




The Compensation Interview: "Oh, I didn't Mean to Say That" and Other Salsa Dance Moves To Try

**Tim Orellano PHR, SHRM-CP
President
The Human Resources Team**

**Lynn Clements, Esq.
Director of Regulatory Affairs
Berkshire Associates**



**The Compensation Interview:
“Oh, I didn’t Mean to Say That”
and Other Salsa Dance Moves To Try**

Tim Orellano PHR, SHRM-CP
President
The Human Resources Team

Lynn Clements, Esq.
Director of Regulatory Affairs
Berkshire Associates

2



The Government Wants To Be Your Dance Partner

- Top Priority
- Increased Transparency
- New Rules
- New Enforcement Staff
- Public Awareness
- High Profile Lawsuits

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

Compensation Interview Dance

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

What Does the Music Sound Like?

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

What Does the Music Sound Like?

- ✦ Directive 307 +
- ✦ EO 13665 Pay Transparency +
- ✦ Revised Sex Discrimination Rules +
- ✦ Annual Pay Data Reporting +
- ✦ State and Local Activity +
- ✦ Stockholder Pressure +
- ✦ Celebrity/Press Attention +
- ✦ Employees +
- ✦ OFCCP's Item 19 Requirement +
- ✦ Plaintiff Lawsuits +
- ✦ EEOC _____
- ✦ Total = _____

Increased data requests and deep dive by EEOC/OFCCP

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

6

What to Expect During An OFCCP Compliance Review

- ✦ Submission of detailed employee level data, including other compensation
- ✦ Provide written pay policies
- ✦ Describe your compensation plan
- ✦ How are pay decisions actually made?



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

7

What to Expect During An OFCCP Compliance Review

- ✦ **What factors influence pay?**
- ✦ **Who makes the decisions? HOW?**
- ✦ **Detailed and broad data requests**
- ✦ **Compensation Interview**
- ✦ **Regression and/or cohort analysis**



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

8

Directive 307 - Purpose of Compensation Interview

- ✦ **Understand contractor's actual pay practices vs. written policies**
- ✦ **Understand Item 19 data provided**
- ✦ **Determine how to group employees for analysis**
- ✦ **Identify pay factors**
- ✦ **Verify how pay factors were applied in making compensation decisions**

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

9

Types of Questions Asked

- ✦ Questions about person's organizational role
- ✦ Organizational structure questions
- ✦ Detailed questions about Item 19 submission
 - Understanding data, resolving discrepancies
- ✦ How starting pay, salary increases are set
- ✦ Identify and rank pay factors
- ✦ Explain bonus plans and calculations

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

10

The Three "P's"

Policy

Practice

Prove It

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved



What Rhythm will OFCCP Use?

- To establish broad groupings of employees for analysis
 - *Follow-up requests for entire workforce, whole job groups, exempt versus non-exempt*
- To understand compensation beyond base pay
 - *Asking about these components more often*
- Follow-up requests for “pay factor” information
 - *Common requests for 15-60 follow-up items for each employee*
 - *Longest request was for 90+ items*
 - *Requests for last self-audit*

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

13



The First Interview –The Wrong Dance Steps

- Witness: **H**arry **R**esume, HR Manager reporting to CEO
- OFCCP Compliance Officer: **C**hristy **O**fficial

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

15

Dancing with the Stars Scoring



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved


16

Dancing with the Stars Scoring

- ✦ **Observe role-play Q & A**
- ✦ **Use this score to rate the interview dance**
 - ✦ 1= Update your resume or who hired you?
 - ✦ 2= A few missteps but good
 - ✦ 3= Next NILG winner of the SALSA glitter ball
- ✦ **When prompted raise your hand and appropriate finger score**

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

17





Fred Astaire: "Do it big, do it right, and do it with style."

For OFCCP compliance, this means you must:

- Understand your pay system;
- What factors actually impact pay; and
- How to explain it before the government asks.

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

18



Follow

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

19

Best Dance Moves to Follow – Strategic Item 19 Submission



Develop a plan for explaining your pay practices to OFCCP – the best defense is definitely a good offense!



Make strategic decisions about what pay to provide and when to explain reasons for pay discrepancies in a compliance review.



Provide additional data when it helps explain your pay, and present your pay data in a way that tells your story.

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

20

Best Dance Moves to Follow: Proactive Pay Analyses



Identify similarly-situated employees/appropriate pay analysis groupings



Evaluate whether readily available pay factors explain pay differences

- Time-based variables first



Identify other variables that may impact pay, and develop a plan to begin collecting if needed

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

21

Best Dance Moves to Follow – The Interview



Schedule planning conference with OFCCP so you understand areas of focus



Identify best person or persons to answer OFCCP's questions



Over-Prepare the person to be interviewed:

- Review what employees are in plan
- Review data already provided to OFCCP
- Review commonly-asked questions
- Review common follow-up requests based on typical responses
- Review any proactive analyses

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

23

Best Dance Moves to Follow – The Interview



Listen to questions asked; Ask for clarification if questions are unclear; Be comfortable saying further research may be needed to answer questions



Ask consultant, attorney, or second company representative to take notes during interview



Decide how you will handle review of OFCCP interview notes

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

24

Best Dance Moves to Follow – The Interview



Explain how you make each type of pay decision separately (starting pay, salary increases, promotions, salary adjustments).



Avoid generalities. Most pay decisions are fact specific - help OFCCP understand this.



Know whether proactive pay analyses have been completed, and whether they are privileged.

Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

25



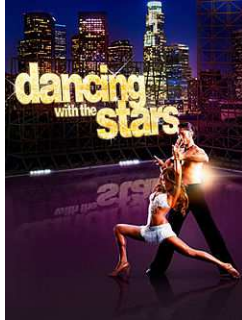
¡Salsa!



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved



Dancing with the Stars Scoring



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved

29



Scrutinize your compensation NOW

Attach attorney client privilege

Leverage your knowledge of the Interview Dance

Select how to present compensation data

Assess interview responses



Copyright © 2017 The Human Resources Team and Berkshire Associates, Inc. All rights Reserved



Thank You!
😊

Tim Orellano, PHR, SHRM-CP
President, The Human Resources Team
Positive Affirmative Action Solutions
4 Perdido Dr
Little Rock, Ark 72211
501-227-9373
timorellanohrteam@comcast.net
www.thehumanresourceteam.com

Lynn A. Clements, Esq.
Director, Regulatory Affairs
Berkshire Associates Inc.
8924 McGaw Court
Columbia, MD 21045
1.800.882.8904, Ext. 1246
lynnc@berkshireassociates.com
www.berkshireassociates.com