

A First Advantage Consulting Firm, LLC
White Paper



**An Affirmative Action
Solutions Company**

First Advantage Consulting Firm, LLC

"We are committed to your company's goals and needs"

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How Contractors get into Trouble

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Introduction

Every company must start at the very beginning. What do you stand for? How do you want the company to run? What are your objectives? You are in business to make money and to provide a great product/service for your customers/clients. That is what business is about more to the point, there is everything right about making money showing profit, paying investors, employing people and growing. There must be good Leadership, Integrity, Morals and Ethics (First Advantage Consulting Firm L.I.M.E.S methods). With that established, there must be policies and procedures for ALL aspects of business within your business.

This means how you handle:

- pay raises
- performance
- complaints
- religious observance
- layoff/terminations
- transfers
- promotions
- recruiting/hiring
- Compliance with OFCCP, FMLS/FMLA and other regulatory restrictions.

Problem Statement

The development of these policies and how they are to be implemented and followed is not a quick process. This should be carefully thought out with different positions, scenarios taken into consideration. This is where the company can ask a consultant for assistance. There is no shame in asking for help. But there could be a great penalty attached to not having good policies and practices in place and following through with them.

There are a great many companies that have had to pay monetary remedies because they chose not to think things through. An “ounce of prevention” is so very important. Each year OFCCP recovers millions of dollars for the American worker. According to” The Center for Corporate Equality” in 2007 OFCCP collected almost \$52 million in back pay. That is admirable for OFCCP and the compliance officers who did the hard work, investigation, and analysis.

However, this sounds like a great practice but the money is coming from their companies’ profits and from their bottom line. You do not want OFCCP recovering any money from you! Take the proper time on the onset to plan your policies and procedures. If not followed penalties could very well occur. Once policies are in place and they are adhered to, everything will flow with ease. You are in business to make money. Leave the compliance “stuff” to those who really know what OFCCP is about.

F.A.C.F's Solution

Training,

Policies and Procedures need to be "Planned" and put in "Place" from top-down management through to the entire organization. *OFCCP* can *NOT* tell a company what policies and procedures to implement but they will "*monitor*" to see that those policies and procedures are followed to include everyone which means, regardless of race, religion, color, national origin, sex, veterans, and the disabled. Policies need to be developed bearing the benefit to the company and all involved. Training will help to eliminate problems that can arise from managers and supervisors regarding vicarious responsibility.

Personnel Activity:

Hiring On boarding, recruiting, employing:

What benefits any company is having the "**best qualified**" person for the position or job that is open. You can only find this person by including all possible candidates. The popular term is casting the widest possible net and this term has with it a great visual of what is actually needs to benefit the company and stay in compliance. You want to attract as many people from as many areas as possible, such as all colleges and their diverse organizations, departments and alumni, business organizations, member groups, etc. A good list can be provided by a good consulting firm.

Before posting a job opening, the minimum qualifications and the preferred qualifications need to be defined. The whole HR team needs to be aware, that includes the recruiters, HR generalist, as well as the hiring officials, all need to be on the same page regarding who they want and what is needed for the company.

Another benefit is having a well-designed ***Applicant Flow Log*** with all necessary items and dispositions covered are essential. A good applicant flow log is invaluable and can provide much important information to correct issues and set standards.

Why bring attention to your hiring practices by giving tests. *OFCCP* views tests as something negative. When there is adverse impact (Transmittal 267) *OFCCP* will investigate full force to determine if the test was the cause of discrimination. Do not leave your company open to this scrutiny. Tests *NEED* to be validated for the "particular job AND for your company at the location". A validation study from the testing company is *NOT* enough. A validation study is costly but necessary if you want to continue to use a test as a screening tool.

OFCCP even considers interviews a test because there is a pass fail associated with the interview. This is where Paperwork, and your policies, and procedures come into play. See the section paperwork.

Be “smart” on what data and information you are providing. OFCCP can ask but are you required to give? Don’t assume that you must provide everything OFCCP asks for because they are the Government. Consider checking with a consulting company, or a law firm, that has former OFCCP Compliance Officers in their staff, who read and are trained in what is required and acceptable. An example is of Frito-Lay because they fought back when OFCCP wanted more data and the Administrative Law Judge agreed with them. Bravo for them.

OFCCP now cannot ask for more data than the original reporting period.
Promotions, transfers, requests for reassignment:

Another source of issues are **Promotions!** OFCCP wants a promotion pool from where the promotions came. This does not mean all those in the feeder pool. This mean only those were considered from feeder pools not the entire feeder pools. As simplistic as this sound it has proven to be more of a problem then one would think. To put it another way only those that expressed an interest in the promotion/new position is the pool for the promotions. A union shop is much easier to analyze since those that bid is the pool. Any request for personnel movement needs to be considered if it affects anyone else’s seniority.

Termination, Lay off, Dismissal: (regardless of voluntary or involuntary)
Again. following policies and making sure procedures are implemented and of course paper work is essential to protect a company from wrongful termination claims. Remember that a standard of deviation of over 2% in terminations might be considered a job group where a hostile work environment exists.

Compensation

Fair market value, rewarding good service, longevity, experience and education are factors for consideration. Once more the pesky paperwork comes to the rescue to justify any differences.

Paperwork (The devil is in the details and details are captured in PAPERWORK)
Paper work is vital in justifying personnel actions hires, promotions, transfers, and terminations.

- Paper work is back up for compensations differences.
- Paper work is evidence that can be used in any investigation to support your position.
- Properly maintain paperwork can be a life saver. A consultant who has your best interest in the forefront and can explain how the essentials of paper work can work on your behalf. The consultant can train your management/supervisory, and support teams.

Good Faith Efforts this is an easy “A” for effort. For example no construction company in the US should ever have a violation for not having 6.9% female representation in the trades. Since 1974 that is the requirement. What each construction company needs to do, is take a proactive approach and connect with female groups in their area not just one or two. A good consulting firm can search out organizations, groups, associations that will show the government that they are using constructive measures to attract women.

The job of compliance needs to be handed over and out sourced to a professional who will work on behalf of their clients. No consultant would want to be responsible for their client to have to pay a financial remedy, or get violations. As each company wants to make a name for themselves in their industry, the consultant’s the bottom line is the well-being and good name of their clients.

Implementation

It is always advisable to have a seasoned and specialized consulting firm in HR preferably with OFFCP experience on your team. Such as First Advantage Consulting Firm, we are the preferred Affirmative Action Solution company. There are many facets to an AAP.

Summary

In summarizing, having good policies and procedure in place, implementing those procedures companywide as well as keeping the paperwork in order is key to eliminating many issues that can cause contractors to get into trouble. If ever in doubt, search out a consulting firm for guidance. Good ones are ready to give free good advice.

The longer a case is open the more likelihood OFCCP is digging to find fault with your company. The goal is to have your audit/review closed within 60 days.