

Year-in-Review and What to Expect in 2021

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Scope and Usage of the Information

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Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEOC and OFCCP developments and strategies for effective compliance.

For more information on The Institute, visit:
www.theinstitute4workplaceequality.org

Institute Membership Offers Many Benefits

- Our leadership team has unique insights, access, and regularly interacts with OFCCP and EEOC national and regional leadership. As of August 10, 2020, we have signed an MOU with the OFCCP.
- We are collaborative and keep employers current and connected to what is happening in Washington, D.C.
- We have a well-established faculty made up of Nationally renowned experts from many firms
 - Our distinguished leaders are comprised of leading EEO attorneys, practitioners, and statisticians from top law firms and consulting practices on EEO/AA
 - Our faculty and partners have a breadth of knowledge and expertise across all industries, including: Defense/Aerospace, Financial services, Food Services, Healthcare, Higher education, Hospitality , Pharmaceutical, Tech *and more*
- Advisory Board members are senior leaders in their organizations, and have broad experience and expertise in the areas of EEO, diversity and inclusion, OFCCP compliance, compensation, and related matters

Institute Membership Offers Many Benefits – Cont.

- We write white papers addressing our members compliance concerns and priorities
- Provide opportunities for our members to collaborate and attend brainstorming sessions with OFCCP
- Semiannual meetings with Institute Advisory Board with OFCCP Director and National leadership
- Monthly member's only roundtables on cutting edge issues
 - Examples:
 - Changing OFCCP enforcement priorities
 - EEO legal developments
 - EEO-1 pay data reporting challenges
 - Quickly growing patchwork of pay equity laws in the U.S. and abroad
- Practical key takeaways summarized after each call so that members can share updates easily within their organizations

Agenda

- Pay Equity
- Religion in the workplace
- Affirmative Action and D&I
- Important agency activities in 2020
 - OFCCP
 - IWE recommendations and Trump Administration initiatives
 - EEOC
- Takeaways and fearless predictions

Pay Equity

Pay Equity

- Oracle Decision and its Implications
- National Academy of Science to review Component 2 data/make recommendations
- Colorado Pay Equity Law
- CA Pay Reporting Law
 - Due March 31, 2021
 - Identical to EEO-1 Component 2
- What will happen in 2021

Religion in the Workplace

Religion in the Workplace

- Supreme Court's Sexual Orientation/Transgender Title VII Ruling and its RFRA loophole
- Supreme Court's Title VII Religious Exemption Decision
- OFCCP Religious Exemption Final Regulations
- EEOC's Revision to its Religious Discrimination Guidance
- What will happen in 2021

Affirmative Action and D&I

Affirmative Action and D&I

- Status of EO 13950 re Diversity Training
 - DFAR issues notice for November 20, 2020 contracts/modifications
- Court Challenges to AA University Admissions
 - Harvard
 - Yale
 - UNC-Chapel Hill
- CA Proposition to reinstate AA ballot initiative
 - What does that mean
- What will happen in 2021

OFCCP



2020 OFCCP

- Nearly record monetary recovery in FY2020
 - FY2021 continuing strong
- New Regulation on Resolving Discrimination Claims
- AAP Verification
- Focused Reviews
 - Section 503, VEVRAA, Accommodation, Promotion, AAP/D&I?
- CAs of Note
 - Mphasis
 - Becton Dickinson & Co.

WE Recommendations to OFCCP

The Institute Recommended

- Selection of contractors for audit
- Move from Active Case Management to Active Case Enforcement
- Rescind EEO-1 Component 2 pay data collection and apply lawful Title VII criteria
- Rescind Directive 307
- Restore EVE and other contractor award programs



OFCCP Response

AAP Verification Proposal

Done through directives and procedures for handling discrimination cases

Done

Done

Done

What will happen in 2021?

EEOC

2020 EEOC

- Signed joint MOU with DOL and DOJ
 - Requires consultation on litigation
 - OFCCP takes lead on federal contractor complaints
- Issued rule codifying its conciliation process
- Recovered \$535M in FY 2020
- Rolled out “EEOC Explore” online tool to allow public to workforce diversity data
- Seeking public input on new religious guidance
- Allow public to seek opinion letters

Predictions & Closing Thoughts



Wrap Up & Thank You

Nita Beecher

H. Juanita (Nita) M. Beecher is a nationally-recognized expert on OFCCP and the EEOC with more than 40 years of experience in federal and state employment law. Currently, Ms. Beecher provides advice to clients on a broad range of employment law issues with her primary focus on issues involving discrimination, affirmative action, compensation and wage and hour matters. She also serves as Legal Counsel to The Institute as well as co-editor of the Federal Employment Law Insider, a monthly newsletter updating employers on federal laws and regulations and presents webinars on federal employment law issues. Ms. Beecher served as an in-house counsel with several major corporations including McDonnell Douglas and Boeing for more than 20 years where she advised in-house clients on labor and employment law issues including, among other matters, OFCCP audits, EEOC class age investigations, implementation of the ADA, FLSA Wage and Hour audits, and developed a self-audit tool for major corporations. After leaving corporate life, Ms. Beecher led networks of senior diversity, equal employment opportunity and affirmative action corporate practitioners and senior in-house labor and employment lawyers focused on labor and employment law issues. Ms. Beecher has been a regular speaker at many professional meetings, including the leading organization for federal contractors, the Industry Liaison Group (“ILG”) National Conference since 2004.

Laura Mitchell

Laura A. Mitchell is a Principal in the Denver, Colorado, office of Jackson Lewis P.C. She is a member of the firm's Affirmative Action and OFCCP Defense practice group as well as the firm's Pay Equity Resource Group. She is also on the leadership team for the firm's Government Contractor Industry Group. Her practice is focused on representing government and non-government contractors in OFCCP matters, preparing for and defending OFCCP audits, and counseling employers on issues stemming from OFCCP regulations. Ms. Mitchell personally oversees the development of hundreds of AAPs each year and is intimately involved in the defense of numerous OFCCP audits. She also spends significant time counseling companies in connection with conducting pay equity analyses as well as government contractor employment obligations. Ms. Mitchell is the editor and a principal contributor of The Affirmative Action Law Advisor blog and frequently presents on pay equity, affirmative action compliance, OFCCP enforcement trends, and government contractor obligations.

Mickey Silberman

Mickey Silberman, Co-Chair of The Institute, is the founder of and a Shareholder with Silberman Law PC. For more than 25 years, Mickey has represented management in all areas of employment law, specializing in affirmative action plan preparation, OFCCP compliance and audit defense, pay equity analyses and related counseling, EEO and diversity & inclusion.

Mickey has overseen the preparation of thousands of affirmative action plans for government contractors in all industries and across the country. He has directed the defense of hundreds of OFCCP audits, including many corporate management reviews. This high volume of audit defense keeps him on the “cutting edge” of OFCCP’s rapidly evolving enforcement trends. He often is asked to step in to defend OFCCP audits and investigations “gone wrong” and has a strong track record achieving great results in those audits. In fact, in the last 1,000 audits Mickey has defended, he has obtained Letters of Compliance-the best possible audit outcome-in more than 99% of the audits.

In addition, Mickey is recognized as a national expert in the areas of pay equity and systemic pay discrimination. Mickey works closely with clients and a team of statisticians to prepare pay analyses both on a proactive basis and also in response to OFCCP and EEOC pay investigations and private pay litigation. He regularly defends employers against claims of systemic pay discrimination. Mickey also advises clients on pay system design and administration to identify and address often subtle or hidden barriers to pay equity.