SURVIVING AN AUDIT: PREPARATION & READINESS

Discussion of AAP Implementation & Ensuring Compliance

SETTING THE STAGE

- Developing Compliant AAPs

- Disparity Analyses

- Compensation Analyses

- Technical Compliance

- What/How to Provide

- Managing the Audit

Developing Compliant AAPs

- AAP Narratives
  - Required Content
    - Executive Order
      - 60-2
    - Section 4212 – Protected Veterans
      - 60-300
    - Section 503 – Individuals with Disabilities
      - 60-741

Using Required Contents

- Organization Profile/Workforce Analysis
  - "an overview of the workforce … that may assist in identifying organizational units where women or minorities are underrepresented or concentrated"
    - CO's rarely look at this
- Job Group Analysis
  - Job titles with incumbency
    - Placement patterns possible to see
    - Smaller/more meaningful for similarities
  - Availability – NO ZERO AVAILABILITY – raises questions
  - Goals – 80% rule/Standard Deviation

Using Required Contents (cont)

- **Additional Ingredients**
  - Use regulatory language
  - Address all key points
  - No extra fluff – who really cares! ==Raises questions==
    - ==If OFCCP is truly interested, they will ask questions – no need to prompt==
  - Policy Statement – only in 4212/503 narratives
    - Include statement of access to AAP; where & when
    - Include all "shall" language – .44(a)
    - Signed by highest ranking official
      - Use corporate policy statement for all AAP locations
  - Address data collection – do NOT include stats in AAP (503/4212)

Disparity Analysis

- Applicants and Hires
  - *Biggest liability*
- Data Management – Internet Applicant Rule
  - Accuracy of applicant and hire data
  - Refinement of data – using disposition codes
    - Avoid 1 to 1 hires except Executives – may be acceptable
    - Using offers – remove UNLESS
      - Changes disparity indicator
      - **Use for explanation of goal(s) – would have been met**
    - Remove rehires who do not have to compete
    - Remove failed drug screen

Disparity Analysis– Applicants & Hires – EVALUATING RESULTS

- Accuracy of applicant and hire data
- DEFEND
  - Go behind the numbers
    - Accurate
    - Add up to bottom line
    - Rate of unknown applicants
      - Include in AAP submission to OFCCP?
        - Only if one is known: gender or race
        - Let OFCCP ask you for the data
- NONSELECTIONS EXPLAINED?
  - Must be YES

Other Indicators –Applicant/Hire Data

- Be mindful of job titles experiencing hires
- Watch for patterns – Examples:
  - Operatives Assemblers – mostly women?
    - This means women of color as well
  - Operatives Operators – mostly men?
    - This means men of color as well
  - Administrative Support Workers
    - Men in blue collar jobs
    - Women in white collar jobs
- Pay and job progression differences?
  - Steering

Promotions

- Provide a list by employee identifier, race/ethnicity, gender and date of promotion, OR

- Provide summary numbers, by job group, on promotions from + within, race/ethnicity and gender, AND

- Provide separately summary numbers of promotions to for measuring goal attainment

Terminations

- Perform disparity analysis
  - Provide summary numbers on all termination, by job group, race/ethnicity, and gender
  - If terminations overall shows AI, refine separately by voluntary/involuntary
    - Be concerned about documentation for AI in involuntary terminations
    - Be prepared to provide the policy violated and to show consistency in application by race/ethnicity & gender
    - Point out to OFCCP if AI is explained by voluntary terminations
      - Some "voluntary terminations" are "leave quietly on your own or else….."

Compensation

- Conduct analysis annually
- Job Group – only because OFCCP does
  - Drill down to those job titles that could be/are causing differences by job group
- Pay Grade
  - OFCCP can assume this is a PAG
  - Examine jobs in those pay grades with indicators
    - Overly broad not realistic – crossing several job EEO-1 categories?
- Job Title – OFCCP must control for job title in regression analysis – STAY FIRM IN YOUR POSITION

Compensation (Cont)

- Compensation Policy
  - Have one?
  - Don't have one?
    - Evaluate the practice of assigning pay – YOU HAVE ONE!
- Be prepared for OFCCP interview
  - Who will talk with OFCCP
  - Prep work before interview
- Know your AAP indicators
  - Be prepared to defend BEFORE AAP goes to OFCCP

Goals – Minorities/Women

- Prepare goals progress report
  - Job Group underutilized
  - Goal %
  - Number of Placements
    - Hires into
    - Promotions into
      - Use transfers into if it helps meet a goal
  - 3 Outcomes
    - Met goal
    - Did not meet the goal
    - <mark>Insufficient opportunities to meet goal</mark>
- Be prepared to defend non-selections in goal areas – goals not met

Technical Compliance

- 100% of the time:
  - Check the website for required postings and EEO tagline
  - Make sure the contact process for the online accessibility process works!
  - Blank/voided purchase order and/or contract
    - Clauses must be included/referenced:
      - 1.4(a) – EO clause – include by reference
      - 1.40(a) – include or send in separate written communication (…must require…develop and maintain written AAP…" usually must just put on notice
      - 300.5 – language mandated by OFCCP & bolded
      - 741.5 – language mandated by OFCCP & bolded

Technical Compliance (Cont)

- Medical Examinations
  - Purpose? (Should be just to determine/provide reasonable accommodations)
- Short-term Disability Policy
  - Same for Maternity leave?
- Be prepared to provide list of reasonable accommodations provided
- How is self-ID process working? When issued – pre and post offer
- Be prepared to "spotlight" success in hiring protected vets and employing IWD

Technical Compliance (Cont)

- Send VETS 4212 & EEO-1 Reports with AAP
  - Last 3 years
- Use DE to prove MJL
  - Other reports available thru DE membership to spotlight recruitment efforts
    - Use only if needed
- Relationship with Temporary Agency
  - Be prepared to discuss how this is working
  - Show evidence of inclusion of minorities/women/disabled/protected veterans thru the referral/placement process

Managing the Audit

- REQUIRE an onsite letter detailing:
  - Who should attend the entrance conference
  - What records need to be available
  - Who will be interviewed
  - Estimated length of the onsite
  - Who will be attending from OFCCP
- Entrance Conference
  - President/CEO expected
    - If not possible, VP HR & HR team
      - No first line managers!
- DO NOT MAKE THIS AUDIT A BIG DEAL! Seem relaxed; friendly (just don't overdo☺)

Managing the Audit (Cont)

- Logistics
  - Comfortable room – be nice☺
  - No windows ☺
  - Not near employees, especially factory area
    - Don't want the CO's interacting with or viewing factory employees/work areas
  - Phone maybe with HR extension – instructions to call HR with any needs
- Facility Tour
  - White collar easy – point out departments
  - Blue Collar – quick tour unless CO requests certain areas

Managing the Audit (Cont)

- Legal Representation
  - Company discretion
    - Consultant representation

- Compliance Officers
  - Typically just 1 if no discriminatory indicators
  - Indicators – team of COs possible
    - CO's in training may attend

Managing the Audit

- Interview with HR Manager/Hiring Officials
  - Legal representation
  - Will question personal details of job history, job responsibilities, etc.
  - Info on hiring authority/role in selection process
  - Make-up of department: race/ethnicity/gender
  - Role in providing reasonable accommodations
  - Aware that company is Federal contractor?
  - Are you aware the company has an AAP?
  - Have you seen the AAP
    - What are your responsibilities under the AAP

Managing the Audit (Cont)

- Interviews with non-management employees
  - Allow, if possible
    - Work flow constraints – give telephone number
      - If employee agrees
  - No legal or consultant representation
  - No access to the interview notes
  - No discussion with employee(s) after OFCCP interview

AVOIDING FINANCIAL LIABILITY

- **APPLICANT & HIRE DATA**
  - Accurate data
  - Adverse Impact
    - Refined data by job title
  - Steering

- **COMPENSATION**

- **PROVIDE WHAT IS REQUIRED**
  - Not necessarily the same as what is being requested

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