

BALANCEview

NEWS AND INFORMATION ON HR AND AFFIRMATIVE ACTION ISSUES

Berkshire Associates Inc. Newsletter ~ Qtr. 1 ~ 2011

Happy 50th Anniversary



Executive Order 10925

Affirmative Action

Applicant Management | Compensation Management | Affirmative Action | Workforce Planning | Diversity | Professional Training

UPCOMING EVENTS

HR Houston 2011 Gulf Coast Symposium
Houston, Texas
May 11-12, 2011

Berkshire's Affirmative Action Workshop with BALANCE^{aa} Web
Columbia, Maryland
June 17, 2011

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AFFIRMATIVE ACTION VS. DIVERSITY—THE QUEST FOR OPPORTUNITY IN A 21ST CENTURY WORLD

By: Shirley J. Wilcher, former OFCCP Board Member, and current Executive Director of the American Association for Affirmative Action

There has been much debate about affirmative action and diversity since President John F. Kennedy signed Executive Order 10925 in 1961. As we approach the 50th Anniversary of the Order it is timely to reflect upon affirmative action and the difference between this concept and the more recent theory and practice of “diversity.” While the terms are often used interchangeably, there are fundamental differences between the two, but they are inextricably linked.

In its Final Report to President Eisenhower, the President’s Committee on Government Contracts, headed by vice president Richard Nixon, concluded:

“Overt discrimination, in the sense that an employer actually refuses to hire solely because of race, religion, color, or national origin is not as prevalent as is generally believed. To a greater degree, the indifference of employers to establishing a positive policy of nondiscrimination hinders qualified applicants and employees from being hired and promoted on the basis of equality.”

President Kennedy incorporated the concept of “affirmative action” into Executive Order 10925, which he issued in 1961. Executive Order 10925 imposed

on all covered contractors a general obligation requiring positive steps designed to overcome obstacles to equal employment opportunity.

In 1965, President Lyndon Baines Johnson signed Executive Order 11246, which gave the Secretary of Labor responsibility for administration and enforcement of the Order mandating that contractors not discriminate against any employees or qualified applicants because of race, color, religion, sex, or national origin. Contractors were to take affirmative action to ensure nondiscrimination in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, [See AA vs. DIVERSITY ...cont. on page 9](#)

SPECIAL AFFIRMATIVE ACTION EDITION:

Berkshire Associates is proud to dedicate this issue of BALANCEview to the 50th anniversary of the first presidential order mandating affirmative action in federal contractor workplaces.

On March 6, 1961, President John F. Kennedy signed Executive Order 10925 into law, which requires all covered contractors to take positive steps to combat equal employment opportunity obstacles in their organizations. This order was designed to require federal contractors to “take affirmative action” to ensure equal opportunity in employment.

In honor of Executive Order 10925, this newsletter is packed with the latest affirmative action information to keep your company informed and compliant.

MISSION STATEMENT

BALANCEview is Berkshire Associates voice to the HR Community. Our mission is to provide up-to-date information on trends and challenges facing HR professionals. BALANCEview is also an extension of Berkshire's mission to provide outstanding services and software solutions to organizations of all sizes, shapes, and business focus. Berkshire's BALANCE comes from its staff of expert HR consultants as well as its innovative team of software developers that turn your ideas into reality. The entire staff of Berkshire Associates wishes to provide you with exceptional service, products, and information to help BALANCE your workforce.

BALANCEview

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The Berkshire Perspective

CUSTOMER DRIVEN INNOVATION IN THE AAP World

By: Manoj Tiwari, Vice President of
Product and Business Development

Berkshire opened its doors over 25 years ago with one mission—to help its clients prepare their affirmative action plans (AAPs) in a much easier and efficient way. Today this mission continues, with one exception—it has grown in scope. Dawn Hyde, SPHR, the Founder of Berkshire, began her career as an AAP practitioner where she helped clients prepare their plans. As the popularity of her work increased, Dawn soon realized she needed more help, and reached out to her dad to automate some of the time-consuming steps of AAP preparation. Thus AAP software was created in the mid-80s using a Disk Operating System (DOS) based program, which revolutionized the way AAPs were prepared. Even today, Berkshire continues to set the standard for the tools needed not only to create AAPs, but to build a balanced workforce.

In 1994, Berkshire introduced its Windows-based software, GREAT AAP and Master Edition, to AAP practitioners. Over the next decade we introduced several innovative features in our software to streamline the processes of AAP preparation, including Start Point Analysis, File Consistency Check, Auto Census Coding, and Census Aggregation. These capabilities were not only the first in the industry, but more importantly benefited the human resource professionals in significantly improving efficiency in the AAP preparation process.

In 2001, we introduced the client server version of our software, providing users with the capability to create hundreds of plans all at the same time using a single dataset. In 2003, Berkshire re-branded its software and introduced the BALANCEworks software

suite which included BALANCEaap for AAP preparation, BALANCEpay for advanced compensation and equity analysis, BALANCEact to perform advanced adverse impact analyses. Later, Berkshire added BALANCEtrak to meet the applicant management needs of government contractors. All of these applications were either first in their group to be released in the market, or were unique in the way they were designed to meet our clients' needs.

Today we offer not only AAP outsourcing services, but also AAP solutions on every platform—from desktop to our true web-based hosted option, BALANCEaap Web. These options, coupled with training, provide a comprehensive suite to arm HR professionals with the resources they need for compliance. None of Berkshire's advancements would be possible without the extraordinary assembly of one of the most creative consulting and product development teams in the industry.

Since 1983, we have been continuously evolving to make Berkshire a one-stop AAP solutions provider for our clients across the country. I believe we have reached that point. With Berkshire's skills, knowledge, and expertise in the AAP arena, our clients can rest assured we will be there for them when they need us. Whether it's for preparing their AAPs, providing audit support, debating issues with the Office of Federal Contract Compliance Programs (OFCCP), or conducting training—we've got HR professionals' unique needs covered. No wonder we have amassed hundreds of loyal clients over the years. I'd like to thank everyone who trusts in us for their service, consulting, training, or software needs. We promise to continue to provide you with the latest innovative solutions and unmatched support in the years to come.

Affirmative Action Automation for Today's Professional

By: Karl Hester

Affirmative action plan analyses, concepts, and calculations can become incredibly overwhelming for many companies trying to remain compliant. When developing an affirmative action plan (AAP), the reasonable recruitment areas, feeder pool calculations, factor weights, employment, underutilization, adverse impact for hires, promotions, and terminations can become hard to manage—even if you are familiar with all these terms and concepts. On top of managing these elusive concepts, and the calculations that go with them, if your organization has any potential problem areas, you still have to consider whether any are statistically significant!

These concepts and calculations can be quite cumbersome and take years to master. Additionally, changes mandated by the government, and periodic changes to the information available make the process of developing a 100% compliant AAP a moving target, and even more difficult to learn.

Thankfully in this day and age, compliance professionals can embrace software solutions to help automate the cumbersome process of developing an AAP. For example, Berkshire's **BALANCEaap** and **BALANCEaap Web** were designed to handle the heavy lifting of performing the analyses necessary, and providing the information needed to complete an entire AAP. Federal contractors simply need to get the necessary information from their Human Resource Information System (HRIS), and supply it to one of these automated solutions. **BALANCEaap** or **BALANCEaap Web** will

handle all of the compliance aspects for them.

Using an automated solution also allows federal contractors to focus on making the decisions and changes necessary to make their plan accurately reflect their organization, and not get caught up in the details of updating each and every calculation whenever a change is made. The time saved in manually performing calculations can also be devoted towards performing more analyses proactively to gain a more in-depth understanding of the demographic dynamics of the organization.



Software solutions like **BALANCEaap** and **BALANCEaap Web** pay even larger dividends in the event of an audit by the OFCCP—as contractors already have their information properly imported and cleaned up to produce their affirmative action plan. In this case, producing any number of additional analyses is as simple as clicking a few buttons. The time spent reviewing and cleaning up data to ensure the plan is accurate is important for the initial plan development, but also for any audit support to fulfill additional OFCCP requests. Contractors with a plan date between July and September have the added benefit of being able to produce their EEO-1 and VETS-100/VETS 100A reports with only a few steps, as well.

Many automated solutions such as **BALANCEaap** are moving to becoming web based solutions, like **BALANCEaap Web**, so regulation updates and supporting information can be applied even faster without any intervention from IT resources. Information is also

much more accessible and can be shared instantaneously with all members of an organization, for a variety of purposes, including recruitment and diversity initiatives.

In a job market that is still recovering, employees at all organizations are being asked to do more—especially in areas they might not be specifically trained or skilled. Turning to automation, and tools that can provide not only efficiency but added guidance and expertise, can help organizations empower these time constrained employees. In a complex arena such as AAP development, automation is the perfect answer.

To learn more about Berkshire's web-based AAP solution, **BALANCEaap Web**, visit www.balanceaapweb.com or call 800.882.8904.

NEW WHITE PAPER AVAILABLE

Berkshire's latest FREE white paper, 'Affirmative Action Industry Profiles—Understanding the Different Compliance Needs in the Manufacturing, Healthcare, and Finance Industries,' is now available! This white paper, written by leading compliance experts, provides insight on the different affirmative action planning needs various industries face, and solutions to overcome these unique challenges. To access this informative white paper, visit <http://www.berkshireassociates.com/infocenter/whitepapers.aspx>.



EFFECTIVELY IMPLEMENTING YOUR AFFIRMATIVE ACTION PLAN

By: Cindy Karrow, SPHR

Your affirmative action plan (AAP) is complete—now what? Maybe you place it in a binder on the shelf, or keep it stored on a secure website or CD in case you receive a scheduling letter. Perhaps you plan to hold a meeting to review it with hiring managers and senior executives at some point.

Regardless of where your AAP is at this point, it's time to dust it off, because there's so much more to be done with that valuable information! An AAP is actually an action plan in itself, and there are some other actions that regulations require you to take with your AAP. Some contractors have fallen into the common routine of completing their plan and forgetting about it until the next time it's due. This article will highlight ways to find a new direction for your AAP information. After all, it takes a lot of time and energy to develop an AAP—why not put that plan to work for you?

One of the key components of an AAP is an annual assessment of how your workforce compares with the current availability estimate. The result of this analysis shows you if there are goal areas where you must establish action plans for placement, or recruitment activity. These activities could be job fairs, advertisements, job postings, or training programs.

Each year your AAP should include an analysis of the prior year's goals. If the results indicate the same or similar goals from year-to-year, despite job openings that have occurred, it may be time to examine your recruitment activities and efforts. Review your selection process and ask yourself the following questions:

- Are the basic qualifications identified and up-to-date?
- Are salaries in line with the marketplace?
- Are there interview questions or tests that should be reviewed or validated for relevance to the job?
- Are hiring managers aware of the goals?
- Where are the company's openings posted or advertised, and are you receiving a diverse pool of candidates from these resources?

If the resources are not providing results that will assist with goals, then research some alternatives or find new sources. The Office of Federal Contract Compliance Programs (OFCCP) provides a Resource and Referral Directory on their website at <http://www.dol.gov/ofccp/ERRD/errsrvs.htm>. A Toolkit for finding Veterans is also available at <http://www.americasheroesatwork.gov/forEmployers/HiringToolkit>.

Contractors are required to communicate the results of their AAPs periodically with hiring managers and executives. Hiring managers should be aware of the goals and the good faith efforts taking place within the organization during plan development in order to show progress. Companies are expected to become involved with community organizations and actively seek relationships with organizations that can refer qualified applicants of all races and ethnicities, as well as women, Veterans, and individuals with disabilities.

Self-monitoring is another requirement. This means periodically reviewing your progress toward the goals set at the beginning of the plan year. If there are openings in a goal job group, targeted efforts can be made to let qualified job seekers know about the openings. It is best to review this progress at least once during the AAP year, and more often when you advertise for open positions. Engaging in self-monitoring will allow you to make adjustments while there

is recruitment activity occurring, rather than waiting until the end of the year to find out when you have no opportunity for changes.

Another form of self-monitoring involves examining adverse impact results to highlight issues in the employment process. If you see results that indicate adverse impact for applicants, there are a few items you can review to find answers. Examine your definition of an applicant to ensure you are appropriately tracking candidate results. Do your disposition codes track a job seeker through the process so you can identify the decision points for each applicant? Can you identify where an applicant was eliminated from consideration? Are there a large number of applicants with race, ethnicity, or gender unknown? Are you using requisition numbers for individual job postings to assist in identifying applicant pools? Use this information to determine if changes should be made to these processes, for example, when and how often you provide the opportunity for job seekers to self-identify race, ethnicity, and gender. Use referral source information to see if your recruitment efforts are attracting a diverse pool of candidates from which to choose.

Compensation information from your AAP can be used to determine if there are pay equity or pay compression issues in your workforce. The regulations require an annual review of compensation systems to determine if there are pay disparities due to race, ethnicity, or gender. The AAP analysis can provide timely information about the fairness of compensation decisions, and determine what factors are influencing compensation. This may be time-in-job; time-in-company; education; experience; or most recent performance rating. These are a few common examples—your analysis may reveal other factors.

Developing and implementing an AAP can involve a review of all employment

decisions. This is an opportunity to examine those decisions and their processes. It is also a good time to review what information is retained to document those decisions. Look at your organization from an outsider's point of view during this process.

Berkshire can provide you with assistance and guidance in implementing your AAP. Contact us at 800.882.8904, or email bai@berkshireassociates.com for more information.

FEDERAL CONTRACTOR COMPLIANCE AND RECENT NEWS

By: Charu Avasthy, PHR

The Office of Federal Contract Compliance Programs (OFCCP) has been off to a busy start this year when it comes to compliance changes and updates. Below are some of the most recent highlights that may impact your company.

Active Case Enforcement (ACE)—The OFCCP has rescinded Active Case Management (ACM) and implemented Active Case Enforcement (ACE), effective January 1, 2011. All Supply & Service (S&S) compliance evaluations scheduled on or after January 1, 2011, will be processed using ACE procedures. This newest enforcement protocol will enable the OFCCP to employ all its compliance evaluation methods such as compliance reviews, compliance checks, focused reviews, and off-site reviews of records. A federal contractor may be evaluated under any one, or a combination of these methods. ACM procedures focused on identifying cases where there were ten or more affected class members. ACE does not have a minimum affected class member constraint.

All compliance evaluations will begin with a full desk audit, which is a comprehensive analysis of all of a contractor's written affirmative action plans (AAPs) and supporting documentation. A compliance check may be expanded to a full compliance review where indicators are identified at the desk audit. An on-site review will not be limited to the nature or scope of the indicators that triggered the on-site review. It will be comprehensive in nature regardless of whether it was prompted by specific indicators of discrimination. If indicators are not identified at the desk audit, the OFCCP has the discretion to close the evaluation. ACE will not affect pre-award compliance evaluations. The Director of the OFCCP may periodically change the subject for focused reviews. It will be announced on the OFCCP website prior to the release of the Federal Contractor Scheduling System (FCSS) list. The initial focus area will be in compliance with Section 503 and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

Corporate Scheduling Announcement Letters (CSAL)—CSALs are a courtesy the OFCCP provides to companies with two or more establishments on their neutral scheduling list. They plan to continue sending the CSAL letters during FY 2011.

New compensation data collection tool ANPRM—The OFCCP has submitted an Advanced Notice of Proposed Rulemaking (ANPRM) on the development of a new compensation data collection tool for approval to the Office of Management and Budget (OMB). The proposed tool will identify contractors that are likely to violate Executive Order 11246, and it may be used to conduct establishment, contractor, or industry specific analyses. Once published, this ANPRM will seek comments on issues relating to the scope, content, and format of the tool to ensure it is an effective and efficient data collection instrument. The OFCCP will conduct town hall meetings to gather

public input. The scope of the data is unclear at this time, however it was confirmed it will not be a reissuance of the Equal Opportunity (EO) Survey. It appears it may be collected by job group and include salary, gender, race, and ethnicity data for each employee; or average compensation and variances for each group by gender, race, and ethnic category. Also uncertain is the type of personnel activity data that will be required, and whether data on Veteran status and disability will be incorporated. Proposed in the budget justification document is also a plan to design a web-based, searchable database system comprised of aggregated data from the compensation data collection tool.

There are no changes to the scheduling letter at this time. Where compensation is concerned, there may be changes to the scheduling letter in the future based on what the OFCCP hears back from the ANPRM on the compensation data tool.

VEVRAA NPRM—The VEVRAA Notice of Proposed Rule Making (NPRM) was scheduled for January, 2011, and has been delayed. It can be expected anytime. During recent webinars, the OFCCP found it premature to discuss the quantitative analysis of Veterans outreach, specifically as it pertains to what will and will not be included in the proposal. Upon completion, the proposed rule will be made available for all to review in the Federal Register.

ODEP's Toolkit to hire individuals with disabilities—The Department of Labor's (DOL) Office of Disability Employment Policy (ODEP) has made an online toolkit available, which is comprised of resources to assist federal agencies in recruiting, employing, and retaining individuals with disabilities. The kit is a five-step process, which includes: employer training, creating a welcoming environment, recruitment, hiring, and retention. Employers can follow these steps to create an

See FEDERAL CONTRACTOR...cont. on page 6

FEDERAL CONTRACTOR....cont. from page 5
inclusive workplace for employees with disabilities. Topics include “do’s and don’ts” for interviewing, accessibility and accommodations, how to find technical assistance, and creating a pipeline of candidates. You may access the toolkit by visiting: <http://www.dol.gov/odep/federal-hire>.

Review of final ADAAA regulations—

The final review was completed and approved by the OMB. The Equal Employment Opportunity Commission (EEOC) had published equal employment provisions of proposed Americans with Disabilities Act Amendments Act (ADAAA) regulations in the Federal Register back in September of 2009. The proposed rule was contentious because it included a long list of conditions that would qualify as a disability. The final version is expected to incorporate modifications in response to concerns raised by employers.

Construction Contractor NPRM’s—The proposed time line for this rule is July 2011. As the proposed rule is still under development, the OFCCP feels it is premature to discuss the details of what will be included in the proposed construction contractor regulations as it relates to the sixteen steps. However, the contractor community will have an opportunity to comment on the proposed NPRM during the public comment period following publication in the Federal Register. Currently, there is no list of mega construction projects. The OFCCP is working to develop a comprehensive list of ongoing federal construction mega-projects.

Misclassification of employees—The OFCCP is also a key partner in a joint Department of Treasury and DOL initiative to detect and deter the misclassification of employees as independent contractors, as well as strengthen and coordinate federal and state efforts to enforce labor law violations arising from misclassification. To that end, the OFCCP will focus on employee classification.

Functional Affirmative Action Program (FAAP)—The OFCCP anticipates releasing new guidance on FAAPs in



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the near future. They also expect the completion of the Federal Contract Compliance Manual (FCCM) during the first half of this year.

Offices of Women and Minority Inclusion (OMWI)-Dodd-Frank Financial Act—The DOL Deputy Secretary sent a letter to his counterparts at all the covered federal financial agencies inviting them to partner with the OFCCP as they go about establishing their agency’s OMWI. The OFCCP has held introductory meetings with several of these agencies and anticipates ongoing communication, coordination, and collaboration to ensure consistency in approaches and avoid duplication of efforts.

Section 503B NPRM—This NPRM is scheduled for release in August 2011. The proposal will be designed to increase employment opportunities of individuals with disabilities. The NPRM will propose federal contractors and subcontractors increase linkages and conduct more substantive analyses of recruitment and placement actions taken under Section 503. In recent webinars, the OFCCP said they are seriously considering whether self-identification

can be better used to assist businesses in strengthening their AAPs. They also stated asking individuals to self-identify for affirmative action purposes in accordance with Section 503 is permissible under the ADA. The OFCCP is also considering a range of methods for improving employment opportunities for people with disabilities, including the effect of technology on employment opportunities for people with disabilities. After the regulation is published, technical assistance will be provided to the contractor community.

Regional outreach sources (Linkages)—Linkages with organizations committed to advancing equal employment opportunity are very important to OFCCP. Consequently, their 2011 operating plan is to update the resource directory available at the OFCCP website: <http://www.dol.gov/ofccp/ERRD/errsrvs.htm>.

For more information on these updates, or to learn more about how they may impact your company’s compliance efforts, please contact Berkshire Associates at 800.822.8904 or email bai@berkshireassociates.com.

Did You Know?

Audit PREPAREDNESS— WHAT YOU NEED TO DO TO STAY COMPLIANT

By: Suzanne Keys, SPHR

When faced with an Office of Contract Compliance Programs (OFCCP) audit, many companies don't know where to start. It's extremely important to have a course of action prepared—just like you would an emergency preparedness plan.

If the OFCCP is planning on auditing your company, you may receive a Corporate Announcement Scheduling Letter (CASL). Receiving this letter gives you a head start on making sure your affirmative action plan (AAP) is in place. If you did not receive a CASL, you may receive a phone call from a Compliance Officer confirming your mailing address. An official scheduling letter is sure to follow a few days later. It is important to know scheduling letters are sent by certified mail, and are signed for upon delivery. Make sure your company's mail department or CEO knows you must be informed immediately if a scheduling letter is received. You only have 30 calendar days, from the date your letter is received, to get your AAP post marked and on its way to the OFCCP.

Here is a helpful compliance evaluation checklist to utilize if you are facing an OFCCP audit.



COMPLIANCE EVALUATION CHECKLIST

Identify your current Affirmative Action Plan date _____

Determine Submission Date

- A. Date letter was received _____
- B. Date plan is due for submission (A + 30 days) _____
- C. Date plan should be ready for submission (B – 5 days) _____

Notify Other Company Staff

- Berkshire Associates
- CEO or Other Top Managers
- In-house Counsel
- HR Team
- Compensation Experts
- Staffing Experts
- Location Manager
- HRIS Personnel
- Policy Signer and AA Officer of the Plan

Determine Reports to Submit

- Organizational Profile (Organizational Display or Workforce Analysis)
- Job Group Analysis
- Availability Analysis
- Utilization Analysis and Significance of Utilization Analysis
- Placement Goals
- EEO-1 Reports for the previous three years
- Collective Bargaining Agreement (if applicable)
- Goal Attainment
- Personnel Action Summaries
- Summary of Compensation Data
- AAP Narratives (Minorities & Women as well as Disabled & Veterans)

Is it six months or more into your plan year? Yes No

If yes, submit the following update information:

- Progress on goals established in the current AAP
- Personnel action data for the first six months of the current AAP

Review Plan Prior to Submission

- Double-check plan for accuracy
- Make copies for submission
- Review plan and HR processes for any possible "Red Flags"
- Significant adverse impact
 - Large shortfall
- Compensation issues
- Presence of other problem areas
 - Technical issues with AAP
 - Non-compliance with regulations
 - Failure to keep records

Audits can be extremely overwhelming, so it's important to gather the right information and be prepared to protect your company from liability. For further audit support or compliance information, please contact Berkshire Associates at 800.882.8904 or email bai@berkshireassociates.com.

Out and About

By: Lauren Collinson

Hello 2011! Berkshire's first quarter has flown by, and as busy as we've been, it doesn't surprise us. Between keeping our clients up-to-date with the numerous industry changes, traveling around the country for meetings and events, and releasing our latest case study and white paper—we haven't missed a beat.

We started out the first quarter with our signature Fundamentals of Affirmative Action Planning (FAAP) training from January 25-26, 2011. This class is designed to provide attendees with comprehensive training on the federal regulations that govern affirmative action, the affirmative action plan preparation process, and OFCCP audits. To sign up for Berkshire's next (FAAP) class, visit <http://www.berkshireassociates.com/training/faap.aspx#public>.

Directly after our FAAP training we hosted our **BALANCEaap** Web class on January 27, 2011. During this class we prepared and armed users with the skills needed to complete their affirmative action plans (AAPs) year after year using our automated software. To find out more about how you can streamline your AAP using Berkshire's leading web-based software, visit www.balanceaapweb.com.

After our in-house training sessions held at Berkshire's Training Center, we took our expertise on the road and headed to Florida for the Jacksonville Industry Liaison Group (JILG) meeting on February 15, 2011. There, one of our leading consultants, Charu Avasthy, PHR, presented, "Strategies for Integrating Returning Veterans into the Workplace." Charu's presentation answered the following questions for attendees:

- As an employer, do I have any obligations to returning Veterans and, if so, what are they?
- What are some innovation strategies for recruiting returning Veterans?
- Now that I have recruited and

employed returning Veterans, what are some best practices for integrating them into my workplace?

Our next stop was the Northern Virginia Society for Human Resource Management Government Contracting Special Interest Group (NOVA SHRM SIG) on March 4, 2011. Berkshire's Manager of Affirmative Action Outsourcing, Sonia Chapin, SPHR, CCP, shared a presentation with group members entitled, "I Finished My Affirmative Action Plan, Now What?" Participants at this meeting left with specific steps and strategies to maximize their AAPs through effective and compliant plan implementation.

To learn more about either of these topics, or to have a Berkshire presenter speak at your next event or meeting, please contact Lauren Collinson at 800.882.8904 ext. 1307, or email laurenc@berkshireassociates.com.

In the midst of our travels and training, we were honored to be named one of the Top Software Development Firms in the Baltimore Area by the Baltimore Business Journal. Upon hearing of the award, Manoj Tiwari, Berkshire's Vice President of Product Development, stated, "As a human resource software developing company, it is exciting to be recognized for our work in the automation field. We are honored to be part of such an innovative group of software developers." And the awards didn't stop there—Berkshire was also named one of Maryland's Future 50 Companies by Baltimore's SmartCEO.

With all the celebrating going on, we still kept doing what we do best—keeping our clients informed, compliant, and up-to-date. We released our latest white paper, "Paying for Performance—Are You Rewarding the Right Factors?" This white paper examines how HR professionals can determine if performance is truly the factor that drives how much their employees are paid, along with ways to evaluate their compensation structure—taking into account required federal and state compliance laws. To access our free white paper, please visit: <http://www.berkshireassociates.com/infocenter/whitepapers.aspx>.

We were also excited to release our newest case study, featuring Fulton Bank's journey towards applicant management automation using Berkshire's **BALANCEtrak** software. Find out how the change from manual tracking to an automated process saved them time and money. Read the entire case study at: <http://www.berkshireassociates.com/infocenter/casestudies/fultoncasestudy.pdf>.

At the end of March, Berkshire also announced its third Service Release (SR3) to **BALANCEpay**, our compensation management software. This release includes several enhancements and changes since the release of SR2. The new enhancements will make working on your compensation analyses not just easier, but more efficient and advanced. From the additional capabilities of the Standard Cohort Analysis and Multiple Regression Analysis, to report titles and new Analysis Summary feature, **BALANCEpay** is more robust than ever. To learn more about upgrading your current software, or to find out more about **BALANCEpay**, please call 800.882.8904.

We ended the first quarter the way we started it, with one of our most popular trainings—AAP Boot Camp. This training is a real compliance workout, including Fundamentals of Affirmative Action Planning, **BALANCEaap** software or **BALANCEaap** Web application training, and the Affirmative Action Plan Workshop. Don't miss our next Boot Camp! Sign up by visiting <http://www.berkshireassociates.com/training/aabootcamp.aspx>.

As 2011 continues, we look forward to providing our clients with the latest tools, technology, updates, and resources needed to make their jobs easier. We have so much in store for the remainder of this year, and can't wait to share it with you. To find out what Berkshire gets into next, make sure you check out the second quarter issue of **BALANCEview**. Meanwhile, receive industry information and updates by joining us on facebook at <http://www.facebook.com/berkshirehr> and on Twitter at: <http://twitter.com/BerkshireHR>.

and selection for training, including apprenticeship.

Before signing the order in September 1965, President Johnson uttered the words that continue to resonate today:

“Freedom is not enough...You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘You are free to compete with all the others,’ and still justly believe that you have been completely fair.”

The quest for equality as a right and as a result has taken more than 40 years. It has faced much success, as evidenced in the marked increases of women and persons of color in private industry, in government, and in the Academy. It has also faced considerable challenges, rhetorical and legal, waxing in certain presidential administrations, waning in others.

WHAT IS AFFIRMATIVE ACTION?

Affirmative action has varying definitions depending upon the sector in which it is found, e.g., education, government contracting, and employment. Executive Order 11246 and its regulations refer to a process that requires a government contractor to examine and evaluate the total scope of its personnel practices for the purpose of identifying and correcting any barriers to equal employment opportunity. Where problems are identified, the contractor is required to develop a program that is precisely tailored to correct the deficiencies. Where appropriate, the contractor is required to establish reasonable goals to measure success toward achieving that result. The affirmative action program incorporated in the regulations has its origins in the private sector, where contractor “Plans for Progress” were reportedly designed to take positive action and prevent discrimination lawsuits.

Affirmative action programs encompass more than outreach and recruitment, however, and include efforts to prevent discrimination by eliminating barriers to equal employment opportunity. The

inverse relationship between affirmative action and discrimination is reflected in the Executive Order itself, which begins with a prohibition against discrimination. In essence, affirmative action creates an environment where equal employment opportunity can prevail. Affirmative action, especially as it is mandated in employment discrimination litigation, is also compensatory and serves to remedy the effects of discrimination.

Affirmative action has been criticized by conservatives as constituting reverse discrimination, preferential treatment, stigmatizing to beneficiaries and contravening principles of merit. Spearheaded by these organizations voters in the states of California, Washington, Michigan, Nebraska, and Arizona have passed initiatives to prohibit affirmative action.

THE EMERGENCE OF “DIVERSITY”

“Diversity” as a term of art used in the context of affirmative action law and policy gained prominence in the Supreme Court decision of *Regents of the University of California v. Bakke*. In *Bakke*, the Court ruled the attainment of diversity in university admissions was a constitutionally permissible goal. Diversity as one factor among many in higher education admissions was later upheld in the Supreme Court’s 2003 decision of *Grutter v. Bollinger*.

In employment, “diversity management” gained prominence in the 1990s as a voluntary effort by corporate America, unrelated to the mandatory compliance embodied in the law. Unlike the Executive Order regulations, there is no standardized method for attaining diversity. Diversity programs have different definitions and appear to vary from organization to organization.

Dr. Roosevelt Thomas, founder of the American Institute for Managing Diversity and author of ‘Beyond Race and Gender: Unleashing the Power of your Total Workforce’ by *Managing Diversity*, argues diversity is “any collective mixture characterized by similarities (ties that bind) and differences (differences that distinguish).” Thomas views diversity management as an evolution beyond

affirmative action and its focus on race and gender. He sees affirmative action as a “band-aid” approach that focuses on the symptom, not the problem. According to Dr. Thomas, affirmative action has not enabled the nation to move toward an appreciation for diversity in its many forms.

Dr. Thomas does not call for the end of affirmative action despite the increasingly vocal criticisms that have been raised by opponents. He argues until communities are modified around the reality of diversity, affirmative action will serve as a “band-aid” approach that allows the accommodation of diversity to a limited extent. “The solution is to move forward with remodeling organizations and society around assumptions of all kinds of diversity.” Thomas seeks a more inclusive and empowering style that creates an environment for performance.

A United Nations study on Best Practices in Diversity Management defines affirmative action as the “framework for a diversity management program.”

Diversity Management means looking at: “1) the mindset of an organization; 2) the climate of an organization; and 3) the different perspectives people bring to an organization due to race, workplace styles, disabilities, and other differences.”

In evaluating state diversity management programs, the study suggested best practice organizations “value people and cultivate an environment where cultural awareness, sensitivity, fairness, and integrity prosper.” All employees believe they can prosper if they are qualified, motivated, and work hard. Specifically, best practice organizations maintain a formal diversity management program, have decentralized efforts that promote a sense of ownership, provide diversity training to the entire workforce, and incorporate diversity management in leadership training and mentoring efforts. Successful programs use workforce data and demographics and identify occupations with “underutilization.”

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AA vs. Diversity....cont. from page 9

This organization encouraged the presence of government-mandated affirmative action programs, endorsed review committees to establish policies and monitor progress, and supported accountability structures through the use of such tools as metrics, surveys, focus groups, and evaluations.

There are many similarities between methods used for affirmative action programs and diversity management programs. Affirmative action programs require policy statements from senior management, workforce analyses, measures of underutilization of protected groups, placement goals where necessary, and action oriented programs. The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which enforces Executive Order 11246 and other laws, also investigates access to senior executive levels ("the glass ceiling") and focuses on recruitment and retention. CEO commitment is essential to a successful affirmative action program and senior management is required to sign the affirmative action plan for the contractor. In the 2000 amendments to the Executive Order 11246 regulations, the Department of Labor emphasized the affirmative action program is a management tool, a diagnostic process used to promote equal opportunity, not simply a paper exercise.

The diversity management profession has grown in recent years. The position of Chief Diversity Officer (CDO) has emerged and many CDOs report to the CEOs of their corporations. Diversity managers have attained a status that most often exceeds that of the affirmative action officer. In many cases, the affirmative action officer now reports to the diversity manager.

Stony Brook University's discussion of the relationship between affirmative action and diversity addresses the results sought by both approaches:

Affirmative action is numbers oriented, aimed at changing the demographics within the organization. Managing diversity is behavioral, aimed at changing the organizational culture, and

developing skills and policies that get the best from everyone. Affirmative action opens doors in the organization while managing diversity opens the culture and the system. Managing diversity does not replace affirmative action; rather, it builds on the critical foundation laid by workplace equity programs.

Affirmative action and managing diversity go hand-in-hand, each reinforcing the gains of the other. Without affirmative action's commitment to hiring and promoting diverse employees, organizations would rarely have the diversity of staff to reach a stage where differences are valued and diversity is effectively managed.

With diversity management programs, we have come full circle, where both affirmative action and diversity programs are creatures of the private sector. Both were initially designed to promote inclusion and to minimize the costs of exclusion, including litigation and reduced market share. While they share the same origins they are very different in concept and approach, however. Affirmative action programs promote access, equity, and opportunity. They enable historically excluded groups including women, minorities, individuals with disabilities, and disabled Veterans to gain entry into and within the labor market. Diversity programs have a broader mandate, fusing the concepts of inclusion with corporate profitability and aiming to change the culture of the organization.

QUESTIONS

While diversity management may temper the arguments against its more controversial predecessor and appear more palatable, one must question whether the shift in emphasis from the morality of equal opportunity to the "bottom line" will evade the "hard choices about equality and justice at work." Employment discrimination continues to exist, as the number of charges filed with the Equal Employment Opportunity Commission (EEOC) attest. Removing the "D" word ("discrimination") from the conversation will not solve the problem.

As important, how can we persuasively measure the success of diversity management programs? How will we know when the culture of the corporation has changed and the diversity of talents, abilities as well as ethnicities, genders, and orientations is truly welcome and contributes to the bottom line? When will government mandates, including affirmative action, be obsolete and we are truly beyond race and gender? Is diversity management the answer for the workforce of the 21st century?

This article was originally published in the INSIGHT Into Diversity, January, 2011 edition.

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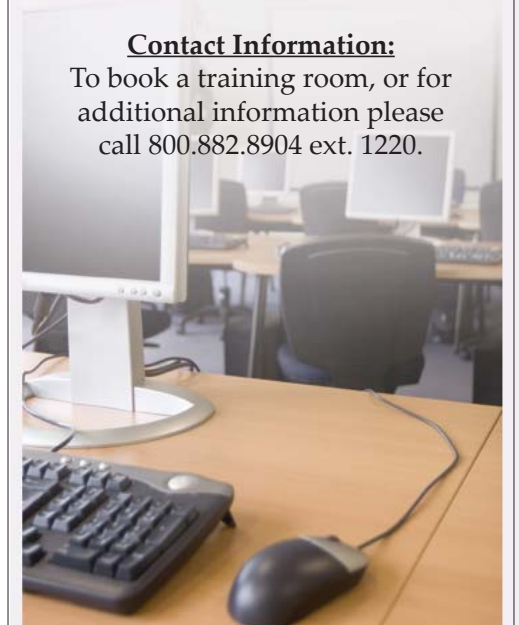
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Berkshire's 2011 Training Lineup

By: Nicole Yeldell, SPHR

Berkshire is dedicated to keeping our clients educated and well informed on affirmative action and government compliance related issues. One way we achieve this is by meeting our clients' learning needs through various training options. These options include public, private, and online training.

In 2011, take advantage of our great new Group Online training option. Group Online training is a hybrid of our public and online classes. They are regularly scheduled classes with a set date and time open to the public, but they are offered online so no travel is required. The Group Online training is specifically designed and ideal for knowledgeable, experienced affirmative action professionals who are either new to Berkshire's **BALANCEaap** software, or simply need a refresher. Group Online training is offered once a month for **BALANCEaap** and **BALANCEaap Web**.

In addition to Group Online training, One-on-One Online training will continue to be offered for **BALANCEaap**, **BALANCEaap Web**, and **BALANCEpay**. One-on-One Online training is a good choice for attendees who want the benefit of having a live instructor, but still want the convenience of learning at their own location. One-on-One Online training is specifically designed and ideal for individuals with intermediate knowledge and skill in affirmative action and affirmative action software.

As we have done for many years, we will once again be offering our signature training class, Fundamentals of Affirmative Action Planning. This training focuses on preparing affirmative action plans, including analyzing your workforce, calculating availability, setting goals, developing applicant flow, and monitoring personnel actions by conducting adverse impact and goal attainment analyses. During training, you will discuss management's role in implementing and communicating the plan, along with preparing for an OFCCP audit.

This class is offered as Public, Self-Paced Online, and Private training.

Public training is ideal for attendees who enjoy a classroom setting and interacting with a group. It also suits those who benefit from face-to-face, instructor guidance. Public training is specifically designed and ideal for individuals new to affirmative action and affirmative action software. Self-paced Online training is the popular choice for those who feel comfortable with learning on their own time, and at their own pace. Private training is recommended for companies with unique training needs, with multiple learners, or individuals who want dedicated, one-on-one training.

Although traditional economic indicators tell us the country is no longer in a recession, we know corporate budgets are still feeling the squeeze. This does not relieve the need for training. To get the training you need at a price you can afford, keep our Travel Free Training option in mind. This offering utilizes our Self-Paced Online Fundamentals of Affirmative Action Planning coupled with the One-on-One Online **BALANCEaap** or **BALANCEaap Web** training. Additionally, if you need help completing your plan, take advantage of the One-on-One Online AAP Workshop sessions.

If you haven't done so already, add www.berkshireassociates.com to your Internet favorites list. Doing so will help you stay aware of Berkshire's upcoming webinars. As news breaks within the world of affirmative action compliance, we will update you with webinars throughout the year. Keep your eyes open for these, and other, popular training events. Also, visit www.berkshireassociates.com/training/hrtraining.aspx to find out more about our training options.

We look forward to providing you with leading training in 2011, whether it's in person or online!

Training

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June 14-15, 2011 • October 18-19, 2011

BALANCEaap Web TRAINING:
June 16, 2011

BALANCEaap SOFTWARE TRAINING:
October 20, 2011

AFFIRMATIVE ACTION PLAN WORKSHOP:
(Software purchase and training are required)
June 17, 2011 (**BALANCEaap Web**)
October 21, 2011 (**BALANCEaap**)

AAP BOOT CAMP:
(Register for four days in a row for the above three classes and save \$170)
June 14-17, 2011 (**BALANCEaap Web**)
October 18-21, 2011 (**BALANCEaap**)

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BALANCEaap Web
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For more information, or to register online, visit: www.berkshireassociates.com/training or call 800.882.8904.

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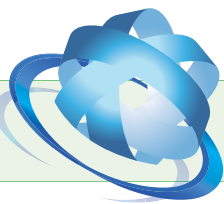
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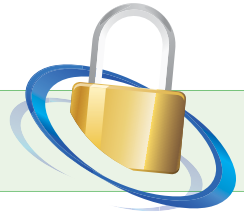
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