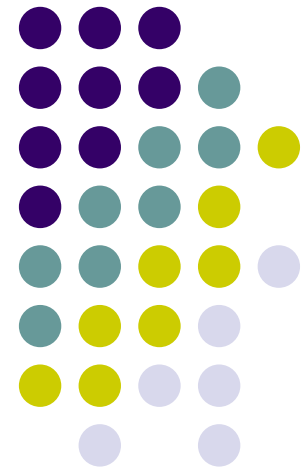


Using Your AAP as a Management Tool for Issue Spotting & Prevention of Litigation

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Seyfarth Shaw LLP



What is Affirmative Action?



- **Taking positive steps to**
 - **Develop an annual AAP for each establishment**
 - **Review focus areas revealed in the AAP and supporting materials**
 - **Design and implement good faith efforts to address those focus areas**
 - **Ensure non-discrimination in all employment decisions, policies and procedures**

Benefits to Using AAP as a Management Tool



- **Investment of resources for compliance requirements**
- **Leverage the investment / Maximize value**
- **Benefits**
 - **Additional insight into HR issues**
 - **Prioritize HR resources**
 - **Litigation prevention**
 - **Will benefit compliance posture**



AAP= Management Tool

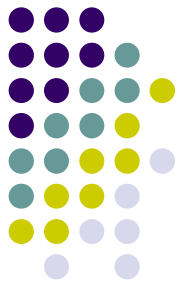
- **Gap Analysis:**
 - Utilization
 - Achievement of Prior Year's Goals
- **Potential Indicators of Discrimination:**
 - Under-representation, Concentrations
 - Adverse Impact Analysis (Patterns in Hiring, Assignment, Promotion, Termination)
 - Compensation Analysis
- **Plan of Action**

Review of Key AAP Focus Areas



- 1. Underutilization**
- 2. Achievement of Prior AAP Year's Goals**
- 3. Under-representation or Concentrations**
- 4. Applicant Flow and Personnel Transactions**
- 5. Compensation Analysis**

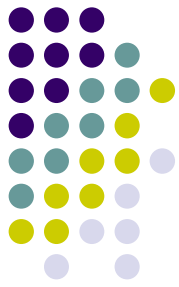
AAP Tool 1: Underutilization



- **Comparing Incumbency to Availability:**
“composition of Job Group is significantly less than the availability of qualified minorities or females in the
 - external reasonable recruiting area and
 - internal feeder job group”

Implications for Talent Identification

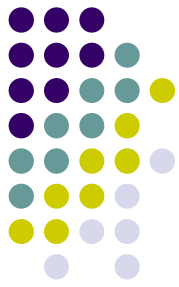
- **Recruiting and Outreach**
- **Employee Development**



Analysis: Underutilization

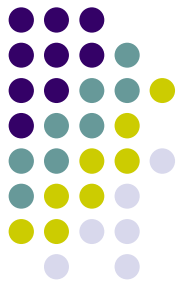
- **Examine AAP: Comparing Incumbency to Availability**
 - Which job groups are underutilized?
- **Examine Availability Analysis: Factors 1 and 2 / External v. Internal sourcing**
 - Which has the most impact?
 - Implications for focus of analysis and action steps

Examine External Sources: Recruiting and Outreach



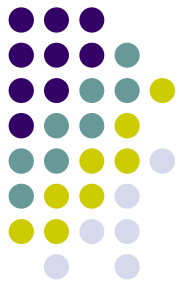
- **Identify external sources of talent**
 - advertising/ our website
 - job boards, including diversity boards
 - agencies/ search firms
 - staffing agencies
 - employee referral
- **Do we maintain referral source data?**
- **Which have most impact on our**
 - applicant flow
 - hiring

External Sources: Analyze Data & Action Steps



- **Analyze referral source success**
 - volume
 - quality !!!!!!!!
 - hires
- **Action steps:**
 - educate sources, if possible
 - terminate use of source
 - remeasure results on periodic basis
 - actively manage sources

Examine Internal Sources: Employee Development



- **For underutilized job groups where internal sourcing is key, examine feeders**
 - feeder job groups
 - feeder job titles (most important)
- **Which feeders contribute most candidates to**
 - internal applicant flow
 - placement (promotion/ lateral movement)
- **Analyze feeder success**
 - volume
 - quality !!!!!!!!
 - hires

Internal Sources: Analyze Data & Action Steps



- **Review Performance Management results**
- **Target Organizational Units/ Job Titles/ Managers for Focused Efforts**
- **Special Glass Ceiling Issues: Officials & Managers**

Analysis: Performance Management Results



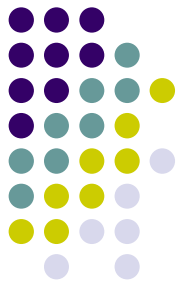
- **If performance ratings in database, analyze for patterns**
 - **Under attorney work product privilege**
 - **By race/ethnicity and gender**
 - **Is average rating of minorities/females lower?**
 - **by job group**
 - **by organizational unit**
 - **by job title**
 - **Why?**

Analysis: Target Individuals for Focused Efforts



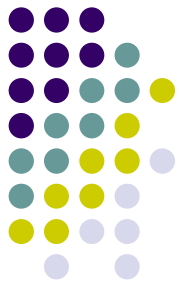
- **For employee, identify**
 - **key gaps in performance:**
 - **Skills development, initiative, positive approach**
 - **needed training and skills enhancement programs**
- **For manager**
 - **Identify needed training and skills enhancement programs**
 - **how to coach**
 - **other management development**

Action Plan: Target Focused Efforts



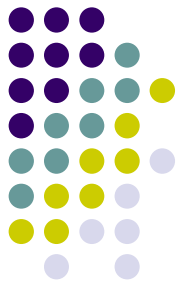
- **Manager-employee- HR collaboration : enhanced performance management plan**
- **Develop action program for targeted individual employees**
 - **Enhanced communication/ coaching with employee**
 - **Support/ belief in success**
 - **Communicate unwritten rules of success**
 - **Frequent feedback- both ways**
- **Measure results, modify plan**

Glass Ceiling Issues: Officials & Managers Analysis



- **New EEO-1 categories: transparency to OFCCP!**
- **At what level are the barriers?**
- **Who? Where? Why?**
 - **Performance ratings**
 - **Compensation**
 - **Quality of assignments**

Glass Ceiling Issues: Officials & Managers Action Plan



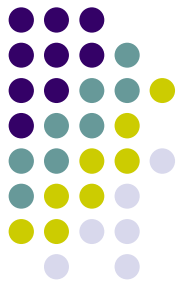
- **Action steps**
 - **CEO commitment**
 - **Collaboration with Diversity leadership**
 - **HR/upper level management collaboration**
 - **Examine**
 - **succession planning**
 - **high visibility opportunities**
 - **other key routes for advancement**
 - **Measure results**

AAP Tool 2: Achievement of Prior AAP Year's Goals



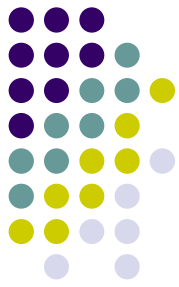
- **Job groups with goals in last year's AAP**
- **Did good faith efforts from the previous AAP year**
 - **provide sufficient qualified minority and female placements**
 - **to meet or exceed your prior AAP goals**

Preparation for Compliance Evaluation



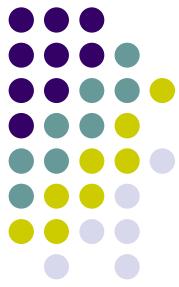
- **OFCCP will hold contractors accountable for:**
 - Achievement of their goals and/or
 - Quality of good faith efforts
- **Did the percentage of “opportunities achieved” equal or exceed each goal?**
- **If not, document good faith efforts implemented for the job group during the last AAP year**

Analysis/ Action Plan: Analysis of Prior Year's Goals



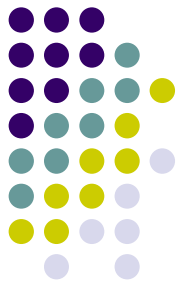
- **Were the Good Faith Efforts effective over multi-year period?**
 - **cost-efficiency: measure \$ per placement**
 - **quality: measure ratio of**
 - **applicants (have basic qualifications) to placements**
 - **candidates to placements**
 - **other standards, e.g. frequency of super stars**
- **Establish “acceptable” standard**
- **Reprioritize, replace**

AAP Tool 3: Under-representation & Concentrations



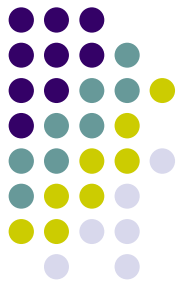
- **Under-representation: fewer minorities or females in a job title or organizational unit than expected**
- **Concentrations: more than expected**
- **AAP:**
 - **Organizational Profile/ Work Force Analysis**
 - **Identification of Focus Areas by Organizational Unit (JAAR Analysis)**

Organizational Profile/ Work Force Analysis

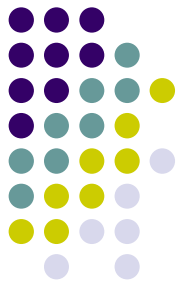


- **Lists job titles in each organizational unit**
- **Indicates the number of employees in each job title and their race/ethnicity and gender**
- **As of the beginning of the AAP year**
- **Job titles are listed from the lowest to the highest paid within each organizational unit**

Analysis: Organizational Profile/ Work Force Analysis



- **Review specific job titles and organizational units for concentrations or under-representation**
- **Which titles/org units are predominantly filled by:**
 - **males /females**
 - **minorities/non-minorities**
- **Which titles/org units have none or few**



Analysis: JAAR Method

- **For organizational units with critical mass of employees, e.g. 20 or more**
- **Identifies where minority/female representation**
 - **falls “Above”, “Below” or “Within”**
 - **an acceptance range of 80% to 120%**
 - **of the minority/female representation of the total work force**

Analysis: Under-representation & Concentrations



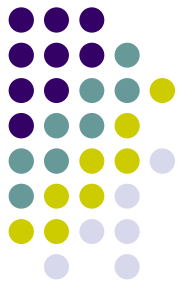
- **Placement/ assignment process**
 - candidate self-selection
 - recruiter steering
- **Internal movement**
 - policy re posting of opportunities
 - who bids
 - success rate
 - why are minorities/ women rejected: patterns?
- **Lifting/ physical requirements**

Action Plan: Under-representation & Concentrations



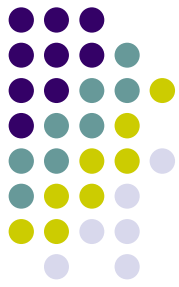
- Modify placement/ assignment process
 - self-selection or electronic screen for basic qualifications
- Encourage internal movement
 - reduce exceptions to posting policy
 - address patterns in minority/ female rejection
 - feedback to manager for performance management
- Develop assists for lifting/ physical requirements

AAP Tool 4: Applicant Flow and Personnel Transactions



- **AAP contains**
 - **Analysis of Applicant Flow**
 - **Analysis of Personnel Transactions**
- **Recording, for each job group, the prior AAP year's**
 - **Applicant flow**
 - **New hire**
 - **Promotion**
 - **Involuntary and voluntary termination data**

AAP Supporting Materials: Adverse Impact



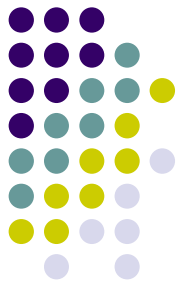
- **Occurs when minorities or females are**
 - **Hired or promoted at lower rates, or**
 - **Terminated at higher rates, than non-minorities or males**
- **Compare**
 - **hires with applicant flow**
 - **promotions with job group composition or applicant flow**
 - **terminations with job group composition**

Review of Analysis of Applicant Flow: Data Issues



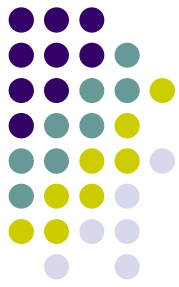
- **Determine if an accurate and reasonable number of applicants are identified**
- **Examine data for gaps, inaccuracies, large number of unknowns, anomalies**
- **If the ratio of applicants to hires is minimal or 1:1, review if additional applicants exist**
- **Dispositions: did we**
 - **properly code the reasons for non-selected applicants?**
 - **record “Declined Offers”**
 - **document the reasons why the selected candidate was the most qualified**

Analysis: Adverse Impact in Hiring: Selection



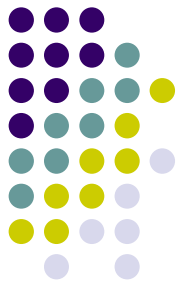
- **Did we select the most qualified candidate**
or
- **were there any minorities/ females more qualified than the white/ male selected?**

Analysis: Adverse Impact in Hiring/ Process



- **Gather applications of**
 - males or whites hired
 - females or minorities not hired
- **Compare least qualified hires with most qualified protected group applicants**
- **Review contemporaneous documentation, e.g. interview notes, pre-employment test results, disposition codes**
- **Interview those involved in selection process to understand decision-making**

Action Plan: Adverse Impact in Hiring



- **Process improvement for key issues:**
 - data collection gaps
 - recruiter use of tracking tools
 - quality of candidate/applicant pool
 - selection decisions
 - record retention
- **Identify team and timeline**
- **Measure results**

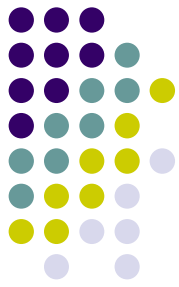
AAP Tool 4: Analysis of Personnel Transactions



- **Promotions**
 - Into or from a new job group and
 - Within the same job group
 - For the prior AAP year

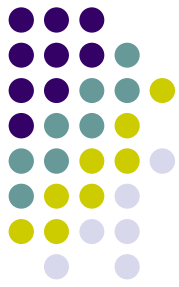
- **Compare with**
 - Job Group composition or
 - actual selection pool

Analysis: Adverse Impact in Promotions/ The Pool



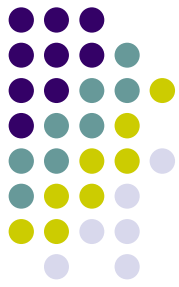
- **If adverse impact,**
 - **if job group used as comparator pool, determine precise feeder job titles and rerun analysis**
 - **if actual candidates used as pool, review selection process and decision**

Analysis: Promotion Selection Process



- **Did we select the most qualified candidate**
or
- **were there any minorities/ females more qualified than the white/ male selected?**

Analysis: Promotion Selection Process



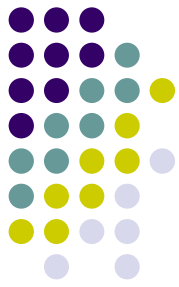
- Gather resumes/qualifications of
 - **males or whites promoted**
 - **females or minorities not promoted**
- Compare least qualified promotions with most qualified protected group candidates
- Review contemporaneous documentation, e.g. interview notes, performance evaluations
- Interview those involved in selection process to understand decision-making

Action Plan: Adverse Impact in Promotions



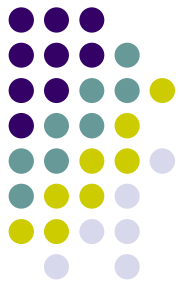
- **Process improvement for key issues:**
 - process gaps
 - posting policy
 - enhance good faith efforts
 - quality of candidate/applicant pool
 - identify internal candidates to develop for the position
 - encourage qualified internal candidates
 - selection decisions
 - examine “ideal qualifications”
 - record retention
- **Identify team and timeline**
- **Measure results**

Alternative Analysis for Placements



- **Best practice: more accurate review of selection results**
- **Replaces separate Hire and Promotion analysis**
- **Recognizes contemporaneous internal and external recruiting**
- **Combine internal and external applicants**
- **Compare with total of hires and promotions**

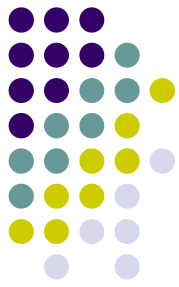
AAP Tool 4: Analysis of Personnel Transactions



- **Terminations**
 - Voluntary and
 - Involuntary
 - For each job group
 - For the prior AAP year

- **Compare with composition of Job Group**

Analysis: Adverse Impact in Terminations/ Process



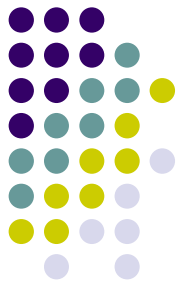
- **Conduct a review of circumstances surrounding the terminations**
- **Review documentation and examine employees' files**
- **Review exit interviews, if available**
- **Interview decision makers**

Analysis: Adverse Impact in Terminations/ Review



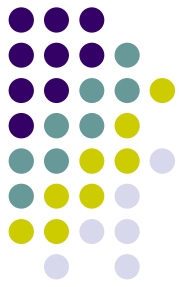
- **have non-protected employees not been terminated**
 - **even though they violated the same standards**
 - **with the same or greater frequency as the protected employees who were terminated**
- **what are the reasons for voluntary resignations; are there patterns?**

Action Plan: Adverse Impact in Terminations



- **If inconsistency in standards of discipline:**
 - establish standards
 - provide supervisor training
 - require HR pre-approval before any termination
- **If patterns in voluntary terminations, consider**
 - employee survey or climate assessment
 - survey caveat: don't ask, if you don't plan to address in a way that employees see improvement

AAP Tool 5: Compensation Analysis



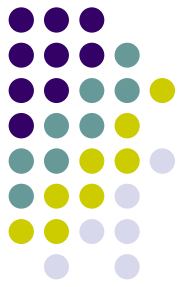
- **Required review**
 - **Gender-based**
 - **Race/ethnicity-based disparities**
- **Compensation system is key focus area**
 - **Substantial and**
 - **Well-publicized monetary settlements**

Analysis: Compensation/ Various Methods



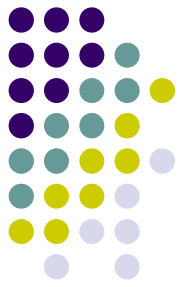
- **OFCCP: tiered approach**
 - **Pay grade/ job title**
 - Cohort analysis
 - DuBray Analysis
 - Trigger test
 - **SSEG's**
 - Multiple Regression Analysis

Analysis: Compensation/ Data



- **Time in position**
- **Prior related experience**
- **Performance**
- **Skill level of the particular job**
- **Responsibility level**
- **Length of service with company**
- **Educational attainment**
- **Geographic location/cost of living**
- **Acquisition of establishment with different pay practices**

Plan of Action: Compensation



- **For compensation disparities, consider:**
 - **pay adjustments**
 - **reviewing compensation policies, practices**
 - **establishing standards for initial starting pay**
 - **using signing bonus, other compensation in lieu of higher starting base**
 - **at annual salary review, communication with managers re “leveling”**