

The OFCCP Presents:

“Beyond the Written
AAP”



Overview of Training

- Scheduling Letter
- Desk Audit
- On-site Evaluation
- Self-Monitoring



Background on Companies

❖ Do-Rite Company

- 500 employees
- \$1.6 million federal contract
- Previous compliance evaluation 3 years ago

❖ Newstar Corporation

- 350 employees
- \$1 million federal contract
- Initial OFCCP evaluation

OFCCP's Scheduling Letter

Requests AAPs

- Executive Order 11246
- Section 503 of the Rehabilitation Act
- Vietnam Era Veterans' Readjustment Assistance Act

Requests Support Data

- Personnel Activity
- EEO-1 Reports
- Compensation Data
- Past and present goals

Compliance Assistance

**A Key to
Effective
Affirmative
Action
Programs**





Role Play #1

OFCCP 15 Day Follow-up Call

Newstar Company

Do-Rite Corporation

Response to Scheduling Letter

Do-Rite Company

- Submits AAP and support data
- Timely
(within 30 days)
- All support data provided
- All components of the AAP included and correct

Newstar Corporation

- Fails to submit reasonable AAP
- Fails to include
Personnel activity data
Compensation data
Workforce analysis or organizational profile

Notice to Show Cause

- Allows 30 days to submit AAP (or proper AAP) and support data before case is referred for enforcement
- Specifies that the contractor will be entitled to a hearing before sanctions are imposed
- Will not be withdrawn until all deficiencies cited in the Notice are corrected in a Conciliation Agreement

Results of the Desk Audit

Do-Rite Company

- AAP technically sound and support data sufficient to conduct analyses
- Adverse impact with a standard deviation of 2.14 in hiring for minorities in the Merchandiser job group

Newstar Corporation

- Technical violations identified and support data incomplete
- Adverse impact with a standard deviation of 5.19 in hiring for females in the Laborers job group

Probability or Chance

Standard Deviation

Chance

1 SD

3.2 in 10

2 SD

5 in 100

3 SD

3 in 1,000

4 SD

6 in 100,000

5 SD

6 in 10 million

6 SD

2 in 1 billion





On-Site Evaluation

On-site Confirmation Letter

Contractor must provide

- Personnel records

- Managers and employees for interviewing

On-site inspection of the facility

Opportunity for additional compliance assistance

What if Records Are Destroyed?

It depends on the circumstances

- ⇒ May be a presumption that information destroyed or not preserved would have been unfavorable to the contractor
- ⇒ Presumption will not apply where circumstances were outside of the contractor's control

Do-Rite's Applicant Flow Log

Job Group/ EEO Cat.	Date of App	Name	Race/ Gender	Position Applied For	Inter- view	Test	Offer	Disp
7B	3/1/03	J. Clem	W/M	Merchandiser	Y	Y	Y	Hired
7B	3/12/03	B. Sims	W/M	Merchandiser	Y	Y	Y	Hired
7B	3/22/03	L. Bush	B/F	Merchandiser	Y	Y	N	Not Hired
7B	4/07/03	B. Le	A/F	Driver/ Merchandiser	N	N	N	Not Hired
7B	4/20/03	J. King	B/M	Merchandiser	Y	Y	Y	Hired
7B	4/30/03	B. Mays	W/M	Merchandiser / Driver	Y	N	N	Not Hired

Newstar's Applicant Flow Log

Job Group/ EEO Cat	Date of App	Name	Race/ Gender	Position Applied For	Inter view	Test	Offer	Disp
8B	3/1/01	B. Crow	W/M					Hired
8B	3/13/02	M. Speer	W/F	Laborer				Hired
8B	4/31/02	P. Byrd	B/F	Open		Y	Y	
8B	1/1/02	L. Laiche		Laborer				Not Hired
8B	2/30/02	L. Garza	H/M	Any		Y		
8C	5/5/03	J. King	B/M					Not Hired

Types of Employment Discrimination

Disparate Treatment

- Where a protected group or individual is treated differently *because of* race, gender, national origin, disability or veteran status
- Intent can be proven by direct evidence or inferred from circumstances or statistics

Disparate Impact

- Where a facially neutral employment practice, policy or qualification has an adverse impact on a protected group
- Can occur, for example, if an employer uses a test that results in a significant disparity

Role Play #2

Interviews of Hiring Officials

Newstar

Penelope Pickle

Human Resources Director

Nikki Madcap

Human Resources Manager

Do-Rite

Charlie Champion

Human Resources Director

Do-Rite's ANNUAL Adverse Impact Analysis

Hiring Process	Non-Minority Selection Rate	Minority Selection Rate	IRA	SD
Overall	87/324 = 26.9%	39/208 = 18.8%	.70	2.14
Screen	250/324 = 77.2%	160/208 = 76.9%	1.0	N/A
Test	200/250 = 80%	115/160 = 72%	.90	1.90
Interview	114/203 = 56.2%	65/112 = 58%	.97	N/A

Newstar's ANNUAL Adverse Impact Analysis for Laborers

Hiring Process	Male Selection Rate	Female Selection Rate	IRA	SD
Overall	91/234 = 38.9%	2/58 = 3.4%	.09	5.19
Screen				
Test				
Interview				

IMPORTANT LESSONS TO LEARN

Failed to maintain data on the different steps in the hiring process

So What ?

- No records or documents to identify at what step applicants were eliminated
- Cannot explain or justify its actions
- OFCCP can draw a negative inference

OFCCP's Findings

If OFCCP finds no violations, a Letter of Compliance may be issued

If OFCCP finds violations, OFCCP issues

- ⇒ Notice of Violations listing all violations (or)
- ⇒ Amended Show Cause
- ⇒ Contractor has an opportunity to rebut findings
- ⇒ Contractor is given an opportunity to conciliate

Show Cause Notice / Amended Show Cause Notice

- ❖ If the contractor cannot successfully rebut the Notice of Violations, a Show Cause is issued
- ❖ The Show Cause Notice gives the contractor 30 days to provide a reason why enforcement proceedings should not be initiated
- ❖ Conciliation Agreement v. Consent Decree

Newstar's Response to the Amended Show Cause Notice (ASCN)

- Remove 5 female applicants because they didn't complete an application
- Remove 3 female applicants because they had a criminal record
- Add 2 female hires because they declined offers

Refinement of Data

- Appropriate adjustments must be made to the non-protected group as well as to the protected group.
- The contractor must show that a criterion is uniformly applied before it can be used to refine an applicant pool.
- If a qualification or criterion results in a disparate impact, the contractor must show that it is job related and consistent with business necessity.

Analysis of Newstar's Response

Incomplete applications

→ NO – Newstar hired 14 males who had not completed their applications

Criminal record

→ NO – Newstar didn't learn of the criminal record until after the NOV was issued

Declined offers

→ YES – 2 female hires were added, but also 5 males who had declined job offers

Refined Data = 4.90 SD's

MOST IMPORTANTLY.....

**Appropriate
corrective actions
can help you avoid
costly discrimination
litigation and control
potential liability**



Financial Recovery FY-2005 Nationwide

Total \$\$\$	Total class size
\$45,156,462	14,761

DOL CALL CENTER

1 (866) 487-2365

DOL WEBSITE

www.dol.gov

Phoenix Area Office

(602) 514-7074

POINT OF CONTACT FOR SMALL BUSINESS OWNERS

BARBARA BINGHAM

**OFFICE OF COMPLIANCE ASSISTANCE
POLICY**

(202) 693-5080

