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New Regulations by the OFCCP

Systematic Compensation Discrimination

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The new policy will provide standards and methods for OFCCP evaluations of contractors' compensation practices

OFCCP officials will have a stronger basis for pursuing investigations of possible systemic compensation discrimination because of the transparency and uniformity provided by the Standards

The standards provide - for the first time - a definitive interpretation of the Wage Discrimination Guidelines with respect to systemic compensation discrimination

New component of affirmative action plan requirements

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The systemic compensation discrimination analysis as set forth in the Standards has two major characteristics:

- The determination of employees who are "similarly situated," for purposes of comparing contractor pay decisions, will focus on the similarity of the work performed, the levels of responsibility, and the skills and qualifications involved in the positions
- The analysis relies on a statistical technique known as multiple regression.

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- Employees are similarly situated under these standards if they are similar with respect to the work they perform, their responsibility level, and the skills and qualifications involved in their positions
- Under these standards actual facts regarding employees' work activities, responsibility, and skills and qualifications determine whether employees are similarly situated
- Preexisting groupings, such as pay grades or Affirmative Action Program (AAP) job groups may only be used if that they do in fact group employees with similar work, skills and qualifications and responsibility levels

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- The Standards focus on similarity in job content, skills and qualifications, and responsibility level
- Systemic compensation discrimination exists where there are statistically significant compensation disparities (as established by the regression analysis) between similarly situated employees, after taking into account the legitimate factors which influence compensation such as:
 - Education,
 - Prior Work Experience
 - Performance
 - Productivity,
 - Time On The Job

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30/5 rule for Similarly Situated Employee Groups

- Under the Voluntary Guidelines, OFCCP defines a Similarly Situated Employee Group (SSEG) as a group of at least 30 employees, at least five of which are from each of the two groups being compared, who are similarly situated in terms of work performed, skills and qualifications involved in the job, and responsibility level. The 30/5 rule refers to the requirement that each SSEG to be statistically-evaluated must be comprised of at least 30 employees, including five or more employees of each group being compared.

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Voluntary Guidelines for Self-Evaluation of Compensation Practices

- Provide suggested techniques for complying with the compensation self-evaluation requirement
- Contractor's decision not to implement a self-evaluation program that complies with the Voluntary Guidelines will not be a consideration in OFCCP's assessment of a contractor's compliance with regulations.
- Failure to adopt any self evaluation method will be a basis for a finding of non-compliance with the regulations

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- If the contractor's compensation self-evaluation system reasonably meets the general standards outlined in the Voluntary Guidelines, OFCCP will consider the contractor's compensation practices to be in compliance with Executive Order 11246
- Contractors have the choice of any statistical analysis that accounts for factors that legitimately affect the compensation of its employees under the contractor's compensation system, such as experience, education, performance, productivity, location, etc
- The statistical analysis must include tests of statistical significance that are generally recognized as appropriate in the statistics profession

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Multiple Regression Analysis

Statistical tool for understanding the relationship between two or more variables:

- Dependent variable (Example: Salary)
- Additional explanatory variables - produce or be associated with changes in the dependent variable (Example: seniority, education, experience)

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Multiple Regression Analysis

The multiple regression model must include those factors that are important to how the contractor in practice makes pay decisions. Such factors could include the employees' education, work experience with previous employers, seniority in the job, time in a particular salary grade, performance ratings, and other factors.