

# An HR Alert!

March 2013

## Two New OFCCP Directives

How much more can the Office of Federal Contract Compliance Programs (OFCCP) throw at federal contractors and subcontractors? Contractors are worn out by the continuous changes, directives, intensified audits and additional paperwork expected of them by the OFCCP. The OFCCP's Director, Ms. Shiu, is plowing ahead with many of the reforms she has been waiting to implement.

There have been two recent announcements from the OFCCP: (1) **Directive 306**, issued January 29, 2013, "Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin" was effective immediately, and (2), the more worrisome, **Directive 307**, which describes the OFCCP procedures for reviewing the contractor's compensation practice during compliance reviews resulting from letters dated February 28, 2013 or later.

With **Directive 306**, the OFCCP adopted the EEOC's 2012 enforcement guidance under Title VII of the Civil Rights Act which requires employers to conduct an individual assessment of the job-relatedness of a conviction to the job for which the candidate has applied. In view of this directive, federal contractors and subcontractors should ensure that the request and use of criminal history information is job-related and consistent with business practices. Additionally, contractors should train staff on how to review, use and interpret the criminal history information and to conduct periodic adverse impact analyses.

Section 41 CFR 60-2.17(b)(3) currently requires contractors to perform in-depth self-analyses of their compensation systems to determine whether there are gender, race or ethnicity-based disparities. **Directive 307** aligns OFCCP's analysis of pay discrimination with the principles used to enforce Title VII of the Civil Rights Act of 1964.

Although OFCCP's current Q&A on Directive 307 states that the "snapshot" date for the compensation submitted should be the same date used for the workforce analysis provided in the

AAP, this revision to the letter still has not been approved. Currently, contractors can use almost any date that works best for them prior to the submission, which has been beneficial for contractors who wait until the last minute to analyze their compensation.

If the OFCCP's snapshot date is enforced, it will mean a significant adjustment and cause additional work for contractors. Since the scheduling letter can often arrive well into a contractor's new plan year, going back into their systems (often 6 months or more) can be disruptive, or nearly impossible, due to changes that may have been made for pay adjustments, changes in job titles, new hires and/or terminations.

No matter how this directive unfolds, contractors should not wait any longer to conduct a thorough compensation review and analysis of their workforce. Take the time and gather your team and analyze your compensation for all employees **now**. The data should be analyzed in various ways:

- Salary Grades: are employees/job titles in the correct pay grades?
- Pay practices: how does the company determine starting salary, performance reviews, etc.?
- Job titles: are employees doing similar work (although job titles may not be exactly the same)?
- Exempt and non-exempt: are employees correctly classified?
- Males vs. females, minority vs. non-minority: do pay disparities exist in the same job group, job title or among those performing similar work?
- Review and update job descriptions, where needed.
- Be sure that the employee files contain data that can explain any pay differentials, and can be defended.

It is always wise to have a second set of eyes reviewing your data--either an HR Consultant who specializes in OFCCP matters (such as PMP) or another professional.

If you don't conduct this analysis now and you are targeted for an OFCCP audit, it may be a very expensive audit! *Ms. Shiu needs a "trophy audit case" for compensation discrimination – hopefully your company won't be her trophy!*

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