



# **Managing Worst Case AAP Results: What to Do Now**

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# Setting the Stage

- **Review of AAP Results**
- **Why? Compliance obligation**
- **When? When AAPs completed**
- **What?**
  - **Goals**
  - **Progress toward Last Year's Goals**
  - **Adverse Impact (favored group)**
  - **Compensation Analysis**
  - **Outreach Veterans/Individuals with Disabilities**



# When?

- **When AAPs finished**
  - **ASAP in AAP year**
  - **Time to flush out data issues and substantive issues**
  - **In time for action plans to be implemented: recruiting, hiring, promotions, compensation**
  - **Timely for your credibility with leadership**
- **When receive Advance Notice (CSAL)**
  - **Quickly!**
- **When receive Scheduling Letter**
  - **Too late to do much!**



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# What?

- **Priority of Issues?**
- **Level of Risk**
  - **\$\$**
    - **OFCCP audits, litigation**
  - **Failure to meet Internal Objectives**
    - **D& I Goals re representation**
  - **External Reputation**
    - **Public image**



# \$\$ Risk- OFCCP Audit, Litigation

- **Adverse Impact**

- **HIRING!**
- **Promotion & Termination**

- **Compensation**

- **BASE**
- **Bonus**
- **Etc**
- **In 2019, maybe EEO-1 Pay Report results**



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# No \$\$ Risk, but Failure to Meet Internal Objectives

- **Representation Goals**
- **Failure to Achieve Last Year's Goals**
- **Insufficient Outreach for Veterans or Individuals with Disabilities, Women or Minorities**





# External Reputation

- **What information have you published on your website or elsewhere (e.g. Pay Gap, Diverse Representation)**
- **What litigation/issues/criticisms about your organization are in the public domain (e.g. Class Actions, Customer dissatisfaction)**
- **In which public rankings do you participate (e.g. Best Places to Work, Diversity, Corporate Responsibility)**
- **What other compliance standards govern your organization (e.g. Dodd-Frank, accessibility)**



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# Our Process Today

- **Forensic Evaluation**
- **Additional Research**
- **Preparation for Communication to Management**
- **Next Steps- Action!**

• **EVALUATE- RESEARCH- COMMUNICATE- ACTION**





# Forensic Evaluation

- **You are the detective!!**
- **Verification of data**
  - Internet applicant definition
  - Applicant flow counts and other errors
- **Verification of proper analysis methodology**
  - Favored group adverse impact
  - What compensation analysis method?
- **Additional critical quantitative (data/numbers) analysis**
  - Steps analysis!!
- **Consult with counsel re establishing confidentiality privilege over your work**



# Additional Qualitative Research

- **Fact-finding discussion with**
  - **Recruiters**
  - **Hiring managers**
  - **Compensation management**
  - **D&I**
  - **Key external providers**
    - **Who list your jobs with ESDS**
    - **Develop your AAPs**
  - **Review with internal or external counsel**



# Preparation for & Communication to Management

- **Ensure your communication is “at direction of counsel”**
- **Summarizing the hot issue(s)**
  - **Style of communication- no “OFCCP speak”**
  - **Getting their attention**
  - **Ensuring understanding**
- **Translating the significance of the risk**
  - **Is the house burning down, or only the garden shed?**
  - **Use of OFCCP or other press releases**
  - **Computing potential financial loss**
- **Summarizing your work to date in assessing the issue**
  - **Show thoroughness but control level of detail, demonstrate reliability**
- **Recommend next steps**





# Next Steps- Action!

- **If Management is not responsive**
  - Escalate? To whom?
  - Risks?
- **If Management says, “ please fix it!”**
  - It may take a village
  - Project management approach
  - Roles/responsibilities, timelines
  - Get budget approval
  - Monitor to ensure fix is effective/progress is being made



# Case Studies

- **NOW IT'S YOUR TURN!!!**
- **Evaluate-Research-Communicate-Action**



# Apparent Hiring Discrimination

- **Customer Service Representative**
- **Asians are selected at a rate that is 13 Standard Deviations less than Whites**
- **You suspect that the hiring manager is screening out persons who may speak with an accent**
- **The company has recently settled a large class action alleging race discrimination against Asians for \$15 million**
- **You have an advance audit notice/CSAL from OFCCP where all CSRs are employed**
- **EVALUATE-RESEARCH-COMMUNICATE-ACTION**





# Apparent Hiring Discrimination

- **EVALUATE-** 13 SDs, really? Steps analysis!
- **RESEARCH-** chat with Hiring Manager
- **COMMUNICATE-** your Manager & Counsel
- **ACTION-** Audit prep: defense of accent-based screening? Change practice? Hire from last year's applicant flow?



# Pay Disparity

- **Your AAP pay analysis which detects differences of 5% or more by job group shows that women in several job groups are paid 40% less than men**
- **Your company's CEO has made public statements about the importance of pay equity**

• **EVALUATE- RESEARCH- COMMUNICATE- ACTION**



# Pay Disparity

- **EVALUATE-** conduct more specific pay analysis by similar jobs (not job group), consider multiple regression analysis or mini
- **RESEARCH-** discuss with Compensation department
- **COMMUNICATE-** your Manager, Compensation
- **ACTION-** ensure your future pay analyses are coordinated with other pay equity reviews in the organization
- **EVALUATE-RESEARCH-COMMUNICATE-ACTION**







# Failure to Make Progress to Goals

- Each year for as long as you can remember there is a female goal for Drivers and prior OFCCP audit concluded with a Conciliation Agreement requiring more outreach
- While the company employs hundreds of drivers, there are rarely any female applicants for these jobs
- The company occasionally hires a female but they quit within several months and join another local company
- The new Chief of Diversity & Inclusion is focused on glass ceiling issues, not issues about Driver hiring
- Last week you received an OFCCP Scheduling Letter announcing an audit



- **EVALUATE- RESEARCH- COMMUNICATE- ACTION**

# Failure to Make Progress to Goals

- **EVALUATE-** review any female applicant flow and hires within last 2 years, review termination documents
- **RESEARCH-** discuss outreach & screening with recruiters, terminations with manager of Drivers
- **COMMUNICATE-** your manager, D&I, third party sources of applicants
- **ACTION-** document outreach efforts, target new effective sources, increase targeted outreach efforts





# No Outreach to Vets or IWD

- You have been conducting annual webinars to stimulate local HR managers to recruit and hire veterans and individuals with disabilities
- You just received an audit letter for your largest location outside HQ which is near a large military base
- The location has done no outreach, has no recruiting efforts, has hired no vets or person with disabilities and has not administered any vets/IWD self-identification for employees
- **EVALUATE- RESEARCH- COMMUNICATE- ACTION**





# No Outreach to Vets or IWD

- **EVALUATE-** review HQ and other efforts for local results, review vets/IWD job board listings of local jobs
- **RESEARCH-** discuss with 3D party job listing service, survey local managers & employees for their activities, review results of employee referral program for vets/IWD
- **COMMUNICATE-** your Manager, D&I
- **ACTION-** immediately conduct self-ID process, start local outreach and documentation process



# Questions??

- **Thanks!**

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