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ADDING "THOUGHT DIVERSITY" TO YOUR WORKFORCE PERSPECTIVE

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It is typical for people to consider diversity in terms of the classic Title VII framework of gender, age, and ethnicity. We have since added disability and other personal factors to the menu of protected characteristics.

Most of the things we consider in our diversity calculations are aspects of a person. Characteristics that describe "what" they are but not necessarily "who" they are. I have heard it said, for instance, that culture and ethnicity are not the same thing. It is possible to create an ethnically diverse workforce and yet still have a single monolithic culture whose only difference is in appearance.

Culture is a different thing all together. While not necessarily a relevant factor in terms of equal employment opportunity compliance, it can nevertheless make a significant contribution to creating a truly diverse workforce.

People often think of ethnic diversity as adding unique perspectives to an organization's collective insight. However, on some level, hiring a Harvard educated upper middle class Hispanic woman raised in Boston *might* add less diversity than a Stanford educated African America who grew up in a moderate income family in the deep south.

What made the difference? In this case, it was not ethnicity but "culture". What is culture? What do we refer to when we describe a person's culture? Ultimately, a person's culture is the sum total of the ideas, experiences, and environments that shaped his or her approach to the world. Thus, culture will influence the ideas, aspirations and innovations that any given person will contribute to an organization.

This concept of culture becomes increasingly important as we look to the future. As the world becomes a smaller and more diverse place, and assuming that we as a civilization get better at ignoring the superficial things that make us appear different, a new factor will emerge that will make a significant impact on any organization's ultimate success or failure; their openness and adaptability to new ideas.

In a rapidly changing world where technology cycles have often dropped to less than 12-months and where events in a remote corner of the world can have a significant impact on the day-to-day operations of a company thousands of miles away, the flexible, intuitive and creative power that diverse perspectives and thought processes can provide an organization are vast indeed.

According to a recent study conducted by Deloitte on this topic, "Diversity of thought" at your business can boost innovation and creative problem solving. Varying thinking styles can also help organizations avoid the kind of "groupthink" that has blinded more than one company to risk and led to large financial losses.

Source: <http://dupress.com/articles/diversitys-new-frontier/>

"FUNNELING" AND ITS OFTEN HIDDEN DISCRIMINATORY EFFECTS

Funneling, when it exists, is a form of discrimination that can be difficult to identify. In many cases, it could be happening right under a contractor's nose with no obvious symptoms. Most likely, it is not even conscious or intentional. And yet, it can happen just the same.

What is Funneling? In this context, it refers to the pernicious practice of directing one group of workers to one particular type of job or set of job duties while another group is directed elsewhere.

Often, one job or set of duties receives more compensation or is considered more desirable than the other. In such cases, illegal discrimination is the result.

In November 2013, the OFCCP announced a settlement with G&K Services Company where the defendant agreed to pay \$265,983 for just such a practice. In this case, the OFCCP determined that G&K Services had a practice of assigning laundry workers to different tasks and different pay rates based on gender. Between July 1, 2009 and June 30, 2010, female employees who had been hired as general laborers were assigned to what were considered "light duty" jobs while their male counterparts were typically assigned to those jobs considered "heavy duty." The "light duty" jobs received a lower compensation than those designated as "heavy duty." These pay differences existed even though they involved similar work and similar qualifications.

Intentional or not, such practices are a violation of Executive Order 11246 as well as a host of other civil rights laws. In addition to stereotyping women as being more appropriate for light duty jobs, one might also see a negative impact on males. According to the OFCCP, investigators also found that male applicants were frequently denied even the option to compete for the majority of open laborer positions during this particular review period because the company only considered them for "heavy duty" jobs.

One can see that, in this instance, the practice hurt both males and females to some degree. In this case, females were impacted in terms of compensation, males were impacted with respect to hiring, which is also mentioned by the OFCCOP in its announcement.

The interesting thing about funneling is that it can be difficult to identify--especially when conducting an analysis of compensation. This is because it is not uncommon for comparisons of the pay of men and women to be based on the job title level. In other words, analyses are restricted to groups who are performing the same job.

If, on the other hand, there are two substantially similar jobs but one is paid more highly than the other and if males are typically funneled into one and females funneled into another, then an analysis focusing solely on the job title will not identify pay discrimination. This is one of the reasons that the OFCCP has sought to dial back the microscope to look at broader groups. It will help identify funneling.

While many believe that the most statistically viable unit of analysis for compensation analysis is at the job title level, it is clear that it is not without drawbacks. This underscores the fact that analyses should *also* look at the bigger picture. Do one without forgetting the other!

G&K, in this case, agreed to pay \$265,983 in back wages to 59 female workers who were steered into the lower paying jobs. G&K Services will also extend to the 59 female class members job offers in the higher-paying laborer positions.

In addition, the company will pay \$23,968 in back wages to 331 male job applicants who were denied the opportunity to compete for open lower-paying laborer positions and will make three job offers. Finally, as a way of moving forward, the company has agreed to undertake extensive self-monitoring measures and review and revise their hiring and pay practices so that they are fully compliant with the law.

Source: <http://www.dol.gov/opa/media/press/ofccp/OFCCP20131725.htm>

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POTPOURRI

■ OFCCP Sues Providence Hospital Over Alleged Disability Discrimination

In a lawsuit filed by the EEOC, Louise McFadden worked as a medical assistant in the hospital's *Center for Life*, a unit that provides care for expectant mothers. Upon returning to work after a disability-related injury, McFadden was required to use a cane in order to walk. Providence Hospital was unwilling to consider McFadden for any of several vacant positions which would accommodate her injury. She was discharged in August 2011. The EEOC charges that the employer had an obligation to offer McFadden a vacant position that she could perform.

*Source: <http://www.eeoc.gov/eeoc/newsroom/release/12-9-13a.cfm>

■ Ruby Tuesday Will Pay \$575,000 to Resolve EEOC Class Age Discrimination Lawsuit

According to the EEOC, Ruby Tuesday had engaged in a pattern or practice of age discrimination against job applicants who were over 40 years of age. In addition, the company failed to preserve employment records. As a result of the settlement, Ruby Tuesday will commit to numerical goals for hiring and recruitment for applicants over 40 as well as conduct ongoing and extensive audits on EEO-related factors.

*Source : <http://www.eeoc.gov/eeoc/newsroom/release/12-9-13.cfm>

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HOUSE SUBCOMMITTEE HOLDS HEARING ON RECENT OFCCP ACTIONS

On December 4, 2013, the US House of Representatives' Committee on Education and the Workforce met to discuss and address the committee's concerns regarding the effects of the OFCCPs recent slate of new rules and regulations affecting companies doing business with the federal government.

Five witnesses testified including OFCCP Director, Patricia Shiu, David Fortney of the HR Policy Association, Thomas Shanahan of the University of North Carolina, Brian Fitzgerald of Easter Seals New Jersey, and Curt Kirschner of the American Hospital Association. Each witness was permitted to present a 5-minute testimony followed by questions from the committee.

The typical concerns raised by those who are required to comply with the OFCCP's regulations were discussed. The OFCCP attempted to clarify some of its regulations saying that the veteran's hiring numbers were not quotas. Ultimately, nothing was changed as a result of the committee hearing.

Regardless, however, of whether changes to the OFCCPs rules are made, the process of legislators, policy makers and contractor representatives discussing the issues and implications can only be a good thing.

Source: <http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=362696>

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