

# OBSERVATIONS

EEOC and OFCCP Updates **Provided by ERS Group**

## Employee Compensation Differentials: How did that happen?

With the passage of the Lilly Ledbetter Fair Pay Act of 2009, the management of employee compensation has assumed greater importance at many companies. Even if your organization has actively reviewed percentage increases in compensation, there is still ample room for differences in compensation to arise between groups of employees.

## How do differences in the level of employee compensation arise?

Many companies control compensation by managing percentage changes in compensation. By not managing compensation levels in conjunction with the percentage increases, differences may arise. This can occur under many scenarios. For example, the root cause of the differences may reach back years to the setting of initial compensation amounts, differences in the speed of promotion, or pay adjustments among otherwise similar employees. In each of these situations, it is possible that the current compensation levels are directly related to the employees' prior compensation levels. When a company then applies percentage raises to these levels of compensation, differences may become wider over time.

### *In the Spring 2009 Issue:*

Understanding Employee Compensation Differentials

E-Verify Delayed Until June 2009

Form I-9 Revised as of April 3, 2009

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EEOC Releases 2007 Job Patterns for Minorities and Women in Private Industry (EEO-1)

Meet ERS Group Professionals

## A simple example illustrates the problem of managing percentage changes in isolation:

### Employee A

Hired: April 1, 1999  
Starting Salary: \$40,000  
Pay Increase: 5% each year  
Salary 2000: \$42,000  
Salary 2001: \$44,100  
Salary 2002: \$46,305  
Salary 2003: \$48,620

**Employee A** was employed by the XYZ Corporation 10 years ago with a starting salary of \$40,000 and received 5% increases in each subsequent year. By year 5, Employee A would earn \$48,620.

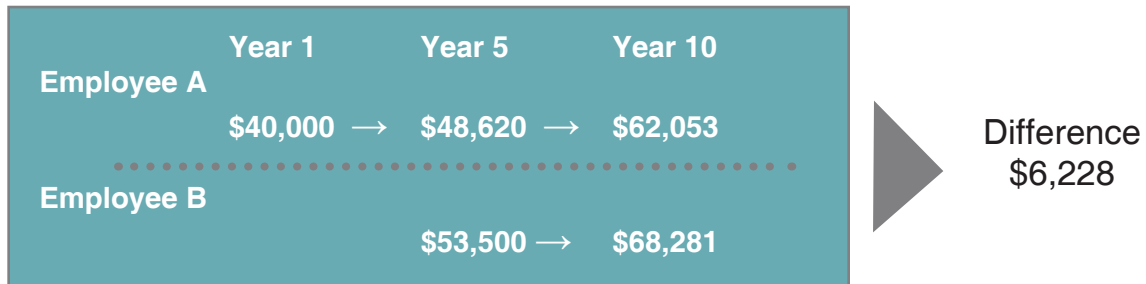
### Employee B

Hired: April 1, 2003  
Starting Salary: \$53,500  
( $\$48,620 + 10\%$ )  
Pay Increase: 5% each year

**Employee B**, with characteristics similar to Employee A, was hired away from a competitor in year 5 of Employee A's tenure. Employee B also earned \$48,620 at the prior employer. However, to entice Employee B to move, XYZ Corporation offered Employee B an approximate 10% increase in pay establishing a starting salary of \$53,500. Like Employee A, Employee B also received subsequent annual compensation increases of 5% at the XYZ Corporation.

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Given this scenario, at the end of 10 years, the difference in compensation between Employees A and B would grow from approximately \$4,900 when Employee B was first employed (at the XYZ Corporation) to over \$6,200. Yet, the employees were treated identically after the setting of their initial pay.



### How would you defend these compensation differences in the event of litigation or government audits?

Contemporaneous documentation of the reasons for a decision often provides the basis of an explanation for these types of compensation differences. In the example above, documentation of the previous work experience of both employees would potentially provide the rationale for the pay decisions long after the actual decisions on initial pay were made. Contemporaneous documentation of other types of decisions, such as information regarding promotion/demotion decisions and performance, may also assist in explaining differences in levels of compensation among employees.

In summary, managing employee compensation entails managing percentage increases in compensation as well as managing compensation levels. Ignoring one or the other component may lead to differences in compensation among employees who otherwise appear to be similarly situated. Documentation of the decisions and reasoning can be the key to knowing the story, after the fact, when facing litigation or government audits.

Click [here](#) for additional information on the Lilly Ledbetter Fair Pay Act of 2009.

## NEWS

### E-Verify Delayed Until June 2009

The Department of Homeland Security and the Social Security Administration are providing employers with an electronic method to verify the employment eligibility of new employees. Use of this system is voluntary at the present time.

The final rule requiring the use of this system by federal contractors and subcontractors has been delayed until June 30, 2009. Prior to the effective date of the final rule, federal contractors are not allowed to use E-Verify to verify the eligibility of current employees. Additionally, the requirement will only be imposed on federal contractors with contracts awarded after June 30, 2009 containing the Federal Acquisition Regulatory Council (FAR) E-Verify clause.

Click [here](#) for additional information.

(News continued)

## Updated Form I-9 Required as of April 3, 2009

Form I-9, a record of employment eligibility and employee identification documents, is required to be completed and maintained for all hires in the United States. This form was updated as of February 2, 2009 and use of the new form is required as of April 3, 2009. When being audited by the OFCCP, an employer will typically be required to produce Form I-9 for each of its hires. These forms must be maintained for three years after an employee's hire date or one year after an employee terminates, whichever is later. Click [here](#) for additional information.

## OFCCP Scheduling Letters Sent

On March 9, 2009 the OFCCP mailed the Corporate Scheduling Announcement Letter to parent companies with more than one establishment to alert the companies of possible compliance audit(s). According to the OFCCP, approximately 5,000 facilities were identified through the Federal Contractor Selection System (FCSS) for these potential compliance audits. The FCSS limits the number of new compliance audits to 25 for any one corporation during the October 1, 2008 through September 30, 2009 compliance cycle.

In accordance with Directive 285 issued on September 17, 2008, the OFCCP is beginning

to conduct on-site compliance reviews for every 50<sup>th</sup> contractor regardless of findings of systemic discrimination. Directive 285 states that this is "a quality control measure, to ensure that contractors are developing and implementing AAPs and that they are maintaining the required supporting data..."

Click [here](#) for additional information regarding the Corporate Scheduling Announcement Letter. Click [here](#) to view Directive 285.

## EEOC Releases 2007 Job Patterns

On March 23, 2009 the EEOC released the 2007 Job Patterns for Minorities and Women in Private Industry based on EEO-1 reports. The 2007 tables detail the aggregate employment (by gender and race/ethnic groups) in the private sector. The information is available by state, Core Based Statistical Area (CBSA), industry and occupation.

The EEOC collects information on private sector employment annually from private employers with 100 or more employees or federal contractors with 50 or more employees. In 2007, over 67,800 employers filed EEO-1 reports covering over 60 million employees.

To access the Job Patterns for Minorities and Women in Private Industry (EEO-1) reports click [here](#).

### *Meet ERS Group Professionals*

#### **May 19, 2009, Jacksonville, FL**

Jacksonville Industry Liaison Group  
Dr. Janet Thornton will present "Tools for Analyzing Compensation."

#### **May 19 - 20, 2009, New York, NY**

ACI Wage & Hour Claims and Class Actions Conference, New York Marriott Marquis Hotel.  
Call Frances Michels at 850-562-1211 ext. 170 or email [her](#) for information on a registration discount sponsored by ERS Group. Download a brochure [here](#).

#### **July 28 - 31, 2009, Atlanta, GA**

National Industry Liaison Group National Conference.  
Meet ERS Group AAP professionals and economic experts at our booth.

**Please contact us if you would like to discuss any of the issues raised here in more depth.**

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