



September 2011

## **OFCCP Enforcement Initiatives**

The OFCCP (Office of Federal Contract Compliance Programs) will conduct industry-based compliance evaluations to determine a baseline measure of compliance. The audits should begin in 2013. OFCCP also oversees affirmative action for vets and disabled individuals. The Department's goal is to complete at least 10 investigations in individual Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and disability discrimination cases.

The OFCCP's primary enforcement initiative in the immediate future is pay equity. The OFCCP has published rules and guidance on how to navigate the compliance requirements. Also, the OFCCP has a new perspective of engaging in "interagency cooperation", this means that various government entities are adopting policies under which they communicate with each other on complaints about employers in order to uncover employers with a history of repeat violation of any type.

The OFCCP has implemented a number of compliance evaluation methods including; compliance review, compliance check, focused reviews and the offsite review of records. Contractors selected for audit will undergo a full desk audit which includes an on-site audit.

The recent settlements for alleged bias in race/sex pay discrimination have steadily increased, to approximately 10 settlements in 2010 and at least 10 settlements to date in 2011. With reference to the Lily Ledbetter equal pay act, the OFCCP is actively looking for pay discrimination.

The OFCCP is influenced by evidence of a persistent pay gap. Under the directive of the presidential pay equality task force the OFCCP is actively seeking out inequities in pay between genders.

### **New Standards Exist for 2011**

The OFCCP will use a variety of statistical and non statistical tools to evaluate cases. There is a "triggering test" defined as a 2% difference in pay OR a \$2,000 difference in pay will trigger a further analysis. OFCCP will require submission of a "12-15" factor test to be followed by a deep investigation if there appear to be gaps.

Among tools the OFCCP is anticipated use: multiple regression, cohort comparisons, and anecdotal conclusions with or without statistic. There is a common element to all of these methods; according to legal experts, they are designed for the employer to fail.

### **What Can Employers Do?**

Some contractors might consider conducting a self-audit. A Self Audit can highlight areas of improvement to facilitate success if subjected to a compliance audit. One major caveat for self audits, though: be sure to consult a qualified labor attorney. In conducting a self audit, it is possible for employers to create documentation of an unfavorable practice.

The key things to be aware of during a self audit are that affirmative action programs in place for women, minorities, veterans and disabled individuals are being followed.

The mere inquiry from the OFCCP is sufficient reason to contact your labor attorney.



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Additionally, employers should be very thoughtful in assigning job titles. The PFCCP has been comparing individuals based on their job titles. Employers have opportunity to assure their jobs are assigned appropriately proactively. Experts advise that individual jobs should be assigned unique and descriptive titles that describe the job. This will help to differentiate the various job responsibilities and qualifications and not permit a broad-based comparison of potentially diverse jobs.

## **Recent Cases from the DOL Website**

### **OFCCP Settles Discrimination Case with Repeat Offender Tyson Foods Inc**

Tyson Fresh Meats Inc., a subsidiary of Tyson Foods Inc., has entered into two consent decrees to settle allegations of sex discrimination. These consent decrees resolve the latest lawsuits in a string of cases brought by OFCCP against subsidiaries of Tyson Foods Inc., for violation of the fair and reasonable standard that they not discriminate in employment on the basis of sex, race, color, religion, national origin, disability or status as a protected veteran. As result, 1,650 qualified female job applicants who were rejected for employment will share \$2.25 million in back wages, interest and benefits. Tyson also has agreed to offer jobs to at least 220 of the affected women as positions become available.

"Companies that profit from federal contracts must not discriminate in employment decisions," said Secretary of Labor Hilda L. Solis. "Today's settlement, one of the largest in OFCCP's history, means that women who were unfairly denied job opportunities will be compensated."

"A year after filing suit, the Labor Department has made good on a promise to those job seekers who were denied the opportunity to work simply because they are women," said OFCCP Director Patricia A. Shiu. "We will remain vigilant, particularly with a serial offender like Tyson, to protect the rights of workers who can and should expect basic fairness from a company that profits mightily from doing business with the federal government."

### **DOL Files Complaint Against Cheese Producer for Hiring Discrimination**

The Office of Federal Contract Compliance Programs is seeking back wages and interest for at least 270 job applicants for on-call laborer positions with Leprino Foods Co. An investigation found that the federal contractor discriminated against qualified African-American, Asian and Hispanic applicants at its Lemoore West facility in California by using a job skills assessment exam that adversely impacted minorities. OFCCP is also seeking job offers for at least 17 applicants, and is requesting that Leprino Foods' existing federal contracts be canceled and the company be debarred from future contracts until violations are resolved and corrected. Leprino Foods, a Denver, Colo.-based company, is the nation's largest producer of mozzarella cheese.

"Leprino Foods' hiring process simply doesn't pass the sniff test," said OFCCP Director Patricia A. Shiu. "When workers are denied employment because of factors that have nothing to do with their ability to perform the job, something is not right. Our message to the company is clear: Correct your discriminatory practices and make restitution to the victims or lose your lucrative federal contracts."

To learn more, contact the HR professionals at MyOHR. [www.MyOHR.com](http://www.MyOHR.com)



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**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

*MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource Legal Compliance, MyOHR assists business in achieving operational efficiency by providing the infrastructure necessary to manage the workforce in compliance with State and Federal requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA at [Jaimeo@MyOHR.com](mailto:Jaimeo@MyOHR.com).*

### Stay “In The Know” in 2011 – Educational Seminars

We have a variety of educational seminars planned for 2011. Some will be live from the office of our partner in Campbell. Others will be conducted using “Go To Meeting” web conferencing.

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### September Educational Session -- OHR’s Quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for **Thursday, September 29th at 1:00 pm** in Campbell, CA. To register please RSVP for the live session at [Harassment Prevention Training](#)