

## **DE Masterclass Employment Law Roundtable: Creating the Proper Footprint and Architecture for Your AAPs**

### **Recap of Practical Takeaways [As of 22-11-21]**

- 1) Times have changed since most of you designed your Affirmative Action Plan architecture around a “brick and mortar” foundation where happy employees showed up every day at an assigned desk or workstation. YOU NOW NEED TO REASSESS YOUR FOOTPRINT DESIGN AND RECALIBRATE AS APPROPRIATE
- 2) Those of you which have NOT adopted a “Functional Affirmative Action Plan” footprint (which is 99.9% of you: only 84 federal contractors currently have FAAP Agreements with OFCCP) will maintain your traditional brick and mortar “AAP establishments.” However, you are increasingly importing employees into your “brick and mortar” “AAP Establishments” AND creating new “AAP Establishments” via the (1) “Follow-the-Manager” rule and/or (2) the “Corporate Initiative”
  - a. The increased use of these two AAP footprint tools is driven by:
    - i. your company’s increasing comfort to adopt more complex work assignment configurations separating managers from employees across city/county/state and international boundaries, and
    - ii. by the here-to-stay remote work movement on to which working professionals have fastened with an iron grip (now about 25% of all U.S.-based employees)
      1. You will put your remote employees either into a:
        - a. traditional brick and mortar “AAP Establishment” where their manager reports for work (under the Follow the Manager rule), perhaps with many other side-by-side and/or more senior and/or more junior managers, OR
        - b. manager’s own “AAP Establishment” (under the Follow the Manager rule) in those situations where the manager does NOT report to a brick and mortar AAP establishment but rather “works from home” and manages his/her employees from his/her “home office” = an “AAP Establishment”
- 3) Reliance on either the “Follow the Manager Rule” or the “Corporate Initiative” requires more HR documentation to link managers with employees reporting to that

manager or to link the Selection Manager in the Corporate Initiative footprint with his/her employee(s) the manager "selected" for hire

- a. HR needs to work with its IT department to potentially create new columns in its HRIS system to document and have available for efficient digital retrieval these Manager-employee pairings and Manager-selection pairings
  - b. HR then needs to develop new HR documentation protocols to document any change in the Manager-employee pairings
    - i. The Corporate Initiative pairings will remain static and constant over time, UNLESS the employee terminates and then returns and a different manager selects the employee for hire the next time around
      1. NOTE: OFCCP thus far has not either revised the Corporate Initiative to apply to promotions, involuntary terminations, or compensation decisions...but it will if it ever gets around to thinking about it. (The Reagan OFCCP really understood discrimination law as evidenced by its adoption in 1988 of the "Corporate Initiative," albeit in a (purposely) limited fashion applicable only to new hires)
- 4) The OFCCP's exemption for federal "contracts" in which you have BOTH recruited AND have employed the employees working on and under that contract OUTSIDE THE UNITED STATES is a "siren song" leading most of you astray and of little utility to 99.99 percent of you.
- a. Rather, your out-of-country employees, if on "the USA payroll," belong in one of your stateside "AAP establishments" via either the "Follow the Manager" rule or the "Corporate Initiative"
    - i. Remember Michelle McCain's easy and efficient way to find those employees working overseas who should be in a stateside AAP Establishment: if you have overseas subsidiary corporations, simply ask payroll for a list of all employees on the United States payroll of your domestic U.S. company and its subsidiary companies (if your subsidiaries are in a "single-entity" relationship with the company(ies) which is (are) signatory to covered federal Government contracts.
      1. Following Michelle's simple and bedrock reliable approach, you avoid an employee-by-employee census of employees working overseas who might be on the payroll of a foreign subsidiary corporation beyond the reach of OFCCP's jurisdiction

**Have additional questions?**

Email [compliance@directemployers.org](mailto:compliance@directemployers.org) for further assistance and guidance.

