

Arkansas ILG Meeting – April 2010

A special thanks to the AR ILG Board members as they work very hard to keep timely, relevant information in front of all Federal Contractors. They do an absolutely wonderful job, and we all appreciate their efforts.

This document is for your own personal use. It should not be considered legal advice. This is an informative document we put together for those that we have visited with that were not able to attend this particular ILG meeting. As predicted, one of the hottest new issues will be compensation.

Hosted by:

Tim Orellano (AA Expert), President of the HR Team - Little Rock, AR

Speakers:

Michael Moore, Attorney with Friday, Eldredge & Clark LLP - Little Rock, AR

Topic: Lilly Ledbetter Fair Pay Act Strategies

Darrell Allen, Assistant Director of the OFCCP SWARM Region - Dallas, TX

Topic: Hot Topics: Compensation, Compensation, Compensation

Michael Moore on Lilly Ledbetter Fair Pay Act Strategies:

What is equal pay?

- It only applies to the nature of the work being completed.
- It does not imply that men and women performing work of equal value be paid equally.
- The exceptions are:
 - If you make a compensation decision that is based on factors other than an employee's sex, you are not violating these acts and committing gender discrimination.
 - These factors can include such things such as seniority, merit, productivity, etc.

Components of a legal compensation strategy:

- Performance reviews
- Tenure with the organization
- Prior experience in a similar position
- Customer praise/complaints
- Customer satisfaction/dissatisfaction with service
- Productivity and resourcefulness
- Value to the company
- Achievements
- A broad banded pay system evaluating employees on factors to determine where to place that employee within a pay range
- Geographical location
- Working conditions

Performance reviews:

Look at your average performance evaluations. Look at all supervisors' evaluations. Determine the averages that are far off from the overall average. Why is this? Is the supervisor too hard on their employees or too easy? Make this process more objective and less subjective. Performance evaluations need to tell the ACTUAL story so be sure to give proper training to all supervisors, and go back and check what they have done.

Recommended action steps for compensation:

1. Perform a job analysis for each position within your organization.
2. Write thorough job descriptions that outline the basis for compensation decisions. Why?
 - a. Protection in an ADA-claim
 - b. Provide a basis for why one job is being paid different
 - c. If you do not have essential duties listed, if the descriptions are not current, if changes in the job have occurred, you need to be sure and keep them updated so that you can validate pay.
3. Develop a uniform method for performance and/or productivity appraisal

Job Analysis:

Purpose – Identify all aspects of a job in hopes of identifying similarities and differences among positions.

A thorough job analysis can be used to develop job descriptions, performance and/or productivity expectations and equitable compensation strategies.

Try to be as fair and equitable as possible through good faith efforts!

Example - If you use education, make sure that there is not someone in the job that has performed well in the job without that education, unless they have more experience than the job requires.

Job analysis factors suggested:

1. Required tasks
2. Essential duties and responsibilities
3. Expectations
4. Geographical location
5. Working conditions
6. Resources
7. Interaction with others
8. Required skills and abilities
9. Education and/or experience

Darrell Allen on Compensation, Compensation, Compensation:

Any factor that you use to evaluate pay, such as attendance; you need to be able to validate why you are using this as a measure.

Should you use credit checks in hiring? If you do, it must directly relate to the job and you must be able to validate the reason that you are using it.

An acceptable AAP must include identification of problem areas and a contractor must perform an analysis of compensation.

Darrell suggested that the OFCCP and Contractors must make a better connection between AA and compensation.

Connect your Compensation Analyst to your policies and not just your high-level decision makers. The Compensation Manager/Analyst is working with this issue on a daily basis.

In regard to compensation, the new trend of the OFCCP is that all forms need to be monitored:

1. Starting salary
2. Benefits
3. Bonuses
 - a. Productivity
 - b. Performance
 - c. Referrals
 - d. Overtime
4. Shift differentials

The OFCCP is looking for an 80% difference, which means any analysis data indicating more than a 20% variance between the disparate group and the non-disparate group is considered potential discrimination.

In regard to audits, the OFCCP DOES have a small window of “opportunity” to choose someone (an organization) for an audit that they know is doing something wrong. However, it can not be based on an anonymous call.

Item #11 Data: Annualized compensation data submitted by SSEG

- a. Wages
- b. Salaries
- c. Bonuses
- d. Commissions
- e. Total # of employees by race or gender
- f. Total compensation by race or gender

3 major components of a systemic discrimination finding in compensation

- a. Review of your similarly situated employee groupings (SSEG)
- b. Multiple regression analysis
- c. Anecdotal evidence

There will be scheduling letter changes in 2011. Those changes are:

1. Send the 12 factor letter information in with every desk audit and AAP.
2. Report summary data by EVERY race.

In regard to the SSEG, the OFCCP wants to see every SSEG have at least 30 employees overall including 5 or more that are male or female and 5 or more who are minority and not-minority. However, if this is not possible, you have to pass.

70% or more of employees in the workforce must be in a SSEG. In regard to smaller organizations, this will not always be possible. This is the number that the OFCCP is aiming for.

For compensation, the OFCCP may analyze:

- Payroll data
- Termination data
- Applications
- Resumes
- Offer letters
- Pay increase data
- Employee personnel files
- Compensation and employee computer based data

They are looking for:

1. Inconsistency
2. Subjectivity
3. Funneling/placement issues

When asked about the “tipping-point” analysis, Darrell said that the Dallas office is looking for an 80% difference, an 80% difference that can not be accounted for. He did say that they use the 5/10/30 formula after the desk audit.

Future hot topics:

- Testing
- Lay-offs
- Internet application rule
- Electronic record keeping
- Compensation, compensation, compensation

This information was compiled by DB Squared™, a world-class provider of automated solutions that support Human Resources. At DB Squared, we offer a job evaluation and salary administration program, DBCompensation™ and the methodology behind the system has been used since 1985. This system offers an electronic job description writer and job rating systems, which are integrated, a key factor in job analysis. The job rating system utilizes fifteen factors to determine job worth and establishes internal equity within organizations. DBCompensation can be a tool to assist with requirements for compliance as it aids in determining similarly situated employee groupings, it performs regression analysis to evaluate your pay practices and establish boundaries for salary

ranges and pay grades, and it permits for organizations to perform self-analysis tests to determine if you have any pay inequities. For more information, please contact our office at (479) 587-0151.