Biddle Consulting Group Institute for Workforce Development (BCGi)

AAP Cross-Fit: Basic Training to Get Your Organization Into Compliance

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Overview of Biddle Consulting Group, Inc.

Affirmative Action Plan (AAP) Consulting and Fulfillment	• Thousands of AAPs developed each year • Audit and compliance assistance • myAAP™ Enterprise software
HR Assessments	• AutoGOJA™ online job analysis system • TVAP™ test validation & analysis program • CritiCall™ pre-employment testing for 911 operators • OPAC™ pre-employment testing for admin professionals • Video Situational Assessments (General and Nursing)
Custom Test Development & Validation	• "High stakes" test development • Validation studies in response/prevention to litigation
EEO Litigation Consulting /Expert Witness Services	• Over 200+ cases in EEO/AA (both plaintiff and defense) • Focus on disparate impact/validation cases
Compensation Analysis	• Proactive and litigation/enforcement pay equity studies • COMPare™ compensation analysis software
Publications/Books	• EEO Insight™: Leading EEO Compliance Journal • Adverse Impact (3rd ed.) / Compensation (1st ed.)
BCG Institute for Workforce Development	• 7,500+ members • Free webinars, EEO resources/tools
Speaking and Training	• Regular speakers on the national speaking circuit

Biddle Consulting Group Institute for Workforce Development (BCGi)

- BCGi Memberships (free): ~7,500+ members / 18,000+ HRCI credits to-date
  - Online community
  - Monthly webinars on EEO compliance topics
  - *EEO Insight* Journal (e-copy)
- BCGi Platinum Membership ($299/yr)
  - Includes validation/compensation analysis books
  - EEO Tools including those needed to conduct AI analyses
  - *EEO Insight* Journal (e-copy and hardcopy)
  - Access to the BCGi library of webinars, training materials, and much more …

www.bcginstitute.org

Agenda

- **Part 1: Comparing Incumbency to Availability**
  - What We Look Like vs What We "Should" Look Like
- **Part 2: Disparity Analyses**
  - How We Got This Way

Agenda

- **Part 1: Comparing Incumbency to Availability**
  - What We Look Like vs What We "Should" Look Like
- **Part 2: Disparity Analyses**
  - How We Got This Way

Important Note

- An AAP is simply a "business plan" related to equal employment opportunity (EEO)
- Contractors need to stop thinking of AAPs as regulatory documents and more as a collection of analyses, and related strategies, to identify and rectify issues related to EEO
  - Identify a goal (e.g., reduce theft/shrinkage, identify/remove non-job-related barriers to employment)
  - Establish a baseline
  - Compare current-state to the baseline
  - Create strategies (aka Action-Oriented Programs) to address identified issues
  - Implement those strategies (i.e., the "plan")
  - Measure again later to see if the strategies are working
  - Change/modify plan – keep what's working, change what's not

Comparing Incumbency to Availability

- A central premise underlying affirmative action is that, assuming all else being equal (and absent discrimination), over time a contractor's workforce will reflect the gender, racial and ethnic profile of those with the "requisite skills" in the labor pools from which the contractor recruits and selects
- If women, minorities, or individuals with disabilities are not being employed at expected rates (given their availability in the qualified/relevant labor pool), the contractor's affirmative action program includes specific practical steps designed to address this disparity

CFR §60-2.10 General purpose and contents of affirmative action programs

Comparing Incumbency to Availability

- As it relates to a comparison of incumbency to availability, an affirmative action program must include the following *quantitative reports/analyses*:
  - (i) Organizational profile—§60-2.11
  - (ii) Job group analysis—§60-2.12
  - (iii) Placement of incumbents in job groups—§60-2.13
  - (iv) Determining availability—§60-2.14
  - (v) Comparing incumbency to availability—§60-2.15
  - (vi) Placement goals—§60-2.16

What We Look Like: Job Groups

- Availability analyses are conducted for each location (or FAAP), by "job group"
- Job groups are aggregations of jobs that are similar in "content, wage rate, and opportunity"
- Job groups are used to:
  - —Increase sample size to yield meaningful results
  - —Reduce the number of analyses conducted
- Job groups should *never* cross EEO categories

Important Note: Job group aggregations are the OFCCPs first experience with your data when it's submitted during an audit. Be thoughtful when creating job groups. You could be artificially creating problems! Same thing goes for pay grades!

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What We Look Like: Job Groups

Snapshot Date: 12/31/2016

Job Group Analysis

Job Group: 7-03: Skilled Machine Operator

				Total				
EEO Cat	Job Code	Census Code	Job Title	Employees	Male	Female	White	Minority
7	123	7830	Divider Operator	4	4	0	0	4
7	234	7830	Ingredient Scaler	3	3	0	0	3
7	345	7830	Machine Operator	6	3	3	1	5
7	456	7840	Mixer	5	5	0	1	4
7	567	7830	Over Operator	6	6	0	1	5
7	678	7840	Racker/Trayer	15	15	0	2	13
7	789	7830	Relief Person	14	8	6	0	14
			Total (#)	53	44	9	5	48
			Total (%)		83.0	17.0	9.4	90.6

This is the incumbency that will ultimately be compared to availability . . .

What We Should Look Like: Final Availability

What we "should" look like is referred to as the "final availability"

- It is an estimate of the number of *qualified* minorities or women available for employment in a given job group
- It's a combination of *internal* and *external* data (i.e., factors) used to identify what those qualified to work in the job group are "supposed" to look like
- In the "comparison of *incumbency* to *availability*" analysis, the final availability will be compared to the job group headcounts to determine the existence of underutilization

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What We Should Look Like: Final Availability

External Factor (i.e., typically census data)

- Step 1: Define the local labor area
- Step 2: Assign census occupation codes to all jobs (487 available to choose from)
- Step 3: Mathematically weight census codes based upon representation within each job group
- Step 4: Identify relevant data other than local/census (e.g., state/national/applicant – if any)

Internal Factor (i.e., "feeder" data)

- Step 1: Identify feeder jobs/job groups – those employees who are "promotable and/or transferrable")
- Step 2: Mathematically weight feeders based on relevance (e.g., flow/movement of internal employees)

<u>Important Note:</u> Results are only as good as the amount of effort put into this process! But don't get caught in the weeds . . . this is equal parts art and science!

External Factor
Step 1: Define the Local Labor Area

Example: Happy Software location in San Mateo

Happy Software Corp. HQ
(500 Employees)

External Factor
Step 1: Define the Local Labor Area

Software Developers (2006-2010)

	Male	Female	White	Black	Hispanic	Asian	NHOPI	AIAN	2+
SF CBSA	80.0%	20.0%	42.3%	1.3%	3.1%	52.0%	0.1%	0.3%	0.9%

	Male	Female	White	Black	Hispanic	Asian	NHOPI	AIAN	2+
SJ CBSA	78.1%	21.9%	30.1%	0.8%	2.3%	65.5%	0.0%	0.2%	1.2%

BCG advocates using a (employee/applicant) ZIP code analysis to identify the most precise local labor area(s):

San Mateo: 37.2%
Santa Clara: 32.1%
Alameda: 15.6%
Santa Cruz: 8.7%
San Francisco: 5.1%

What remains is the local labor area (with corresponding weights)

Marin: 1.0%
Contra Costa: 0.2%
Portland: 0.1%

"Trim" spurious and/or misleading labor areas, including those that have negligible contributions

External Factor
Step 2: Assign Census Occupation Codes

- Census occupation codes (aka “census codes”) are links between your jobs and the external census data
- Each distinct job is assigned to one of 487 codes

2006-2010 Census Code Toolkit

- The census data for each code is weighted based upon it’s representation within each job group

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External Factor
Step 2: Assign Census Occupation Codes

								Snapshot Date: 12/31/2016			
		External Availability (Raw)									
AAP:	Location ABC										
Job Group:	7-03: Skilled Machine Operator										
Labor Area:	National										
		Raw (%)									
Cns Code	**Census Code Title**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
7830	Roasting, Baking Machine Ops	68.3	31.7	39.1	60.9	16.3	16.5	3.0	1.5	0.4	1.4
7840	Food Batchmakers	44.2	55.8	38.4	61.6	11.7	19.9	4.4	1.2	0.2	1.0
Labor Area:	Local										
		Raw (%)									
Cns Code	**Census Code Title**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
7830	Roasting, Baking Machine Ops	29.0	71.0	42.6	57.4	20.1	22.5	0.0	0.0	0.0	0.0
7840	Food Batchmakers	32.0	68.0	75.5	24.5	17.1	56.0	2.4	0.0	0.0	0.0

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External Factor
Step 3: Weight Census Occupation Codes

Snapshot Date: 12/31/2016

External Availability (Weighted)

62.3% of the employees in this job group are in jobs assigned to code 7830

AAP: Location ABC

Job Group: 7-03: Skilled Machine Operator

Labor Area: National

			Weighted (%)									
Cns Code	**Census Code Title**	**Weight (%)**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
7830	Roasting, Baking Machine Ops	62.3	42.5	19.8	24.3	37.9	10.2	10.3	1.8	0.9	0.2	0.9
7840	Food Batchmakers	37.7	16.7	21.1	14.5	23.3	4.4	7.5	1.7	0.4	0.1	0.4
		100.0	59.2	40.9	38.8	61.2	14.6	17.8	3.5	1.3	0.3	1.3

Labor Area: Local

			Weighted (%)									
Cns Code	**Census Code Title**	**Weight (%)**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
7830	Roasting, Baking Machine Ops	62.3	18.0	44.2	26.5	35.8	12.5	14.0	0.0	0.0	0.0	0.0
7840	Food Batchmakers	37.7	12.1	25.7	28.5	9.2	6.4	21.1	0.9	0.0	0.0	0.0
		100.0	30.1	69.9	55.0	45.0	18.9	35.1	0.9	0.0	0.0	0.0

External Factor
Step 4: Identify relevant data other than local

State/National Census Data

Miscellaneous (Potentially) Available Data Sets

- Applicants
- Graduate data
- Internal/External training course attendees
- Mentorship Programs

Internal Factor
Step 1: Identify relevant feeders

- Internal Factor:
  - Positions are not always filled via external sources . . . it's also necessary to identify internal sources of availability information
  - Step 1: Identify "feeders" for all job groups
  - Step 2: Weight feeders based on historical promotions data (i.e., data-driven . . . for starters . . . with a *heavy* dose of personal review because there will be crazy stuff)

Target Job Group	Weight	Feeder Job Group
1A – Management	75.0	1B – Middle Management (Directors)
	25.0	1C – Managers/Supervisors

Internal Factor
Step 1: Identify relevant feeders

								Snapshot Date: 12/31/2016			
			Internal Availability (Raw)								
AAP:	Location ABC										
Job Group:	7-03: Skilled Machine Operator										
			Raw (%)								
Plan	**Feeder**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
ABC	7-05: Loaders/Checkers	100.0	0.0	85.7	14.3	0.0	85.7	0.0	0.0	0.0	0.0
ABC	7:06: Sanitors	100.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0

Internal Factor
Step 2: Weight feeders

Snapshot Date: 12/31/2016

Internal Availability (Weighted)

AAP: Location ABC

Job Group: 7-03: Skilled Machine Operator

50.0% of the internal movements ***into*** job group 7-03 come from job group 7-05

			Weighted (%)									
Plan	**Feeder**	**Wght (%)**	**M**	**F**	**MIN**	**W**	**AA**	**H**	**A**	**NA**	**PI**	**2+**
ABC	7-05: Loaders/Checkers	50.0	50.0	0.0	42.9	7.1	0.0	42.9	0.0	0.0	0.0	0.0
ABC	7:06: Sanitors	50.0	50.0	0.0	50.0	0.0	0.0	50.0	0.0	0.0	0.0	0.0
		100.0	100.0	0.0	92.9	7.1	0.0	92.9	0.0	0.0	0.0	0.0

Note: Job groups should ***never*** be a feeder for themselves.

Final Availability: Assigning Factor Weights

- Factor Weights:
  - The weight given to the internal and external availability data (i.e., factors) for each job group
  - Identifies the relative "importance" of each set of data
- Assigning factor weights requires the user ask the following question:
  - "Out of 100 hypothetical movements into this job group, what number do I expect to come from a local recruitment area, reasonable recruitment area, or an internal pool?"

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What We Should Look Like: Final Availability

Raw (%) x Factor Weight = Weighted (%)

Snapshot Date: 12/31/2016

Final Availability

Job Group: 7-03: Skilled Machine Operator

	Raw (%)			Weighted (%)		
Factor	**Fem**	**Min**	**Factor Weight**	**Fem**	**Min**	**Source**
External Factors						
Local	69.9	55.0	50.0	34.9	27.5	Employee ZIP Code Analysis
Reasonable	40.8	38.8	0.0	0.0	0.0	National Labor Area
Internal Factor						
Feeders	0.0	92.9	50.0	0.0	46.4	Feeders
		Final Avail (%)	100.0	34.9	73.9	

Sum of Weighted (%) = Final Availability (%)

Final Availability (%) = Goal

Comparison of Incumbency to Availability

Snapshot Date: 12/31/2016

Comparison of Incumbency to Availability

Job Group: 7-03: Skilled Machine Operator

Test: Whole Person

Total Employees (#): 53

	Total	
	Female	**Minority**
Employee (#)	9	48
Employee (%)	17.0	90.6
Availability (%) – Goal	34.9	73.9
Test: Whole Person	Yes	No
Additional Needed to Eliminate Problem Area (#)	9	0

Necessary to understand the magnitude of the issue, but should ***never*** be considered a quota . . .

Comparison of Incumbency to Availability

- Regulations require contractors to *compare the percentage of minorities and women in each job group with the availability for those job groups* determined in the availability analysis
- When the percentage of minorities or women employed in a particular job group is *less than would reasonably be expected*. . . the contractor must establish a placement goal and create action-oriented programs associated with that goal

Comparison of Incumbency to Availability

- What is "less than would reasonably be expected"?
  - Any Difference: Is there any difference between incumbency and availability?
  - Whole Person Rule: Is the difference between incumbency and availability at least one whole person?
  - 80% Rule: Is incumbency at least 80% of availability?
  - Statistical Significance: Is the difference between incumbency and availability statistically significant?

Comparison of Incumbency to Availability

Statistical Significance
- Least proactive
- Legally-oriented
- Least goals

Any Difference
- Proactive
- Diversity-Oriented
- Most goals/misleading?

80% Test
- Has historical value
- Misleading?

Whole Person
- Focus on tangible issues
- Good with small orgs/job groups
- Balanced

Important Note: ***Identifying underutilization is NOT a declaration of discrimination***. Choose a rule that best represents your organizational size/structure and how it views/perceives affirmative action.

Comparison of Incumbency to Availability

External Census Data

Internal Availability Data

Assign factor weights . . .

Final Availability Data

Compare to . . .

Actual Representation (Incumbency/Headcount) Data

If goal exists . . .

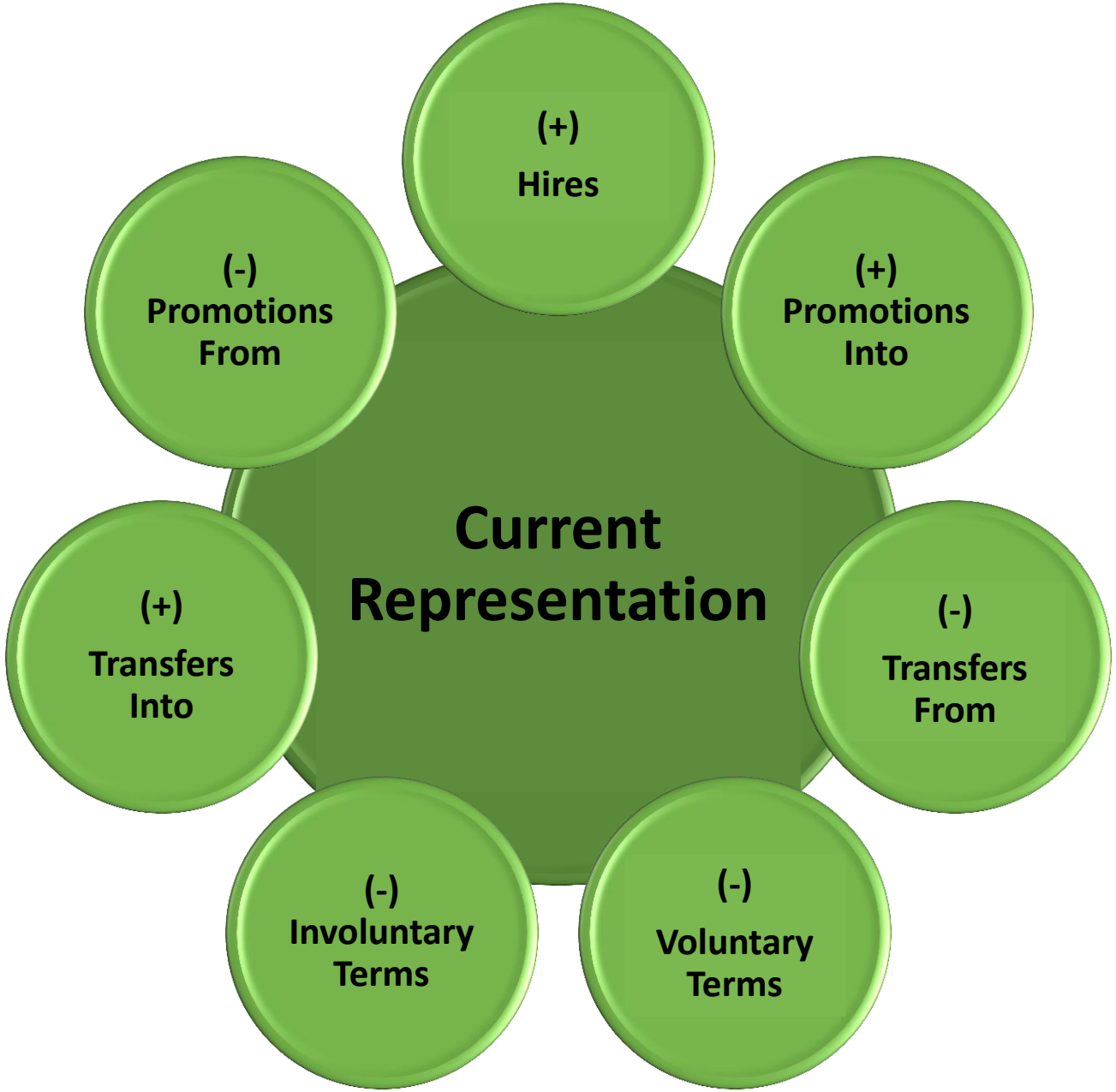
Create Goal/Action-Oriented Program

Comparing Incumbency to Availability: Recommendations

Strategies and Recommendations

- Periodically review job groups
  - Avoid extremely large job groups (if possible)
  - Single job titles, with a large number of incumbents, can be their own job group
- Periodically re-evaluate census codes, local labor area, feeders
- Don't get "stuck in the weeds" – this is as much art as math/science
- Prioritize the "big ticket" items
- ***Remember, addressing goals is so much more than just a recruitment issue!***

- Part 1: Comparing Incumbency to Availability
  - What We Look Like v What We "Should" Look Like
- **Part 2: Disparity Analyses**
  - **How We Got This Way**



Adverse/Disparate Impact: A Legal Framework

An **unlawful** employment practice based on disparate impact is established only if:

1. **A complaining party demonstrates that a respondent uses a particular employment practice that causes an adverse impact**

and

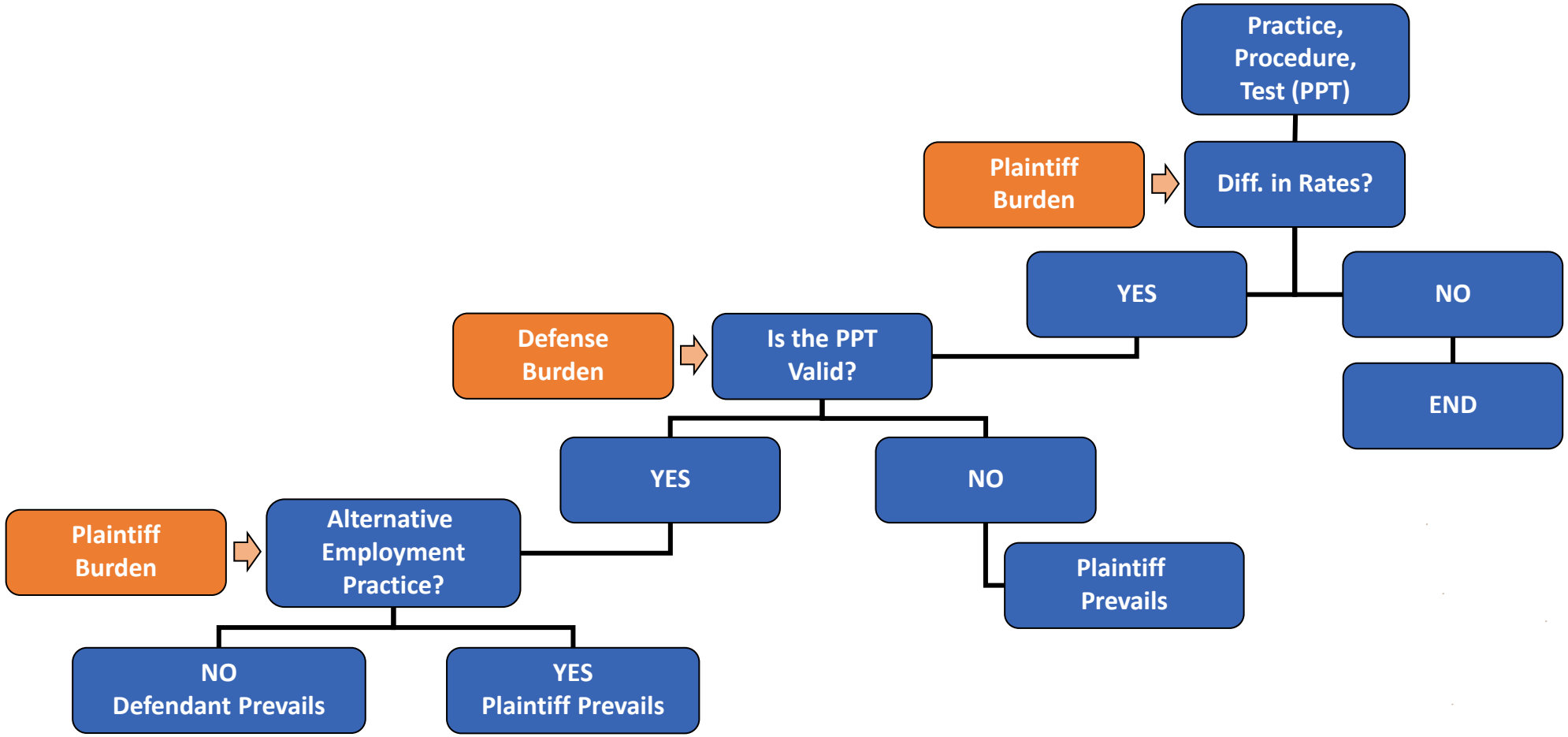
2. **the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity**

or

3. **the complaining party makes the demonstration described above with respect to an alternate employment practice, and the respondent refuses to adopt such alternative employment practice.**

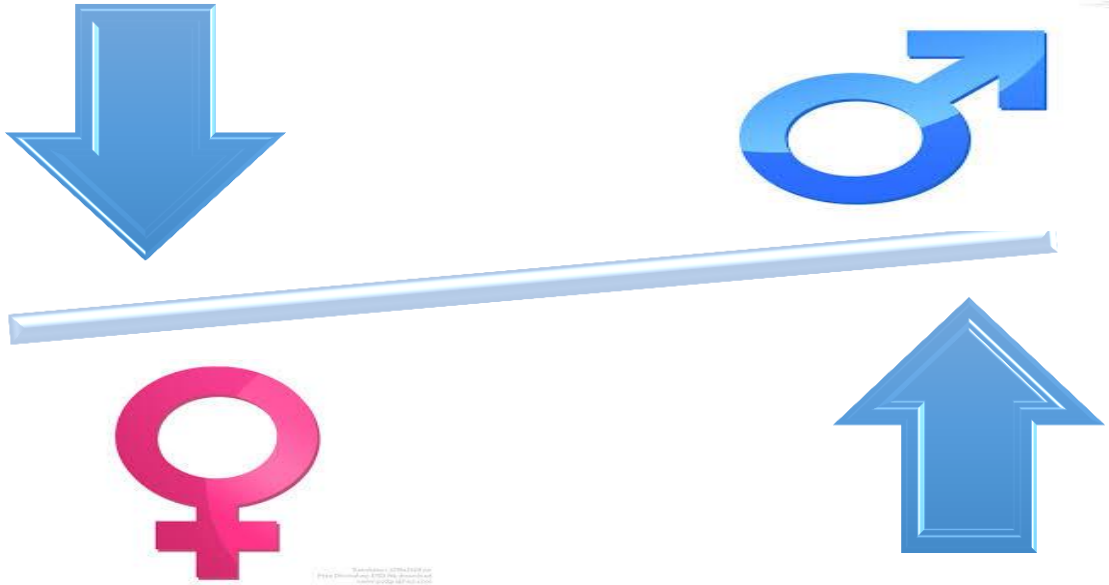
Adverse/Disparate Impact: A Legal Framework

How selection processes are challenged . . .



Plaintiff Burden: Identify if Disparate Selection Rates Exist

Does a practice, procedure or test (PPT) result in **disproportionate selection rates** by gender, race/ethnicity, or age group?



Important Note: "Intent" is not required. It doesn't matter that recruiters or hiring managers may never see an applicants gender and/or race. All that matters is whether there is a selection rate disparity.

Plaintiff Burden: Identify if Disparate Selection Rates Exist

- Same for hires, promotions, terminations, transfers, etc.
- 2 X 2 Table Comparison
- Impact Ratio Analysis (IRA)
- Fisher Exact / Chi-Square / 80% Test

Men Pass (50)	Men Fail (50)	→ Men Passing Rate (50%)
Women Pass (25)	Women Fail (75)	→ Women Passing Rate (25%)

Results in a value indicating if the observed difference in rates is due to chance (i.e., statistically significant).

Important note: Discrimination can impact any group. Make sure to analyze men and individual minority subgroups as well. Compare all groups to the "group with the highest rate."

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Plaintiff Burden: Identify if Disparate Selection Rates Exist

Significant Differences:

- OFCCP Burden Met (initially)
- Validation Requirement
- Additional Data Requests Likely
- Audit More Likely to Get Ugly

No Significant Differences:

- OFCCP Burden Not Met
- No Validation Requirement
- Audit Less Likely to Get Ugly

Disparity Analyses: The Typical Approach

Statistical Significance and Power

- Statistical Significance: The point at which differences become large enough that one can claim a trend exists
- Statistical Power: The ability to see those trends if, in fact, they do exist
- Statistical power is directly related to *effect size* and *sample size*:
  - —Effect size: The size of the difference in selection rates between two groups . . . the larger the difference the fewer transactions necessary to detect statistical significance
  - —Sample size: With larger numbers of transactions it becomes much easier to detect statistical significance

Statistical Significance and Power

- Enforcement agencies have no control over effect size (i.e., the difference in selection rates), but they do have some control over sample size . . . which is why they often request two (2) years worth of data (or more: Frito-Lay) to analyze.
- However, simply aggregating all applicants and all hires across strata (as is typically done), can sometimes result in incorrect/misleading findings.

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Statistical Significance and Power

	Men		Women	
	(#)	(%)	(#)	(%)
Pass	100	50.0	90	45.0
Fail	100	50.0	110	55.0
80% Test (1)	Company A		0.90	
Stat. Test-EXACT (2)			0.343	
Pract. Test (to Exact Test) (3)			N/A	
Stat. Test-ESTIMATED (2)			0.317	

	Men		Women	
	(#)	(%)	(#)	(%)
Pass	200	50.0	180	45.0
Fail	200	50.0	220	55.0
80% Test (1)	Company B		0.90	
Stat. Test-EXACT (2)			0.168	
Pract. Test (to Exact Test) (3)			N/A	
Stat. Test-ESTIMATED (2)			0.157	

So, given that "big numbers are bad numbers," what important lessons do we need to take from this?

PRIORITIZE THE HIGH-VOLUME POSITIONS FIRST!

	Men		Women	
	(#)	(%)	(#)	(%)
Pass	300	50.0	270	45.0
Fail	300	50.0	330	55.0
80% Test (1)	Company C		0.90	
Stat. Test-EXACT (2)			0.088	
Pract. Test (to Exact Test) (3)			N/A	
Stat. Test-ESTIMATED (2)			0.083	

	Men		Women	
	(#)	(%)	(#)	(%)
Pass	400	50.0	360	45.0
Fail	400	50.0	440	55.0
80% Test (1)	Company D		0.90	
Stat. Test-EXACT (2)			0.048	
Pract. Test (to Exact Test) (3)			N/A	
Stat. Test-ESTIMATED (2)			0.045	

Disparity Analyses: The Typical OFCCP Approach

- OFCCP's initial analysis will typically be by *AAP job group* regardless of different:
  - — Job titles
  - — Selection processes
  - — Hiring managers
  - — Basic qualifications
  - — Locations (perhaps)
  - — Applicant pools for separate requisitions (perhaps)
- Typically an aggregation of 12 months (sometimes 18/24 months) worth of transactions into a single 2x2 table
- Considers everyone who applied throughout the year as available for every hire throughout the year

Important Note: AAP Job groups were never originally intended to be used with disparity analyses . . . only comparisons of incumbency to availability . . . because if you think about it, they don't make sense here!

Disparity Analyses: The Typical OFCCP Approach

ALL applicants and **ALL** hires for a 12-month period

Men Pass	Men Fail
Women Pass	Women Fail

There is nothing wrong with this approach . . . as an initial inquiry only. Sometimes this approach is used as the basis for a Notice of Violation (NOV) or plaintiff class action litigation; however, ***it is up to the employer to provide rebuttal analyses that more accurately reflect reality!***

Why Data Just Can't Simply be Aggregated: Simpson's Paradox

Job Group: 08 - Warehouse Laborers

Job Title	Group	Applicants (#)	Selected (#)	Selection Rate (%)
Warehouse Person	Men	400	200	50.0%
	Women	100	50	50.0%
Laborer	Men	100	20	20.0%
	Women	100	20	20.0%
W/H Person + Laborer Combined	Men	500	220	44.0%
	Women	200	70	35.0%

- Fisher Exact Test: SD = 2.16 (Significant)
- Mantel-Haenszel: SD = .024 (NOT Significant)

Disparity Analyses : The Right Way

Separate and Distinct Events . . . ?

ALL applicants and **ALL** hires throughout the time period

Men Pass	Men Fail
Women Pass	Women Fail

= Chi-Square or Fisher's Exact

Job 1 + Job 2 + Job 3

Men Pass	Men Fail
Women Pass	Women Fail

Men Pass	Men Fail
Women Pass	Women Fail

Men Pass	Men Fail
Women Pass	Women Fail

Component "Step" Analyses

Component "Step" Analyses

Title VII of 1964/1991 Civil Rights Act

An unlawful employment practice based on disparate impact is established under this title only if a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact . . .

Important Note: Enforcement agencies have every right to investigate the practices, procedures, and tests (PPTs) contractors use to screen applicants. However, in the past, due to resource constraints they wouldn't typically do so unless there was adverse impact in the overall hiring process.

Times have changed! Know if your PPTs have impact!

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Component "Step" Analyses

Male v. Female			
Steps	**Starting**	**Completing**	**Result**
Overall (App vs. Hired)	Male - 100 Female - 100	Male - 50 Female - 30	2.81 SD
1. Basic Qualifications	Male - 100 Female -100	Male – 79 Female - 77	0.25 SD
2. Test	Male - 79 Female - 77	Male – 65 Female - 35	4.80 SD
3. Interview	Male - 65 Female - 35	Male – 60 Female - 32	0.18 SD
4. Final Selection	Male - 60 Female - 32	Male – 50 Female - 30	0.00 SD

Component "Step" Analyses

Important Note: Aside from being legally required, why would an employer want to conduct step analyses?

Statistically Significant Disparity (alone) ≠ Discrimination

If the employer can "pin" the impact on a specific step, then they are able to use a validity defense. In the absence of this, the enforcement agency is allowed to use the overall (applied v hired) analysis.

Disparity Analyses: Recommendations

Strategies and Recommendations

- Make sure "analyses reflect reality"
  - Data must reflect reality (do your clean-up)
  - Statistical analysis must reflect reality
- Focus on the "big ticket" items
- Find the step causing the impact
- It is up to you (or your expert) to "guide" the OFCCP toward the "truth"… if you don't do it, who will?

Before you start freaking out, there is a tool. Just join BCGi . . .

Adverse Impact Toolkit™

Overall Summary and Conclusion

- It is imperative that practitioners (at least conceptually) "know" these statistics:
  1. Comparison of Incumbency to Availability
     - What is availability and how is it calculated?
  2. Adverse Impact Analyses
     - Typical v. how to do it right
- Know your practices, procedures, and tests (PPTs)
- Analyses must reflect reality (i.e., the reality that existed as selection decisions were made

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Comparison of Incumbency to Availability: Section 503

<u>Utilization Goal(s) for Individuals with a Disability</u>

- Contractors are required to survey their workforce (using the OFCCP's 503 survey form) within 12 months of being subject to §503, and every five (5) years thereafter
- Disability representation will be compared to 7.0 % "aspirational" goal
  - A "yardstick" against which contractors can measure success
  - Applied to the entire workforce if contractor has ≤100 EEs; to each job group if contractor has 100+ EEs
  - The OFCCP may review and update (as appropriate) the 7.0% aspirational goal
- FAQs imply that contractors should use the "any difference" rule; however, they further state that it is up to contractors to determine "whether and where" impediments exist

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Comparison of Incumbency to Availability: Section 503

Utilization Goal(s) for Individuals with a Disability

- If underutilized, the employer must:
  - take steps to determine whether and where impediments to equal opportunity exist
  - develop and implement action-oriented programs (AOPs) to correct any identified problem areas
- "Failure to meet the disability goal is not a violation of the regulations and will not lead to a fine, penalty or sanction. [The regulations] further state that a contractor's determination that it failed to meet the disability goal does not constitute either a finding or admission of discrimination in violation of the regulation."
- BCG Opinion: The disability goal will be used/interpreted by the OFCCP exactly how the women/minority goal is interpreted . . . If the goal is not met it simply opens to door to questions regarding action-oriented programs and good-faith efforts.

VEVRAA (Subpart C): Hiring Benchmarks

Hiring Benchmark(s) for "Protected Veterans"

- Contractors must establish an annual hiring benchmark
- May use national percentage of veterans in the CLF (currently 6.7%) or may calculate own percentage based upon five criteria:
  1. Average % of veterans in CLF
  2. # of veterans in state ESDS over past twelve months
  3. Applicant/hire data over past year
  4. Contractors own assessment of outreach and recruitment
  5. Any other related factor
- May apply benchmark to job groups, EEO-1 categories or workforce for each establishment separately

http://www.dol-esa.gov/errd/VEVRAA.jsp



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VEVRAA (Subpart C): Hiring Benchmarks

Data Collection (VEVRAA)

Contractors shall collect the following data on a yearly basis. All data and analyses shall be retained for a period of three (3) years.

Data Requirements

- ✓ The # of applicants who self-ID'd as protected veteran (or who are otherwise known to be a protected veteran)
- ✓ Total # of protected veteran applicants hired
- ✓ Total # of applicants for all jobs
- ✓ Total # of applicants hired
- ✓ Total # of job openings
- ✓ Total # of jobs filled

Data will be used to ***evaluate the effectiveness*** of outreach/ recruitment as well as progress toward the hiring benchmark.

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opportunity. for all.