



AFFIRMATIVE ACTION UPDATE: E-VERIFY AND COMPENSATION ANALYSIS

This bulletin provides an update on issues for Affirmative Action contractors and other subscribers. Please contact us if you have any questions about these developments or about their effects on your business.

President Bush Signs Amendment to Executive Order Requiring Federal Contractors to Use E-Verify

The White House announced yesterday that President Bush signed an Executive Order amending Executive Order 12989. President Clinton signed Executive Order 12989 on Illegal Immigration and Federal Contracts in 1996. President Bush's Executive Order amending that Order now requires federal government contractors to use E-Verify to confirm the employment eligibility of all new hires and current employees who work on future federal contracts. E-Verify is a web-based system operated by the Department of Homeland Security and Social Security Administration that enables employers to electronically verify work authorization.

Note that this requirement relates to "future" federal contracts. We will likely have to wait for some regulations to know for sure what contractors' obligations will be with regard to current employees; there does not appear to be a duty to electronically verify current employees (on present contracts) at this point, but that may be spelled out in more detail by implementing regulations.

If you have questions about E-Verify, or immigration matters in general, feel free to contact Mike Thompson in our office at (205) 323-9278.

OFCCP Adjusts its Compensation Analysis Procedure

For the past 12-15 months, you've been hearing about the OFCCP's "2:30:3" triage approach to analyzing compensation submitted during an audit in response to Itemized Listing #11. We have now learned that the OFCCP has adjusted its 3-prong test and, in fact, some compliance officers have been using this "new" method for several months.

Under the new method, the 3 prongs are as follows:

- 1st prong --The new method identifies pay differences that are 5% (rather than 2%) or larger as adverse to a demographic group. Thus, this test is slightly more lenient than the old version.
- 2nd prong – Under the old method, if at least 30% of the protected group members were in a pay division where they are paid at least 2% less than the non-protected group, the ratio of the percent of the protected group adversely affected to the percent of the non-protected group adversely affected was computed. Under the new system, if 30 protected group members or at least 10% of the protected group are paid at least 5% less than the non-protected group, then the ratio is computed. This new prong, therefore, has a tighter margin of error than did the older 2nd prong.
- 3rd prong – (No change) If the ratio of the percent of the protected group adversely affected to the percent of the non-protected group adversely affected is at least 3, then further investigation of compensation issues is indicated.

Who knows, maybe they'll now refer to this as the "5:30/10:3" test.

You may recall that, in our annual training sessions last fall, we noted that the OFCCP was increasingly analyzing compensation data by AAP job group. We recommended at that time that contractors consider re-structuring their job groups so that they were more closely in line with actual job titles so that you would in general have all your apples in one job group being compared with each other, and your oranges in another group to be compared with each other, etc. This recommendation was premised on a general observation that, most of the time, arraying the compensation data by job title eliminated problems, while arraying it by job group often created disparities.

Under the OFCCP's new system, the agency will be increasingly insistent that the information submitted in response to the scheduling letter item #11 be presented by AAP job group. Technically, since Itemized Listing #11 allows the contractor to choose to provide the data by "salary range, rate, grade, or level," the contractor can structure the responsive data as it wishes. Since few contractors are willing to refuse follow-up requests from the OFCCP, however, (and thereby risk an onsite audit), odds are high that most contractors will grant the OFCCP's request and provide the compensation

data by job group. As a result, if the employees in your AAP job groups represent wildly divergent job titles, you may want to reconsider your AAP job groupings.

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