



*Understanding the Unique  
Applicant Management  
Obligations of Federal  
Contractors & Subcontractors*

*Presented By:  
Beth Ronnenburg, SPHR, SHRM-SCP  
President,  
Berkshire Associates Inc.*

# About Berkshire Associates

For over 30 years Berkshire has offered services and software to overcome HR challenges.

## Affirmative Action

- Plan Preparation Services
  - OFCCP Audit Support
- Adverse Impact Analyses
  - BALANCE*aap* Software

## Applicant Management

- Compliance Assessment
- BALANCE*trak* Software

## Compensation

- Base Pay Structures
  - Market Analysis
- Salary Equity Analyses

## Training

- Affirmative Action
  - BALANCE*aap*
- Collaborative Plan Development
- Webinars & Private Training



# Agenda

- Why Does it Matter Who is an “Applicant?”
- Defining an “Internet Applicant”
- Let’s Get Strategic...
  - Strategic Disposition Codes
  - The Power of Prescreening
  - Data Management Techniques
- Managing Common Recruitment Practices
- Auditing Your Recruitment Practices



*Why Does it Matter Who  
is an “Applicant?”*

# Why Should You Care About Applicant Data?

- ***We have to:*** Required by law to maintain applicant records
- Technology makes applicant data easier to maintain (and analyze)
- Enforcement agencies use data to evaluate hiring
  - **EEOC's top priority on 2013–2016 Strategic Enforcement Plan**
    - Will “target class-based recruitment practices that discriminate against racial, ethnic, and religious groups, older workers, and people with disabilities”
  - **OFCCP's “bread and butter”** is hiring discrimination, especially in entry-level jobs—**95% of monetary settlements** come from applicant-to-hire adverse impact

# Why Should You Care About Applicant Data?

- Revised requirements in scheduling letter October 2014
  - Individual race data (White, Black, Hispanic, Asian, Native American, Pacific Islander, and Two or More Races) must now be submitted for all personnel actions
  - Analysis is now being done by “favored group” versus “traditional”
    - For each job group, it is first determined which race/gender has the highest selection rate (favored group) and then that group is compared to all others individually
- Increased scrutiny by OFCCP on how contractors are defining an “applicant” versus “job seeker”
- OFCCP is asking to speak with recruiters, hiring managers, and compensation managers as a part of the audit



# Impact Ratio Analysis in the Past and Today

	Minorities vs. Whites	Hispanics vs. Asians
Rate for Minorities (protected) or Hispanics (favored)	$6/50 = .12$	$5/10 = .50$
Rate for Whites (non protected) or Asians (non favored)	$10/100 = .10$	$1/40 = .025$
80% Rule	120%	20%
Standard Deviation		4.13
Shortfall		2



# Recent OFCCP Settlements

- **Food Service Contractor—\$1.85M** to female applicants for laborer positions; Will hire 37 female applicants and stop using strength test
- **Food Service Contractor—\$165K** to 1,300 male and African-American applicants for food service worker positions; Will make 53 job offers to original applicants as positions become open
- **Uniform and Services Contractor—\$1.8M** to affected class members (male, female, Caucasian, African-American); Covered audits at nine locations for entry-level positions; Steering case
- **Pharmaceutical & Medical Device Contractor—\$400K** to 145 female pharmacy attendant applicants; Will make 11 hires from the class members
- **Industrial Supplier—\$1.3 million** to 7,398 African-American and 1,055 female general warehouse applicants at two facilities; Will hire 154 African-American and 17 female class members





# Why You Should *Really* Care about Applicant Data: Big Numbers are Bad Numbers

Analysis	Rate for Women	Rate for Men	80% Rule	Standard Deviation	Shortfall
Women vs. Men	1/10 .10	20/100 .20	50%	0.77	0
Women vs. Men	10/100 .10	200/1000 .20	50%	2.43	9
Women vs. Men	100/1000 0.10	2000/10000 0.20	50%	7.67	90





*Defining an  
“Internet Applicant”*

# Defining an Internet Applicant

1. Employer must allow candidates to **submit expressions of interest by way of Internet, fax, or email**
2. Candidate must meet the **basic (objective and non-comparative) qualifications**
3. Candidate must be **considered** by employer
4. Candidate **must not withdraw** from process
  - Actual withdrawal at any point prior to offer
  - Presumed disinterest



# Element One: Expression of Interest

- Employers may establish procedures for expressing interest (e.g., must apply online for specific position).
- Note on social media: is a profile on LinkedIn an expression of interest?



## Element Two: Consideration

- “Considering” means “assessing the substantive information provided in the expression of interest with respect to any qualifications.”
- Employers are not required to consider all applications:
  - Not submitted in accordance with employer’s procedures
  - Not submitted with respect to a particular position
  - Not reviewed due to data management techniques
  - Not reviewed because qualified candidate found

# Element Three: Basic Qualifications

- Basic qualifications—either advertised or determined prior to the beginning of a search
  - Non-comparative
  - Objective
  - Job-related
- Not all minimum qualifications are basic qualifications
- Pre-employment tests are not basic qualifications



# Element Four: Removal from Consideration

- The candidate is not an “applicant” if they remove themselves from consideration, or otherwise indicate they are no longer interested in the position:
  - Expressly; **OR**
  - Passively through **REPEATED** (at least twice) non-responsiveness to inquiries from the employer; **OR**
  - Contractor “gleans” from initial expression of interest that job seeker is not interested because of “disqualifying factors,” such as **salary requirements, shift availability, schedules, travel, part-time, full-time, or willingness to work overtime**

# Using the Internet Applicant Rule

ABC & XYZ Companies want to hire an Electrical Engineer

ABC only accepts paper applications

Receives 1,000 résumés

Reviews for location and required certifications

**ABC has 1,000 applicants.**

XYZ uses an online ATS

Same 1,000 individuals apply

XYZ prescreens for location and required certifications, resulting in 100 candidates

Recruiter opens first 50

**XYZ has 50 applicants.**







*Let's Get Strategic...*

# Why Use Strategic Disposition Codes?

- Now, more than ever, employers must use strategic disposition codes to:
  - Defend and explain indicators of adverse impact (why candidates were not selected)
  - Determine who **IS** an “applicant” under the Rule
  - Determine who is **NOT** an “applicant” (should be taken out of data analyses)

# What Are Strategic Disposition Codes?

Strategic disposition codes should state the reason the candidate “fell out,” such as:

- Candidate withdrew
- Candidate declined offer
- Did not consider
- Does not meet basic qualifications
- Did not return calls
- Offer rescinded—did not pass background check
- Presumed disinterest (Salary/Location/Shift)

# What Are Some Not So Strategic Disposition Codes?

- Examples of Codes that are Not Helpful

-Not Selected

-Applicant Disqualified

-Better Candidate Chosen

-Blank

-Interviewed/Screened

- These codes do not explain *why* the candidate was not chosen *compared to* the hire
- These codes do not use the Internet Applicant Rule to identify candidates who should not be included in data analyses



# Tracking “Steps”

**We must also track the “step”**—the stage of the recruitment process where each candidate “fell out” and who made the decision (some examples below)

- Prescreen
- Résumé Review by Recruiter
- Phone Screen by Recruiter
- Manager Review
- HR Interview/First Interview
- Manager Interview/Second Interview
- Individual Post-Offer Steps (drug screen, background check, physical, etc.)

# Using Strategic Recruitment Workflow Models

- How candidates are moved through your recruitment process directly impacts how many applicants you report
- Make sure your ATS fits your recruitment model; do not simply adopt ATS default steps and disposition codes
- Best systems are online, requisition-based systems
  - Require candidates apply for each specific position
  - Do not consider candidates who do not follow or complete entire process
  - Do not move candidates among requisitions



# The Power of Prescreening

- **Step One:** Assess candidate willingness—if they are not *willing* to do the job, we can infer they can be removed from consideration
  - Shift/Hours/Travel Requirements
  - Location
  - Salary
- **Step Two:** Assess basic qualifications
  - Education level
  - Required certifications
  - Years of experience



# Prescreening Question Don'ts

- Do not do the following (with why not):
  - Ask for preferred qualifications (in online ATS, has considered, is an applicant if meets willingness and basic qualification questions, even if recruiter never opens)
  - Ask about ability (ability is not the same as willingness and may get to disability issues)
  - Use a system that ranks, scores, or stacks candidates (could be seen as a test that must be validated)—if system does this, set it up as 100% to pass with drop-down options so no artificial cut-score
  - Reject candidates as “overqualified” in prescreen (same reasoning as first)



# Data Management Techniques

To control large numbers of expressions of interest, use **data management techniques** that do not depend on an assessment of qualifications.

- Most helpful for high volume, entry-level jobs
- Consider candidates in batches of small groups
  - Pre-determined number of candidates to be reviewed, such as first 50; all candidates who apply by X date
  - Can be changed by requisition or position but consider defaults for high volume positions
- Once you have enough qualified candidates to move to next phase of recruitment process, stop





# *Managing Common Recruitment Practices*

# “Evergreen” Requisitions

- **Situation:** Recruiter creates a blanket requisition which remains open for long period of time to make multiple hires
- **What’s the problem?** Creates compliance concerns because often result in large applicant pools
- **How to handle strategically?**
  - First determine recruitment needs
  - Then determine how ATS will be used to explain specific selections
  - Seek to minimize number and size of evergreen requisitions

# “Cross-Over”/Moving Candidates

- **Situation:** “Sally isn’t right for this position, but she would be perfect for this new position I am about to open.”
- **What’s the problem?** Moving even a single candidate between requisitions allows agencies to argue that other candidates should be counted multiple times as well—this equals large applicant pools
- **How to handle?** Best practice is to invite Sally to apply for the other requisition; if she doesn’t apply, move on



# Using Social Media

- Distinguish between sourcing, recruitment, and selection for specific positions
  - **Sourcing** is the finding and initial engagement of non-applicants; few recordkeeping requirements if done correctly
  - **Recruitment** activities can create recordkeeping obligations, such as when databases are searched for particular positions
  - Particular **selection decisions** must be documented



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# *Auditing Your Recruitment Practices*

# Audit Your Recruitment Practices

- **Know what data you need and how to retrieve it**
  - All applicants who applied during plan year?
  - Only requisitions opened during plan year?
  - Only data for jobs filled during the plan year?
  - What about internal selections?
  - Cancelled reqs?
  - Req's with no hire?
- **Best Practice: Reverse Engineer your data!**
  - Identify hires made during plan year first and then gather applicant pools for those hires



# Annual Audits

- Map out current recruitment process on annual basis and update steps in ATS to reflect your actual process
- Evaluate use of data management techniques and ranking/scoring functionality
- Review prescreening questions to confirm they are valid and working as intended
- Use annual AAP data to evaluate use of disposition codes





# Quarterly Check-Ups

- Perform quarterly checks to confirm applicant data is being collected correctly
  - How many candidates have unknown race, gender, IWD, or PV status?
  - Are requisitions with a hire still open?
  - Do all candidates have a step and status?
  - Do any requisitions have a 1:1 applicant to hire ratio?

# Questions?

For more information on the Internet Applicant Rule, ATS, and recruiting best practices, or any other area of AA/EEO compliance, please contact:

**Beth Ronnenburg, SPHR, SHRM-SCP**

**[bethr@berkshireassociates.com](mailto:bethr@berkshireassociates.com)**

**800.882.8904, ext. 1202**

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**[info.berkshireassociates.com/Beth](http://info.berkshireassociates.com/Beth)**



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