

# Q&A: EEO-1 Reports May Shed Light On Unlawful ‘Steering’ By Federal Contractors

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The Office of Federal Contract Compliance Programs’ current focus on whether federal contractors are steering some women and minorities into lower-paying jobs may mean employers need to examine more closely the job category data in their annual Employer Information Report (EEO-1), a former deputy regional director at the OFCCP told Bloomberg BNA.

Federal contractors with 50 employees corporatewide and a contract of \$50,000 or more in any given 12-month period are required to file an [EEO-1 Report](#), which provides a workforce breakdown by job category and by race, ethnicity and sex. Some job categories in the report include Professionals, Technicians, Laborers, Operatives, Craft, Sales and Services Workers. Contractors file the report with both the Equal Employment Opportunity Commission and the OFCCP.

Steering generally occurs when an employer assigns women or minorities to certain jobs because of unlawful sex or race bias that leads to a difference in wages, commissions, opportunities and other employee benefits.

“Although there are few references to the term steering in OFCCP’s compliance enforcement documents, the agency has done a really good job of looking at this concept, finding ways to investigate steering and proving it,” Joyce Morgan, owner of [Morgan Consulting Services LLC](#), said in an interview with Bloomberg BNA.

I interviewed Morgan in Indianapolis last month after she presented on OFCCP's compliance and enforcement trends at the annual conference of [DirectEmployers Association](#), a nonprofit consortium of employers whose representatives focus on talent acquisition and compliance with requirements enforced by the OFCCP. During the session, Morgan urged contractors to "dissect" their job titles within a particular job category of the EEO-1 Report to assess whether there are patterns emerging that could indicate steering.

The OFCCP recently settled steering allegation claims with [Comcast Corp.](#), [Central Parking Systems of Louisiana Inc.](#), [Myer Construction Corp.](#) and [Hillshire Brands Co. of Illinois](#).

According to Morgan, the agency is providing "some best practices" to the federal contracting community through the terms negotiated in the conciliation agreements involving steering allegations. "The remedies set up as corrective actions in steering settlements include allowing the promotions or transfers to take place, encouraging the affected employees to apply for those positions and monitoring the process to ensure that it's nondiscriminatory," she added.

**Bloomberg BNA:** Discuss how the EEO-1 report may help an employer spot potential steering?

**Morgan:** During a compliance audit, the OFCCP gets the EEO-1 reports for the last three years. The report shows the distribution of your workforce within the EEO-1 categories.

Now, a job group of professionals in a written affirmative action plan (AAP) is not the same thing as an EEO-1 category of professionals. With the AAP, you have to determine if engineers, architects, accountants and other professionals deserve their own job groups within the AAP as these jobs are vastly different.

In an EEO-1 report, for example, you may see in the Professional category that you have an abundance of women and men. This may look great for women, but the report shows that you have very few minorities in that category.

In addition, you might look at the Technician category and find you have several minorities in that category, so distribution--based on number of minorities in your workforce--looks pretty good. However, if the Technicians job group is feeding your Professional job group(s) and minorities are not moving into Professional jobs, you could face a potential discriminatory issue.

You are studying the EEO-1 report to see where minorities and women are and are not within your workforce. Typically, the representation of minorities and women in your workforce will be evenly distributed throughout the respective EEO-1 categories – at least that is what is expected by the OFCCP in the analysis – formerly called the JAAR (Job Area Acceptance Range) analysis.

In terms of the OFCCP, the agency focuses on those easy EEO-1 categories that tell the story on its face. Historically, craft positions are typically held by men, while jobs under the Operative, Laborers and Service Worker categories are normally occupied by women and minorities. These are good places to start to determine if this pattern could be discriminatory.

There are different job positions that are listed within each EEO-1 category that will have different skill levels and rates of pay. Therefore, you must also take a deeper look in those EEO-1 categories by job titles to see if steering is occurring by placing women or minorities into the lower paying jobs or those that have less opportunity for promotion.

On the report's surface, you may see minorities concentrated in the Laborers and Service Workers categories and not the Operative category, so that may be something you will want to examine more closely because that could represent a steering mechanism within the company.

**Bloomberg BNA:** Are there any legitimate, nondiscriminatory reasons that a contractor's workforce may have a large concentration of men or women in a job title or job group?

**Morgan:** Yes, personal choice. One may decide to work in a certain job title or not. I advise federal contractors to have individuals to decide for themselves in applying for specific job openings and don't decide for them. Women and men may select themselves into what could look like a steering situations.

You can say to the compliance officer here is the person's resume, and this is what the individual applied for. If contractors require applicants to apply for specific and open jobs, and not move them from requisition to requisition because the company feels they would be better suited for another open job, steering will be hard to prove.

Additionally, one can self-select out of being an applicant by disclosing a salary that the employer finds too high to match. The contractor can use the information provided in a resume or application to determine if the applicant(s) should be considered further without discussing with the applicant. The applicant, in essence, self-selects out of further consideration by the information provided versus what is required or the pay offered for the job.

My caution here, however, is with an employer that has a cultural environment, particularly in small communities, where women and men know what jobs to apply for at the local establishment. Believing that it's just the way things work at the company. That doesn't make it right, especially if there is a difference in pay. The company has to be aware whether its work environment holds stereotypes around certain jobs performed by women and men at the establishment. If that's the case, the employer has an obligation to offer some education and cross-opportunities to show that job applicants and employees are given choices to pursue a wide variety of jobs.

**Bloomberg BNA:** Any practical advice for contractors on avoiding steering allegation claims?

**Morgan:** The requisition specific is a good place to start; requiring job seekers to apply for that particular job before they can be considered. The contractor should also focus on voids and concentrations of women and minorities in the workforce and determine the underlying cause(s).

Also, look for movement patterns and feeder pools related to promotions. Determine if those patterns show a trend that warrants further review. Mentoring and cross-training programs can encourage some women and minorities to try jobs that they may not have previously considered.



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