

JacksonLewis

NILG CONFERENCE UPDATE

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About us.

As legal professionals **focused on the workplace**, we have a unique vantage point into the human condition.

It is our **privilege** to do work that affects real people.

It is our **calling** to craft policies that achieve the delicate balance between supporting diverse workers and the **businesses that employ them**.

Firm Overview

- We represent management exclusively in every aspect of employment, benefits, labor, and immigration law and related litigation.
- As leaders in educating employers about the laws of equal opportunity, Jackson Lewis understands the importance of having a workforce that reflects the various communities it serves.
- With 61 locations and more than 950 attorneys, we offer local knowledge backed by the support of a national firm.
- We are founding members of L&E Global, a global alliance of premier employer's counsel firms.

Practice Group Overview

Affirmative Action, OFCCP and Government Contract Compliance

- Integrated team of attorneys, data analysts, and statisticians, dedicated to equal employment opportunity, pay equity, and OFCCP defense.
- Prepares thousands affirmative action plans and pay analyses each year, defends them in OFCCP audits nationwide.
- Subject matter experts to ensure sophisticated legal representation on compliance, audits, and systemic discrimination claims.
- More than just consulting services, we provide strategic thinking and sophisticated representation to ensure your compliance program is strategic and minimizes burdens to your organization.
- Current insights, news, and strategies through our blog: <https://www.affirmativeactionlawadvisor.com/>.

Matthew J. Camardella

Matthew Camardella is a principal in the Long Island, New York, office of Jackson Lewis P.C. He is the co-leader of the Affirmative Action Compliance and OFCCP Defense practice group.

Matt directs the preparation of more than 1,000 AAPs each year and has defended hundreds of OFCCP audits for a broad range of employers across the country.

He also serves as the practice group lead on responding to OFCCP allegations of class-based discrimination. He regularly counsels clients about the design and implementation of company-wide AAP structures, applicant flow tracking systems, and other complex “real world” compliance issues. He spends significant time advising clients on their compensation practices and directing pay equity analyses.

Conference Overview

- Theme: Be a Beacon of Change
- Held from July 25-28, 2022
- Hosted in Boston Massachusetts
- Headlined by keynote addresses from Jenny Yang (OFCCP), Charlotte Burrows (EEOC), and Taryn Williams (ODEP)

Conference Themes

- OFCCP aim to review multiple establishments
- OFCCP/EEOC focus on removing barriers to employment through HIRE Initiative
- Implications of use of artificial intelligence
- Ramped up statistical capabilities with focus on “meta” analysis
- Increased importance of ESG posture of companies

OFCCP Highlights (Jenny Yang)

- Agency rebuilding its ranks
 - Will hire several hundred employees by September
 - Focus on strengthening statistics capabilities
- Looking to overhaul scheduling methodology
 - Risk focused approach
 - Analysis of EEO-1 representation
 - Improved identification of subcontractors
 - Including those expected to receive stimulus money
- Restarting physical on-sites where appropriate
- Renewed focus on construction contractor audits
 - Leveraging data to view representation across work sites
 - Renewing mega-construction project reviews

OFCCP Highlights (Jenny Yang)

- Directive 2022-01 (Pay Equity Audits)
 - 85% of contractors audited did not perform pay analysis
 - OFCCP needs to ensure compliance with obligation to analyze pay and hold contractors accountable
 - Patterns of “segregational assignment”
 - Disclosure of analysis will allow OFCCP to be more efficient
 - Does not impact ability to conduct “privileged” analysis – new guidance coming on this
 - OFCCP recognizes that contractors are looking for more guidance on how to do analysis

OFCCP Highlights (Jenny Yang)

- Directive 2022-02 (Compliance Reviews)
 - No extensions
 - Certification process should ensure AAPs are up to date
 - Will advise contracting agencies of contractors who failed to certify
 - Will prioritize contractors who failed to certify for audit

OFCCP Highlights (Jenny Yang)

- Regulatory Updates
 - Incentivize use of FAAPs
 - Guidance on use of non-binary gender designation
 - Improvement to self-identification process
- HIRE Initiative
 - Expand access to jobs
 - Remove barriers to hire
 - Focus on skilled-based hiring

OFCCP Highlights (Regional Directors)

| Enforcement Statistics | |
|----------------------------|-----------------------------------|
| 2021 | 2022 (1 st 3 Quarters) |
| 1,236 compliance reviews | 683 compliance reviews |
| 43 discrimination findings | 15 discrimination findings |
| \$26.4 million in back pay | 5 million in back pay |
| 21,900 class members | 4,500 class members |
| 900 job offers | 76 job offers |

OFCCP Highlights (Regional Directors)

- Increased focus on construction contractors
- Greater coordination within regions and between regions
- Effort around training OFCCP staff to ensure consistent approach to audits
- Increased access to technical assistance
- Best Practices
 - Open letter from CEO to employees
 - Board awareness of audit activity
 - Early resolution
 - Chief Accessibility Officer
 - Better record-keeping
 - Tracking all good faith efforts and evaluating effectiveness in real time

EEOC Highlights (Charlotte Burrows & Jocelyn Samuels)

- Renewed pay data collection on the table
 - NAS report released on last day of conference
- Looking at impact of COVID on underrepresented and vulnerable groups, including care givers
- New guidance related to COVID testing
 - Testing no longer presumed job-related and consistent with business necessity
- Beware of over-accommodation of IWDs with COVID
- HIRE Initiative
- Greater coordination with OFCCP

See You at the 2023 NILG Conference!

- Theme: Transforming for Tomorrow
- August 1-4, 2023
- Phoenix, Arizona

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Thank **you.**