



Reopening the Workplace:

COVID-19 Special Series

Reduction in Force (RIF) Considerations

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Reopening the Workplace COVID-19 Special Series

The Institute is excited to announce a new webinar series to help employers navigate the unprecedented issues in the workplace arising from the Coronavirus pandemic.

This series focuses on reopening the workplace. Our Institute leaders, our nationally renowned faculty, and special guests will join together to discuss legal considerations, reassessing jobs in a changed environment, and challenges of managing remote workers.



Reduction in Force (RIF), Furlough, and Other Decisions

- Any type of selection decision that can have a negative employment consequence on employees can be considered.
 - Layoffs or Reductions in Force (RIF);
 - Furloughs;
 - Reorganizations;
 - Reduction in work hours;
 - Demotions;
 - And other 'negative' employment decisions.



Key Focus Areas



Criteria for decisional unit and individual decision-making
What? Who? Why?



Legal Considerations and Privilege



Analytical Methodology



Communication and other practical considerations

Legal Considerations



ATTORNEY-CLIENT PRIVILEGE



TITLE VII AND ANALOGOUS
ANTI-DISCRIMINATION LAWS



AGE DISCRIMINATION IN
EMPLOYMENT ACT (ADEA) &
OLDER WORKERS BENEFIT
PROTECTION ACT (OWBPA)



WORKER ADJUSTMENT AND
RETRAINING NOTIFICATION
ACT (WARN ACT)



Analytical Methodology



Decisional Unit
Formation



Type of Selection



Statistical Toolbox



Age, Race and Gender-
Based Analyses

Examples: Sex and Race

Job Group	Advertising									
Group	Lowest Sel Rate	Selected	Pool	Sel Rate	Ovr Sel Rate	Expected	Difference	Std Dev	Fisher	Disparity?
Female	Yes	29	569	5.1	6.09	34.63	5.63			
Male		15	154	9.74	6.09	9.37	(5.63)	2.1384		Yes
White		38	597	6.37	6.07	36.24	(1.76)	1.4019		
Black		2	16	12.5	4.44	0.71	(1.29)	1.9477		
Hispanic		3	44	6.82	4.11	1.81	(1.19)	1.436		
Asian	Yes	0	29	0	0	0.00	0.00			
Amer Indian		0	2	0						
Pac Islander		0	2	0						
Two or More		0	9	0						

Examples: Age

Job Group Advertising										
Group	Lowest Sel Rate	Selected	Pool	Sel Rate	Ovr Sel Rate	Expected	Difference	Std Dev	Fisher	Disparity?
Over 40		29	324	8.95	6.09	19.72	(9.28)	2.9036		Yes
Under 40	Yes	15	399	3.76	6.09	24.28	9.28			

Job Group Consumer Revenue										
Group	Lowest Sel Rate	Selected	Pool	Sel Rate	Ovr Sel Rate	Expected	Difference	Std Dev	Fisher	Disparity?
Over 40	Yes	1	183	0.55	1.13	2.07	1.07			
Under 40		4	259	1.54	1.13	2.93	(1.07)	0.9772		

What's Next?

What should we do with the results?

- How do we evaluate decisional criteria?
- Ultimately, make selection decisions based on job-related criteria, not protected characteristics

Final decisions and implementation.

Communication with employees.

- Plan ahead.
- Follow the script.
- Written documentation.
- Prepare a strategy for remaining employee meetings.

Key Takeaways

- Secure attorney client privilege.
- Develop clear, objective and defensible decision-making criteria.
- Ensure the analytical methodology matches the decisional unit and decision-making criteria.
- Utilize both statistical and practical significance measures for interpretation of analytical results.
- Make sound legal and business decisions based on the analytical results
- Communicate to employees with dignity.

Resources

- <https://www.bls.gov/opub/mlr/2015/article/industry-employment-and-output-projections-to-2024.htm>
 - https://www.eeoc.gov/policy/docs/qanda_severance-agreements.html
 - <https://www.upcounsel.com/owbpa>
-
- Simpson, Murray S. (2015), “Challenging the Uniform Guidelines: A New Approach for Conducting Race-Based Adverse Impact Analyses,” *EEO Insight*, 7 (2), 13-22.

Upcoming Sessions

Guidance on avoiding discrimination and harassment upon returning to work

OSHA general duty clause and what it requires of employers as employees return to work

When do you have to provide paid leave to your employees during the COVID-19 pandemic

How to handle sick employee in the workplace

Issues with taking temperatures or otherwise checking employees for COVID-19 symptoms

How to handle employees who refuse to return to work

Pandemic return to work: What rights do employees have?

Mickey Silberman

Mickey Silberman, Co-Chair of The Institute, is the founder of and a Shareholder with Silberman Law PC. For more than 25 years, Mickey has represented management in all areas of employment law, specializing in affirmative action plan preparation, OFCCP compliance and audit defense, pay equity analyses and related counseling, EEO and diversity & inclusion.

Mickey has overseen the preparation of thousands of affirmative action plans for government contractors in all industries and across the country. He has directed the defense of hundreds of OFCCP audits, including many corporate management reviews. This high volume of audit defense keeps him on the “cutting edge” of OFCCP’s rapidly evolving enforcement trends. He often is asked to step in to defend OFCCP audits and investigations “gone wrong” and has a strong track record achieving great results in those audits. In fact, in the last 1,000 audits Mickey has defended, he has obtained Letters of Compliance-the best possible audit outcome-in more than 99% of the audits.

In addition, Mickey is recognized as a national expert in the areas of pay equity and systemic pay discrimination. Mickey works closely with clients and a team of statisticians to prepare pay analyses both on a proactive basis and also in response to OFCCP and EEOC pay investigations and private pay litigation. He regularly defends employers against claims of systemic pay discrimination. Mickey also advises clients on pay system design and administration to identify and address often subtle or hidden barriers to pay equity.

Joanna L. Colosimo

Joanna L. Colosimo, M.A., SHRM-SCP is a Director and Principal Consultant at DCI Consulting Group, where she provides guidance and support to clients regarding employment discrimination statutes and regulations, pay equity, and diversity and inclusion. Joanna manages DCI's EEO Compliance & Workforce Analytics division, consisting of consultants and analysts who consult with large organizations on OFCCP compliance, Affirmative Action, pay equity, talent distribution, RIF-analytics, and related employment issues. She is an Industrial-Organizational Psychologist with over 14 years of experience with EEO and Workforce Analytics, and the current President of the Washington DC Metro ILG (WMILG).