

OFCCP and EEOC Update

January 26, 2009

OFCCP News

January 6, 2009 – The Office of Federal Contract Compliance Programs (OFCCP) announced record financial remedies of \$67.5 million for fiscal year 2008 representing an increase of \$15.8 million, or 31%, over fiscal year 2007 financial remedies. As in prior years, the OFCCP is attributing its success to its more efficient use of resources and the effectiveness of its systemic discrimination initiatives. Charles James, deputy assistant secretary of the OFCCP, notes that "This is our fourth consecutive record-breaking year in the categories of workers helped and amounts recovered. Of all the changes of these eight years, the focus on systemic discrimination is by far the most significant for the mission of the agency." The article may be reviewed in its entirety [here](#).

January 9, 2009 – A more comprehensive view of the accomplishments of the OFCCP over the past several years was released in [The Detailed, Year-by-Year Accomplishments by The Office of Federal Contract Compliance Programs](#). Here, the OFCCP has prioritized its systemic discrimination focus to three areas: (1) prioritize agency resources to address the worst offenders, those who allow discrimination to be their "standard operating procedure;" (2) achieve maximum leverage of OFCCP resources to protect the greatest number of workers from discrimination; and (3) encourage employers to engage in self-audits, by increasing the tangible consequences of not doing so. Additionally, the review summarizes the recent initiatives of the OFCCP and its enforcement statistics for fiscal years 2001 through 2008. The article may be reviewed in its entirety [here](#).

January 8, 2009 – Naomi Levin of the OFCCP and Mario Damiani of the Office of Disability Employment Policy (ODEP) presented "Accessible Online Application Systems and Tools for Achieving Them." Their presentation reiterated the initiative by the OFCCP to assess the accessibility of online application systems to those with disabilities as well as actions that contractors could take to minimize the need to individually accommodate applicants. ODEP presented a tool for assessing the accessibility of online systems called the Accessible Systems Racing League that is available through the Employer Assistance and Referral Network. The presentation may be reviewed in its entirety [here](#).

January 8, 2009 – The Society for Human Resource Management and other employment-related associations reached an agreement with the Department of Justice to delay, until February 20, 2009, the implementation of the E-Verify rule, which was to become effective on January 15, 2009. This rule, which is published in the November 2008 Federal Register, is an expansion of the E-Verify system and would require most federal contractors and subcontractors to use E-Verify for both newly hired and incumbent employees. Prior to the November 2008 rule, E-Verify was a voluntary program applicable to new hires. The delay will allow for an expedited hearing to be held on the merits of the challenging legal case. The Federal Register containing the November rule is available [here](#).

EEOC News

November 17, 2008 – In its FY 2008 Performance and Accountability Report, the Equal Employment Opportunity Commission (EEOC) reports that FY 2008 saw a 15.2% increase over FY 2007 in private sector charges of discrimination with 95,402 total charges received. Over 81,000 charges achieved resolution with more than 18,000 people receiving monetary and/or non-monetary benefits during the year. Over 48% of the FY 2008 charges were resolved within the EEOC's 180 day timeframe goal. The EEOC attributes this achievement to the success of its mediation program, which garnered over \$124 million in settlements from nearly 9,000 resolutions. However, the increased number of charges filed also caused the inventory of pending charges to increase at the end of FY 2008 over FY 2007 by 34%.

The EEOC launched an initiative in April 2006 to identify, investigate and litigate systemic discrimination cases, a focus of the Office of General Counsel law enforcement activities. In 2008, the Committee of Advisors for Systemic Enforcement issued a report noting that the EEOC made much progress in enhancing its investigation of systemic discrimination charges resulting in a sharp increase in the number of systemic investigations. The Office of General Counsel is expecting fewer individual cases and a greater number cases involving larger groups of people, in keeping with the systemic initiative.

The FY 2008 Performance and Accountability Report may be reviewed [here](#).

Labor Economist's Corner: Analyzing Reduction-in-Force Selections

As the news of widespread economic woes has spread throughout the US economy, many reduction-in-force announcements have been made by a wide variety of companies in many industries. Recent examples include CitiGroup, which announced 60,000 layoffs worldwide in November, and Dow Chemical, which announced 5,000 layoffs in December. The Bureau of Labor Statistics also reported a preliminary loss of over half of a million jobs in both November and December with an associated increase in the unemployment rate to 7.2% in December. For companies making these difficult decisions, the perspective of a labor economist may help facilitate their implementation of a reduction-in-force.

A reduction-in-force decision is a type of employment selection analogous to a selection for promotion. Therefore, it is possible to analyze statistically the layoff decisions in light of the impact on protected groups defined by age, race/ethnicity, gender, and/or disability status. Such an analysis is enhanced, and perhaps simplified, if the employer follows a few basic protocols. Most important is the maintenance of accurate and complete documentation of all aspects of the reduction, including information regarding:

- the employees who were actually considered for layoff,
- the employees who were not considered or who were not “at risk” of layoff,
- why certain groups of employees were “at risk” and others were not [e.g., plant closures, some skills sets valued more highly than others, outsourcing of a function, loss of funding for a particular project, consolidation of a function to a single location], and
- the specifics of the process utilized to determine the selections for reduction [e.g., selection “pools” and factors that influenced the selections].

Such documentation permits the labor economist to construct a model to analyze selections for layoff that is as reflective of reality as the data permit. Labor economists recommend that organizations analyze reduction decisions prior to the announcement of the events. Results of these analyses offer valuable information that the organization can use to prepare for challenges to the outcomes of the decision-making process.

Upcoming ERS Group Seminars and Presentations

For information visit ERS Group's website: <http://www.ersgroup.com/seminars.asp>

Weathering the Economic Downturn: Economic and Statistical Analyses for Layoffs

Dr. Janet Thornton will be providing more insights on analyses of layoff decisions to the Jacksonville Industry Liaison Group in Jacksonville, Florida on February 24, 2009.

Jacksonville, FL – University Center – University of North Florida, February 24, 2009.

Current Trends in Wage and Hour Litigation: Economic, Legal and Statistical Issues

A one-day seminar on what to expect in the wage and hour arena – both in Federal and state courts. Experienced plaintiff and management attorneys, survey, economic and statistical experts will discuss the practical aspects of wage and hour cases.

San Francisco, CA – Hotel Monaco, Thursday February 26, 2009

Preparing for OFCCP Compliance Audits and Crafting Effective Affirmative Action Plans

Practical training for Affirmative Action, EEO, Compensation and HR Professionals, as well as attorneys involved in affirmative action planning and OFCCP audits.

Orlando, FL – Buena Vista Palace, Wednesday, April 1, 2009 – Friday April 3, 2009

Tools for Analyzing Compensation

Dr. Janet Thornton will provide insights on how employers may want to examine its compensation levels and pay changes of its workforce at the Space Coast Industry Liaison Group.

Melbourne, FL – Harris Corporation, April 14, 2008

Employment Discrimination: Economic and Statistical Evidence

Unique, practical training for employment attorneys and human resource professionals, presented by nationally known experts and labor law attorneys.

Washington, D.C. - Park Hyatt Washington, Thursday, April 16, 2009 - Friday, April 17, 2009