Brief History of OFCCP Equal Pay Enforcement

Pre-2006

- Compensation low priority in compliance reviews

- OFCCP was consistently beaten when compensation charges went to litigation
Brief History of OFFCP Equal Pay Enforcement

2006-2011

- Compensation Standards Established
- OFCCP focuses on systemic discrimination
- SSEGs and Multiple Regression analysis standards set
- Very few charges of discrimination
Brief History of OFFCP Equal Pay Enforcement

2011- Present

- Obama/Shiu Era
- OFCCP goes into enforcement mode
- Equal pay becomes priority
- Bigger budgets
- Legislation aimed squarely at federal contractors
- OFCCP expands to pay discrimination against individuals
Results

- OFCCP has spent approximately $120 million in investigating compensation discrimination since 2010

- Agency has taken in less than $1 million in settlements for alleged victims of discrimination

- One systemic discrimination settlement since 2010
  - AstraZeneca paid $250,000 in June 2011
Sooo........
New OFCCP Regulations

- Feb 28, 2013 OFCCP Rescinds “Restrictions” on Pay Discrimination Investigation
- Aug 8, 2014 Executive Order 13665 Pay Transparency
- Aug 6, 2014 Equal Pay Report
Real World Effect

- Dramatic increase in compensation data requests during audits
- Frequent compensation interviews and follow-up questions
- Expect findings that lead to increased conciliation agreements
New Audit Procedures

- No longer provide summarized compensation
- Employee level compensation at front end
- Compliance Officers have broad scope to conduct audits
- Case specific approaches
- Qualitative and Quantitative factors to be considered
Initial Audit Data Submission

- All employees on payroll
- 1st day of plan year
- Employee ID
- Gender
- Race/Ethnicity
- Job Group
- Job Title
- Hire Date
Salary

- Base Salary/Wage Rate
- Hours Worked in Typical Week
- Bonuses
- Incentives
- Commissions
- Merit Increases
- Overtime
Preliminary Analysis

Quantitative Factors

- Size of the overall average pay difference based on race and gender
- Size of the largest average pay difference within AAP job groups, or the contractors existing salary band or pay grade
- The number of job groups where average pay differences based on race or gender exceed a certain threshold
- The number of employees affected by race or gender based average pay differences within job groups or grades.

Qualitative Factors

- Compliance history
- OFCCP or EEOC complaints
- Anecdotal evidence
- Potential violations involving other employment practices
- Data integrity issues
During this stage, there are three questions the Compliance Officer is trying to answer:

1. Is there a measurable difference in compensation on the basis of sex, race, or ethnicity?

2. Is there a difference in compensation between employees who are comparable under the contractor’s wage or salary system?

3. Is there a legitimate (i.e. nondiscriminatory) explanation for the difference?
When discrimination indicators exist a telephone interview will be scheduled

- Broad questions on companies pay practices
- Does a compensation system exist
- What pay factors are used
- Promotion practices
- Who has oversight
Recognizing Red Flags

- Pay differences normally begin at time of hire
- Culture of bargaining initial pay could backfire
- Mergers and Acquisitions
- Inadvertent discrimination is not a defense
How to Prepare

Compensation systems that are:

- Well-defined
- Well-documented
- Consistently applied
How to Prepare

- Ensure work being performed is equivalent to job title
- Review compensation at job title level *
- Are protected classes making less than peers
- Where differences exist are their business factors to explain
But Wait... THERE'S MORE!
Compensation Data Collection Tool

- Annual Reporting
- 100 employees and $50,000 in federal contracts/subcontracts
- Due by March 31 covering previous year’s data
- Web-based filing
- May affect likelihood of audit
Compensation Data Collection Tool

1. The total number of workers within a specific EEO-1 job category by race, ethnicity and sex;

2. Total W-2 wages defined as the total individual W-2 wages for all workers in the job category by race, ethnicity and sex; and

3. Total hours worked, defined as the number of hours worked by all employees in the job category by race, ethnicity and sex
That's all folks

Thank You...
Any Questions?