



Title VII Compliance Analyses Best Practices

Presented By:
Joanna L. Colosimo and
Beth Ronnenburg

PRESENTERS



Joanna L. Colosimo
DCI Consulting Group, Inc.
jcolosimo@dciconsult.com



Beth Ronnenburg
Berkshire Associates LLC
Beth.Ronnenburg@berkshireassociates.com

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AGENDA

- Landscape – *How did we get here?*
- Location decisions in a post 11246 world
- Analytical / Job Groupings in a post 11246 world
- Title VII Analyses and Data Considerations
- Compensation Analytics
- Responding to Findings – *Now what?*
- Wrap-up and Questions



Current Landscape

LANDSCAPE

How did we get here?

January 2025

- EO 14173 issued revoking EO 11246, DOL Secretary order directed OFCCP to cease EO 11246 enforcement and put Section 503 and VEVRAA activity in temporary abeyance

February 2025

- General Services Administration (GSA) issues class deviation removing Federal Acquisition Regulation (FAR) clauses pertaining to EO 11246

March 2025

- EEOC/DOJ releases guidance on 'Illegal DEI'

LANDSCAPE

How did we get here?

April 2025

- 90-day period ends where contractors could continue to comply with the regulatory scheme in effect prior to EO 14173
- EO 14281 deemphasizing the ‘use of disparate impact liability’
- FAR submits ‘Interim Final Rule’ to comply with EO 14173 (still pending review)

May 2025

- DOJ launches Civil Rights Fraud Initiative

June 2025

- Supreme Court rejects higher standards for majority plaintiffs in Title VII disparate treatment cases

LANDSCAPE

How did we get here?

August 2025

- DOJ releases additional guidance regarding unlawful discrimination
- Reported that DOJ begins issuing Civil Investigative Demand (CID) letters to federal contractors and grant recipients

February 2026

- OFCCP funded for FY26 with \$101M allocation (\$10M less than FY25)
- EEOC issues reminder letter to the Fortune 500 regarding Title VII compliance related to DEI initiatives

LANDSCAPE

How did we get here?

- EO 11246 revocation ≠ no EEO analytics
- What guidance still exists (Title VII, EEOC, DOJ)
- Why employers still need defensible analytics





Location Decisions for EEO Analytics

EEO ANALYTICS: LOCATION DECISIONS

Post EO 11246 Reality Check

Sometimes, location-based analytics **can make sense.**

- Manufacturing / plants
- Hospitals or medical facilities
- Localized recruitment
- To align to Section 503/VEVRAA, and other state requirements, like California

Sometimes, **they do not.**

- A fully remote workforce
- Where decisions are made in a centralized way

KEY QUESTIONS FOR EMPLOYERS

- How are employment decisions made in the organization?
- Does “location” or “establishment” meaningfully define our workforce anymore?
- Where does a location-based analysis still make sense?
- Where could alternative groupings be more defensible than location?
- How are we balancing flexibility with consistency?
- Are we accounting for overlapping obligations?
- Are our location decisions aligned with our broader analytics strategy?

KEY QUESTIONS FOR EMPLOYERS

- Location is **no longer a default requirement** for race/ethnicity and sex analytics — **it is a strategic choice.**
- The most defensible structure is the one that **reflects how decisions are made**, not how analyses were historically required to be performed.
- Employers should expect to be **more engaged and intentional** in defining their analytical structures.



Analytical Groupings for EEO Analytics: *Job Groups, Now What?*

JOB GROUPS

What Changed, What Didn't Change, and Where to go from here

What Changed?

Prescriptive rules are gone

No regulatory requirement defining 'job group' although it is referenced in Section 503 regs.

Minimum size thresholds are no longer dictated

The "30-employee rule" and similar bright-line rules no longer control grouping decisions.

Form no longer drives substance

Groupings are no longer about satisfying a template; they must reflect how employment decisions occur.

Greater employer discretion — with greater responsibility

Employers now must **define and defend** their analytical groupings under a Title VII framework.

What did NOT change?

Analytical groupings must still be defensible

Groups should be rational, job-related, and consistent with how decisions are made.

Similarly situated employees still matter

Comparisons must make sense based on job content, qualifications, and decision processes.

Consistency and credibility remain critical

Arbitrary or post-hoc groupings increase legal and practical risk.

Analytics are still about identifying potential barriers

The purpose remains understanding whether neutral processes may be producing disparate outcomes — not setting or chasing demographic targets.

JOB GROUPS: KEY FRAMING FOR EMPLOYERS

Examples to Consider

The question is no longer *“What grouping does the regulation require?”*

It is now *“What grouping best reflects how decisions are actually made, and can we explain it?”*

Common Considerations:

- Grouping by function and EEO-1
- Grouping by decision-maker and job levels
- Grouping by job, role, or scope of responsibility

There is **no single “right” grouping** anymore — but there are defensible and indefensible ones.

The best analytical grouping:

- Reflects real-world decision-making
- Can be explained simply and logically
- Is applied with some level of consistency

JOB GROUPS: GROUPING BY FUNCTION

Examples to Consider

Used when:

- Job roles share similar skills, qualifications, and career paths
- Decisions are made consistently across locations
- Labor markets and recruiting pipelines are function-driven rather than site-driven

Examples:

- Finance, IT, HR, Sales, Engineering
- Corporate vs. field-based functions
- Revenue-generating vs. support roles

Key questions to ask:

- Do these roles draw from the same talent pool?
- Are qualifications and selection criteria materially similar?
- Would differences across locations meaningfully affect outcomes?

JOB GROUPS: GROUPING BY DECISION-MAKER

Examples to Consider

Used when:

- Hiring or promotion authority is centralized or shared
- The same leaders influence outcomes across roles or locations
- Manager discretion drives results

Examples:

- Centralized recruiting teams
- Shared promotion or compensation committees
- Regional leadership with authority across multiple sites

Key questions to ask:

- Who actually makes or influences the decision?
- Is discretion exercised consistently?
- Would grouping by manager better isolate where disparities may arise?

JOB GROUPS (OR GROUPINGS): THEN VS. NOW

Considerations

What it used to look like

- Location-based job groups tied to establishment AAPs
- Broad EEO-1 categories grouped together for minimum size
- One “correct” structure driven by regulatory guidance
- Focus on completing the plan correctly

What it can look like now

- Groupings aligned to how decisions are made
- Flexible structures based on function, decision-maker, job, or relevant factor
- Multiple defensible approaches depending on business reality
- Focus on meaningful insight, not just compliance artifacts



Title VII Analyses *And Data Considerations*

TITLE VII ANALYSES

- Title VII covers discrimination affecting employment terms and conditions
 - Supreme Court in Muldrow said that a plaintiff **does not need to show a “significant” or “material” employment action**
- Types of analyses
 - Competitive movement selection analyses
 - Non-competitive movement (proportional analyses)
 - Talent availability metrics

EMPLOYEE DATA CONSIDERATIONS

- Merit variables
 - Time variables (i.e., experience, tenure, time in job, time in grade, etc.)
 - Performance
 - Education and/or certifications
 - Other variable relevant to specific roles
- Differentiating promotions – competitive vs non-competitive
- National origin / citizenship

APPLICANT CONSIDERATIONS

- Who should you be counting as an applicant?
 - Continue to use the Internet applicant rule
 - Codified in the EO 11246 portion of the regulations therefore no longer required
 - EEOC never adopted the definition
 - Include all job seekers
 - Somewhere in between
- Considerations
 - Reliability of disposition coding – especially ‘basic qualifications’
 - Data quality long-term
 - Are you ‘auditing’ your internal HR data?



**Title VII
Compensation
Analytics: *Still Very
Much Alive***

COMPENSATION ANALYTICS

Title VII is still very much alive!

Why they Still Matter

- Compensation analytics did *not* disappear with shifting federal enforcement priorities
- Employers still face **Title VII risk, state pay equity laws, and litigation exposure**
- Pay decisions remain one of the **highest-risk employment practices** to defend after the fact

Title VII-Aligned Pay Equity

- Title VII remains the **core legal framework** for pay equity analysis
- Plaintiffs, EEOC, and state agencies rely on **“similarly situated” comparisons**, not EO-only concepts
- Disparities can be challenged even without intent or federal contractor status
- Proactive analyses support:
 - Litigation defense
 - State law compliance
 - Internal governance and consistency

SSEG CONCEPTS STILL IN PLAY



**SSEGs originated under
Title VII, not EO 11246**



The idea remains simple:

Compare employees
performing **similar work**

Account for **legitimate, job-
related pay factors**



What's evolving:

Less rigid labels or reports

More employer-specific,
defensible groupings



**Courts still expect a
logical, consistent
grouping methodology**

WHAT CHANGES?

If anything at all...

Moving beyond compliance with 2.17(b)(3) regulations and focus on Title VII

Common grouping approaches:

- Job family / sub-family + Grade
- Career level or progression bands
- Functional role + scope
- Geographic or market-based structures

Goal: balance **statistical validity**, **legal defensibility**, and **operational credibility**

Reminder: This Was Never About Only Women or Minorities

- Title VII protects **all employees**



Now What?

Responding to Findings

WHAT EMPLOYERS CAN (AND CANNOT) DO

Using your results in the right way

What Employers Can Do

- ✓ Use analytics to **identify patterns** and potential **risk**
- ✓ Ask process-level questions
 - ✓ Recruiting, pay, promotion, performance
- ✓ Prioritize **removing** actual barriers
- ✓ Strengthen **consistency, documentation, and governance**

What Employers Cannot Do

- ✗ Make decisions because of race, ethnicity, sex or some other protected trait
- ✗ Adjust pay, ratings, promotions or selections simply to 'fix the numbers' without appropriate evidence that a policy or process needs change
- ✗ Treat analytics as permission to re-engineer outcomes
- ✗ Replace decision making with targets

WHAT “ACTION” ACTUALLY LOOKS LIKE

Do this instead

Remove

Remove barriers

- E.g. -Unnecessary degree or experience requirements
- Subjective screening criteria

Fix

Fix processes

- Standardize pay setting
- Calibrate performance reviews
- Clarify promotion criteria

Improve

Improve controls

- Training for decision-makers
- Documentation and oversight



Key Takeaways

FINAL TAKEAWAYS

What to Keep in Mind

Groupings Matter

Think: *Would I be comfortable explaining this grouping to a regulator or a judge?*

Still Analyze Compensation

Think: *Fix the system.*

Implementation Is Where Risk Lives

-Strong analysis can be undone by weak execution

Think: *How decisions are made matters as much as the data itself.*

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HRCI: 736595

SHRM: 26-5XKWA



Thank You

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