

Conciliation Agreements With The OFCCP

During the last five years, the OFCCP has continuously threatened to turn their focus towards examining how compensation is structured throughout Federal Contractor's organizations. We have heard again and again how detailed statistical analyses are going to become the standard for OFCCP examinations.

What used to be an ongoing rhetoric that people were paying little heed to now appears to have finally become a startling reality. During current OFCCP audits, compensation data will automatically be requested for review. If there are any pay disparities affecting employees, the OFCCP may require a Conciliation Agreement between the contractor and the OFCCP. While the concept of a Conciliation Agreement is nothing new, Biddle Consulting has reviewed an actual recent compensation agreement drafted by the OFCCP and we highly suggest that Federal Contractors pay close attention to the details contained within this very aggressive format. Below is an example of an actual agreement. We have taken the liberty of highlighting areas that we consider of special interest.

As stated in the Federal Regulations, "the [conciliation] agreement shall provide for such remedial action as may be necessary to correct the violation and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority." An example of such an agreement is demonstrated below.

XYZ Company (hereinafter referred to as XYZ) was found to be guilty of pay disparities affecting certain employees, which is in violation of Executive Order 11246. XYZ agreed that the OFCCP may require written reports

(as described later in the agreement), inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation. XYZ was required to take the actions described below to ensure full compliance:

REMEDY

1. Notification (summary). All current and/or former non-exempt minority employees who were alleged to be paid less than similarly situated non-minority employees will be notified within 55 calendar days of the Effective Date (date of signature by the Regional Director for the OFCCP) of their rights and monetary settlement by Notification Letter and Release (form to be filled out) by certified mail. This letter will advise the individuals of the minimum amount, including back pay and interest, to which they will be entitled if they participate in the settlement. These individuals will be given 30 days to respond to XYZ. Within 95 days of the Effective Date, XYZ must provide the OFCCP a list of the individuals who did not respond, and the OFCCP will then try to locate these individuals. If within 140 days of the Effective Date, the individuals have not responded, they are no longer entitled to any relief.
2. Release (summary). Individuals must return Release to be entitled to any monetary settlement.

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Dispatcher Testing With CritiCall

CritiCall Pre-employment Testing Software for public safety (9-1-1) dispatchers and calltakers has been adopted by over 350 organizations since it was released in 2000, and now, with out latest release, it is even better. CritiCall 3.5 contains 22 test modules that measure many different skills and abilities needed of employees who work in today's complex computerized communication center, including the ability to multi-task while using a

computer. The California Commission on Peace Officer Standards and Training (P.O.S.T.) has found that 80% of those newly hired dispatchers/calltakers who exit the organization (either voluntarily or involuntarily) lack sufficient levels of knowledge, skill, or ability to do the job. This lack of skill leads to high turnover and greatly added costs for the recruitment, testing, background

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Conciliation

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3. Monetary Settlement (summary). Within ten business days of the Effective Date, XYZ must put the requested amount of money into an account. Within 180 days of the Effective Date, XYZ will mail the checks by certified mail to the Participating Individual.
 4. **Revision of XYZ's Compensation Job Classification System (summary). XYZ must hire a consultant to analyze the current compensation job classification system. Within 30 days from the effective date, XYZ must submit the name and curriculum vitae of the consultant it wishes to hire to perform the analysis to the OFCCP. The OFCCP has ten days to notify XYZ if the consultant was rejected. If XYZ does not receive this notification, they are allowed to move forward with that consultant. XYZ then has 180 days to complete the analysis of the compensation job classification system. XYZ will have 12 months from the Effective Date to implement all changes to the compensation job classification system.**
 5. One-Time Salary Adjustments (summary). Once XYZ has revised the compensation job classification system, it will perform an analysis of the compensation Job Groupings using salary levels in effect as of 30 days from the final implementation of the changes to the compensation job classification system. **XYZ MUST go through extensive analyses, such as t-tests and regression analyses. Depending on the results of these analyses, salary adjustments may need to be made. These adjustments must be completed no later than 180 days from the final implementation of the changes to the compensation job classification system.**
 6. Self-Monitoring (summary). XYZ agrees to monitor the compensation job classification system for all employees on an on-going basis. XYZ also agrees to make the necessary adjustments if any salary disparities are discovered.
- compensation job classification system and of salary adjustments made. The documentation should include a summary of the consultant's recommendations and a description of the revisions made to the compensation job classification system, which should include: changes in pay grades or job groupings; the salary range for each Job Grouping; the job titles in each Job Grouping; and the number of employees in each Job Grouping, broken down by race/ethnicity and gender. If there were salary adjustments, the report must also include: the employee's name, race/ethnicity, gender, Job Grouping, the amount of salary adjustment, and the effective date of the adjustment.
3. The second progress report is due 13 months from the Effective Date and will cover the 12-month period following the Effective Date. This progress report is the same as listed above.
 4. The third and final progress report is due within 19 months from the Effective Date and will cover the period between the Effective Date and the date of the third progress report. This report will include:
 - a. A description of the results of the statistical analyses performed
 - b. A description of the analytical model or methodology used to determine the disparity and salary adjustments.
 - c. A listing of the salary adjustments made in response to the statistical analyses.
 - d. If XYZ determines that no adjustments should be made to correct a statistical disparity, XYZ must include the information to support this statement.
 5. The Conciliation Agreement will expire 90 days after receipt of the final progress report, or when the OFCCP give approval of the final report, whichever occurs earlier.

REPORTING (summary)

1. XYZ must report its progress toward fulfilling the provisions of the Agreement by supplying the OFCCP with progress reports.
2. The first report is due seven months from the Effective Date of the Agreement, which will include:
 - a. Documentation of monetary amounts paid to the Participating Individuals
 - b. Documentation of all changes to XYZ's

It should be obvious based on the example above that you do not want to run into this kind of problem with an OFCCP audit. Therefore, you must be proactive and consistent when evaluating and analyzing your compensation structures. While the OFCCP does not yet have statisticians in every region, they have hired one in Washington DC and in a recent ILG meeting it was suggested that a statistician in each region conducting statistical analyses of contractors within that region was on it's way to becoming a reality. Many consultants (including BCG) offer services to take proactive measures by reviewing a company's compensation structures using appropriate statistical methods. ❖

Definition Of An Applicant: Revised

Federal Register dated March 4, 2004 Answers Who is an Applicant?

An important but difficult question that we have been asked repeatedly over the past few years is "What is the definition of an applicant?" The reason why it has been difficult to answer is because the Office of Federal Contract Compliance Program (OFCCP), Equal Opportunity Commission (EEOC), Department of Labor (DOL) and the Office of Personnel Management (OPM) have been working to modernize the definition. The traditional definition, that is associated with the Uniform Guidelines on Employee Selection Procedures (UGESP), is that an applicant is anyone who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. However, since the onset of internet recruiting, organizations can and sometimes do receive thousands of applications for individual job openings. As a result, it was necessary to revise the definition in order to address how internet applications are truly screened and evaluated. With that said, as far as the Internet is concerned, an applicant only truly becomes an

applicant for tracking purposes when the following events have occurred:

1. The employer has acted to fill a particular position

For example, if an employer identifies 200 individuals with specific interest in a Materials Planner position. These 200 individuals have the requisite skills necessary, but only 100 of them are willing to relocate to Madison, WI. Those 100 people become the applicant pool for that position.

2. The individual has followed the employer's standard procedures for submitting applications

An example of standard procedures is if applicants are required to submit applications and/or resumes in a particular manner. Often times there is a deadline for filling and if an individual is past the deadline then they aren't considered for the position.

3. The individual has indicated an interest in the particular position

It is essential that the applicant specify the position they are interested in. If an individual posts their resume on a third party resume bank they are not necessarily considered an applicant.

This posting isn't suggesting interest in a particular organization or specific position. If this person is contacted based on their resume experience then they are considered an applicant. This requirement is paramount because many job seekers sometimes send bulk emails with their resumes to ton organizations where they aren't necessarily interested or qualified.

Many contractors will now sigh with relief because the new specifications about filtering applicants, with respect to the Internet, are defined. If you are interested in gaining more information about this topic please visit the website below. Also, if you are looking to develop an applicant tracking system then please contact our associates at <http://www.sonicrecruit.com>

Full text of the Federal Register document can be found at:

<http://www.dol.gov/esa/regs/fedreg/final/2004004090.pdf>

EEOC posted Questions & Answers at:

<http://www.eeoc.gov/policy/docs/qanda-ugesp.html>

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CritiCall


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investigation, training, and supervision associated with the hiring of unqualified persons for the job.

CritiCall's users have consistently indicated that by using CritiCall they have lowered their turnover rate and frequently have reduced the amount of time it takes to train a newly-hired dispatcher/calltaker. One large county reported that they were able to reduce the amount of time it took to train the first two employees they hired using CritiCall by two months! In addition, they reported that those who were chosen using CritiCall were less likely to leave the organization and were more productive on the job. These are truly phenomenal results that have been replicated time and time again by agencies across the nation.

CritiCall strives to constantly update and upgrade the testing software. Based on client feedback, this newest version of CritiCall contains many new features that make the test easier to use and the reports easier to understand. For example, it now contains a "Test Creation Wizard" that assists users in quickly and easily selecting the best test modules for measuring the types of skills needed by their agency's employees. The program now also contains a "Test Interruption Protection" feature that saves a test taker's work if the computer should happen to malfunction or crash. The program allows users to print scores from each test administration immediately after tests are given, and the test reports have been made even easier to interpret. In addition, CritiCall now

offers a feature that allows longer tests to be broken into shorter parts, and allows users the option to have the testing stop if a test taker shows that he or she does not have sufficient skill to perform the job prior to the test being completely finished. This will save agencies time and resources, since only those test takers who are truly qualified will need to take all of the CritiCall test modules that an agency has chosen to be used for testing.

As we continue to upgrade and update CritiCall, we invite all current users to provide us with feedback through the CritiCall User's Group web pages at <http://www.critical1911.com/usersgroup.html>. This site offers users training, hints, downloadable updates, and an opportunity to provide feedback about our software and services. 

2004 Calendar

Conferences & Expositions

AAP Training Workshops

: May 15-17 :
(OPAC)
ALA National Conference
Association of Legal Administrators
Philadelphia, Pennsylvania

: May 24-25 :
(Criticall)
East Coast Regional
APCO Conference
Charleston, West Virginia

: June 14-15 :
(Criticall)
NENA Annual Conference
Nat'l Emergency Numbers Assoc.
Tampa, Florida

: June 27-29 :
(AAP & OPAC)
SHRM Annual Conference
Society for HR Management
New Orleans, Louisiana

: August :
(Criticall)
APCO International
Annual Conference
Montreal, Quebec, Canada

: August :
(AAP)
NILG Annual Conference
Nat'l Industry Liaison Group
St. Louis, Missouri

: May 11-12 :
*Affirmative Action Plan
Methodology & Software Training*
Rancho Cordova, California
Cost: \$990

: August 3-4 :
*Affirmative Action Plan
Methodology & Software Training*
Rancho Cordova, California
Cost: \$990

: November 9-10 :
*Affirmative Action Plan
Methodology & Software Training*
Rancho Cordova, California
Cost: \$990

For more information on any of the conferences, training workshops, or other Biddle Consulting Group, Inc. events listed, please call BCG toll-free at (800) 999-0438 or e-mail your questions to staff@biddle.com.

Definition

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Proposed Rule for Internet Applicant Record Keeping

The Office of Federal Contract Compliance Programs (OFCCP) also released in the March 29 *Federal Register* specific instructions on how to organize records and assess Internet job applicants. It was necessary to revise the Uniform Guidelines on Employee Selection Procedures because the vast increase of applications and resumes contractors receive, via electronic avenues, for each position they advertise

for. Currently, contractors are required to track gender, and ethnicity data on applicants and employees. However, the OFCCP proposes that it's also necessary to track the same information about those individuals who express interest through the Internet. There are four criteria that must be met for an individual to be considered an "Internet applicant",

- 1) The individual must have expressed interest in employment through the Internet or related technologies;
- 2) The employer must have considered the job seeker for employment in a particular open position, which must include an indication that they possess the advertised basic qualifications for the job; and
- 3) The job seeker didn't designate that they were no longer interested in the job.

Additionally, "advertised, basic qualifications" must be objective and job-

related. The proposed rule said that it should be clear for "A third party, unfamiliar with the employer's decision process, would be able to evaluate whether the job seeker possesses the qualification without more information about the employer's judgment". All records of Internet applications should be kept for the OFCCP to evaluate if contractors complied with the definition of Internet applicant for at least two years. Also, the proposed rule states that the agency may contrast the contractor's applicant pool with external labor statistics to determine if there is a significant difference. With the rapid change in technology the OFCCP intends keep the Uniform Guidelines on Employee Selection Procedures as appropriate to the times as possible. ❖

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