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## **AVOIDING EEO CLASS ACTIONS: CURRENT THINKING AND BEST PRACTICES**

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### **General Principles**

- As a general rule, adequate mechanisms need to be put in place to minimize the bias inherent in subjective decision-making processes. Care should be taken to ensure that the degree of subjectivity and discretion permitted by the process is warranted and that alternatives are considered.
- Failure to follow established procedures can expose the organization to liability. (In other words, don't establish procedures that will not be followed.)
- Mechanisms must be developed to hold managers and supervisors accountable.
- Organizations should not seek to identify and collect data on problems unless they (senior management) are committed to addressing them.
- Data collection and analyses will be discoverable by adverse parties unless undertaken in a manner to create protection under an attorney-client privilege. The privilege is difficult to establish, so assume the data and analyses will be disclosed to an adverse party.

### **Staffing**

- Update job competencies based on job analyses.
- Job postings for available positions (limit exceptions).
  - Utilize web-based recruiting.
  - Utilize employee referral program.

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- Maintain active outreach (internship, scholarship, etc.) with organization positioned to refer qualified minority/women candidates.
- Mandate that all applicant pools contain a minimum number of candidates and both genders and minorities (African American, Hispanic, Asian American, others), unless top H.R. official investigates justifications/explanations and approves deviation.
  - Mandate that outside search firm tender applicant pools diverse in race and gender.
  - High potential employee pools to include diverse pool of candidates.
- Maintain effective applicant tracking system.
- Conduct adverse impact analyses on selection decisions and, if adverse impact is found, undertake follow-up investigation and action plan. Report to CEO/Board (under counsel privilege).
- Provide written guidelines for criteria, structured interviews and selection decisions.
  - Hold managers accountable.
- Implement a mentor program.
- Implement a career development program.

## **Compensation**

- Conduct job analysis for proper assignment of pay grades, bands, etc.
- Conduct compensation analysis to detect disparities, investigate and develop response plan. Report to CEO/Board (under counsel privilege).
- Provide written guidelines for setting starting salaries and determining merit increases, bonuses and other incentives.
  - Mandate training on compensation tools and guidelines.
- Hold managers accountable.
  - Base some part of incentive compensation on progress against Diversity Goals.

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## **Performance Management**

- Performance appraisals based on thorough job analysis and behaviorally-anchored.
  - Initial objective-setting/development plan session.
  - Employee self-assessment.
  - People metrics as a basis for evaluation of supervisors and managers. Reward or penalize for performance in this area.
- Raters receive rater, coaching and feedback training, plus regular pre-review refresher training.
  - Train all employees on the appraisal process.
- Appraisal form encourages employee comment or appeal, if appraisal believed to be unfair or inaccurate. Comments to trigger investigation.
- Adverse impact analysis performed on all evaluations and if adverse impact is detected follow-up investigation and action plan undertaken. Report to CEO/Board (under counsel privilege).
- Survey employees on effectiveness of performance management system.
- Conduct audit of select number of appraisals each year.
- Monitor appeal/conflict resolution system for issues, investigations.

## **EEO/Diversity**

- Mandatory executive briefings and strategy sessions to develop business case for diversity and integrate diversity into business practice.
- Mandatory annual training for supervisors/managers.
- Mandatory bi-annual diversity training for individual contributors.
- Integrate Diversity into all training programs.
- Develop data collection and tracking systems to monitor EEO compliance, review data, develop and implement plan for addressing identified issues (under counsel privilege).

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- Properly prepared AAPs and effective action plans for addressing underutilization; report to CEO/Board.
- Include EEO/Diversity issues on exit interview.

## **Problem Resolution**

- 1-800 report line to outside vendor.
- Ombudsperson (direct report to CEO) to ensure each report is properly investigated, monitor investigation, report results to appropriate management official and provide annual status report to CEO/Board.
- Collect and analyze utilization data (type, persons complaining/complained about, demographics, department, results), report regularly to senior management.