

# Quad A News

## OFCCP Issues New Procedures for Conducting Compliance Evaluations

Source: Jackson Lewis LLP

### New “Active Case Enforcement” Directive Expands Focus of Compliance Reviews and Gives OFCCP Flexibility to Conduct Different Types of Audits

Claiming that its previous Active Case Management (ACM) method for conducting compliance evaluations was “of limited utility,” OFCCP has rescinded ACM and instituted a new system called Active Case Enforcement (ACE). Accord-

ing to the OFCCP’s new directive, ACE promises to allow the Agency to “more effectively utilize its resources and strengthen its enforcement efforts.”

With the new ACE system, announced last week but which went into effect on January 1, 2011, OFCCP lowers the thresholds for an “indicator” of discrimination prompting in-depth review, expands the definition of what constitutes an indicator of discrimination, plans to assess contractor compliance for the three years preceding an evaluation, expands the enforcement tools available to the Agency



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## Can Your Organization Make the Grade? Passing the OFCCP/EEOC Tests

### March Membership Meeting

**DATE:** March 15, 2011  
**TIME:** 8:30-10:00 a.m.  
**LOCATION:** Blood Systems  
 4405 E. Cotton Center Blvd,  
 Suite 120, Phoenix

*Please RSVP by Friday, March 11 to [azquada@aol.com](mailto:azquada@aol.com)*

## Speaker's Profile



**Bruce Kuehnl**  
**President, EEO Logic**

Bruce Kuehnl is the founder and President of EEO Logic. Bruce formed EEO Logic after serving for 18 years in the US Department of Labor (DOL). While working for the DOL, Bruce pioneered the use of computers to statistically analyze workforce race and gender profiles, movement patterns, and compensation practices. Bruce now applies the same practices that he pioneered for the DOL to help organizations properly analyze their workforce and avoid costly compliance issues.

Bruce is one of the foremost experts in the areas of Affirmative Action planning, statistical compensation analysis, and workforce planning. His in-depth knowledge of statistical analysis combined with his experiences working for the DOL enable him to quickly navigate the compliance maze.

He received his Bachelor of Arts from the University of California at Davis, and a Masters Degree in Public Administration and Labor Relations from Golden Gate University in San Francisco. Bruce focuses his efforts with EEO Logic on consulting on Affirmative Action obligations and statistically analyzing workforce data as part of a self-critical analysis, or in defense of compliance audit findings. You may contact Bruce via email at: [Bruce.Kuehnl@eeologic.com](mailto:Bruce.Kuehnl@eeologic.com).

## Statement by Secretary of Labor Hilda L. Solis on Black History Month 2011

**WASHINGTON** — Secretary of Labor Hilda L. Solis today issued the following statement regarding Black History Month 2011:

"Harriet Tubman once said, 'Every great dream begins with a dreamer. Always remember, you have within you the strength, the patience and the passion to reach for the stars to change the world.' A true soldier of the Civil War, Tubman is among the ranks of countless African-Americans who have paved a path of opportunity, bold visionaries who dreamed, who challenged the status quo, defied the odds and changed the course of American history.

"This month we commemorate that progress. Against the backdrop of this year's theme, African-Americans and the Civil War, we embrace the movement that lies ahead. We celebrate the spirit of our forbearers and build upon their promise of justice, equality and opportunity for all. "America is built on this promise. And the contributions of African-Americans have been instrumental building blocks of its success. In the 'war between the

states,' African-Americans fought selflessly to promote unity. In the midst of great intolerance, many sacrificed their lives. This patriotism reached beyond the front lines of war. African-Americans aided the wounded, gathered intelligence and consoled the faint of heart.

"Much progress has been made since then. Today, African-Americans are valued contributors in every American pursuit and path. But barriers still remain to be broken. Together, we must remain committed to creating an education system that works for everyone. We must continue to create and expand job opportunities for everyone. And we must remain committed to protecting civil rights and ensuring equal opportunity for everyone.

"With strength, patience and passion, we continue to shape the destiny of this great nation. Like Harriet Tubman, we continue to dream."

Source: <http://www.dol.gov/opa/media/press/opa/OPA20110162.htm>

# OFCCP Issues New Procedures for Conducting Compliance Evaluations

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when conducting evaluations, requires compliance officers to conduct full desk audits in every review, and requires an onsite audit requirement in at least every 25<sup>th</sup> evaluation scheduled.

## **“Indicators” of Discrimination**

Under ACM, OFCCP focused on identifying cases of class-based discrimination that potentially affected ten or more individuals. Significantly, under ACE, OFCCP *removes* the affected class member threshold and indicates that indicators of discrimination may be of an individual and/or class nature. In its directive announcing this new approach, OFCCP defines “class” as “two or more victims” and explains that an indicator of discrimination or violation may include statistical evidence, anecdotal evidence, patterns of individual discrimination, patterns of systemic discrimination, patterns of major technical violations, and indicators of non-compliance with **non-EEO** labor and employment laws enforced by other federal agencies (*e.g.*, Wage/Hour Division, OSHA, EEOC, *etc.*). The likely effect of this new approach will be more in-depth au-

*Now more than ever, proactive employers will need to assess their entire employment compliance posture when preparing for an OFCCP evaluation.*

audits of contractor employment processes during evaluations despite any lack of large-scale indicators of discrimination.

## **Assessment of Contractor Compliance and Cooperation Among Agencies**

As noted above, as part of ACE, OFCCP will now review contractors’ compliance history for the three years prior to the review to assess whether there are patterns of non-compliance. OFCCP compliance officers are now directed to review OFCCP’s internal database system, review any information received from EEOC,

state or local fair employment practice agencies, and other enforcement agencies such as the Department of Labor’s Veterans’ Employment and Training Service and Wage and Hour Division. Significantly, OFCCP will now seek cooperation and coordination across Department of Labor agencies when conducting evaluations. Accordingly, now more than ever, proactive employers will need to assess their

*Although federal contractors may be reviewed by OFCCP using any ... methodologies, all compliance evaluations will include a **full desk audit**.*

entire employment compliance posture when preparing for an OFCCP evaluation.

## **Expansion of Enforcement Tools**

Under ACE, when conducting compliance evaluations, OFCCP will utilize all of its enforcement methodologies, including the compliance review, compliance check, focused review, and offsite review of records. Although federal contractors may be reviewed by OFCCP using any of the above methodologies, all compliance evaluations will include a **full desk audit**. A full desk audit is a comprehensive analysis of a contractor’s affirmative action plan (AAP) prepared pursuant to Executive Order 11246, Rehabilitation Act and the Vietnam-Era Veterans Readjustment Assistance Act and supporting documentation. As under ACM, under ACE, the audit will include a full evaluation of a contractor’s selection decisions (hires, promotions and terminations), compensation, and other more programmatic aspects of a contractor’s AAP (*e.g.*, goal setting, outreach efforts, *etc.*).

Following the desk audit, OFCCP will then consider initiating one of the following review methodologies:

**Compliance Review** - A comprehensive review of all components of a contractor’s AAP. In ad-

**MARK YOUR CALENDAR**  
**to attend Quad A's**  
**36th Annual Conference**  
**April 19, 2011**

***“Recruiting for a Competitive Advantage”***

***Watch for upcoming details on Agenda, Speakers' Profiles  
& Registration Information***

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Conducting Compliance Evaluations**

(Continued fm Pg 1)

dition to the desk audit, the review may include an onsite review and offsite analysis.

**Compliance Check** - An abbreviated review of a contractor's recordkeeping practices to ensure compliance with the affirmative action regulations. A compliance check may be followed by a more expansive evaluation, as appropriate.

**Focused Review** - An onsite review that focuses on one or more components of contractor's employment organization or practices.

**Offsite Review of Records** - As the name suggests, the review will involve OFCCP's receipt and review of documentation related to a contractor's employment processes to ensure compliance with the affirmative action regulations.

On a positive note for contractors, OFCCP re-emphasizes that, if during the desk audit of a contractor's AAP, the compliance officer identifies no or minor technical violations, that compliance officer should seek to close the review at the desk audit stage.

***Full Compliance Review  
for Every 25th Audit***

Under ACE, for quality control purposes, OFCCP will select every 25th compliance evaluation for an automatic full compliance review regardless of whether any problematic em-

ployment processes are identified. A full compliance review will consist of all three stages of a compliance review – desk audit, onsite review, and offsite analysis, when necessary.

***What Should Employers Do Now?***

In light of this development, employers should evaluate their entire employment compliance posture to ensure full compliance with applicable requirements. Additionally, employers should ensure that all employment processes, including, but not limited to, hires, promotions, terminations, and compensation are supported by legitimate, business-related reasons and appropriate documentation, without regard to the number of individuals potentially affected or disadvantaged. Jackson Lewis LLP In the event a facility is selected for evaluation by OFCCP, employers should inquire of the Agency *at the outset of the evaluation*, whether it is the 25th compliance evaluation initiated by the Agency and therefore carries an automatic onsite review obligation.

\* \* \*

*For more information on this development or any other affirmative action or EEO compliance issues, please contact Eric J. Felsberg at [felsbere@jacksonlewis.com](mailto:felsbere@jacksonlewis.com), (631) 247-0404, or the attorney with whom you regularly work.*

***From the Desk of...  
USDOL***



**US Labor Department sues  
Houston-based Kinder Morgan  
Lawsuit seeks more than \$1 million in  
back wages for approximately 4,500  
workers nationwide**

**HOUSTON** — The U.S. Department of Labor has announced the filing of a lawsuit against Houston-based Kinder Morgan Inc. and Kinder Morgan Energy Partners LP for their failure to pay more than \$1 million in overtime compensation to approximately 4,500 current and former operators, technicians, maintenance workers, laborers and administrative nonexempt employees in violation of the Fair Labor Standards Act. The department's suit asks the court to order the defendants to pay the full amount of back wages due, along with liquidated damages, and to prohibit them from violating the law in the future.

Kinder Morgan Inc., owner of Kinder Morgan Energy Partners LP, is one of the largest pipeline transportation and energy storage companies in North America, with an enterprise value of \$30 billion and approximately 8,000 employees nationwide. The defendants provide services to local oil refineries and clients such as Conoco/Philips, Exxon Mobil and Shell.

"There is no excuse for denying workers their rightful wages, and this lawsuit demonstrates that the department will use all available enforcement tools, including litigation and penalties, to ensure accountability and compliance with the law," said Secretary of Labor Hilda L. Solis.

The complaint was filed against both companies in the U.S. District Court for the Southern District of Texas, Houston Division, after an investigation by the La-

bor Department's Wage and Hour Division found systemic violations nationwide resulting from the employers' failure to include certain bonuses in overtime pay calculations for these employees.

The FLSA requires that covered employees be paid at least the federal minimum wage of \$7.25 for all hours worked, plus time and one-half their regular rates of pay, including commissions, bonuses and incentive pay, for hours worked beyond 40 per week. Employers must also maintain accurate time and payroll records.

**US Labor Department recovers  
more than \$934,000 in overtime  
back wages for 479 employees of  
UnitedHealthcare in Hartford, CN  
Department assesses more than  
\$104,000 in penalties for multiple  
Violations**

**HARTFORD, Conn.** — The U.S. Department of Labor has recovered a total of \$934,551 in overtime back wages for 479 employees of UnitedHealthcare and \$104,280 in civil money penalties after an investigation by the department's Wage and Hour Division determined that the employees had been incorrectly classified as exempt from the Fair Labor Standards Act and consequently denied compensation for all hours worked.

UnitedHealthcare is the largest single health insurance carrier in the United States. This action is limited to the company's Hartford location, which specializes in the IT, finance, actuarial and underwriting operations for UnitedHealth Group Inc.

"Employers subject to the Fair Labor Standards Act's requirements, whether large or small, must ensure all of their workers are properly classified and receive the wages they are owed," said Secretary of Labor Hilda L. Solis.



**The Louisiana ILG  
is privileged to host the**

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Conference**

***“Embrace the Rhythms of Harmony & Equality”***  
**July 25-29, 2011**

**at the New Orleans Marriott**



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|-------|---|
| \$495 | <i>(2 1/2 day conference) register by April 29</i>                      |
| \$645 | <i>(3 1/2 day preconference and conference) register by April 29</i>    |
| \$695 | <i>(2 1/2 day conference) register after April 30</i>                   |
| \$845 | <i>(3 1/2 day preconference and conference) register after April 30</i> |

**Register at:**

**<http://www.ilgconference2011.com>**

## ***From the Desk of... USDOL (Cont)***



"Workers deserve to keep what they earn. It is simply unacceptable that a multi-billion dollar company misclassified its employees and failed to abide by some of the nation's most basic labor laws."

After conducting 90 employee interviews and reviewing time and payroll records for 21,000 employees, investigators determined that UnitedHealthcare incorrectly classified employees in several different occupational categories as administratively exempt from FLSA, thereby denying them overtime compensation for all hours worked over 40 in a week. The company also failed to include certain compensation for employment in workers' regular rates, on which time and one-half should have been paid. Additionally, recordkeeping violations were uncovered, as records of the number of hours worked were not properly maintained for those who had been misclassified as exempt.

The FLSA provides an exemption from both minimum wage and overtime pay for workers employed as bona fide administrative employees. To qualify for this exemption, an employee must be paid on a salary basis at a rate not less than \$455 per week, must perform work directly related to the management or business operation of the employer, and must be responsible for exercising independent judgment or discretion with respect to matters of significance. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Labor Department's regulations.

The amount of civil money penalties assessed was based on multiple violations of the FLSA.

The FLSA requires that covered employees be paid at least the federal minimum wage of \$7.25 per hour as well as time and

one-half their regular rates for every hour they work beyond 40 per week. The law also requires employers to maintain accurate records of employees' wages, hours and other conditions of employment, and prohibits employers from retaliating against employees who exercise their rights under the law.

*For more information about the FLSA, call the Wage and Hour Division's toll-free helpline at 866-4US-WAGE (487-9243). Information is also available on the Internet at <http://www.dol.gov/whd/>.*

### **US Labor Department settles gender discrimination case with Green Bay Dressed on behalf of 970 female applicants for \$1.65 million Agreement incjBeef ludes back wages, interest, benefits and job offers**

**GREEN BAY, Wis.** — Federal contractor Green Bay Dressed Beef LLC will pay \$1.65 million in back wages, interest and benefits to 970 women who were subjected to systemic discrimination by the company. The settlement follows an investigation by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, which found that the women were rejected for general laborer positions at the company's Green Bay plant in 2006 and 2007.

"This is the 21st century in the United States of America. There is no such thing as a "man's job," said Secretary of Labor Hilda L. Solis. "I am pleased that my department has been able to work out a resolution with Green Bay Dressed Beef, and that the settlement not only compensates the victims of discrimination but also provides jobs for many of these women."

In addition to financial compensation, the beef supplier will extend a total of

## ***From the Desk of...***

### ***USDOL (Cont)***



248 offers of employment to affected women as positions become available. The company already has hired more than 60 of the women in the original class.

During a scheduled compliance review, OFCCP determined that the company had violated Executive Order 11246, which prohibits federal contractors from discriminating on the basis of gender in their employment practices. Under the terms of the conciliation agreement worked out between the Labor Department and the contractor, the \$1.65 million will be divided among the affected women who return timely notifications. The company also has agreed to undertake extensive self-monitoring and corrective measures to ensure that all employment practices fully comply with the law and will immediately correct any discriminatory practices.

Two of Green Bay Dressed Beef's largest clients are the U.S. Department of Agriculture and the U.S. Department of Defense — as one of the largest suppliers of beef products for the federal school lunch program and one of the leading providers of beef products to American military personnel worldwide.

**US Labor Department settles  
discrimination case with InterCall,  
world's largest provider of  
conferencing services  
151 minority job applicants to share  
\$700,000 settlement**

**CHICAGO** — Federal contractor InterCall will pay \$700,000 in back wages, interest and benefits to 151 minority job applicants who were subjected to discrimination by the company. The settlement follows an in-

vestigation by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, which found that 103 black, 28 Asian and 20 Hispanic job applicants were systemically rejected for sales associate positions at the company's Chicago offices in 2006 and 2007. In addition to financial compensation, InterCall will extend a total of 14 offers of employment to affected applicants as positions become available.

"I'm pleased that we were able to work out a fair resolution on this case," said OFCCP Midwest Regional Director Sandra S. Zeigler. "Companies that do business with our government have a responsibility to ensure that their workplaces are safe, fair and diverse. Going forward, we expect that will be true at InterCall."

During a scheduled compliance review, OFCCP determined that the company had violated Executive Order 11246, which prohibits federal contractors and subcontractors from discriminating on the basis of race and national origin in their employment practices. Under the terms of the conciliation agreement worked out between the Labor Department and InterCall, the company will pay \$700,000 to be divided among the 151 affected minority applicants who return timely notifications. The company also has agreed to undertake extensive self-monitoring and corrective measures to ensure that all employment practices fully comply with the law and will immediately correct any discriminatory practices.

InterCall, a subsidiary of West Corp. of Omaha, Neb., is the world's largest conferencing provider. Between 2005 and 2008, the company had a \$1.7 million contract to provide software, telecommunication support and recording services to the U.S. Department of Health and Human Services.

*For general information, call OFCCP's toll-free helpline at 800-397-6251. Additional information is also available at <http://www.dol.gov/ofccp>.*



# 2011 Membership Application

Thank you for your continuing interest in and support of the Arizona Affirmative Action Association (Quad A). Our members include professionals in the fields of human resource management, equal employment opportunity, affirmative action, workplace diversity and other related fields. For over 35 years, Quad A has been providing its members with quality, up-to-date information through workshops, seminars and conferences. Your membership entitles you to a monthly newsletter, quarterly meetings/workshops, seminars, the Annual Conference (in April) and Compliance Conference (in the fall). Most activities are included in your membership; others are offered at a substantial discount. At only \$75 per year (Jan-Dec), membership in Quad A is a true value for the money. *(Individual memberships only; no organizational memberships at this time.)*

Goals of the Arizona Affirmative Action Association are to:

- Promote equal employment opportunity, diversity and affirmative action in the workplace.
- Promote awareness and recognition in the workplace and the community of the benefits of taking affirmative action to provide equal employment opportunities
- Share and disseminate up-to-date information on EEO, AA and diversity issues, legislation, judicial decisions, best practices and trends.
- Provide an opportunity for professionals interested in EEO, AA and diversity issues to network and communicate.

*Quad A is a nonprofit 501(c)3 organization (TIN 86-0966437).*

**Membership fee in Quad A is a qualified tax deduction.** *Membership applications/renewals can be made online at [www.azquada.org](http://www.azquada.org) or e-faxed to (623) 321-6016. If paying by check, please return this renewal form along with a check or credit card for \$75 made payable to Arizona Affirmative Action Association to our office at P.O. Box 1848, Phoenix, AZ 85001.*

## MEMBERSHIP APPLICATION/RENEWAL

Member Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail (for member communications only): \_\_\_\_\_

Visa  MC  Am Ex Name on card: \_\_\_\_\_

Card # \_\_\_\_\_

Expires: \_\_\_\_\_

**Arizona Affirmative  
Action Association  
(aka) "Quad A"**

**P. O. Box 1848  
Phoenix, AZ 85001  
Phone: 555-555-5555  
E-fax: 602-321-6016  
E-mail: azquada@aol.com**

**We're on the Web!  
azquada.org**

**Board Members & Officers**

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JAG Specialties, LLC  
(602) 300-2023

**Maria Sandoval, PHR, Vice President**  
MAS Specialists, LLC  
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**Rebecca Rand, SPHR, Recording Secretary**  
American Express  
(602) 537-2960

**Gail Painter, PHR**  
Apollo Group  
602-557-7586

**Marian Enriquez, CCEP, MHCS, PHR**  
The Sundt Companies, Inc.  
(480) 293-3108

**Neil Bourque, SPHR**

**George Thorne**  
Jobing.com  
(602) 914-7507

**Lisa Barnum**  
Boeing Company  
480-648-7944

**Evelyn Miller**  
Raytheon  
520-794-9997

**Charlene Valestin, SPHR**  
Zions Bancorporation  
(928) 899-4199

**Lida Daniel**  
Blood Systems  
(602) 414-3517

**Thomas D. Arn, Esq**  
**Quad A Legal Counsel**  
Ogletree, Deakins  
602-778-3702

**Flossie Christensen, Chair**  
**Las Vegas SNILG Chapter**  
Bank of Nevada  
(702) 248-4200

**Quad A Administrator**  
**Chris Weakland, SPHR**

Legacy Partners Consulting & Coaching, LLC  
(602) 377-0404

**Membership meetings are the 3<sup>rd</sup> Tuesday  
of every month from 8:30-10:00 a.m.**

# 2011 Calendar of Events

DATE	TOPIC	HOST & LOCATION
Jan 18, 8:30-10:00	2011 Forecast & Trends in Employment	Blood Systems 4405 E. Cotton Center Suite 120 Phoenix
Feb 15, 8:30-10:00	Compliant & Effective Job Descriptions & Postings	Sundt Construction 2641 S. 40th St. Phoenix
Mar 15, 8:30-10:00	Can Your Organization Make the Grade? Passing the OFCCP/EEOC Tests	Blood Systems 4405 E. Cotton Center Suite 120 Phoenix
Apr 19, 8:00-4:00 Cost: Members \$50 Nonmembers \$125	36th Annual Conference	Desert Willow Conference Center 4340 E Cotton Center #100 Phoenix
May 17, 8:30-10:00	Medical Marijuana in the Workforce	American Express 18850 N. 56 <sup>th</sup> Street, Phoenix
June 21, 8:30-10:00	Disabled/Vets Outreach -- Good Faith is Not Enough	Sundt (Los Alamos Rm) 2620 S. 55 <sup>th</sup> Street Tempe
July 25-29	Annual National ILG Conference	New Orleans
<b>AUGUST</b>	<b>MID-SUMMER BREAK</b>	<b>MID-SUMMER BREAK</b>
Sept 20, 8:30-10:00	Best Practices: Communicating AAPs	To Be Announced
Oct 16, 8:30-10:00	Best Practices: Diversity – Not Why But How	To Be Announced
Nov 15, 8:30-10:00 COST: Members \$100 Nonmembers \$150	14th Annual Compliance Conference	Desert Willow Conference Center 4340 E Cotton Center #100 Phoenix
Dec 6, 8:30-11:30 COST: Members FREE Nonmembers \$75	Annual Members Only Holiday Roundtable	To Be Announced