

2020 AAP Fundamentals Series/Conference: *Session 3: Adverse Impact and EEO Statistical Disparities*

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Scope and Usage of the Information

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Measuring and Reviewing Personnel Activity

- Applicant Flow
- Promotions
- Terminations

Internet Applicant Rule

- Disposition Codes

Measuring and Reviewing Personnel Activity

AAP Analyses

- *Organizational Profile (41 CFR § 60-2.11)*
- *Job Group Analysis (41 CFR § 60-2.12)*
- *Availability Analysis (41 CFR § 60-2.14)*
- *Utilization Analysis (41 CFR § 60-2.15)*
- *Placement Goals (41 CFR § 60-2.16)*
- *Goal Attainment (41 CFR § 60-2.16)*
- **Personnel Activity Analysis (41 CFR § 60-2.17)**

Personnel Actions

- AAPs must include personnel activity to determine whether there are selection disparities (41 CFR § 60-2.17(b)(2))
 - Applicants (see 41 CFR § 60-1.3)
 - Hires (i.e., applicants selected for a position)
 - Promotions (i.e., movement from one job title to another, with a change in responsibilities and an increase in pay)
 - Terminations (i.e., employees selected-out of the workforce, including layoffs and reductions-in-force)
 - Other personnel actions

Sample Personnel Activity Reports

Applicants

Job Group E1 - Upper Level Administrative		
Group	Selected	Pool
Female	2	10
Male	1	14
Unknown Sex	0	1
White	3	18
Black	0	1
Asian	0	4
Amer Indian	0	1
Unknown Race	0	1

Applicant report to include unknown race or sex.

Count the personnel activity in each job group by race/ethnicity and sex. This is an example of what might be submitted to a federal enforcement agency.

Promotions

Job Group G3 - Operatives - Warehouse		
Group	Selected	Pool
Female	6	24
Male	12	46
White	11	55
Black	1	1
Hispanic	0	1
Asian	6	13

Sample Personnel Activity Reports (Cont.)

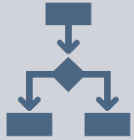
For Termination Activity, best practice is to complete a Termination Report for “Voluntary”, “Involuntary,” and “Total” terminations.

Job Group		E2 - Mid Level Administrative	
Job Title		INTN - Intern Employee	
Group	Selected	Pool	
Female	1	1	
Black	1	1	

Job Title		OFCENG - Engineering,Office Clerical	
Group	Selected	Pool	
Female	1	4	
White	1	4	

Job Title		OFCFIN - Finance,Office Clerical	
Group	Selected	Pool	
Female	1	11	
Male	0	3	
White	1	10	
Black	0	3	
Two or More	0	1	

Conduct Statistical Disparity Analysis



More precise review of your employment decisions for the past 12 months.



Required by the Regulations.



Success rate (not JUST number of placements) for:

Applicants and hires
Promotions
Terminations

Sample EEO Disparity Analysis

Selection rate for each subgroup. These selection rates are then used for the EEO disparity analysis.

Overall selection rate for total applicants selected to total applied.

Given the overall selection rate, this is the given number of applicants that should have been selected in each subgroup.

If there is a shortfall between the number of applicants selected for each subgroup, this identifies what the shortfall is.

Results of the standard deviation or Fishers Exact Test.

1B - Upper Management										
Job Group	Group	Highest Sel Rate	Selected	Pool	Sel Rate	Ovr Sel Rate	Expected	Difference	Std Dev	Fisher Disparity?
Female	Yes		48	720	6.67	5.09	36.65	(11.35)		
Male			104	2,266	4.59	5.09	115.35	11.35	-2.2089	Yes
Unknown Sex			0	15	0					
White			130	2,318	5.61	5.63	130.48	0.48	-0.2163	
Black			7	212	3.3	4.19	8.89	1.89	-1.152	
Hispanic			6	172	3.49	4.44	7.64	1.64	-1.0099	
Asian	Yes		6	98	6.12	6.12	6.00	0.00		
Amer Indian			3	61	4.92	5.66	3.45	0.45	-0.3196	
Pac Islander			0	5	0	5.83	0.29	0.29	-0.5701	
Two or More			0	79	0	3.39	2.68	2.68	-2.2375	Yes
Unknown Race			0	56	0					

Yes indicates the difference in selection rate is greater than 2.00 standard deviations or a Fishers Exact Test is 0.025 or less.

Investigating Statistical Red Flags



It is important to understand that statistical “red flags” are not discrimination; however the burden shifts to the employer to prove this.

Red flags need further investigation.



What is causing the adverse statistical trend?

Requisition level? Step in the process?



Are the employer’s actions job-related (e.g., valid), consistent and administered in a non-discriminatory manner?

Uniform Guidelines on Employee Selection Procedures

- Codified in the regulations at 41 CFR § 60-3.
- Requires contractors to determine which step or stage in the process a disparity occurs.
 - Example: If there is a statistical indicator in marketing positions for applicants, at what stage did the disparity occur?
 - The initial screening process?
 - The employment testing process?
 - The interview process?
- Requires legitimate, non-discriminatory, validity evidence for areas with EEO disparity.

Internet Applicant Definition

Internet Applicant Regulation

- OFCCP issued the final “Internet Applicant” Regulation October 7, 2005.
- Internet Applicant Regulation provides clear guidance on what data will be included in your EEO disparity calculations.
- Regulations spell out the differences between records that must be retained versus records that must be analyzed.
- Contractors are required to solicit race/ethnicity and gender from all individuals who meet the definition of an Internet Applicant; however, it can be solicited earlier.

Four-prong criteria:

1. Applicant system permits individuals to submit an expression of interest through internet or related electronic data technologies
2. Contractor considers individual for employment for a particular position
3. Individual's expression of interest indicates basic qualifications for position
4. Individual does not withdraw him/herself from consideration prior to job offer

Disposition Codes

- Disposition codes should fall into one of the following final outcomes:
 - Selected (Included in the EEO disparity analysis)
 - Rejected (Included in the EEO disparity analysis)
 - Did not consider (Not included in the EEO disparity analysis)
 - Did not meet basic qualifications (Not included in the EEO disparity analysis)
 - Withdrawn (Not included in the EEO disparity analysis)
- **Disposition codes are used to streamline the analysis process, as well as provide accurate results.**
- For a proper analysis to be conducted, ALL job seekers must be assigned an applicant disposition code.
 - No missing information
 - No pending disposition codes if the requisition is closed
 - Disposition codes should **not** be ambiguous

They Determine Who to Include Or Exclude From Analysis

INCLUDE



- Selected
- Rejected but Met BQs

EXCLUDE



- Did Not Meet BQs
- Withdrawn
- Data Management Technique

Records that must be kept:

Internal Database Recordkeeping

- The position for which each search of the database was made.
- Corresponding to each search, the substantive search criteria used.
- The date of the search.
- **Each** resume added to the database.
- The date each resume was added to the database.

External Database Recordkeeping

- The position for which each search of the database was made.
- Corresponding to each search, the substantive search criteria used.
- The date of the search.
- The resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor, regardless of whether the individual qualifies as an Internet Applicant.

Takeaways

- AAPs must include personnel activity to determine whether there are selection disparities.
 - Use of disposition codes and the internet applicant rule to properly examine applicant and hiring activities is critical.
- Statistical indicators, or “EEO disparity” flags do not necessarily mean discrimination has occurred, but the burden shifts to the employer to prove legitimate, non-discriminatory reasons for the disparity.
 - Areas of impact should be researched and evaluated further.



Elizabeth B. Bradley, Esq. has over fifteen years of experience representing employers and federal contractors in litigation and mediation matters before state and federal agencies and courts, as well as counseling and training private, public, and non-profit employers in all aspects of employment law.

Ms. Bradley has extensive knowledge and experience in counseling federal contractors in matters relating to OFCCP. She has represented U.S. corporations in successfully defending against OFCCP's review of the contractor's utilization rates and compensation practices as well as representing companies during OFCCP compliance reviews.

Joanna Colosimo

Joanna L. Colosimo, M.A., SHRM-SCP is the Director of Compliance & Workforce Analytics at DCI Consulting Group, where she provides guidance and support to clients regarding employment discrimination statutes, Affirmative Action, pay equity, and diversity and inclusion. Joanna manages DCI's Compliance & Workforce Analytics division, consisting of consultants and analysts who consult with large organizations on OFCCP compliance, Affirmative Action, pay equity, talent distribution, and related issues. She is an Industrial-Organizational Psychologist with over fourteen years of experience with OFCCP-related work. Joanna is the current President of the Washington DC Metro ILG (WMILG) and the Vice President of the Radford University I/O Psychology Advisory Board.

Thank you so much!

Session 4: Advisory Board Panel – Implementation and Enforcement Best Practices, Thursday, October 29th, 4-5 pm EDT

Presenter:

Laura Mitchell from Jackson Lewis in Denver, CO

In our final installment of our AAP Basics series we will hear from a panel of EEO professionals on their thoughts around AAP best practices, tips and hurdles they've encountered as they worked through AAP implementation and OFCCP enforcement.

Panelists:

Frank Torres from M&T Bank in Buffalo, NY

Naomi Tyre from Northrop Grumman in Washington, DC