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**Effective Affirmative Action**

# **How to Properly Implement a Completed Affirmative Action Plan**

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# Agenda

## Implementing Affirmative Action

- Compliance Staff – Basic Implementation
  - Internal Audit and Review
  - Assessing Outreach
- Training on Results - Leadership
- Training on Results - Staff

# Preface

On an HR bulletin board:

**“I need to provide compliance/AAP training for my company, does anyone have examples or advice for me?”**

**Response #1** – Keep it very basic and short, management doesn’t care about these things.”

**Response #2** – I agree with #1, don’t put a lot of effort into it. No one cares.

**OutSolve comment** – Actually considering the risks involved in failing to be compliant and the potential for real ROI in the hiring process it is worth the effort to get the company on board and to try and impact the company culture.

**Response #3** – I agree with #1 and #2. Don’t waste your time. The consultant response is just trying to validate the expense.

# Preface

## **In a Perfect World....**

- Affirmative Action is embraced as a key company asset
- Compliance has a budget to match it's needs
- The annual AAP review with leadership is a significant, and heavily attended function
- The hiring process is built around compliance laws using an advanced Applicant Tracking and Hiring System that seamlessly interact
- Your company is a top sponsor for ILG events

# Preface

## ➤ Then there's reality

Executives (often) see compliance as a cost, not as an asset that creates growth

Compliance staff has huge responsibility with limited resources and support

Hiring staff sees makes every effort, BUT compliance remains a speed bump to doing their job

The new regulations compound the challenges listed above

# Implementation Requirements

Compliance staff needs to “complete” the plan development process by:

Addressing current and the future needs by:

- Reviewing the results - populate outreach and audit reporting documents
- Translating compliance needs (training) internal staff both leadership and hiring teams
- Preparing to adapt internal processes for the purpose of reaching goals/benchmarks
- Being prepared for an eventual audit

# Internal Audit and Reporting System

## Annual Compliance Checklist/Audit and Reporting System

Obligations of Contractors	Requirements	Compliance (Y/N)	Date Reviewed	Follow-up actions necessary (if any)
Equal Opportunity Clause §60-300.5(a)(2)	Listed external job openings with state workforce agency job bank or with the local employment service delivery system (ESDS)			
Equal Opportunity Clause §60-300.5(a)(4)	Informed State Agencies or ESDS of Federal Contractor status and contact information			
Equal Opportunity Clause §60-1.42; §60-300.5(a)(9) & §60-741.5(a)(4)	EEO is the Law poster is on bulletin boards and accessible to remote employee/applicants			
Equal Opportunity Clause §60-1.35	Disseminate the nondiscrimination provision, using the language as prescribed by the Director of OFCCP, to employees and applicants			
Equal Opportunity Clause §60-1.4(a)(4); §60-300.5(a)(10) & §60-741.5(a)(5)	Notified union officials of company's EEO Policy (if applicable)			
Equal Opportunity Clause §60-1.4(a)(8); §60-300.5(a)(11) & §60-741.5(a)(6)	Updated Purchase Order Language			
Equal Opportunity Clause §60-1.4(a)(2); §60-300.5(a)(12)) & §60-741.5(a)(7)	EOE Tagline is on all job postings			
Reasonable Accommodation Obligation 60-741.21 (a)(6)(iii) Reasonable Accommodation Procedures §60-741.21(a)(6)(vi) & §60-741.44(d)(2)	If utilizing an electronic applicant tracking system, provide alternate means for individuals with disabilities to request reasonable accommodation to apply and be considered for all jobs. Recommendation - Develop procedure for reasonable accommodation requests (not required)			
Recordkeeping §60-1.12; §60-300.80 & §60-741.80	Records are retained for two* years (including job posting, applications, resumes, good faith efforts, etc.) *Data collection analysis and VETS/IWD outreach efforts must be retained for three years.			
Annual Filings §60-1.7 & §61-300	Completed and filed EEO-1 and VETS Reports			

# Internal Audit and Reporting System

## Annual Compliance Checklist/Audit and Reporting System

AAP Components	Requirements	Compliance (Y/N)	Date Reviewed	Follow-up actions necessary (if any)
Availability of Affirmative action program §60-300.41 & §60-741.41	Applicants/employees have been made aware that the AAP is available for inspection			
Policy Statement §60-300.44(a) & §60-741.44(a)	Affirmative Action policy statement with CEO support is posted on bulletin boards			
Invitation to self-identify §60-300.42(a)	Veterans Pre-Offer Self ID is given to applicants			
Invitation to self-identify §60-741.42(a)	Disabled Pre-Offer Self ID, provided by the OFCCP, is given to applicants			
Invitation to self-identify §60-300.42(b)	Veterans Post-Offer Self ID is given to applicants			
Invitation to self-identify §60-741.42(b)	Disabled Post-Offer Self ID, provided by the OFCCP, is given to applicants			
Invitation to self-identify for employees §60-741.42(c)	Resurvey workforce within first year and at five year intervals			
Review of Personnel Processes §60-300.42(b) & §60-741.44(b)	Periodically reviewed personnel processes			
Physical and Mental Qualifications §60-300.42(c) & §60-741.44(c)	Reviewed physical and mental job qualifications			
Reasonable Accommodation Procedures §60-741.21(a)(6)(vi) & §60-741.44(d)(2)	Developed Procedure for Reasonable Accommodation Requests (not required)			
Harassment §60-300.44(e) & §60-741.44(e)	Developed/updated harassment policy			

# Internal Audit and Reporting System

## Annual Compliance Checklist/Audit and Reporting System

AAP Components	Requirements	Compliance (Y/N)	Date Reviewed	Follow-up actions necessary (if any)
Required Outreach Efforts §60-300.44(f)(1)-(3) & §60-741.44(f)(1)-(3)	Documented Outreach Activities and assessed effectiveness of efforts/sources			
External dissemination of policy §60-300.44(f)(1)(ii) & §60-741.44(f)(1)(ii)	Sent written notification of AAP to subcontractors			
Internal Dissemination of policy §60-300.44(g) & §60-741.44(g)	EEO policy is in manual and/or posted on company's intranet site			
Training §60-300.44(j) & §60-741.44(j)	Trained recruitment personnel in EEO implementation			
Data collection analysis §60-300.44(k)	Veteran's data collected/maintained for three years			
Data collection analysis §60-741.44(k)	Disabled data collected/maintained for three years			
Benchmarks for hiring §60-300.45	Established a 7% hiring benchmark for veterans			
Utilization Goals §60-741.45	Established a 7% utilization goal, per job group, for individuals with disability			
Action-oriented programs §60-2.17(c) & §60-741.45(f)	Alter efforts where underutilization continues to exist (Minorities/Women/IWD) and correct any problem areas in employment process			
Identification of problem areas §60-2.17(b)(2)	Monitor records of all personnel activity			
Identification of problem areas §60-2.17(b)(3)	Review compensation system for any disparities			

# Assessment & Evaluation of Outreach

## Sample Assessment of Outreach and Recruitment Activities

Time Period: \_\_\_\_\_

Location: \_\_\_\_\_

Outreach/ Recruitment Activity	Date of Activity	Description	Evaluation
Listed job openings with local Veteran Advocacy Group	Ongoing	In addition to listing openings with local Employment Service Delivery System (ESDS), openings are also listed with a local Veteran Advocacy Group.	Received 32 applications from protected veterans, of which 4 were hired. This is an effective activity.
Briefing of Vet-Reps in local community college campus	July 15, 2014	Briefed Vet-Reps of Contractor's services and current hiring needs	Will begin sending job listings to Vet-Reps for assistance in attracting veteran applicants. This is an ongoing effort and we will monitor the success of this initiative.
Participated in Veteran Job Fair	November 13, 2014	Veteran Job Fair was hosted by local veterans' groups, and over 30 employers participated.	Received 25 applications from qualified veterans. Conducted 15 initial interviews. 10 follow-up interviews were scheduled, which resulted in 3 hires. This is a successful outreach effort.
Annual meeting with local Disabled Veterans' Outreach Program (DVOP) specialist	December 1, 2014	Briefed DVOP of Contractor's outreach and recruitment efforts. Discussed anticipated openings (and job descriptions) for 2015.	DVOP will conduct training first quarter of 2015 with hiring managers regarding hiring IWDs and reasonable accommodations to expand the inclusion of IWDs in contractor's workforce. Also, Contractor will send 2015 job openings to DVOP.
Participated in Disability Job Fair	October 15, 2013	Disability Job Fair was hosted by the local disability advocacy groups, and over 30 employers participated.	Received 15 applications from qualified individuals with disabilities. 1 was hired. Resumes were retained for consideration in future job openings.

# Compensation

- Know the regulations and industry expectations (audit process)
- Have a strategy
- Set a baseline? (especially with EEO-1 change looming)

# Training

**A combination of clarifying requirements and delivering results...**

# Training - Content

- **§60-2.17 Additional required elements of affirmative action programs.**
- In addition to the elements required by §60-2.10 through §60-2.16, an acceptable affirmative action program must include the following:
  - (d) *Internal audit and reporting system.* The contractor must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:
    - **(3) Review report results with all levels of management; and**
    - **(4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.**

# Training - Content

## **EO 11246 (in the SB guide)**

Some additional steps to foster equal employment opportunity are:

- Periodically provide training to supervisors on how to avoid unlawful employment discrimination when making employment decisions.
- Establish EEO performance as a performance standard for managers and supervisors.

Contractors must provide EEO and AA training for employees involved in personnel processes.

- (41 CFR 60-741.44(j))                      Section 503 - Individuals with a Disability
- (41 CFR 300.44(j))                        VEVRAA - Veterans

# Training - Leadership

## **What the compliance team asks of leadership:**

- Periodic reviews with leadership to assess risk (annual or more)
- Leadership support within the organization
- Up-to-date technology for tracking and record keeping
- Budget/Staffing for expanding regulations
- Support and training from industry experts in a changing environment

# Training - Leadership

**What the compliance team will accomplish if needs are met.**

**As Federal contractors we are contractually obligated to implement Affirmative Action. We must ensure non-discrimination through:**

- Completion of annual Affirmative Action Plan (all three plans)
- Maintaining up to date policy documents
- Conducting rigorous outreach efforts associated with women, minorities, veterans and individuals with a Disability (IWDs)
- Tracking the results of outreach efforts and adjust programs to continuously work towards achieving Goal/Benchmark attainment
- Analyzing and acting upon plan results that has value in many ways

# Training - Leadership

- How not to deliver results...



# Training - Leadership

- **Thinking out loud –**
- Be creative in your training and plan delivery. Think of new ways to accomplish your goals
  - Think high-level, avoid the trenches
  - **BE VISUAL**
  - Scheduled progress reviews
  - Using a training template?
- The point of the presentation...anyone can deliver training that lists requirements (Google them)
- Meaningful Affirmative Action comes with a plan (not just a binder).

# Training - Leadership

## Understanding the changes

- Before – the risk *was* focused on hiring and advancement of women and minorities
- Now –the risk *is* focused on recruitment, selection and retention of women, minorities, protected veterans and individuals with a disability (IWD)
- The Wild Card - compensation

# Training - Leadership

## Legitimate ramifications of non-compliance (not fluff, real results)

- <http://www.dol.gov/opa/media/press/ofccp/> - Long list of 6-figure (some 7-figure) settlements for record keeping issues and hiring discrimination
- Very public citations by Dept. of Labor (Every settlement is public information)
- Violations cited, resulting in time-consuming paperwork and on-site audits
- Conciliation agreements requiring rushed and pricey changes including upgraded technology and processes
- Basic Desk-Audit can utilize more than 80 work hours to support
- Fair Pay and Safe Workplaces EO 13658

# Training - Leadership

## Summary from 30,000 feet:

### OFCCP enforces three laws

- Executive Order 11246 - Women and Minorities
- Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) – Veterans
- Section 503 of the Rehabilitation Act of 1973 - Individuals with Disabilities
- *Obligations for recruitment, selection and retention for each*

# Training - Leadership

## **Next tier of detail (10,000 feet):**

- Company is a Federal contractor.
- We are responsible for implementing an annual affirmative action plan as part of our Federal contract
- We may be audited at any time by the Office of Federal Contract Compliance Programs (OFCCP)
- The OFCCP sends an itemized listing to review a MASSIVE amount of information including our recruitment, selection and retention process including live data related to our staff.
- If we are found to be out of compliance the result can range anywhere from a Conciliation Agreement requiring you to change a policy or modify a system to a demand for a very public settlement. Settlements can range anywhere from thousands to millions of dollars.

# Training - Leadership

## Ground Level:

- Sample plan reports
- Understanding plan results
  - Placement Goals
  - Transaction Analysis (Adverse Impact)
  - Compensation
  - New output for Veterans and IWD
    - Expanding outreach and internal standards
    - Reasonable accommodation procedure
    - Internal training
  - Understanding the criticality of a transparent selection and retention process

# Training - Leadership

Pelican Products, Inc.  
New Orleans, LA

Plan Date: 01/01/2015

Job Group	Group Size	IWD Employment Count	IWD Employment %	7% Goal Met?	Problem Areas (if any) and Action - Oriented Programs (where utilization goal not met)
1A - Executive	5	1	20.0	Yes	
1B - Middle Management	4	0	0.0	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
1C - Managers and Supervisors	77	3	3.9	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
2A - Professionals	17	1	5.9	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
3A - Technicians	3	0	0.0	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
4A - External Sales	18	1	5.6	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
4B - Inside Sales	127	6	4.7	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
5A - Administrative	24	1	4.2	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
6A - Craft Workers	38	2	5.3	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
7A - Shift Leads	24	2	8.3	Yes	
7B - Operatives	21	1	4.8	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
7C - Drivers	155	7	4.5	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.

# Training - Leadership

Job Group	Adverse Impact?									
	Placement Goal?		Hires		Promotions		Terminations (Invol)		Terminations (All)	
	Females	Minorities	Gender	Race	Gender	Race	Gender	Race	Gender	Race
PLAN 1										
1.2 - First/Mid Officials & Mgrs										
3 - Technicians	Yes									
4 - Sales Workers										
5 - Administrative Support										
PLAN 2										
1.2 - First/Mid Officials & Mgrs										
2 - Professionals				Yes						Yes
3 - Technicians	Yes	Yes		Yes						
PLAN 3										
1.2 - First/Mid Officials & Mgrs										
2 - Professionals									Yes	
PLAN 4										
1.2 - First/Mid Officials & Mgrs										
2 - Professionals	Yes		Yes							
3 - Technicians										
5 - Administrative Support										
8 - Laborers & Helpers										
PLAN 5										
1.2 - First/Mid Officials & Mgrs										
2 - Professionals	Yes									
3 - Technicians								Yes		Yes
6 - Craft Workers										
PLAN 6										
1.2 - First/Mid Officials & Mgrs										
2 - Professionals										
3 - Technicians	Yes		Yes							
6 - Craft Workers										

# Sharing Affirmative Action Data

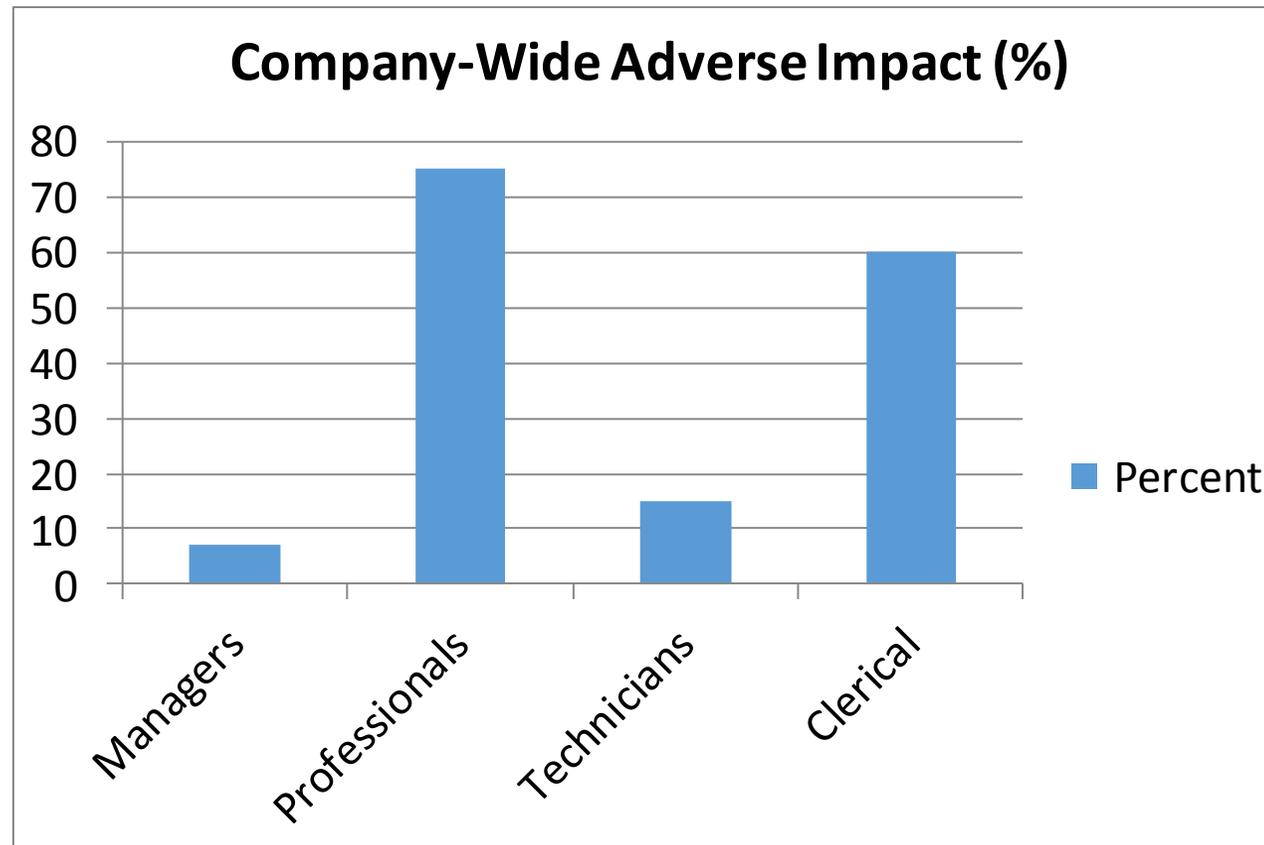
At the executive level:

- Imagine your entire organization under one report...

Job Group	JG Count	Race/Gender	Placement Goals	Adverse Impact (Hires)	IWD Goals
Management	100	Race	15%	7%	3%
Professionals	80	Gender	39%	75%	10%
Technicians	60	Race	20%	15%	6%
Clerical	100	Gender	50%	60%	21%

# Sharing Affirmative Action Data

Executive level. Here is simpler version:



# Training - Leadership

## Conclude with Solutions

- Prepare a short list of realistic goals and maybe add a few longshots
- Evaluate the ROI of your past efforts and prepare adaptations to outreach
- Tighten down the record keeping process to clarify potential statistical issues
- Don't go too far (“We will establish new relationships with 300 Diversity groups”)
- Strategically pursue some larger goals. For example; HR systems upgrade, job reviews, new outreach activities, proactive compensation review, etc.

# Training Hiring Staff

# Training Hiring Staff

## The Challenge:

- Recruiters/Hiring Managers don't like anything that slows them down
- Most ATS have a lot of options and allow staff to plow through the process for good or bad and compliance often does not get the opportunity to provide detailed input prior to ATS implementation.
- Recruiters don't have access to or know how to work towards goals
- Hiring managers lack time/resources to ensure a thorough process
- New regulations have changed what compliance means and the new version relies heavily on recruiters/hiring staff

# Training Hiring Staff

## Preparation

### Create a straightforward training program

1. Help them understand - Why comply?
2. Very Brief Regulation summary – Review the changes!
3. Collaborate with hiring management on training program “How to use the system: step-by-step”
4. What the needed results look like – Show an Adverse Impact Analysis and what happens when the results are incomplete or significant
5. Review and update the training annually. Provide results in the annual update
6. Align the technology so the recruiter follows the desired process organically

# Training Hiring Staff

Preparation – Communicating with hiring staff (Get some buy-in!)

Audit the process

- Is every job processed the same? Any anomalies?
- Are dispositions accurate and being used?
- Are job postings accurate and used consistently?
- Is data available for analysis?
- Are we making progress?
- Can we defend problem areas?
- Is the HRIS team educated on compliance?

# Training Hiring Staff

Hiring staff needs to fundamentally understand the following:

- The ability to track and be able to analyze every step of the hiring process is critical not only to compliance but in protecting the organization and giving the company the ability to identify and reduce/eliminate our vulnerabilities.
- The inability to see all of the data related to the hiring process and to conduct meaningful analyses opens us up to claims of discrimination that we will be unable to defend. The Department of Labor automatically reviews this data during an audit and contractor shortcomings in the area of record keeping equate to 95% of very public, and very expensive claims of discrimination.

# Training Hiring Staff

What is Adverse Impact?

- A substantially different rate of selection in employment
- Employment decisions that adversely affects a protected group
- Prima facie evidence of discrimination
- Includes almost any employment decision

Analyze selections made during the year

1. Hires v. Applicants
2. Promotions
3. Terminations
4. Review outreach results. Document, analyze, adapt.

Remember – Statistical significance alone is not discrimination

# Training Hiring Staff

- Demonstrate with an example. Straight numbers don't have to be confusing.

## ***Disparity Analysis - Hires***

Pelican Products, Inc.  
New Orleans, LA

Date Range: January 1, 2015 through June 30, 2015

<b>4B - Inside Sales</b>											
<b>Non-Favored vs Favored</b>	<b>Total Hires</b>	<b>Total Pool</b>	<b>Total Unknowns</b>	<b>Non-Favored Hires</b>	<b>Non-Favored Pool</b>	<b>Favored Hires</b>	<b>Favored Pool</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Female vs Male	23	69	0	1	16	22	53	6.25%	41.51%	2.62	Yes
Male vs Female	23	69	0	22	53	1	16	41.51%	6.25%	-2.62	No
Black vs White	22	46	0	1	14	21	32	7.14%	65.63%	3.65	Yes
Hispanic vs White	22	55	0	1	23	21	32	4.35%	65.63%	4.58	Yes
Asian vs White	21	32	0	0	0	21	32	N/A	65.63%	N/A	No
Am. Indian vs White	21	32	0	0	0	21	32	N/A	65.63%	N/A	No
Hawaiian vs White	21	32	0	0	0	21	32	N/A	65.63%	N/A	No
Two or More vs White	21	32	0	0	0	21	32	N/A	65.63%	N/A	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

# Summarize a Plan

“Here’s what we want to accomplish this year”

- You can mandate goals but don’t push too hard
- Be aware of goals and strive to reach them
- Close any gaps in data collection associated with the selection process
- Be more consistent with dispositioning candidates
- Stretch to create some new relationships with the community groups for women, minorities, veterans and individuals with a disability
- Don’t just repeat the norm, change can bring new energy to the process

# Post Presentation Support Material

## Additional Content to Consider

# Resources To Back You Up

- OFCCP FAQ's - <http://www.dol.gov/ofccp/regs/compliance/faqs/offaqs.htm>
- OFCCP - <http://www.dol.gov/ofccp/>
- OFCCP enforcement stats - <http://ogesdw.dol.gov/homePage.php>
- OFCCP audit letter - [http://www.dol.gov/ofccp/regs/compliance/OMB\\_appr\\_letter.pdf](http://www.dol.gov/ofccp/regs/compliance/OMB_appr_letter.pdf)
- OFCCP settlements - <http://www.dol.gov/opa/media/press/ofccp/>
- OutSolve Blog - <http://www.outsolve.com/blog>
- Uniform Guidelines for Employee Selection Procedures (UGESP) - <http://www.ecfr.gov/cgi-bin/text-idx?SID=6f4cf49742cfo79dd38b91a38b273615&node=41:1.2.3.1.3&rgn=div5>

# Training Support – Hiring Staff

## Disposition coding should work in three parts:

1. Active/Inactive
2. Step(s)
  - Phone screen
  - Interview
  - Test
  - Final Selection
  - Hired
3. Details – Why rejected?

Candidate Name
Inactive
Test - Failed
Score below minimum req.

# Training Support – Hiring Staff

## **Critical items that compliance and recruitment need to review together for validity:**

- Job qualifications
- Job descriptions
- Basic Qualifications/Preferred Qualifications
- Hiring tests
- Interview questions
- Dispositions
- Identifying the source
- Applications and Applicant Tracking Systems (ATS)
- Job postings
- Accessibility of application process

# Sharing Affirmative Action Data

For hiring staff:

➤ What does good and bad applicant data look like?

App ID	Race	Gender	App Date	Job Code	Job Title	Location	EEO Code	Name	Protected Vet	IWD Status	Disposition
12345	A	F	4/18	113	Mgr	Portland	2	V. James	N	N	Selected
12346	AA	M	4/18	117	Prog.		2	R. James	N		
12346	UK	UK	4/18	117	Prog.		2	R. J.	N		

# Training Support - Leadership

## ROI Articles

- <http://www.ciainsight.com/it-management/workplace/slideshows/how-diversity-delivers-on-roi-employee-engagement.html>
- [http://www.shrm.org/Research/Articles/Articles/Pages/Diversity\\_20Management\\_20Series\\_20Part\\_20II\\_20Measuring\\_20ROI\\_20for\\_20Diversity\\_20Management.aspx](http://www.shrm.org/Research/Articles/Articles/Pages/Diversity_20Management_20Series_20Part_20II_20Measuring_20ROI_20for_20Diversity_20Management.aspx)
- <http://www.cidi-icdi.ca/reports/what-gets-measured-gets-done.pdf>
- <http://blog.diversity-executive.com/2013/11/18/unleashing-the-strategic-power-of-diversity-roi-measurement/>

# Training Support – Hiring Staff

## The Definition of an Internet Applicant

**Remember, separating the job seekers from legitimate applicants is critical to Affirmative Action Planning.**

An “Internet Applicant” is an individual who satisfies all four of the following criteria:

- The individual submitted an expression of interest in employment through the Internet or related electronic data technologies;
- The contractor considered the individual for employment in a particular position;
- The individual's expression of interest indicated that the individual possesses the basic qualifications for the position; and
- The individual, at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removed himself or herself from further consideration or otherwise indicated that he/she was no longer interested in the position.

# Thank You!

## Q&A

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