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Ideas & Trends

EMPLOYEE GRIEF

Eight tips for assisting in recovery process

Strokes, heart attacks, car accidents and other traumas can send family members and friends of a victim into a tailspin because their lives are often suddenly and unexpectedly changed. Knowing how to be supportive and sensitive to employees and coworkers whose families have endured a tragedy can be a godsend to help them cope with grief and recover.

Yet, when unexpected tragic news is heard, coworkers often feel so sad and uncomfortable, they don't know what to do or say. That's why people sometimes avoid interacting with their friends, coworkers and families at the very time their support is needed most. This awkwardness creates even more pain for those

grieving because friends and colleagues at work are expected to act like extended family members.

"When a person suffers a sudden, tragic loss, it is felt physically and emotionally," explains Lorraine Ash, award-winning journalist and health care reporter. "The pain can be intense, and the emotional anguish, if unresolved, can lead to prolonged depression, headaches, chest pain, loss of appetite, difficulty concentrating, and difficulty sleeping. It can become hard for employees to get back into a routine at work to perform tasks that once came so simply to them."

"Enlightened employers recognize that when a person returns to work before being healed, they may be present

physically, but they can't always focus and pay attention," Ash said. "The worker may not be as interested in tasks as before. He or she may seem irritable and have mood swings, and feel life is unfair and meaningless. Concentration and decision-making may be affected. Plus, it can be hard to remember details. As a result, some of that person's work may be sloughed off onto colleagues who already had to pick up the slack while that person was out of the office. This adds stress for everyone and continues to drain energy and resources if there isn't closure."

Ash developed eight tips to help employers speed the recovery process of grieving employees. The tips focus on open communication, counseling, flexibility of work assignments and rallying the ongoing support, understanding and help of coworkers. "When employers show compassion—a genuine concern and willingness to work with an employee—the affected employee develops greater company loyalty long term, and when other workers witness that support, it can boost overall morale," Ash explains.

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OFCCP

Federal contractor's pay practices are now undergoing statistical analysis

Federal contractors' and subcontractors' compensation practices will be subject to "multiple regression analysis" under final standards issued by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) on June 16, 2006 (71 FR 35124-35141). The statistical analysis is part of the compliance review process the OFCCP uses to determine whether a contractor or subcontractor has engaged in systemic compensation discrimination in violation of Executive Order 11246.

Background. The OFCCP enforces EO 11246, which requires federal con-

tractors and subcontractors to implement affirmative action programs and to guarantee equal employment opportunity in the workplace without regard to race or gender. Pursuant to OFCCP regulations adopted in 2000 (41 CFR Part 60-2.17(b)(3)), covered contractors must evaluate their compensation system(s) to determine whether there are disparities based on gender, race or ethnicity. As part of its compliance review process, the OFCCP investigates whether contractors' pay practices are discriminatory.

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GRIEVING

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Eight tips for assisting in recovery process

1. Acknowledge the loss. Ignoring an unexpected tragedy that an employee has endured will only engender resentment by the employee, whose mind will still be filled with sad images and difficult emotions. The workplace can take the edge off both by acknowledging such a life-altering event.

2. Find ways to comfortably express support as a group. As individuals, coworkers may be afraid to approach a grieving employee and may not know what to say or do. But they can act *en masse* to show they care by doing something nice, such as:

- co-signing a big bereavement card;
- organizing a food brigade and delivering homemade meals to the bereaved colleague's home right after the death; or
- taking up a collection for a group tribute to the lost loved one by making a contribution to a charitable organization in his or her name.

3. Offer the grieving employee flexibility in his or her work assignments and schedule. A boss should sit with a grieving employee in an office with a closed door and offer condolences, which makes the employee's grief visible and can elicit feelings of relief and gratitude. A boss can also offer other assistance for the next month or two—a shortened work day here or there, a quiet room to which to retreat during difficult moments, a flexible work schedule. If other employees protest, tell them they can expect similar treatment if unexpected tragedy befalls them.

4. Don't assign grieving employees jobs that are too taxing. Unresolved grief can leave employees irritable and feeling that life is both unfair and meaningless. It's important to help them stay occupied when they return to work, but if they haven't fully recovered, don't overwhelm or frustrate them by assigning new tasks they can't handle or jobs that require such keen judgment the company could hang in the balance from their decisions. Realize they initially may have difficulty concentrating and remembering details, and that their decision-making may

be affected. Be patient, help them get back into the routine, and encourage them to seek counseling.

5. Make the pathway to counseling easy. An HR director can send an email to the employee that expresses condolences and reminds the employee of counseling services covered by the company plan, if such exists. The email can also provide easy ways to connect to these services, such as a Web link or the name of an individual with a phone number. A colleague

Enlightened employers recognize that when a person returns to work before being healed, they may be present physically, but they can't always focus and pay attention.

can also be the one to encourage participation in a support group.

Some people are reluctant to join a support group, but support groups help members learn coping skills, stress management, and spiritual healing. The colleague can learn where and when a group meets, and possibly even offer to drive the grieving person to the location initially, and attend sessions with him or her.

6. Encourage other employees to be sensitive in their daily interactions. When colleagues have to pick up the slack for someone who has been absent because of a tragic loss, or because that person isn't performing at a hundred percent when he or she returns, they can become irritated and may seem moody. Telling an employee to "Snap out of it" isn't going to help anyone. Remind colleagues that people recover at their own pace, and ask them to be patient and considerate.

When colleagues show compassion, genuine concern and a willingness to work with an employee, the affected employee is likely to develop greater company loyalty

long term. When other workers witness this, it can boost overall company morale.

7. Express one-on-one caring off-site and off-hours. The workplace is about work, and conversation about personal crises can be awkward and unwelcome there, doing no one any good. But coworkers can offer to spend one-on-one time with a grieving colleague by taking him or her to lunch and asking how things are, or accompanying the employee on walks, to the gym or on outings that can help the colleague stay socially connected outside the work site.

8. Be sensitive to "shadow grief." Sorrow from unexpected tragedies can linger like a shadow, never really going away completely. It can be especially haunting for those who have lost a loved one around holidays or milestones like the lost loved one's birthday or the date they passed away. Enlightened employers will try to recall those dates, and exhibit extra consideration to employees during those times. □

Source: Lorraine Ash is the author of Life Touches Life: A Mother's Story of Stillbirth and Healing (NewSage Press). For more information about Lorraine Ash, Life Touches Life, or the "Wisdom of Words: Writing to Heal the Spirit" workshops she offers, access www.Lorraineash.com.

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EMPLOYEE PERFORMANCE

Poor worker performance may spread if HR fails to address it

A company's failure to deal effectively with its few workers who are consistently poor performers may decrease the extent to which other employees are engaged in their jobs and their companies, according to a survey released by Sirota Survey Intelligence. Only two out of five employees (slightly more so for management) who feel their companies are doing much too little to correct poor employee performance are favorably engaged at work, according to the survey of 34,330 employees. This compares with a favorable engagement level of 73 percent among those who feel their company is taking the necessary steps to correct poor employee performance.

Fully 33 percent of management and 43 percent of non-management employees think their companies are *not* doing enough to deal with poor performers. Results are pervasive across union and non-union, as well as public and private sector, organizations.

"A very small percentage of employees at a typical workplace – usually around only five percent – are 'allergic to work,' and do as little work as they possibly can," said David Sirota, lead author of *The Enthusiastic Employee: How Companies Profit By Giving Workers What They Want* (Wharton School Publishing, 2005).

"The main reason they get away with this is the lack of management's will and persistence in stepping up to the problem. Management needs either to help employees understand they must pull their own weight and coach them to improve, or let them go. This is an unpleasant task that many managers choose to avoid," said Sirota.

A significant proportion of both management and non-management employees feel there is too little emphasis on dealing with poor performance, with a higher proportion among non-managers feeling this way. "One possible reason for this difference between the views of managers and non-managers is that some managers are actually addressing the problem, but these efforts would not—and should not—be visible to other non-managers," said Douglas Klein, president of Sirota Survey Intelligence.

"Many non-managers feel that failure to effectively deal with poor performers is unfair to the great majority of employees who

consistently work hard at their jobs," continued Klein. "This finding belies a commonly held myth that many in non-management want to take it easy."

"Managers and non-managers alike who feel there is much too little attention paid to correcting poor performance by far exhibit the lowest levels of employee engagement in their organizations, and are at risk of becoming disengaged from their jobs," said Klein.

Added Sirota, "Companies should distinguish between employees who don't want to work and those who do, but whose performance is poor. The latter may require additional training and coaching. In

addition, don't assume that employees are interested only in receiving praise for what they do well, and resent hearing about areas in need of improvement."

Comments about areas that need improvement should be specific and factual, rather than evaluative, and directed at the situation, rather than the person. "Feedback needs to be limited to those aspects of employee behavior that relate to performance. When giving performance feedback, always encourage two-way communication," Sirota continued. □

Source: Sirota Survey Intelligence; www.sirota.com.

EMPLOYEE PERFORMANCE

Employee engagement still isn't a reality warns BlessingWhite

The latest Employee Engagement Report by global consulting firm BlessingWhite indicates that even though the majority of employees express positive feelings about their work, their employers and even their managers, less than one-fifth are fully engaged in their work.

"Engaged employees are not just happy or proud. They are what we call 'enthused and in gear,' focusing their talents to make a difference in their employer's success," explains Christopher Rice, BlessingWhite's President and CEO. "We found that only 18 percent of our survey respondents had all the pieces of this engagement puzzle in place." There were 714 participants in the survey.

According to the report, lack of alignment is a primary reason for so few employees being fully engaged. Rice observes, "For the third year in a row, our survey results indicate that strategy isn't getting very far out of the boardroom. Although more respondents this year indicate that their organization's strategy is well communicated (41 percent vs. 33 percent in 2005), only 19 percent indicate that they believe daily work priorities are linked to a clearly communicated strategy. Our findings suggest that a lot of well-meaning, hard-working employees are spinning their wheels on work that may not matter much to their employers. Sooner or later, their attitude will take a nose-dive or they'll burn out." Another key finding: Strong manager-employee partnerships lead to more engaged employees.

This year's report also found that more than two-thirds of employees do not see visible actions by their employers to increase employee engagement. According to Rice, "We're not suggesting that organizations implement workforce initiatives emblazoned with 'engagement' in neon letters. There is evidence, however, that if leaders begin talking about engagement or conduct employee engagement surveys, they need to be vigilant in helping their workforce understand what's happening as follow-up."

Source: BlessingWhite, a global consulting firm dedicated to creating sustainable high-performance organizations; www.blessingwhite.com.

One-in-three workers won't stay with unethical company

Whether a company acts ethically is a significant factor in the average American's willingness to work for an employer, according to independent research conducted by LRN, a leading provider of governance, ethics and compliance management applications and services. In fact, more than one-in-three employed Americans actually left a job because they disagreed with a company's business ethics.

The LRN Ethics Study provides new evidence that links a company's ability to foster an ethical corporate culture with an increased ability to attract, retain and ensure productivity among U.S. employees. Findings of the study reveal that:

- A majority of workers—94 percent—say it is “critical” or “important” that the company they work for is ethical.
- Eighty-two percent prefer to be paid less but work for a company with ethical business practices than receive higher pay at a company with questionable ethics.
- Eighty percent cite disagreement with the ethics of fellow employees, a supervisor or management as the most important ethical reason for leaving a job, and 21 percent cite pressure to engage in illegal activity.
- Fifty-six percent of U.S. workers define their current company as having an ethical culture. Yet one-in-four say that in the past six months they witnessed unethical, and even illegal, behavior where they work. Among those, only 11 percent say they were not affected by it.

“Our findings confirm that companies with a commitment to ethical conduct enjoy distinct advantages in the marketplace, including attracting and retaining talent,” said LRN CEO and chairman Dov Seidman. “Companies that inspire principled conduct throughout their workforce also experience fewer ethical distractions. The LRN Ethics Study brings greater clarity to the nexus between ethical behavior and business success.”

Demographic distinctions

Virtually all Americans want to work for a company that they believe is ethical, with 57 percent saying it is critical, the LRN Ethics Study found. However, there is a distinction in importance by sex, geography and occupation.

Besides affecting a company's ability to recruit and retain employees and increasing the legal, regulatory and compliance risks a company faces, unethical behavior has an impact on employees' productivity.

Working for an ethical company is slightly more critical to women (63 percent) than men (53 percent). Full-time employees in the West and South, 62 and 61 percent respectively, are more likely than those in the North Central and Northeast, 54 and 48 percent respectively, to say it is critical to them. Two-thirds of those in professional and managerial occupations, 68 percent, say this is critical to them, compared with 53 percent of sales and clerical employees and 45 percent of blue-collar workers.

The link between ethics and pay.

Eighty-six percent of Americans employed full-time in professional or managerial positions would prefer to work for an ethical company rather than be paid more, compared with 76 percent of those working in blue-collar occupations. Those 35 and older are slightly more likely than younger workers to choose working for an ethical company over more pay, 85

percent versus 76 percent, although clearly both groups prefer working for an ethical business.

Ethical disagreements lead to employee turnover

Not only do employees want to work for ethical companies, but the LRN Ethics Study found that employees are willing to leave when they are dissatisfied with their employer's ethics. More than one-in-three respondents, or 36 percent, said they have left a job because they disagreed with a company's ethical standards for doing business. This is true of Americans regardless of gender, age or socioeconomic factors.

However, workers in the West are the most likely to have left a company because of concerns with the company's ethical standards, 43 percent, and Americans living in rural areas are more likely than those in metropolitan environments, 43 percent versus 34 percent respectively.

The most common ethical reason for leaving a company is disagreement with the ethics of fellow employees, a supervisor or management, according to 80 percent of those surveyed. Moreover, one-in-five, or 21 percent, of those surveyed felt pressure to engage in illegal activity, a number equal to eight percent of Americans employed full-time.

Other ethics-related reasons for leaving a job include feelings by employees that the company was not acting according to its promises or corporate values, 72 percent, and employees feeling pressure to compromise their own ethical standards, 67 percent.

U.S. workers define their cultures.

A majority of Americans working full time, or 56 percent, say their current employer embraces ethics and corporate values in everything they do. This is a significant figure given the focus regulators and other corporate stakeholders place on a company's ability to foster a strong ethical corporate culture.

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ETHICS*continued from previous page*

Despite the positive overall findings, about half as many, or 30 percent, say their company merely tows the line by following the law and company policies. The remaining nine percent, or nearly one-in-ten people surveyed, say they either work at a company where they do what they are told and are not encouraged to ask questions about what is right or wrong, or they often see management and peers acting in questionable ways.

Although the majority of employees think highly of their employer's ethical business practices, 25 percent of those surveyed said that in the past six months they have witnessed a colleague acting unethically (18 percent), illegally (seven percent) or in a harassing or discriminatory manner (14 percent). Among those who have witnessed this behavior, about one-in-four say they do so at least once a week, including 12 percent who say that they are a daily occurrence and an additional 12 percent who say that they happen at least once a week.

Impact of unethical behavior

Besides affecting a company's ability to recruit and retain employees and increasing the legal, regulatory and compliance risks a company faces, unethical behavior has an impact on employees' productivity. Very few of those who experienced unethical behavior on the job—only 11 percent—say they were not affected by it, the LRN Ethics Study found.

Half of those surveyed admitted that unethical behavior is a distraction on the job. Further, 63 percent spent time talking about unethical behavior with colleagues. Nearly as many, or 49 percent, spent time talking about ethical issues at work with family and friends, and almost one-third, or 32 percent, went so far as to speak with management or make a formal complaint.

Source: LRN; www.lrn.com.



For more information on addressing ethics and values in the workplace, check out the HR Practices Guide ¶1842 through ¶1854. □

Should you disclose possible arrest when giving reference? **HR Quiz**



You receive a call from a hiring manager for another company in your city asking about a former employee. Steven has just applied for a traveling sales representative position at that company and the hiring manager is performing a routine reference check. She asks for your assistance in verifying Steven's employment history at your company.

You remember Steven all too well. He resigned from your organization just a couple of days after it was rumored that he had been arrested for driving while under the influence of alcohol after leaving a customer location. Because the arrest allegedly occurred while he was on the job, you were especially concerned.

You willingly verify Steven's length of employment and his salary, as well as the fact that his departure was a voluntary separation. However, the hiring manager then asks whether you have any additional information that she should consider in hiring Steven as a sales representative. Should you disclose the apparent arrest? If you do, are you opening up your company to liability for privacy or defamation claims? What if you don't?



If you had documentation showing for a fact that Steven was arrested for a DUI, and that the arrest occurred while he was performing job-related duties, it may be best for you to disclose the information. If Steven were actually convicted, and the hiring manager told you that he was being considered for a position that required driving to customer locations, it would be even more compelling that you disclose this information.

However, the scenario is not so clear cut. Because you don't know for a fact that Steven was actually arrested, and you certainly don't know whatever became of the arrest if it did indeed occur, you probably are under no obligation to disclose the rumor. But you could get yourself into trouble by misleading the hiring manager with a statement to the effect that to your knowledge Steven had a perfect driving record or even if you comment on his performance in general.

Job reference policy guidance. To avoid potential problems in disclosing information about former employees, it is a good idea to implement a policy on giving references, outlining the type of information that can be disclosed. Here's what HR can do:

- Develop a written policy that addresses what information will be provided and how.
- Specify how the policy will be reviewed, enforced and documented.
- In your policy, specifically address employer reference requests and letters of recommendation.
- Consider restricting the information that you will provide or verify to name, social security number, dates of employment, last title, last salary, and reason for leaving employment.
- If the organization's policy is to not release certain information, tell employers who request information what the policy is so that the employer does not assume that failure to provide the information means that the information is being withheld because it is negative.
- Design a form that captures all pertinent information concerning a prospective employer's request for information on a former employee so that all information relayed is documented. Have the individual who had the conversation as well as his or her manager sign the form.

Source: CCH HR How-to: Workplace Privacy.

OFCCP

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The standards. The agency's approach has two major components: (1) the determination of "Similarly Situated Employee Groups" (SSEGs)—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; and (2) the use of multiple regression analysis, which is a statistical tool for understanding the relationship between two or more variables. The purpose of the regression analysis is to determine whether there are any significant differences in compensation by gender and/or race that are not explained by legitimate factors.

OFCCP will investigate whether employees in an employer's pre-existing groupings, such as pay grades or Affirmative Action Plan (AAP) job groups, are in fact similarly situated by looking at job descriptions and conducting employee interviews.

In addition, the agency may consider other factors, including department or other functional unit of the employer, employment status (e.g., full-time or part-time), compensation status (e.g., union, nonunion, hourly, salaried, or commission).

The voluntary guidelines. The same day the agency issued the final standards, it also issued final guidelines for contractors' voluntary self-evaluation of compensation practices (71 FR 35114-35122). The guidelines are OFCCP's first effort at providing guidance to contractors and OFCCP personnel on suggested techniques for complying with the compensation self-evaluation regulatory requirement (41 CFR Part 60-2.17(b)(3)), and the agency stresses that the guidelines are entirely voluntary.

If a contractor decides to follow the guidelines, the contractor must make a reasonable attempt to produce SSEGs that are large enough for meaningful statistical analysis (at least 30 employees with five or more incumbents who are members of either a male/female pair or a minority/non-minority pair). Other than in establishments or AAPs with 500 or

more employees (in which case multiple regression analysis is required), contractors may use any statistical analysis that accounts for factors that legitimately affect employees' compensation, such as experience, education, performance, productivity, location, etc.

Contractors must investigate statistically-significant compensation disparities to determine whether they are explained by legitimate factors. Any disparities not explained by legitimate factors must be remedied.

As the agency trains compliance officers and implements the final standards, contractors should expect more aggressive investigation of compensation during OFCCP audits.

If the contractor's compensation self-evaluation system reasonably meets the general standards outlined in the guidelines, the OFCCP will consider the contractor's compensation practices to be in compliance with EO 11246 and the compensation portion of the audit will end at that point. All relevant statistical and non-statistical documentation must be made available to OFCCP during a compliance review. OFCCP may review personnel records and conduct employee interviews to determine the accuracy of the data and documents.

In addition, the OFCCP will review data and documents explaining the results of the non-statistical methods used to evaluate pay decisions of those employees who were eliminated from the statistical evaluation process.

The agency will also review documentation regarding any follow-up investigation into statistically-significant disparities, the conclusions of such investigation, and any pay adjustments made to remedy disparities.

Alternative compliance certification. In the alternative, a contractor may certify that it has performed a compensation self-evaluation, which it asserts is subject to attorney-client privilege and/or attorney work product doctrine, in lieu of producing the methodology or results during a compliance review. For contractors who elect this route, OFCCP will evaluate their compensation practices without regard to their compensation self-evaluation.

Contractors' concerns

William E. Doyle, Jr., Partner, Morgan, Lewis & Bockius LLP, Washington, DC, and former Deputy Director of the OFCCP, U.S. Dept. of Labor, recently spoke with CCH about the standards and voluntary guidelines.

The final standards signal that OFCCP will now focus more aggressively on compensation during compliance reviews, Doyle observed. "As the agency trains compliance officers and implements the final standards, contractors should expect more aggressive investigation of compensation during OFCCP audits."

Most contractors are not prepared to perform multiple regression analysis and getting to that point is costly. Compensation data are often incomplete and not available electronically. Moreover, because the OFCCP is now following legally recognized standards and utilizing sophisticated statistical techniques, contractors risk greater exposure to liability not only as a result of an OFCCP investigation but also in the context of class action litigation.

Even where a multiple regression analysis did not reveal any pay disparities, plaintiffs' lawyers who bring class actions typically are astute enough to tweak the model in search of pay disparities revealed by the addition or elimination of a factor or two, Doyle observed.

Suggestions for contractors

So, what should contractors be doing? According to Doyle, they need to develop specific compliance and defense strategies in response to the new standards. He recommends that contractors focus on four areas.

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OFCCP

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1. Construct careful pay divisions. First, explore different options for submitting the “Pay Divisions,” which are the groupings the contractor uses to submit compensation data in response to Item 11 of the Scheduling Letter contractors receive from the OFCCP. “Contractors should attempt to identify Pay Divisions that pass OFCCP’s desk audit test and that are likely to be acceptable to OFCCP,” Doyle advised.

Pay Divisions should be consistent across a contractor’s facilities within the same OFCCP district, unless there are compelling explanations, like a unionized workforce in one facility but not the other, Doyle added.

2. Do privileged internal assessment. Second, consider doing an internal, privileged risk assessment analysis to assess whether there are compensation disparities that OFCCP would discover if it did a full-blown investigation using multiple regression analysis. This is also important for large employers in industries that have been targeted for class action litigation, said Doyle.

According to Doyle, the objectives of the risk assessment are: (1) to explore the likely regression models that the OFCCP, EEOC and plaintiffs’ lawyers would use; (2) to develop compelling defense models; and (3) to take steps to secure the factual foundation for a defense model.

“You can’t meet any of these objectives unless you really understand how the courts look at these analyses and the types of arguments advanced by plaintiffs’ lawyers and government agencies,” he said.

“The risk assessment allows the contractor to identify and correct misclassifications, data discrepancies, and other problems that would make it easier for OFCCP or a plaintiff’s lawyer to demonstrate statistically significant pay disparities. Data changes are often greeted with suspicion by OFCCP during an investigation, so waiting until an audit has been scheduled may limit the contractor’s defense options,” he explained.

Doyle advises contractors not to disclose the fact that they have conducted the risk assessment for two reasons. “First they should take the position that the fact that they conducted the risk assessment is confidential. Second, they did not conduct the risk assessment to comply with the AAP regulations, so it is irrelevant to any discussion of their OFCCP compliance status,” Doyle suggested.

The final standards signal that OFCCP will now focus more aggressively on compensation during compliance reviews, Doyle observed. “As the agency trains compliance officers and implements the final standards, contractors should expect more aggressive investigation of compensation during OFCCP audits.”

Contractors should also understand that the attorney-client privilege and the attorney work product doctrine only apply if the risk assessment was conducted for the purposes of obtaining legal advice or developing a defense to potential litigation, Doyle cautioned. “A risk assessment conducted to meet a regulatory obligation probably will not be privileged,” he stressed.

3. Pass on the voluntary guidelines. Doyle advises contractors not to attempt to take advantage of the voluntary self-audit guidelines without consulting counsel and conducting a confidential risk assessment first. Although the guidelines afford contractors some latitude to develop a statistical analysis other than a full multiple regression analysis, these sta-

tistical analyses are less sophisticated than multiple regression methods and are likely to be less accurate because they do not account for the joint impact of the legitimate factors that explain pay disparities, Doyle observed.

“Less sophisticated methods are likely to generate pay disparities more frequently and to generate larger pay disparities. It may be difficult to convince OFCCP compliance officers that large pay disparities are entirely justified and that back pay and pay adjustments are not warranted,” said Doyle. “A contractor who makes pay adjustments based on these less rigorous statistical methods may also have a harder time defending against reverse discrimination claims,” he added.

4. Keep it simple. Finally, the OFCCP regulations require contractors to do some kind of monitoring of compensation practices as part of their affirmative action programs. The voluntary guidelines make clear that this monitoring obligation does not require contractors to conduct any data analysis or statistical analysis. For example, a contractor could comply by having its HR and compensation staff monitor compensation decisions on a regular basis to ensure that all decisions are based on legitimate nondiscriminatory factors, Doyle observed.

Contractors have ultimate discretion to determine what they will do; however, during a compliance review, OFCCP will ask contractors to identify what they have done to comply, Doyle said. He recommends that contractors not develop multiple regression analyses outside of a risk assessment study. To conduct a risk assessment study that serves the purposes of assessing risk and identifying risk mitigation steps, contractors will need statistical and legal expertise, Doyle said.

Contractors can contain costs by conducting much of the risk assessment in-house after utilizing legal and statistical experts to assist with the initial setup of the analysis, Doyle suggested. However, he stressed that corporate counsel must remain intimately involved as the overall manager of the internal risk assessment project in order to protect the analysis under the attorney-client privilege and work product doctrine. □

Mass layoff events increase in July

In July 2006, employers took 1,125 mass layoff actions, seasonally adjusted, as measured by new filings for unemployment insurance benefits during the month, the Bureau of Labor Statistics reported August 23rd. Each action involved at least 50 persons from a single establishment, and the number of workers involved totaled 114,895, on a seasonally adjusted basis. The number of layoff events increased by 28; the number of associated initial claims decreased by 4,767 from June 2006. In the manufacturing sector, 363 mass layoff events were reported during July 2006, seasonally adjusted, resulting in 47,287 initial claims. Both the number of events and initial claims in manufacturing were higher than a month earlier.

HR Notebook

Consumer prices see July increase

The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.3 percent in July, before seasonal adjustment, the Bureau of Labor Statistics of the U.S. Department of Labor reported August 16. The July level of 203.5 was 4.1 percent higher than in July 2005. The Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) also increased 0.3 percent in July, prior to seasonal adjustment. The July level of 199.2 was 4.3 percent higher than in July 2005.

On a seasonally adjusted basis, the CPI-U advanced 0.4 percent in July, following a 0.2 percent rise in June. Energy costs, which declined 0.9 percent in June, advanced 2.9 percent in July. Within energy, the index for petroleum based energy increased 5.0 percent and the index for energy services rose 0.1 percent. The food index increased 0.2 percent in July. The index for all items less food and energy rose 0.2 percent in July, following increases of 0.3 percent in each of the preceding four months. A sharp drop in the index for apparel was largely responsible for the smaller increase in July.

Real earnings fall slightly in July

Real average weekly earnings decreased by 0.1 percent from June to July after seasonal adjustment, according to preliminary data released on August 16 by the Bureau of Labor Statistics. A 0.4 percent increase in average hourly earnings was more than offset by a 0.5 percent increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Average weekly hours were unchanged.

Average weekly earnings rose by 4.1 percent, seasonally adjusted, from July 2005 to July 2006. After deflation by the CPI-W, average weekly earnings decreased by 0.1 percent. Before adjustment for seasonal change and inflation, average weekly earnings were \$571.48 in July 2006, compared with \$542.49 a year earlier.

TRENDS

Worker confidence up in August despite dip in expected hiring

The Hudson Employment Index(SM) rose one point to 102.9 in August, a moderate increase albeit the most substantial since May. Nominal improvements in workers' perceptions of their finances and job satisfaction contributed to the increase, yet were tempered by a decrease in hiring expectations. The latest reading is nearly five points above last August, when the Index registered 98.2.

Specifically, the number of workers happy with their job rose to 75 percent in August, up one point from July. The current findings are substantially higher than one year ago when only 72 percent of employees were happy at work.

Also, only 15 percent of the workforce reported their companies would be reducing headcount this month, down one point from July and down three points from last year at this time. While 21 percent of workers were worried about job loss last August, only 19 percent reported that to be a concern this year.

Conversely, the number of workers expecting their employer to hire in the coming months fell from 32 percent in July to 31 percent this August. This still fares better than last August, when only 30 percent expected their employers to increase headcount. □