

Preventing Recruiters From Exposing Your Organization to Increased Risk



Webcast Presenters



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Agenda

1. Requirements
2. Record Keeping
3. Analyses
4. Hiring Process
5. Training



Why Care about Recruiting Compliance?



OFCCP regulations related to recruiting - Executive Order 11246, Section 503 of Rehabilitation Act, and Vietnam Era Veterans' Readjustment Assistance Act



Recordkeeping is the most commonly cited violation in OFCCP compliance reviews

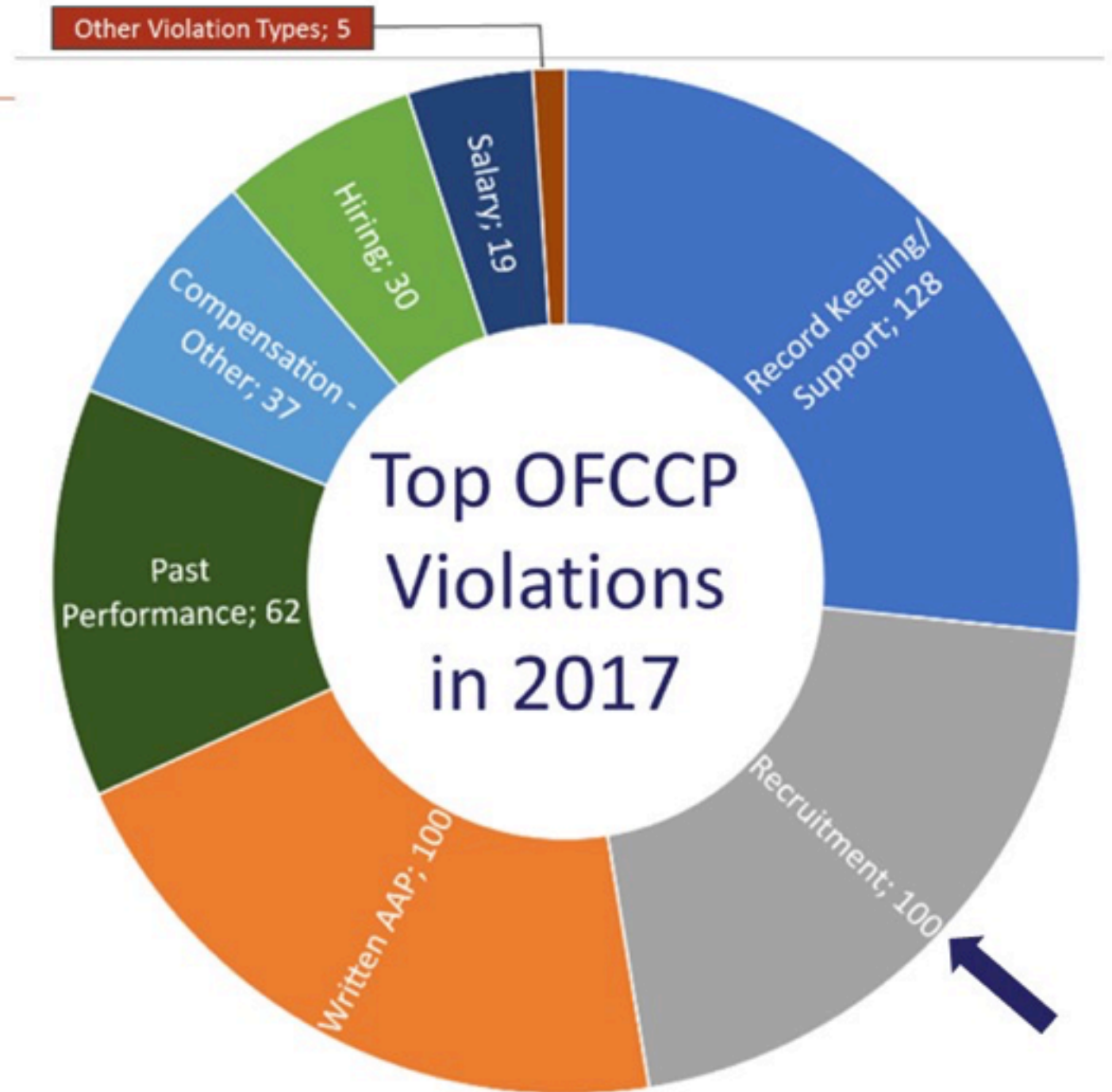


Adverse impact in hiring decisions has been the costliest violations



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Vacancy Announcement Tagline



Job Postings Should Have:

- Basic Qualifications
- Instructions on how to apply
- EEO Tagline

“We are an equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.”

-- or --

“EOE/disabled/veterans”



Definition of Internet Applicant

The individual submits an expression of interest in employment through the Internet or related electronic data technologies.

The contractor considers the individual for employment in a particular position.

The individual's expression of interest indicates the individual possesses the basic qualifications for the position.

The individual at no point in contractor's selection process prior to receiving an offer of employment, removes themselves from further consideration or indicates no longer interested in position.

Basic Qualifications

- Basic qualifications test is one prong of the internet applicant definition that must be met to be counted in the hiring analysis.
- Basic qualifications must be advertised to potential applicants as necessary in order to be considered for the position; or
- If the position is not advertised, establish in advance by making and maintaining a record prior to considering any expression of interest for that particular position (e.g. simple external database searching)



Basic Qualifications, cont.

A “basic qualification” must be:

Non-comparative

Minimum of 3 years of experience vs. top 5 most experienced

Objective

Bachelor's degree in Accounting vs. a business degree from a “good school”

Relevant

Requiring a BS in Chemistry for a chemist position vs. for a clerical position

Not Basic Qualifications:

- Most experienced - comparative
- ‘Strong’ educational background – subjective
- Personality traits such as sociable, dedicated – subjective
- Motivation traits such as hard-working, willing to go the extra mile, not afraid of challenges - subjective



Are Tests Applicable for a Position?

- A test is anything, any device, method, procedure, process, in any format, that a contractor uses to select one or more candidates for a job.
- The most important consideration of any test used is validity.
- **Validity is the extent to which a test measures what it is supposed to measure (e.g. typing test, lifting test).**
- A test can be justified by showing it is job related and necessary for the safe and efficient operation of the business.



Sample On-Line Statement

In compliance with the ADA Amendments Act (ADAAA), if you have a disability and would like to request an accommodation in order to apply for a position **with x company**, please call xxx-xxx-xxxx or e-mail xxxx.xxxx@xcompany.com.



Job Listing VEVRAA Requirement



DirectEmployers

List jobs through job service for all openings except those that

- Last 3 or fewer days
- Are filled from within the company
- Executive/top management positions

Job Service Offices (also referred to as One-Stop Centers) have either a Disabled Veterans Outreach Program (DVOP) specialist or Local Veterans Employment Representative (LVER)



Example - Effectiveness of Outreach & Recruitment Activities

Outreach / Recruitment Activity	Date of Activity	Description	Evaluation of Each Activity
Annual meeting with State Vocational Service Agency (SVSA)	September 5, 2017	Provide info on job openings starting September 10, 2017	No applicants through this source have applied as of yet. Have call scheduled with SVSA contact on October 20, 2017 to discuss options.
Listing of jobs with Employment One-Stop Center	Recurring	List all external job openings through the year with the appropriate local or state office	As of 8/10/17, received 50 applications; 10 identified as veterans; 6 identified as IWD; hired 2 veterans and 1 IWD
Careers and the disABLED	June 10, 2017 September 5, 2017	Placed job listing in publication for management and professional jobs	We received 30 applications through this source; 10 identified as protected vet; 25 as IWD; hired 3 PV & 2 IWD
RecruitMilitary Job Fair	September 2, 2017 in Houston	5 recruiters along with 2 veteran employees participated in job fair	80 applications were received; hired 3 veterans; job offers made to 2 others who declined
Job advertisement in Minority Engineer publication	January 15, 2018	Placed an ad for publication in minority focused engineer publication to be published in February and March 2018	Received 20 applicants from this source; all identified as minority; 5 were women; hired 3 male, minorities and 1, minority female



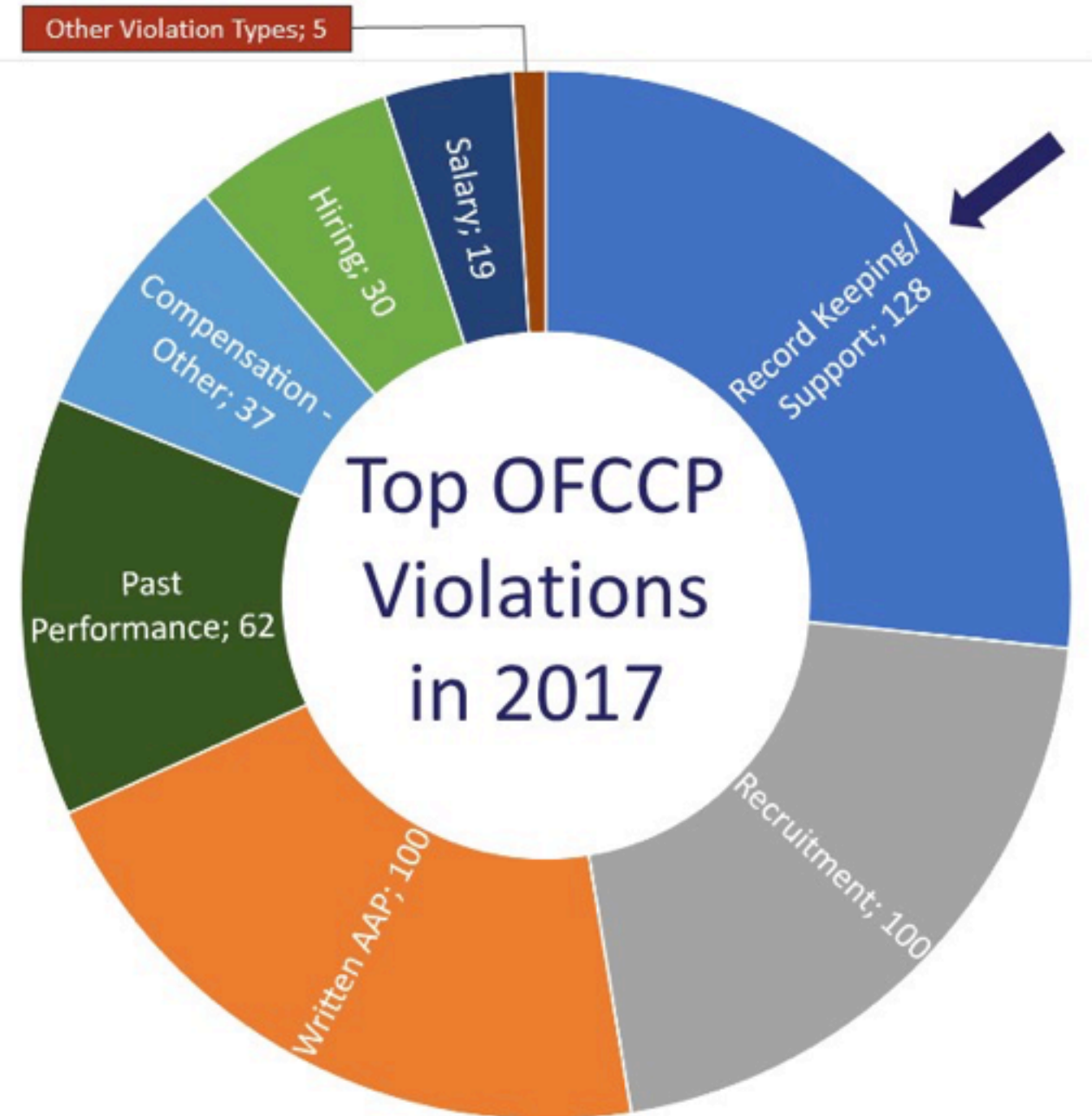
Example - Effectiveness of Outreach and Recruitment Activities

(1/1/17 – 6/3/17)	American Association of People with Disabilities	Texas Workforce Commission	Veterans Hospital in Houston	GettingHired	Career Fairs with Recruit Military
Total Applicants / Total Hires	80/10	50/5	15/5	60/10	100/30
PV applicants	10	15	15	30	80
Non-PV applicants	60	35	0	30	15
PV hires	3	1	5	4	20
Non-PV Hires	6	4	0	6	7
IWD applicants	65	3	5	55	30
Non-IWD applicants	0	47	10	0	40
IWD hires	8	0	3	9	10
Non-IWD hires	0	5	2	0	15



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Polling Question?

How long do you typically keep your AAP records?

- ☐ **“Forever”** - We never delete our AAP records.
- ☐ **5 – 10 years** - Most of our records are kept 5 – 10 years.
- ☐ **2 – 4 years** - Most of our records are kept 2 – 4 years.
- ☐ **0 – 2 years** – Most of our records are kept 0 – 2 years.
- ☐ **Don't know**



Characteristics of Electronic Recordkeeping System

What characteristics must an electronic recordkeeping system have in order to satisfy OFCCP's record retention requirements?

To satisfy the OFCCP requirements, contractors must ensure their electronic recordkeeping system:

Has reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format

Is capable of retaining, preserving, retrieving, and reproducing the electronic records

Is able to readily convert paper originals stored in electronic format back into legible and readable paper copies

Has adequate records management practices in place

Source: OFCCP



Record Retention Period

Contractors with at least 150 employees and a contract of \$150,000 are required to maintain the records for a period of two years. That time period is measured from the time the record was created or from the time of the personnel action associated with that record, whichever is later. (41 CFR 60-1.12)



As an example, for a selected applicant the retention period would be calculated from the date of selection rather than from the date of application.

If a contractor repeatedly considered an individual's resume, the retention period would start as of the last consideration given to that resume.



Recordkeeping Requirements – Veterans & IWD

Certain types of records* are to be maintained for **three** years:

- **Evaluations of outreach and recruitment efforts**
(Section(f)(4))
- **Records pertaining to the data collection of comparisons regarding applicants and employees** (Section (k))
- **Records related to the hiring benchmark requirement**
(41 CFR 60-300.45(c))

*41 CFR 60-300.44 (VEVRAA) and 741.44 (Section 503 of the Rehabilitation Act)



Employment Agency and Recruiting Firms

The Executive Order recordkeeping obligation belongs to the Federal contractor, not the retained employment agency, and it is the contractor's responsibility to ensure that the agency keeps for it whatever records the contractor will be expected to have.

A recruiting firm's obligations to retain records about referrals of job candidates to Federal contractor or subcontractor clients arise out of its agreements with those clients.

Because contractors will be held accountable for keeping the required records, we suggest that recruiting firms and Federal contractors and subcontractors have a specific discussion about recordkeeping practices so that both parties understand what records must be retained, and by whom.



Record Retention – Under Review or Investigation

Important Note

Where the contractor has received notice:

- A complaint of discrimination has been filed
- A compliance evaluation has been initiated, or
- An enforcement action has been commenced

The contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action.



Internet Applicants: Internal vs External Databases



Internal Databases

- Applicant Tracking System such as PeopleFluent RMS
- Human Resources Information Systems

External Databases

- Job Boards such as Monster and CareerBuilder
- Internet Data Mining / Passive Candidate Search Technologies such as Google
- Social Networking such as Facebook, Twitter and LinkedIn
- Third party recruiters

Recruiting Recordkeeping Requirements

Internal Database

- A record of each resume added to the database
- Date each resume was added to the database
- The position for which each search of the database was made
- For each search, the substantive search criteria used
- The date of the search
- Records identifying job seekers contacted regarding their interest in a particular position

External Database

- A record of the position for which a search was made
- For each search, the substantive search criteria used
- The date of the search
- The resumes of job seekers **who met the basic qualification** for the particular position who are considered by the contractor, regardless of whether the individual qualifies as an Internet Applicant
- Records identifying job seekers contacted regarding their interest in a particular position



Record Retention – Hiring Process Documents

- Interview notes and questions
- Test results
- Data Management Technique (DMT) information
- Log of phone call / email attempts
- Self-identification forms
- Results of background checks, references, credit history
- Application and Resume
- Basic Job Requirements
- Requisition information
- Copy of job posting
- Applicant data (race, gender, veteran, disability status)
- Information on source of applicant
- Detail on person who made decision in each step of hiring process
- Test validation information



Consequences of Lack of Records

- Laws typically provide for civil monetary penalties for failure to maintain statutory records.
- Maintenance of employment records is critical to defending against employment-related litigation.
- 41 CFR 601.12(e) states ***“Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor”***
- Without records to back up selection decisions made, if adverse impact exists, a contractor might be required to enter into a conciliation agreement and pay a settlement including back pay and interest.



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Types of Analyses

1. Applicant pool compared to labor market
2. Applicant to hire (required, if adverse impact)
3. Sourcing analysis – specific sourcing success
4. Disposition analysis – step analysis (required, if adverse impact)



Scenario

Let's suppose that your Placement Goals reports shows underutilization of minorities in the Sales group.

You institute a number of good faith efforts to attract minority applicants.

- College recruiting at historically black universities
- Outreach to groups such as National Black MBA Association and the Urban League
- Job postings on niche job boards that target minorities



Applicant Pool Compared to Available Labor Market

Calculate expected minority applicants based on available labor market.
For example, if available labor market is 27.15% minority, expect that 27.15% of applicants will be minority.

Express disparity as a number of standard deviations where > 1.96 is evidence of statistical disparity.

Comparison of the racial composition of the applicant pool to the available labor market

Total Applicants	Minority Applicants	Expected Minority Applicants	Difference	Standard Deviations
522	240	141.74	98.26	9.72

You recruit significantly more minorities than expected given available labor market.



Applicant to Hire Study

- Calculate expected minority hires based on racial composition of applicant pool.
- Express disparity as number of standard deviations where > 1.96 is evidence of statistical disparity.

Applicant to Hire Study

Applicant Pool	Minority Applicants	Total Hires	Minority Hires	Expected Minority Hires	Difference	Standard Deviations
522	240	35	4	11.02	-7.02	-2.59

- Good faith efforts to recruit minorities are successful, but recruited minorities are not hired in proportion to their representation in the applicant pool.
- Evidence of adverse impact in the hiring process.



Did a Test Cause Adverse Impact?

- Identify all employment tests and consider their placement in the process carefully
- Where the total selection process results in adverse impact, a contractor must analyze each individual component of its hiring process to identify what procedure is causing the adverse impact and either:
 - Validate the procedure, or
 - Find an alternative that eliminates the impact



Sourcing Analysis

1. What are the best sources of applicants? Hires?
2. What are the best sources of female and minority applicants? Hires?
3. How can we use this information to improve our good faith efforts?

	Folder Type		Gender	
Standardized Source	Hired (1.3% total)	Not Selected	Female (25% total)	Male
Advertising	4	389	70	291
College/University				
Company Job Board				
Direct Source				
Employee Referral				
Internet				
Job Fair				
Standardized Source	Hired (1.3% total)	Not Selected	Female (25% total)	Male
Local State Job Service	2	101	34	65
	1.94%	98.06%	34.34%	65.66%
Military	1	135	8	124
	0.74%	99.26%	6.06%	93.94%
Other	94	1891	448	1346
	4.74%	95.26%	24.97%	75.03%
Premium Post Site	115	25328	6757	17416
	0.45%	99.55%	27.95%	72.05%
Professional Organization	1	284	92	184
	0.35%	99.65%	33.33%	66.67%
Third Party	53	462	31	195
	10.29%	89.71%	13.72%	86.28%
Walk-In/Mail-In		114	27	80
	0.00%	100.00%	25.23%	74.77%
Total Count of Folder Type	716	53260	12832	37311
Total Count of Folder Type2	1.33%	98.67%	25.59%	74.41%



Disposition Analysis

- Why are females not getting hired?
- Can this information help you with targeted recruiting?
- Based on this information, can you make any changes to the position or hiring process?
- Based on this information, can you do a better job of positioning candidates?



Disposition Analysis

Disposition	Female (25% total)	Male	Grand Total
Candidate Not Suitable	18	524	542
	3.32%	73.08%	100.00%
Considered for another position within dept or another dept	81	315	396
	20.45%	79.55%	100.00%
Deleted Candidate	14	131	145
	9.66%	90.34%	100.00%
Did not meet basic <u>qual</u> - certification	14	47	61
	22.95%	77.05%	100.00%
Did not meet basic <u>qual</u> - education	767	1833	2600
	29.5%	70.5%	100.00%
Did not meet basic <u>qual</u> - experience	1901	5363	7264
	26.17%	73.83%	100.00%

Target
recruiting to
sources with
more qualified
females



Disposition Analysis, cont.

Disposition	Female (25% total)	Male	Grand Total
Passive withdrawal	851	2389	3240
	26.27%	73.73%	100.00%
Preference given to internal candidates	43	196	239
	17.99%	82.01%	100.00%
Withdrawal - Content of Expression of Interest	10	49	59
	16.95%	83.05%	100.00%
Withdrew-job content	384	896	1280
	30.00%	70.00%	100.00%
Withdrew-location	16	143	159
	10.06%	89.94%	100.00%
Withdrew-Salary	337	1000	1337
	25.21%	74.79%	100.00%
Withdrew-travel	1		1
	100.00%	0.00%	100.00%
Withdrew-Hours	239	41	280
	85.36%	14.64%	100%

Consider
options to
decrease
withdrawals



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Applicant File Data – Is it Accurate?

Does Applicant name match Applicant log?

Are Race codes accurate?

Is Disabled status field completed?

Is Applicant ID completed?

Is Veteran status completed?

Is Organization number correct?

Any missing Gender fields?

Is Disposition completed and valid?

Are job groups accurate?

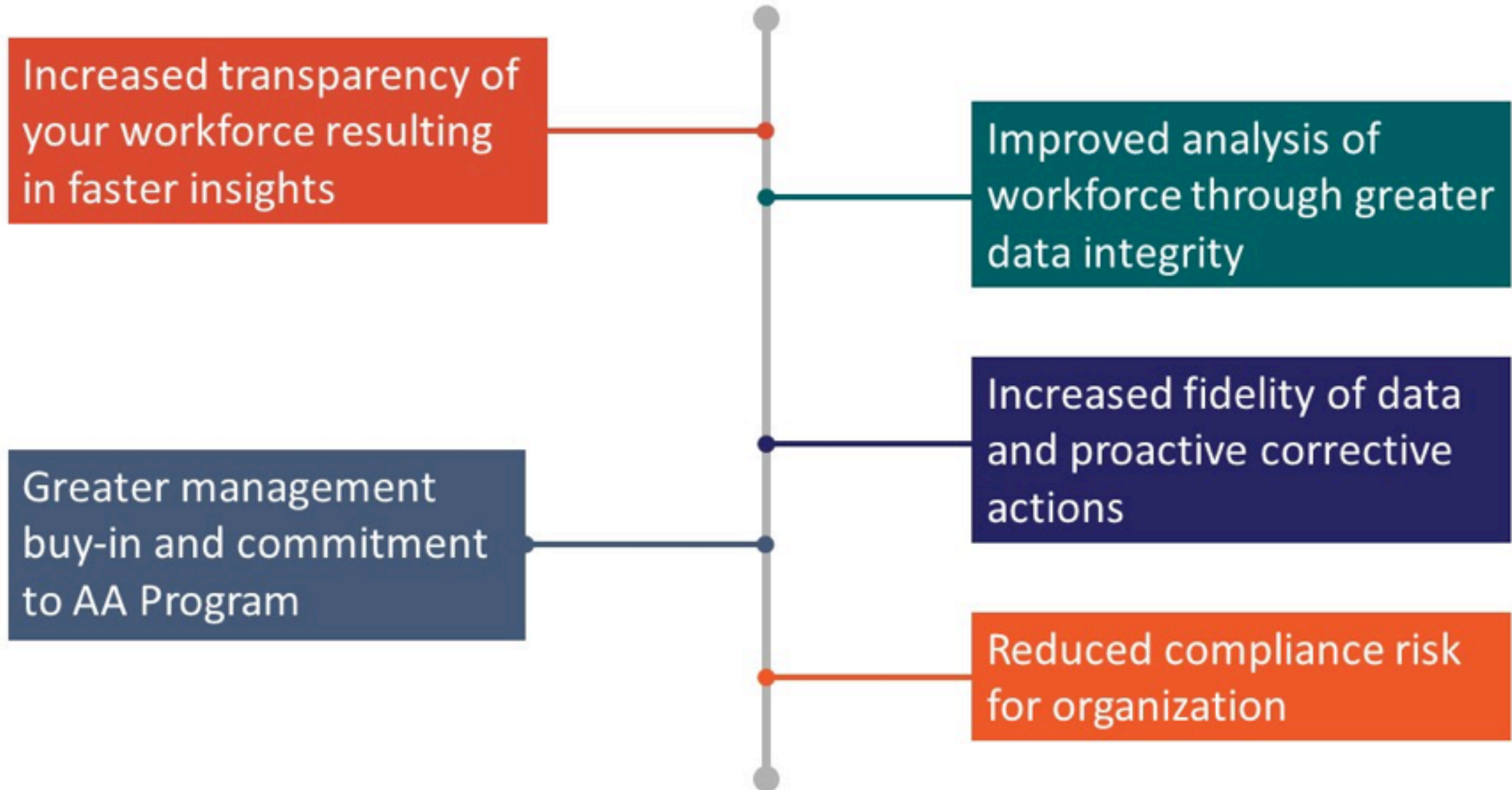
Did a Requisition result in multiple hires?

Are EEO codes valid?

Are Reqs with no hires or internal hires removed?



Benefits of Accurate Data



Self-audit Guide

Are you reviewing your postings to ensure they are up-to-date?

Are you preparing hiring analysis on more than an annual basis?

Are you conducting a step-analysis whenever you have overall adverse impact?

Are you regularly reviewing policies and procedures to determine if anything needs to be updated?

If you were audited in the past and found non-compliant in any area, have those issues been resolved?

Are you reviewing pay practices at least annually as required by regulation to determine if there are any pay disparities?

Are you monitoring applicant race / gender / disability status / veteran status to determine if outreach and recruitment efforts are effective?



Example EEOC Recruiting-related Violations

Gender-based

- Class of males were denied hire to Store Manager positions in a chain of retail clothing stores.
- Relief totaled \$2.7M on behalf of class of males (2017).



Age-based

- Large chain of restaurants failed to hire applicants age 40 and older into “front of the house” positions across the nation.
- \$12M in damages to ~800 older applicants (2017)



Sex-based

- EEOC alleged two surface coal mining companies, failed to hire female applicants into mining and mining-related jobs
- Decree includes requiring defendants to advise staffing agencies not to screen out female applicants
- \$4.3M in damages to ~70 women (2017)



Race-based

- Nationwide camping and sporting goods chain failed to hire black and Hispanic applicants into retail jobs across the U.S.
- Consent decree requires company to create a new Office of Diversity and Inclusion
- \$10.5M in relief to ~1,500 applicants (2017)



Landmark Decision – Pay



- Female employee was hired as a math consultant by the Fresno County Office of Education in 2009.
- Starting pay set at 5% of previous job's pay.
- Several years later, finds out male colleagues are making substantially more in similar roles.
- County argued that wage differential was permitted by the Equal Pay Act because it was based on "a differential based on any other factor other than sex".
- The majority opinion held that "prior salary alone or in combination with other factors cannot justify a wage differential..."
- The court stated that the "any-other-factor-other-than-sex" defense should only be limited to legitimate, job-related factors such as **"a prospective employee's experience, educational background, ability, or prior job performance."**
- Prior salary is not job related and thus does not fall within the statute's exception.

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Training Requirement

Individuals with Disabilities and Protected Veterans (Title 41 60-741.44 and 300.44)

All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.



All training records must be retained – including attendance, handouts, and information regarding trainer



Training Requirements





Final Thoughts...

- Audit your records to ensure retaining required records
- Keep for required amount of time
- Connect and train talent acquisition, compensation, decision-makers, and others
- Be proactive - perform on-going analysis and self-audits

Polling Question?

Would you like a PeopleFluent representative to reach out to you with more information about our Affirmative Action solutions?

☐ Yes

☐ No



Q & A



Thank You

For questions or comments:

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