistics until 2004. And it is uncertain what the new race categories will be (although preliminarily they have added two by breaking out Hispanic Black and Hispanic White and breaking out Asian and Pacific Islander), but again, multiple government agencies that use the data are trying to make some decisions and supposedly will do so by late 2003.

The HR consultant's advice: in your HR planning, be aware that you will probably need to make some changes to your HRIS system and application for race reporting, but wait and see what final decisions come down the pike.

EEOC Pushing Mediation

The EEOC has now figured out that they have recovered more money for charging parties through the mediation process than they have through litigation. As a result, they are going to start pushing mediation as an alternative to case processing. They are training/hiring more mediators and are trying to sweeten the mediation pot for employers. There are some voluntary pilots going on right now with some larger employers and EEOC that involve mediation. The Commission has noted that Charging Parties are twice as willing to mediate than employers. It's been my experience that mediation is effective in some EEOC offices, but not many. It appears that so many EEO charges are without merit that it gives us heartburn to even consider mediation.

The HR consultant's advice: if you have a charge that appears to be a problem – attempt mediation; if you have a charging party who is

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litigious and you are going to be spending money on legal fees down the line, consider mediation. If you have a lot of charges with the EEOC and want to develop good will and face time, consider mediation. Otherwise, keep answering them and if you need help with responses, give me a call.

EEOC Office Discretion

Once upon a time, a charge was a charge was a charge. The compliance manual was the bible and you could expect that all EEOC charges would follow a similar path. Not so anymore. EEOC is giving District offices a lot of leeway and discretion in handling their caseloads. But the law is the law and the regulations are the regulations. Beware of renegade investigators and offices going outside of that scope. Aggressive is one thing; making up new rules is quite another.

The HR consultant's advice: EEOC charges should be thoroughly investigated by your own company. Know what kind of situation you have and assess the risk. Make sure you are helping to steer the investigation by questioning requests and dialoguing with the investigator. Call me if you need a third party investigator to help you out or if you need assistance in responding to an EEOC charge.

Layoffs are Back

And so are age discrimination claims, the darling of the EEOC. Class action age discrimination charges are a by-product of large-scale layoffs.

The HR Consultant's advice: if you're paying severance, make sure that you are having legally binding releases signed as part of that process. Also, make sure that your selection process is objective and is documented. Adverse impact analysis should be run prior to final decisions being made. Call me if you need help setting up an objective process or running adverse impact analysis. Have your labor counsel review your releases. Offer severance and outplacement services to minimize impact. ⌘

Thank you for all your referrals over the years.

SAVERS

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Screen! Screen! Screen!

Look at your current recruiting methods and be certain that your selection process is getting you the best possible candidates both in attitude, organizational fit and skills. With the current abundance of applicants for your current positions, you'll have the luxury of a good choice of candidates. Use multi-interviewer panels and structured interviews, even for your entry-level jobs. It's also a good idea to conduct background checks.

Welcome Internal Complaints

Build a good employee complaint system and they will come - to you instead of the EEOC. You will identify problems in your own organization; build stronger employee relations save a bundle on litigation expenses. Make sure it is well communicated and the HR professionals who are taking the complaints/investigating complaints are well trained. ⌘

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Contact The HR Consultant!

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Trends in Compliance

A view of trends in EEOC and OFCCP compliance.

In this issue:

Keep Your AAP Up-to-Date

Maintain Applicant Flow and Other Employment Records

Conduct Internal Pay Equity Analysis

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