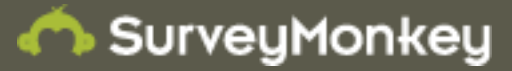







CCE - Expert Survey on Compensation Discrimination Analysis










1. Which of the following best describes your primary area of expertise?

		Response Percent	Response Count
Industrial and Organizational Psychology		17.6%	6
Labor Economics		23.5%	8
Employment Law		26.5%	9
HR Compliance		14.7%	5
HR Statistics		14.7%	5
Other (please specify)		2.9%	1
		answered question	34
		skipped question	0

2. Which of the following best describes your current employment position?

		Response Percent	Response Count
Internal Practitioner		11.8%	4
External Consultant		55.9%	19
Private Research		0.0%	0
Attorney		20.6%	7
Academic		5.9%	2
Government		5.9%	2
Other (please specify)		0.0%	0
		answered question	34
		skipped question	0




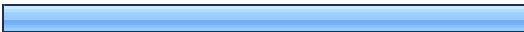


3. Which of the following best describes the highest educational degree you have obtained?

		Response Percent	Response Count
BA		8.8%	3
BS		0.0%	0
MA		2.9%	1
MS		2.9%	1
MBA		2.9%	1
JD		26.5%	9
PhD		50.0%	17
PsyD		0.0%	0
Other (and if multiple advanced degrees please describe here)		5.9%	2
		answered question	34
		skipped question	0


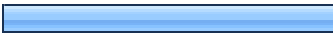


4. How many years of experience do you have working on systemic compensation discrimination projects/cases?

	Response Count
	34
answered question	34
skipped question	0





5. In your experience working with systemic compensation discrimination, which of the following roles have you been involved in? Note that you may choose more than one response.

		Response Percent	Response Count
On behalf of an EEO Agency		23.5%	8
On the plaintiff side of litigation/audit		29.4%	10
On the defendant side of litigation/audit		82.4%	28
For an organization proactively		79.4%	27
For the court as independent expert		11.8%	4
Other (please specify)		5.9%	2
		answered question	34
		skipped question	0



6. Which of the following best describes your work involving systemic compensation discrimination analysis?

		Response Percent	Response Count
In the Public Sector		5.9%	2
In the Private Sector		50.0%	17
Both		41.2%	14
Other (please describe)		2.9%	1
		answered question	34
		skipped question	0



7. What statutes concerning systemic compensation discrimination have you worked with? Note that you can choose more than one response.

		Response Percent	Response Count
Title VII		97.1%	33
EO 11246		82.4%	28
Equal Pay Act		94.1%	32
Other (please specify)		5.9%	2
		answered question	34
		skipped question	0



8. Do you have expertise in the legal aspects of systemic compensation discrimination?

		Response Percent	Response Count
Yes		70.6%	24
No		29.4%	10
		answered question	34
		skipped question	0



9. Do you have expertise in the data analysis aspects of systemic compensation discrimination?

		Response Percent	Response Count
Yes		94.1%	32
No		5.9%	2
		answered question	34
		skipped question	0



10. In 1978, the federal agencies responsible for ensuring equal employment opportunity published the Uniform Guidelines on Employee Selection Procedures. These Guidelines have been used in the vast majority of adverse impact/selection cases. Importantly, these standards provide a common framework for conducting and interpreting adverse impact analyses. Do you believe that a uniform set of cross-agency guidelines for systemic compensation discrimination investigation is necessary?

		Response Percent	Response Count
Yes		73.1%	19
No		26.9%	7
	Comments:		9
	answered question		26
	skipped question		8



11. OFCCP is proposing that 'once rescinded, nothing in the Standards or Voluntary Guidelines or their Preamble can be relied upon as a statement of OFCCP's interpretation of Title VII Principles or OFCCP regulations'. Therefore, there would be no published guidance on how OFCCP would investigate and enforce systemic compensation discrimination cases. Do you think that OFCCP should publicly state their interpretation of Title VII Principles in the context of systemic compensation discrimination?

		Response Percent	Response Count
Yes		88.9%	24
No		11.1%	3
	Comments:		8
	answered question		27
	skipped question		7


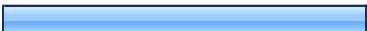
12. OFCCP enforces Executive Order 11246 as it relates to compensation discrimination. Is OFCCP required to follow Title VII standards for enforcing compensation discrimination?

		Response Percent	Response Count
Yes		56.5%	13
No		43.5%	10
Comments:			10
answered question			23
skipped question			11

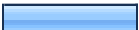

13. Does OFCCP have the authority to enforce the Equal Pay Act of 1963?

		Response Percent	Response Count
Yes		25.0%	5
No		75.0%	15
Comments:			8
answered question			20
skipped question			14

14. Does OFCCP have the authority to enforce a claim of compensation discrimination under Executive Order 11246 given the following scenario? For example, John Smith (male) and Jane Doe (female) are both electrical engineers working at the same establishment for Company A. John makes \$500 more than Jane. Following Title VII, is the identification of this difference without evidence of intentional discrimination actionable by OFCCP?

		Response Percent	Response Count
Yes		45.0%	9
No		55.0%	11
		Comments:	13
		answered question	20
		skipped question	14

15. Do you agree with OFCCP's statement that the Compensation Standards 'significantly undermine OFCCP's ability to investigate and identify compensation discrimination?'

		Response Percent	Response Count
Yes		20.0%	5
No		80.0%	20
		Comments:	10
		answered question	25
		skipped question	9

16. Title VII systemic compensation cases typically are complex and depend on the legal claim being asserted (e.g., pattern or practice disparate treatment, disparate impact, or individual claims). The rows in this table show some common theories of compensation discrimination. The columns in this table present some facts that are often involved in systemic compensation discrimination cases. For each theory of discrimination, please indicate which facts are necessary to prevail in a systemic compensation challenge.

Similarly situated employees

	Yes	No	Response Count
Individual Disparate Treatment	86.4% (19)	13.6% (3)	22
Pattern or Practice Disparate Treatment	91.7% (22)	8.3% (2)	24
Disparate Impact	72.7% (16)	27.3% (6)	22

Statistically significant differences in compensation

	Yes	No	Response Count
Individual Disparate Treatment	14.3% (3)	85.7% (18)	21
Pattern or Practice Disparate Treatment	95.8% (23)	4.2% (1)	24
Disparate Impact	100.0% (22)	0.0% (0)	22

Anecdotal evidence of intentional discrimination



	Yes	No	Response Count
Individual Disparate Treatment	78.3% (18)	21.7% (5)	23
Pattern or Practice Disparate Treatment	78.3% (18)	21.7% (5)	23
Disparate Impact	23.8% (5)	76.2% (16)	21

Comments: 9



answered question 24

skipped question 10



17. Historically, OFCCP has used base pay (e.g., salary as of a particular date) as a measure of compensation for analyses of potential discrimination. Does OFCCP have the authority to challenge individual pay decisions (e.g., a raise, a bonus) rather than current base pay?

		Response Percent	Response Count
Yes		86.4%	19
No		13.6%	3
	Comments:		8
	answered question		22
	skipped question		12





18. Under 60-1.12(a), OFCCP requires that contractors keep personnel activity records for 2 years from the creation of the record or of the personnel action, whichever occurred later. Does OFCCP have the authority to challenge compensation decisions that were made prior to the two-year record keeping requirement?

		Response Percent	Response Count
Yes		52.6%	10
No		47.4%	9
	Comments:		9
	answered question		19
	skipped question		15

19. Base pay is affected by many compensation decisions during an employee's tenure. Under an individual disparate treatment claim, must OFCCP identify a discriminatory compensation decision, or is it enough to show that an employee's base pay is less than a similarly situated individual?

		Response Percent	Response Count
Yes, base pay is enough evidence.		39.1%	9
No, base pay is not enough and a specific decision must be identified		60.9%	14
		Comments:	5
		answered question	23
		skipped question	11

20. How many of your clients opted to follow the statistical methodology (e.g., SSEGs and multiple regression) laid out in OFCCP Voluntary Guidelines when conducting a self-analysis of their pay practices?

		Response Percent	Response Count
All		22.7%	5
Most		27.3%	6
Some		36.4%	8
None		13.6%	3
		Comments:	8
		answered question	22
		skipped question	12






21. For those clients (if any) that did not follow the methodologies outlined in the Voluntary Guidelines, what were the reasons? Please check all that apply.

		Response Percent	Response Count
Too complicated		40.0%	6
Did not have expertise		6.7%	1
Clients are too small		40.0%	6
Financial considerations		40.0%	6
Not prepared to offer remedies if discrimination is identified		53.3%	8
	Comments:		5
	answered question		15
	skipped question		19



22. How many of your clients opted to participate in the compliance coordination incentive option (i.e. submitted the results of their multiple regression in lieu of Item 11) under the Guidelines during an OFCCP compliance evaluation?

		Response Percent	Response Count
All		5.0%	1
Most		5.0%	1
Some		15.0%	3
None		75.0%	15
	Comments:		3
	answered question		20
	skipped question		14



23. For those clients (if any) that did not opt for the compliance coordination incentive option, what were the reasons? Please check all that apply.

		Response Percent	Response Count
Did not want to waive attorney client privilege		72.2%	13
OFCCP compliance officer did not allow for this option		5.6%	1
Did not want to increase OFCCP scrutiny		61.1%	11
Analysis results were not favorable to the client		16.7%	3
Other (please note below)		22.2%	4
		Comments:	5
		answered question	18
		skipped question	16



24. Under a disparate treatment pattern or practice theory, is OFCCP required to group employees into similarly situated groupings for comparison purposes?

		Response Percent	Response Count
Yes		72.0%	18
No		28.0%	7
		Comments:	4
		answered question	25
		skipped question	9



25. Under a disparate treatment pattern or practice theory, is it appropriate to group employees by pay grade alone when job titles within a grade differ by such factors as market value, job duties, responsibility levels, and skills levels?

		Response Percent	Response Count
Yes		4.2%	1
No		95.8%	23
Comments:			8
answered question			24
skipped question			10


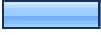
26. As justification for OFCCP's proposed rescission of the agency's Compensation Standards, OFCCP stated: "The Standards also significantly limit OFCCP's ability to identify compensation discrimination by imposing overly narrow investigation procedures that go beyond what would be required under Title VII principles in litigation. For example, the Standards state that, except in unusual cases, OFCCP will not issue a notice of violation (NOV) without providing anecdotal evidence to support OFCCP's statistical analysis. But under Title VII, a pattern or practice class-wide disparate treatment case may be proven by statistics'. Do you agree with the statement that a disparate treatment pattern or practice claim may be proven by statistics alone?

		Response Percent	Response Count
Yes		37.5%	9
No		62.5%	15
Comments:			9
answered question			24
skipped question			10



27. In OFCCP's proposed rescission to their Compensation Standards the following is stated: "The Standard's mandate to use a multiple regression analysis to identify compensation discrimination is also overly narrow and is not required under Title VII principles. While a multiple regression analysis may be a useful tool in identifying compensation discrimination, other statistical or non-statistical analyses may be better suited, depending on the facts of the case." Do you agree with this statement?

		Response Percent	Response Count
Yes		65.2%	15
No		34.8%	8
Comments:			10
answered question			23
skipped question			11



28. Is some form of statistical significance testing (e.g., t-test, regression analysis controlling for other factors) required to establish a prima facie case of a pattern or practice of systemic compensation discrimination?

		Response Percent	Response Count
Yes		85.7%	18
No		14.3%	3
Comments:			3
answered question			21
skipped question			13





29. When analyzing base pay under a Title VII pattern or practice theory, do you believe that multiple regression analysis accounting for other factors is necessary to determine whether there is a statistical disparity in pay?

		Response Percent	Response Count
Yes		73.9%	17
No		26.1%	6
		Comments:	4
		answered question	23
		skipped question	11



30. With groups that are large enough to conduct meaningful regression analyses, are there statistics available other than regression that are better suited to analyze a systemic compensation discrimination allegation of base pay?

		Response Percent	Response Count
Yes		45.0%	9
No		55.0%	11
		Comments:	8
		answered question	20
		skipped question	14



31. If yes, which of the following statistical methods are better suited for determining whether differences in base pay are statistically significant? Check all that apply.

		Response Percent	Response Count
T-test		58.3%	7
Fisher's exact test		33.3%	4
Mann-Whitney		33.3%	4
Other (please list below)		41.7%	5
		Comments:	8
		answered question	12
		skipped question	22



32. Do you think that the Ricci decision applies to remedies made as a result of OFCCP's typical pattern and practice disparate treatment compensation claims?

		Response Percent	Response Count
Yes		47.4%	9
No		52.6%	10
		Comments:	6
		answered question	19
		skipped question	15





33. Based on the Ricci decision, is a contractor required to meet the strong basis in evidence standard before it can make adjustments to pay based solely on race/ethnicity and/or sex?

		Response Percent	Response Count
Yes		71.4%	15
No		28.6%	6
Comments:			3
answered question			21
skipped question			13


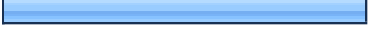
34. Assume for practical reasons that a federal contractor signs a conciliation agreement with OFCCP alleging systemic discrimination in compensation. As part of that agreement the contractor agrees to adjust salaries for a class of female employees. Could the contractor be liable for a reverse discrimination case against men under Title VII if OFCCP's allegations do not meet the strong basis in evidence standard?

		Response Percent	Response Count
Yes		73.7%	14
No		26.3%	5
Comments:			10
answered question			19
skipped question			15

35. Which of the following facts would you need at a minimum to feel confident in making a recommendation to your clients that they make proactive pay adjustments based on race/gender under Executive Order 11246? Please check all that apply.

		Response Percent	Response Count
Logically developed similarly situated employee groupings (SSEGs)		86.4%	19
Anecdotal evidence of intentional discrimination		40.9%	9
Statistically significant differences in pay		86.4%	19
Regression analysis controlling for legitimate and non-discriminatory variables		86.4%	19
		Comments:	4
		answered question	22
		skipped question	12

36. Would you be interested in collaborating with CCE on a response to OFCCP's notice to propose rescission of the compensation standards?

		Response Percent	Response Count
Yes (If yes, please contact CCE at jerilyn.whitmer@cceq.org for more information.)		45.0%	9
No		55.0%	11
		Comments:	3
		answered question	20
		skipped question	14