



A Review of OFCCP Enforcement Statistics from FY 2009/2010

CCE Webinar May 4, 2011

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Agenda

- What has CCE been up to lately?
- A REVIEW OF OFCCP ENFORCEMENT STATISTICS FROM FISCAL YEAR 2009 and 2010
- Q and A – Please submit all questions to webinar@cceq.org

The Center for Corporate Equality

- Nonprofit research and think tank organization – 501(c)(6)
- <http://www.cceq.org>
- Mission: To create workplaces free from bias and unlawful discrimination by:
 - Harnessing the synergies between human resource functions
 - Promoting affirmative action and equal employment regulatory compliance
- DCI Consulting Group provides staff services
- Harold Busch– Executive Director

What has CCE been up to?

- Sept 2010: CCE released a technical advisory committee (TAC) best practice report on adverse impact analysis
 - http://cceq.org/ts_pub.asp
- Sept 2010: CCE submitted a comment regarding the Evaluation of Affirmative Action Provisions Under Section 503 of the Rehabilitation Act.
- March 2011: CCE submitted a Response to OFCCP's rescission of Interpretive Standards for Systemic Compensation Discrimination and Voluntary Guidelines: <http://www.dciconsult.com/alert/comp.pdf>
 - **Jointly submitted by** (1) CCE; (2) CUPA-HR; (3) Fortney & Scott, LLC; (4) ORC; and (5) SHRM.
 - CCE conducted expert and contractor surveys:
 - <http://ofccp.blogspot.com/2011/03/cce-releases-survey-results-from.html>
- April 2011: Submitted comment to EEOC, DOL, and DOJ regarding agency regulations review under EO 13563, which directs federal agencies to develop a plan to review existing regulations.
 - <http://dolregs.ideascale.com/a/dtd/Review-the-Uniform-Guidelines-on-Employee-Selection-Procedures/123333-12911>

And onto the settlements we go

Some context to note

- The new administration is in full swing!
 - New compliance manual is being written
 - DOL received public comment of Proposed rulemaking for Section 503 of the rehabilitation act
 - New Veterans' AAP regulations published
 - Compensation standards are being rewritten (maybe)
 - 2006 standards no longer apply?
 - Cross-agency task force on compensation discrimination
- FY 2009: Year of transition between administrations
- FY 2010: First full year under Director Shiu
- Business as usual on the settlement front?
 - For the most part....with a caveat

A recent settlement (Feb 3rd) business as usual

- OFCCP, Meat Firm Settle for **\$1.65 Million**
 - OFCCP and a Green Bay, Wis., meatpacker have reached a \$1.65 million settlement of OFCCP's claim that the employer engaged in systemic sex discrimination by not hiring women for laborer jobs
 - OFCCP determined that the company discriminated against female applicants for general laborer jobs in 2006 and 2007. Some 970 female applicants were subjected to the alleged discrimination. Green Bay Dressed Beef will extend 248 job offers.
 - Green Bay Dressed Beef, part of the fresh meats division of Minneapolis-based American Foods Group LLC, is one of the largest providers of beef products to U.S. military personnel and has a contract with the Department of Agriculture to supply the federal school lunch program, according to DOL.

Note that.....

- This effort is not a criticism of the agency in any way
- Reporting ‘just the facts’
 - From all cases that settled and alleged systemic discrimination against a protected group
- In most cases we aren’t able to answer the ‘whys’ based on available data

Have you ever wondered.....

- What types of OFCCP audits produce systemic discrimination settlements? Hiring, Compensation, Promotion, etc.?
- What industries do most settlements come from?
- What the details of those settlements look like?
- Are there regional differences in enforcement?

Of course you have!

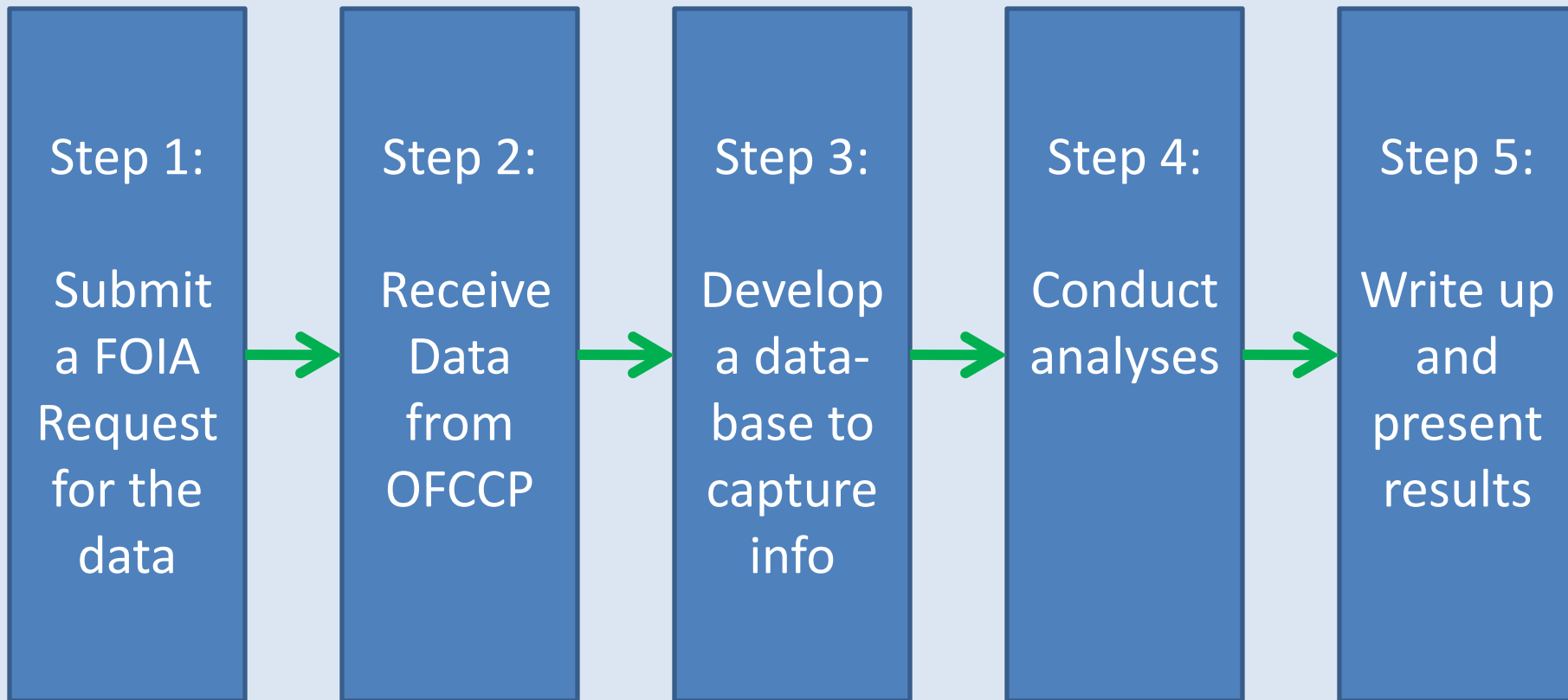
Remember these enforcement statistics?

Fiscal Year	Financial Remedies Obtained	Workers Recompensed by OFCCP Agreement	Compliance Evaluations
2010	\$9,750,272	12,397	4,960
2009	\$9,314,978	21,839	4,000
2008	\$67,518,982	24,508	4,333
2007	\$51,680,950	22,251	4,923
2006	\$51,525,235	15,273	3,975
2005	\$45,156,462	14,761	2,730
2004	\$34,479,294	9,615	6,529
2003	\$26,220,356	14,361	4,698
2002	\$23,975,000	8,969	4,135
2001	\$28,975,000	9,093	4,716

Toward answering those questions.....

- CCE conducts an annual content review of OFCCP settlements. The review
 - informs the public about the types of audits and OFCCP strategies that ended with conciliation/consent decree.
 - sheds light on some of the financial and other remedies stemming from settlements.
 - identifies some important differences in settlements across OFCCP region.

The content review process: A step by step approach



FY 2009 Data

Details on the data collection

- CCE received 65- FY 09 conciliation agreements and 4 consent decrees.
 - All 6 regions sent agreements.
- Only settlements with systemic discrimination were examined in the analyses (i.e., where \$\$\$ was collected)
 - Many others included only technical violations (i.e., where no \$\$\$ was collected)

One caveat to keep in mind

- Many of the FY 2009 settlements stem from OFCCP audits that were initiated in 2004, 2005, 2006, 2007. Because of this natural lag in the EEO enforcement process, these settlements are likely not a depiction of present day OFCCP enforcement policy. For example, consider that:
 - the OFCCP has implemented important new policy and directives (e.g. comp standards, active case management, etc.) after many of these audits were initiated.
 - OFCCP has hired key staff in recent years and these staff have implications for OFCCP enforcement policy and training (e.g. statisticians and testing experts)

Summary of results

- The number of systemic OFCCP settlements increased from 61 in FY 2007 to 73 in FY 2008 and decreased slightly to 69 in FY 2009.
- Once again, nearly all of the settlements (**about 94%**) involved allegations of systemic discrimination in **hiring**.
 - Most of these were **pattern and practice** allegations
 - One settlement focused on **employee placement**, and two settlements focused on **compensation**.
 - Another settlement settled on a disability access issue.
 - **No** settlements involved allegations **of discrimination in promotion or termination decisions**.

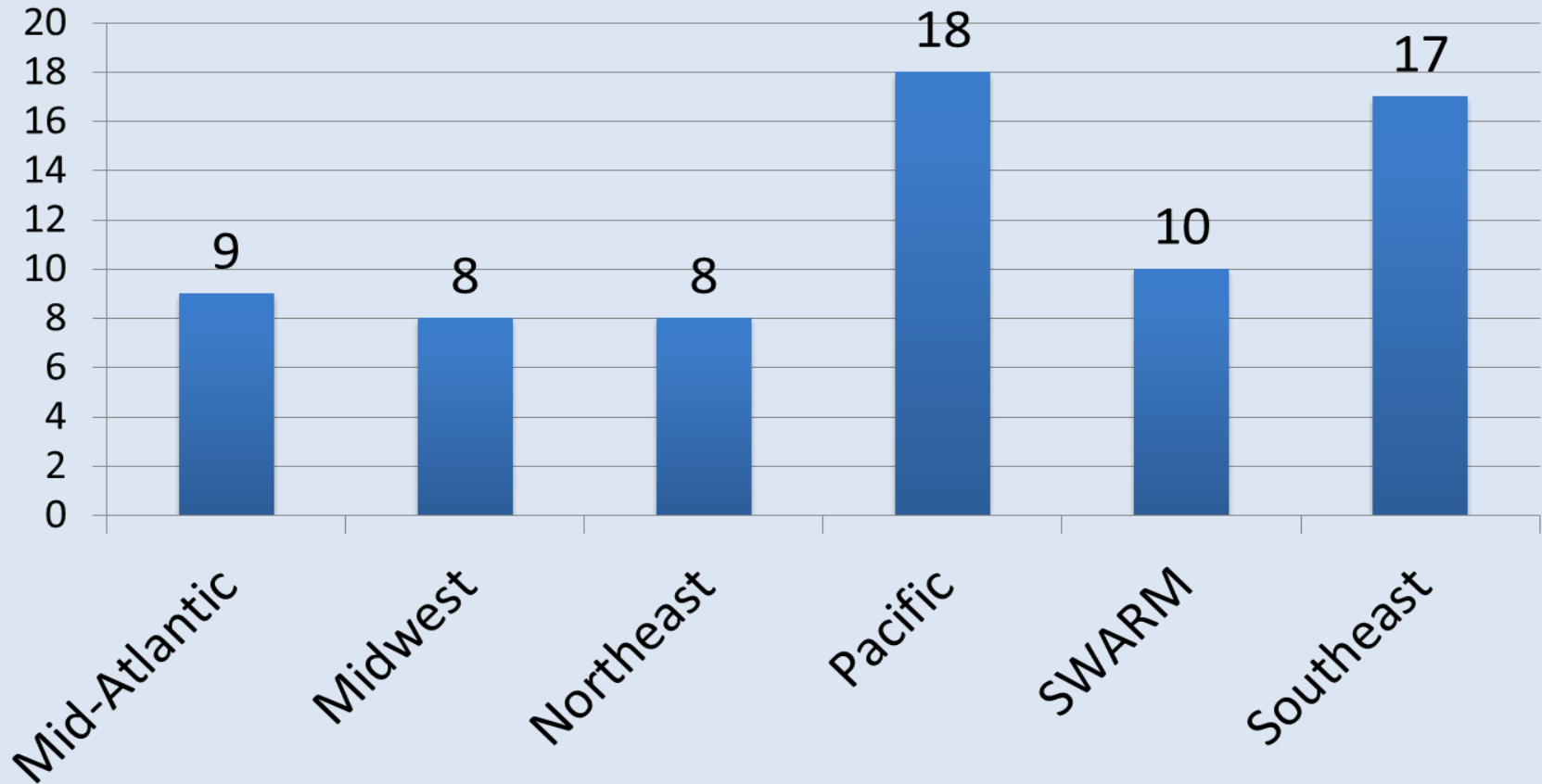
Summary of results

- **No “Glass Ceiling” Corporate Management Compliance settlements (CMCE)**-- audits of a corporate headquarters that focuses on identifying barriers to females and minorities advancing to senior executive positions
- There were no settlements from compliance evaluations of a **Functional Affirmative Action Plan (FAAP)**, which is a plan based on functional or business units rather than physical establishment
- The typical length of time between the start of the compliance evaluation and the signing of a conciliation agreement or consent decree was about 3 years
- Females and minorities benefited in fairly equal numbers in these settlements.
 - Many cases settled for an aggregate group (Minority, Non-Hispanic)
 - Some cases settled for Asian and Pacific islanders, and compared these groups to an aggregate (e.g., Non-Pacific Islanders)

Summary of results

- **Statistical significance** testing was used as stand-alone evidence of disparities in over 90% of **settlements**.
 - Is the **4/5ths rule** dead? One settlement required that update data be analyzed using the 4/5th rule as part of the CA. More on this later.
- For adverse impact analysis purposes, data were aggregated in the majority of settlements (about 66%) and in various ways (e.g., across multiple jobs, locations, protected groups, over time, etc.)

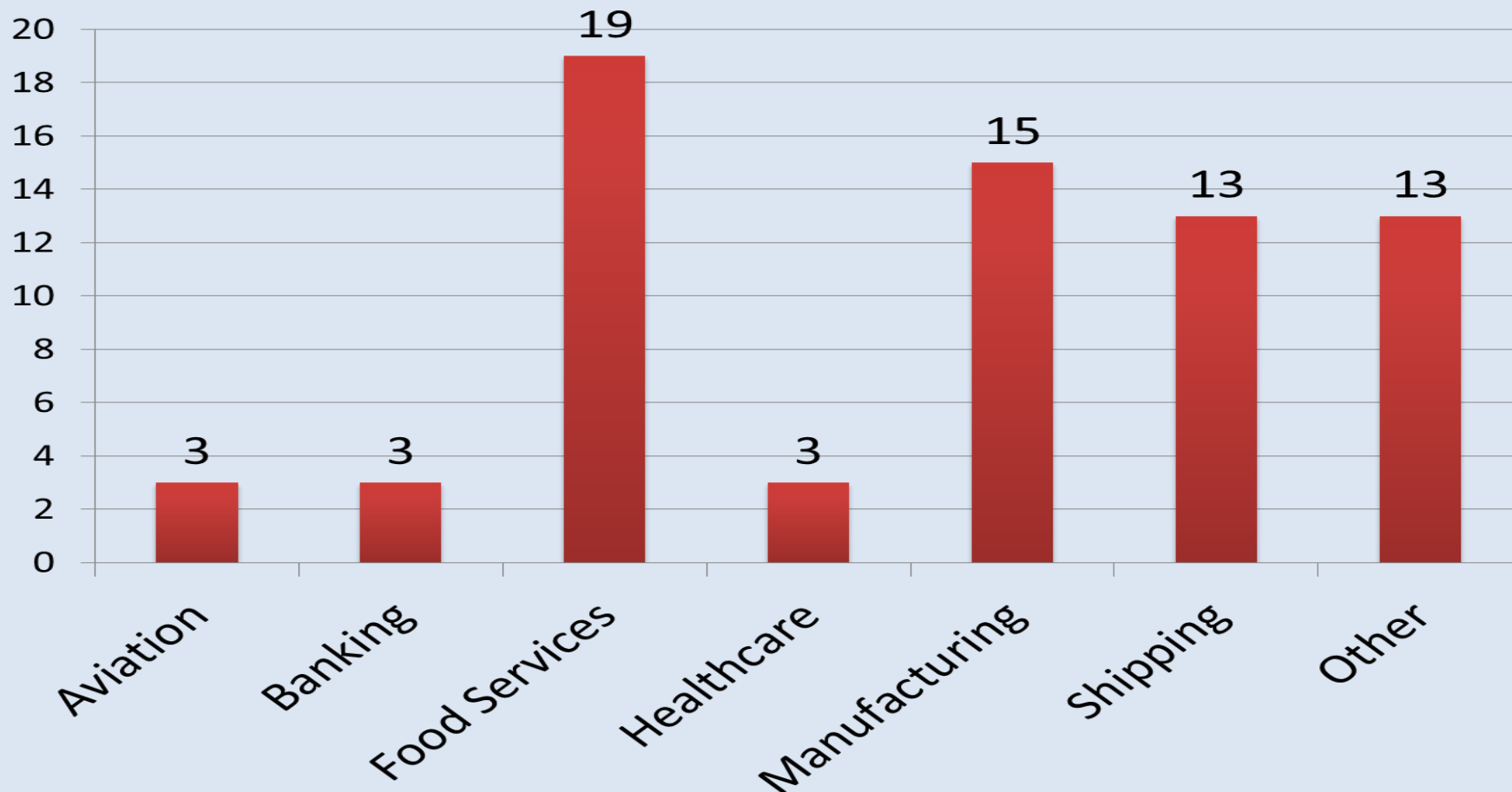
Number of settlements by region



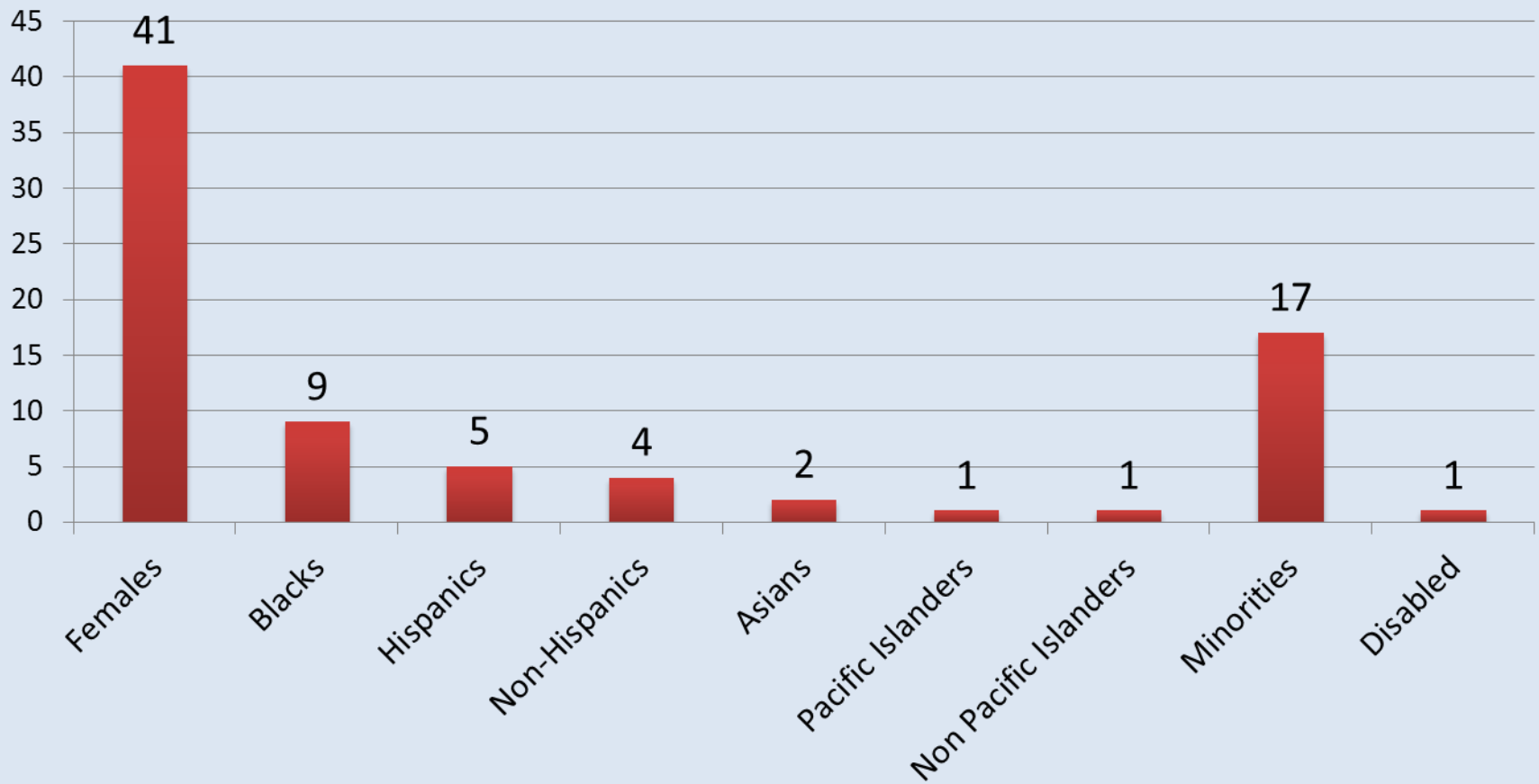
Note: one settlement was dually enforced by NE and MA regions



Number of settlements by industry

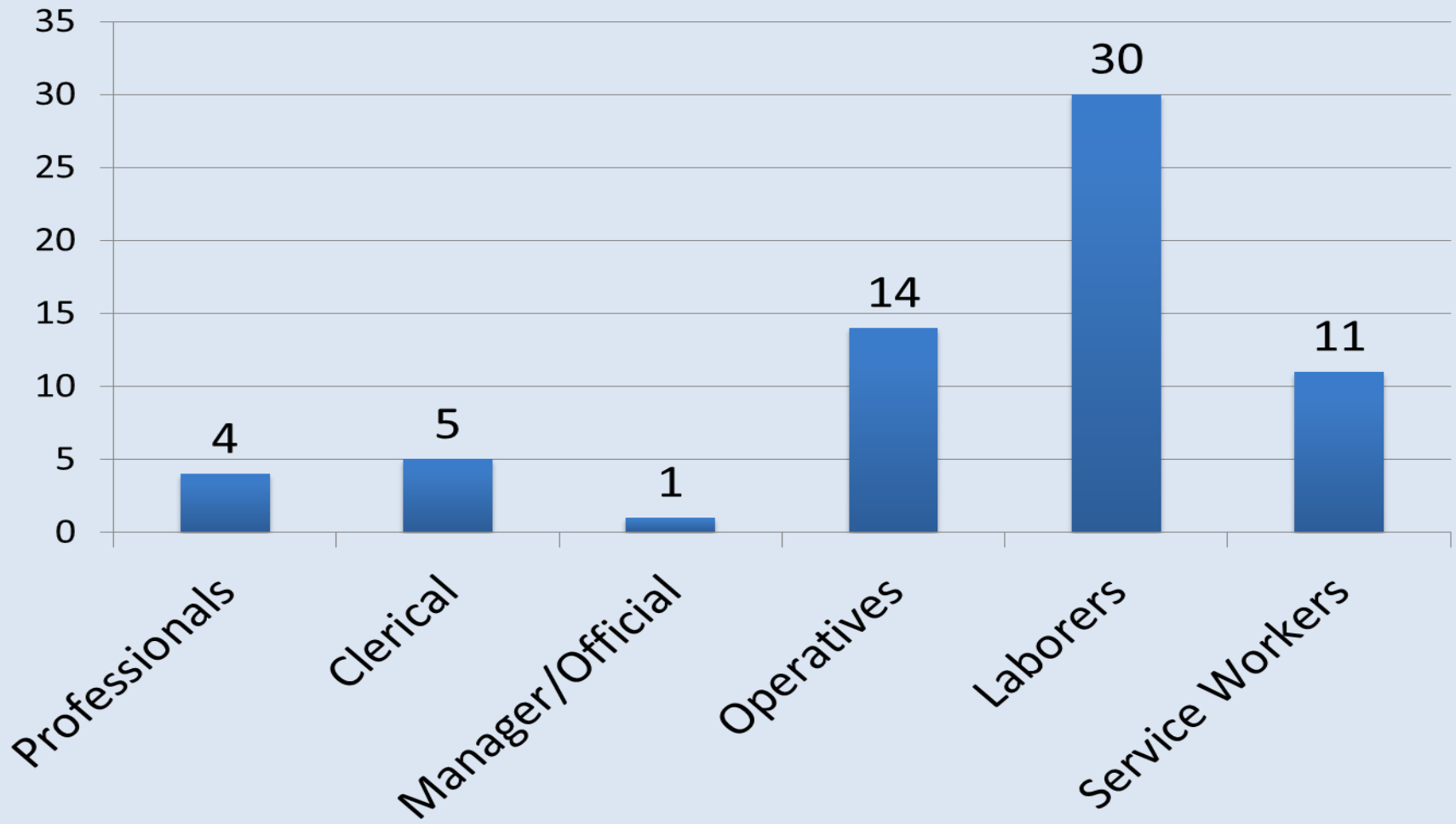


Protected groups affected

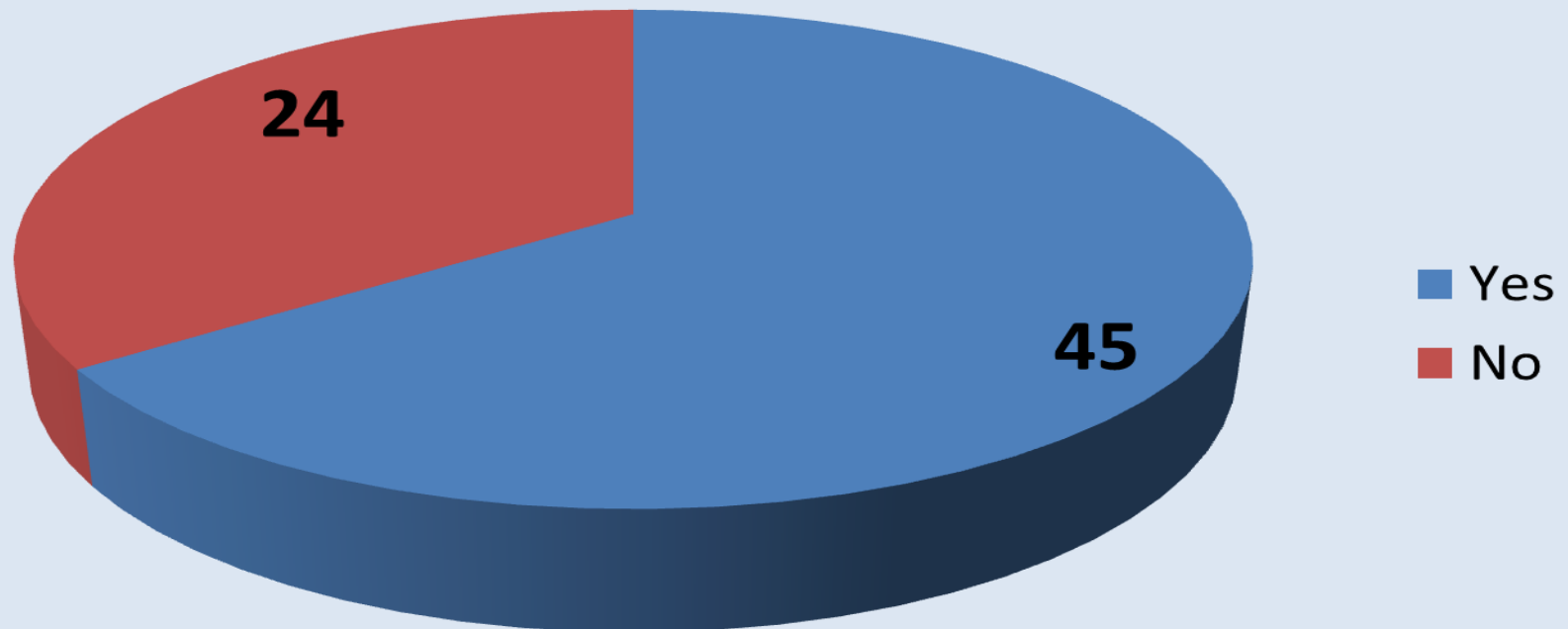




Types of jobs

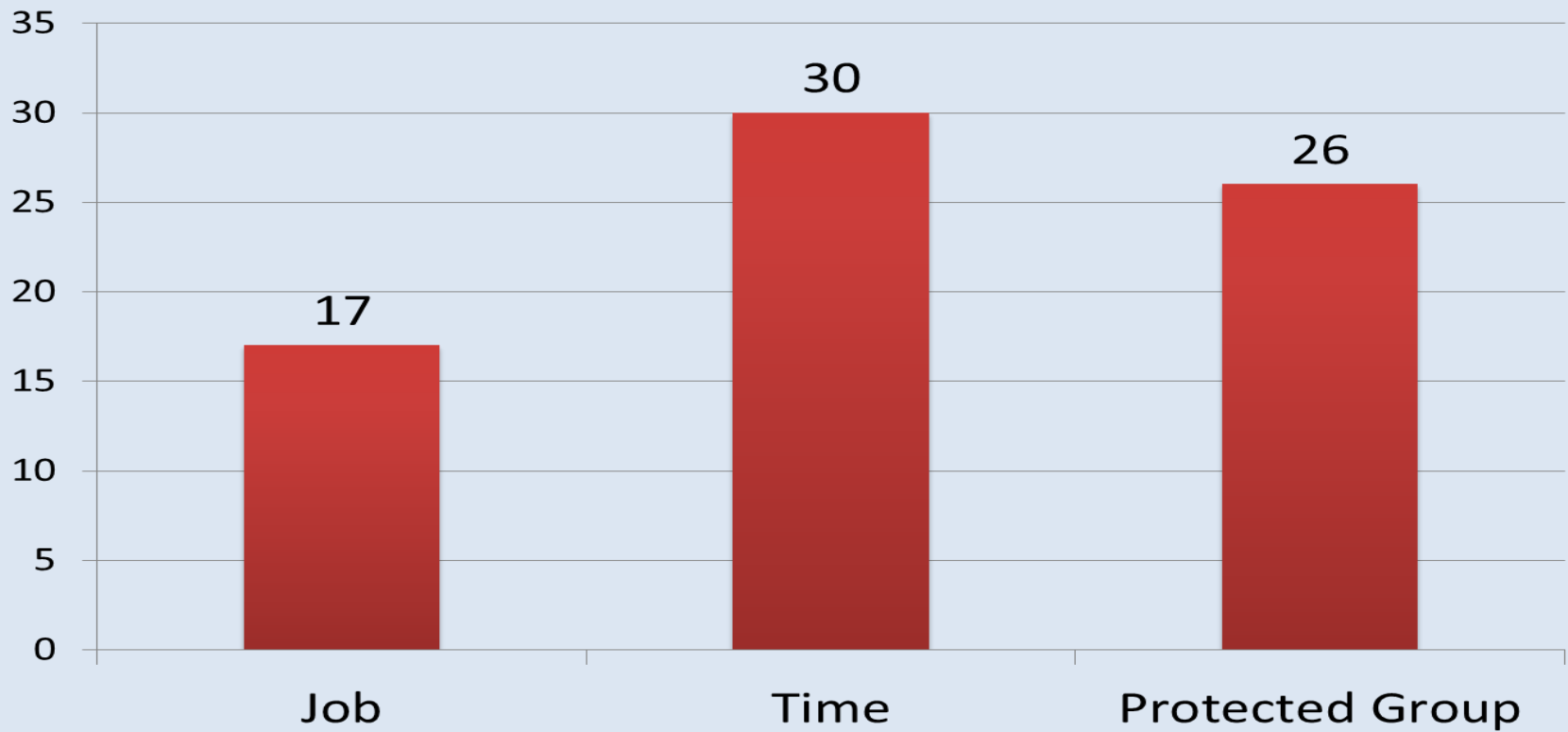


Number of agreements with data aggregation



Note: one settlement included multiple agreements; some included aggregation and others did not

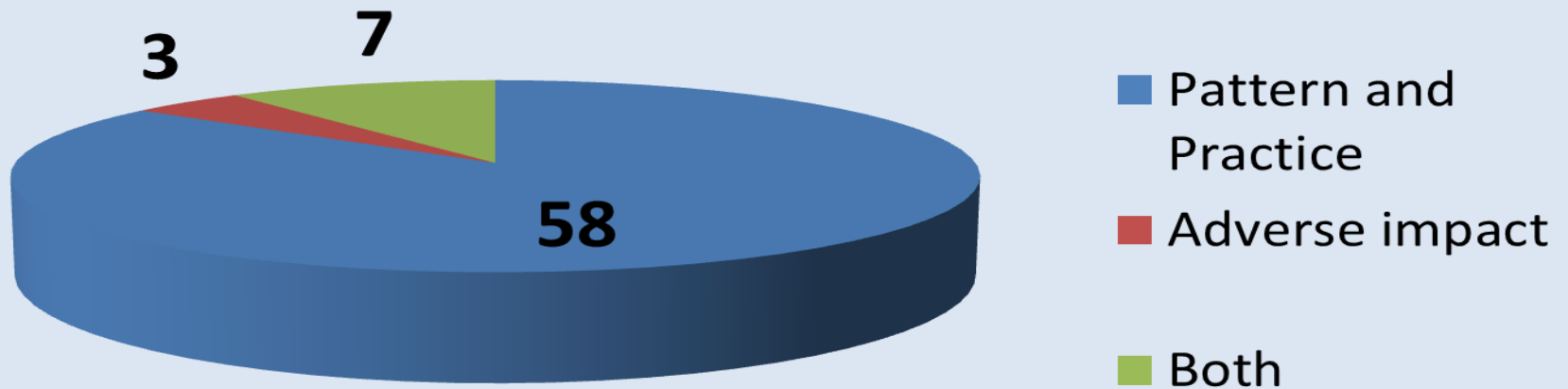
Type of data aggregation



**All of this is important because of this slide
(an extreme hypothetical example...but a statistical ‘fact’)**

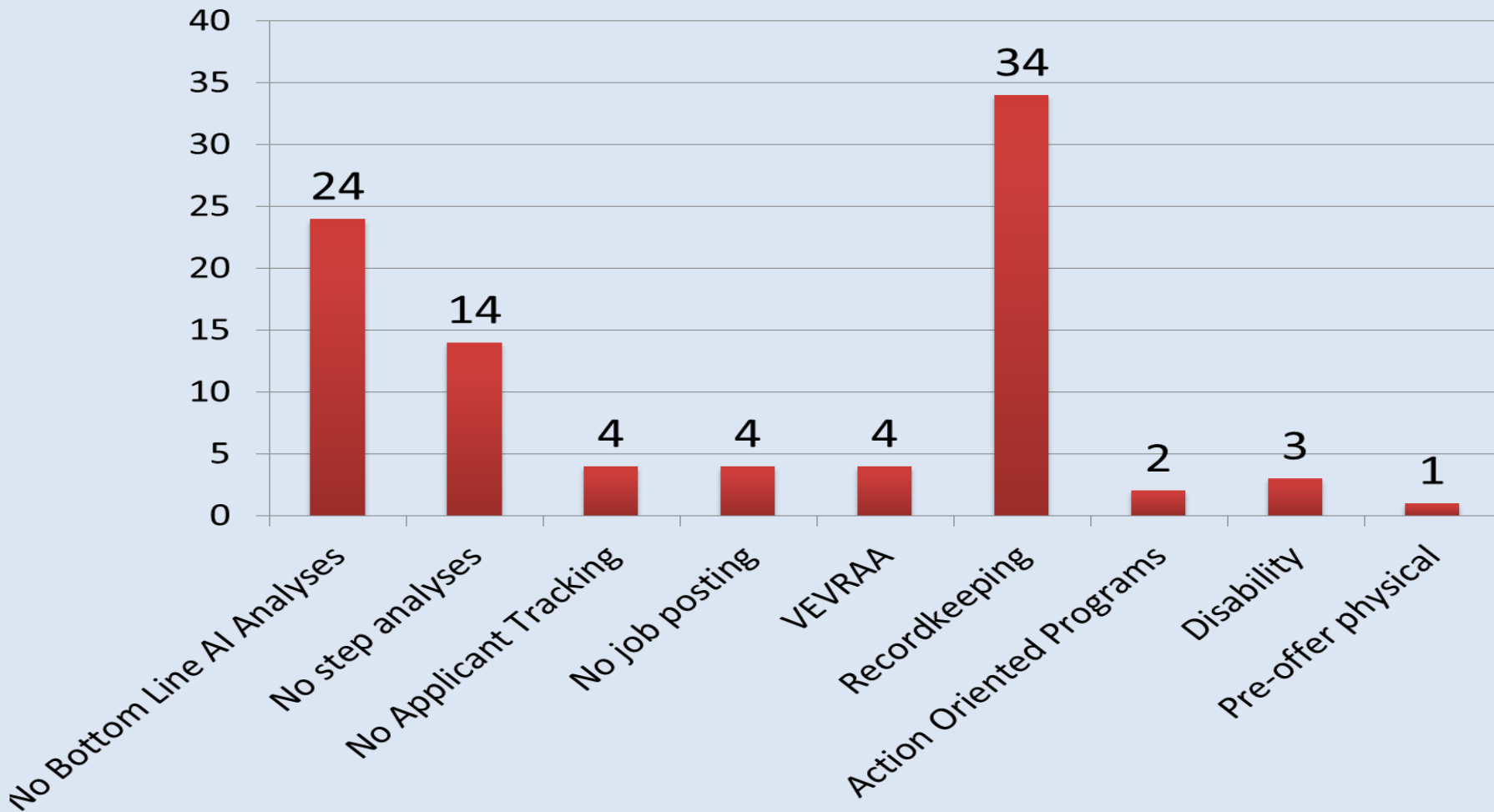
# Applicants		# Selections		Selection Rates			Practical Measures		Statistical Test
Males	Females	Males	Females	Total	Males	Females	Impact Ratio	Diff in rates	SD (Z) test
100	100	99	98	0.985	0.99	0.98	0.99	0.01	0.58
1,000	1,000	990	980	0.985	0.99	0.98	0.99	0.01	1.84
1,200	1,200	1,188	1,176	0.985	0.99	0.98	0.99	0.01	<u>2.01</u>
10,000	10,000	9,900	9,800	0.985	0.99	0.98	0.99	0.01	5.82
100,000	100,000	99,000	98,000	0.985	0.99	0.98	0.99	0.01	18.40
1,000,000	1,000,000	990,000	980,000	0.985	0.99	0.98	0.99	0.01	58.17

Type of discrimination alleged





Technical violations



Some cases of interest

- Some contractors were involved in more than 1 settlement
 - Similar allegations in all settlements regardless of region
- One settlement spanned 2 regions
 - 7 locations all under audit for the same contractor
 - Same protected group
 - Slightly different allegations
 - Jobs
 - Bottom line vs impact
 - Specific practice under scrutiny

Trends from

'selection procedure' settlements

- Tests of 'basic education' were targeted in more than 1 audit
- Certified (by an association) employment tests were challenged
- Physical ability tests were involved in more than 1 audit
- Less obvious 'tests' can be challenged as well
 - Application screen
 - Phone interview/in person interview
 - Assessment Center

How about validity research?

- In some situations contractors hadn't conducted validity research on a step that caused the impact.
 - No proactive analyses?
 - Unfamiliarity with UGESP?
- In other situations OFCCP alleged that the validity research was inadequate (i.e. didn't meet UGESP). For example:
 - Inadequate job analysis
 - Arbitrary cut score
 - A few settlements mentioned that the contractor did not consider reasonable alternatives (Eric gets on his soap box now).

Notes from comp cases

- 1 case included what appears to be a ‘cohort analysis’ methodology
 - Group A made more than Group B
 - 1 case included multiple regression analysis
 - Found statistically significant disparities across multiple jobs
 - No legitimate factors could explain the statistically significant disparity

FY 2010 Settlements: hot off the press!

Summary of results

- The number of systemic OFCCP settlements stayed about the same (69 in FY 2009 to 68 in FY 2010).
- Once again, most settlements (about 84%) involved allegations of systemic discrimination in hiring.
 - Most of these were pattern and practice allegations
 - 10 settlements (about 15%) focused on compensation (only 2 in 2009)
 - Two settlements focused on employee placement
 - One settlement each involved allegations of discrimination in promotion and termination decisions.

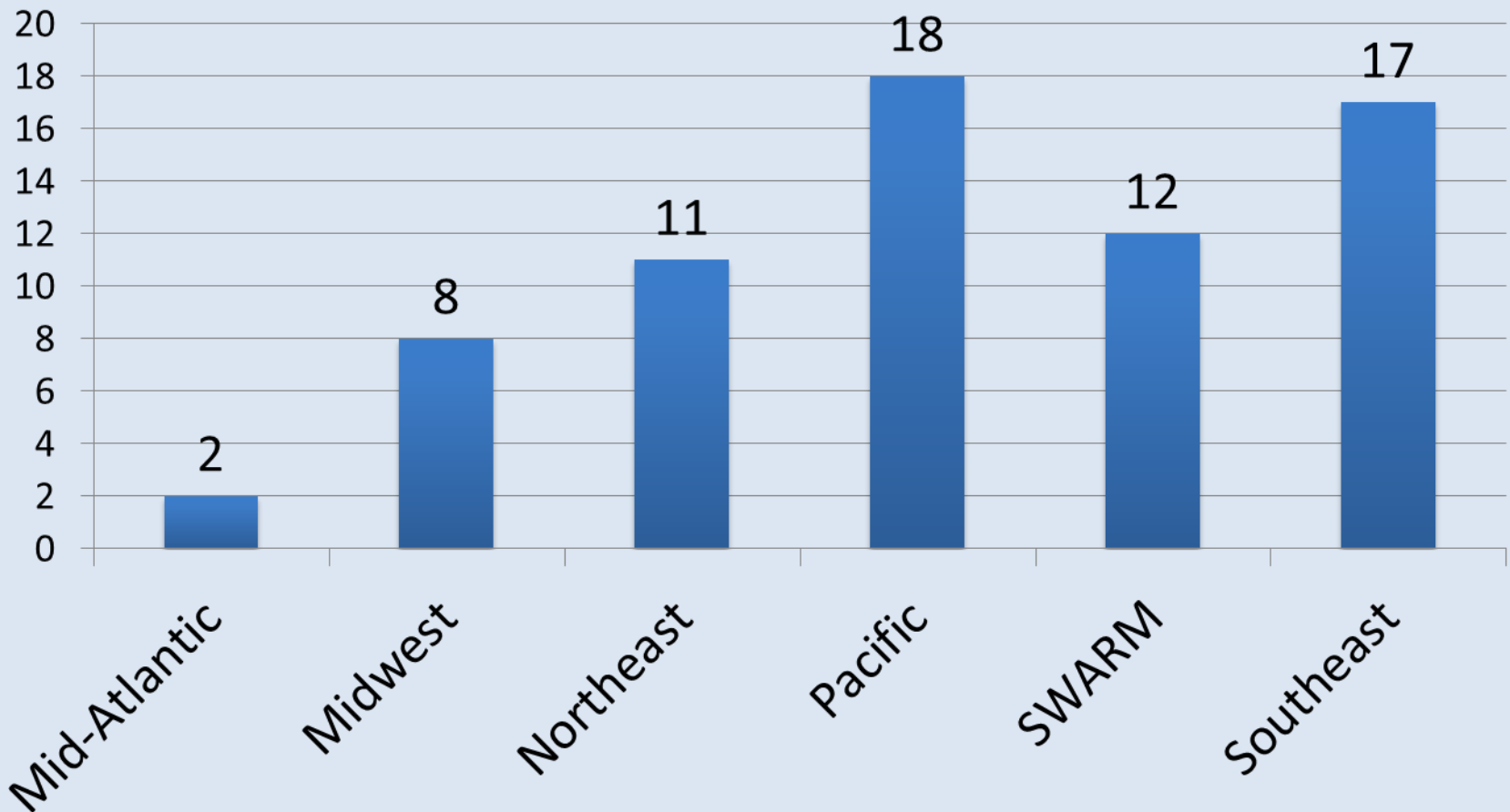
Summary of results

- **No “Glass Ceiling” Corporate Management Compliance settlements (CMCE)**
- no settlements for **Functional Affirmative Action Plan (FAAP)**
- The typical length of time between the start of the compliance evaluation and the signing of a conciliation agreement or consent decree was about 3 years (min = 4 months, max = 120 months)
- Females and minorities benefited in fairly equal numbers across these settlements.
 - Many cases settled for an aggregate group (Minority, Non-Hispanic)

Summary of results

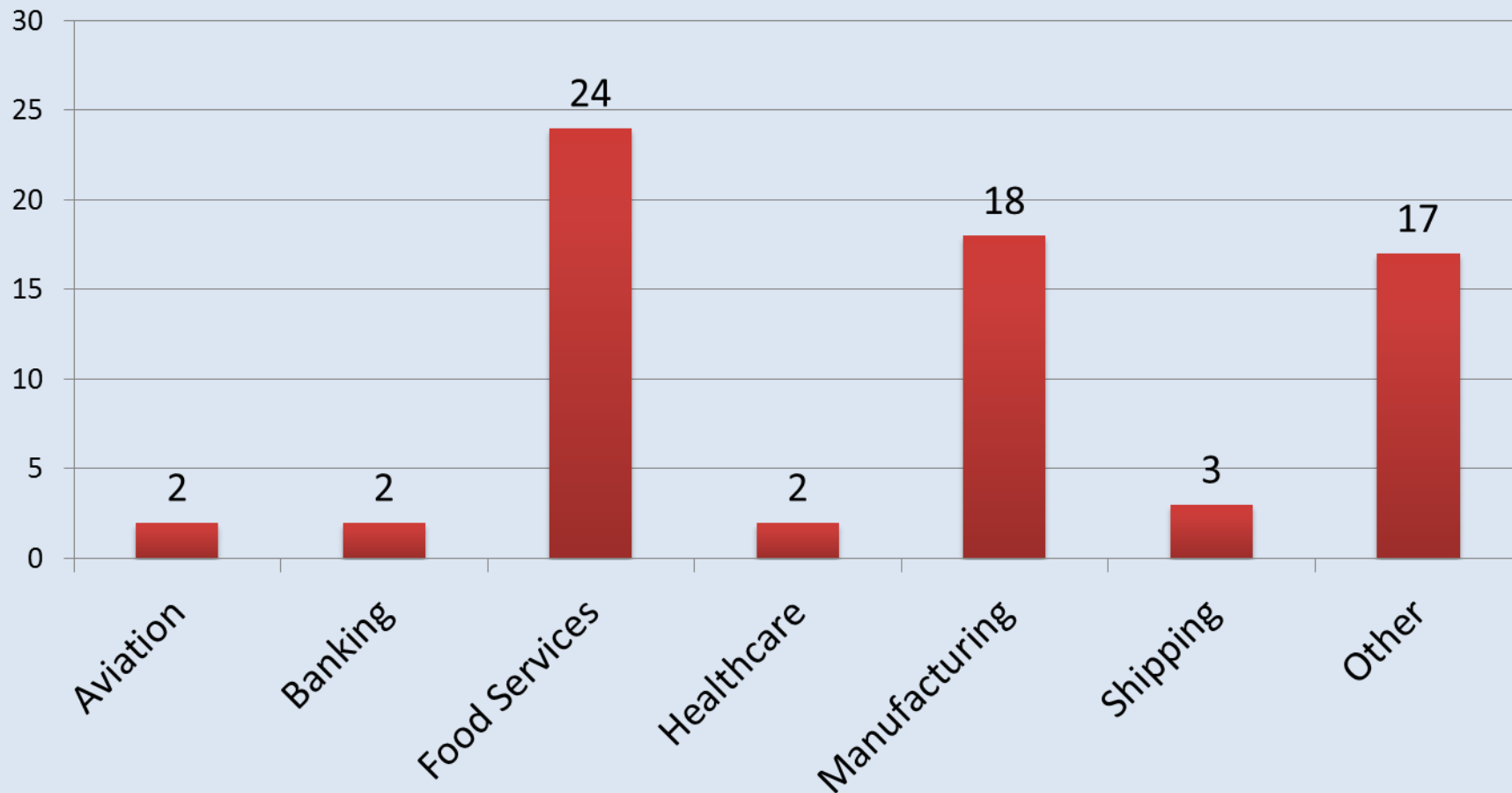
- **Statistical significance** testing was used as stand-alone evidence of disparities in **100% of settlements**.
 - Is the **4/5ths rule** dead?
 - Looks like it in OFCCP enforcement
- For adverse impact analysis purposes, data were aggregated in the majority of settlements (about 60%) and in various ways (e.g., across protected groups, over time, etc.)

Number of settlements by region

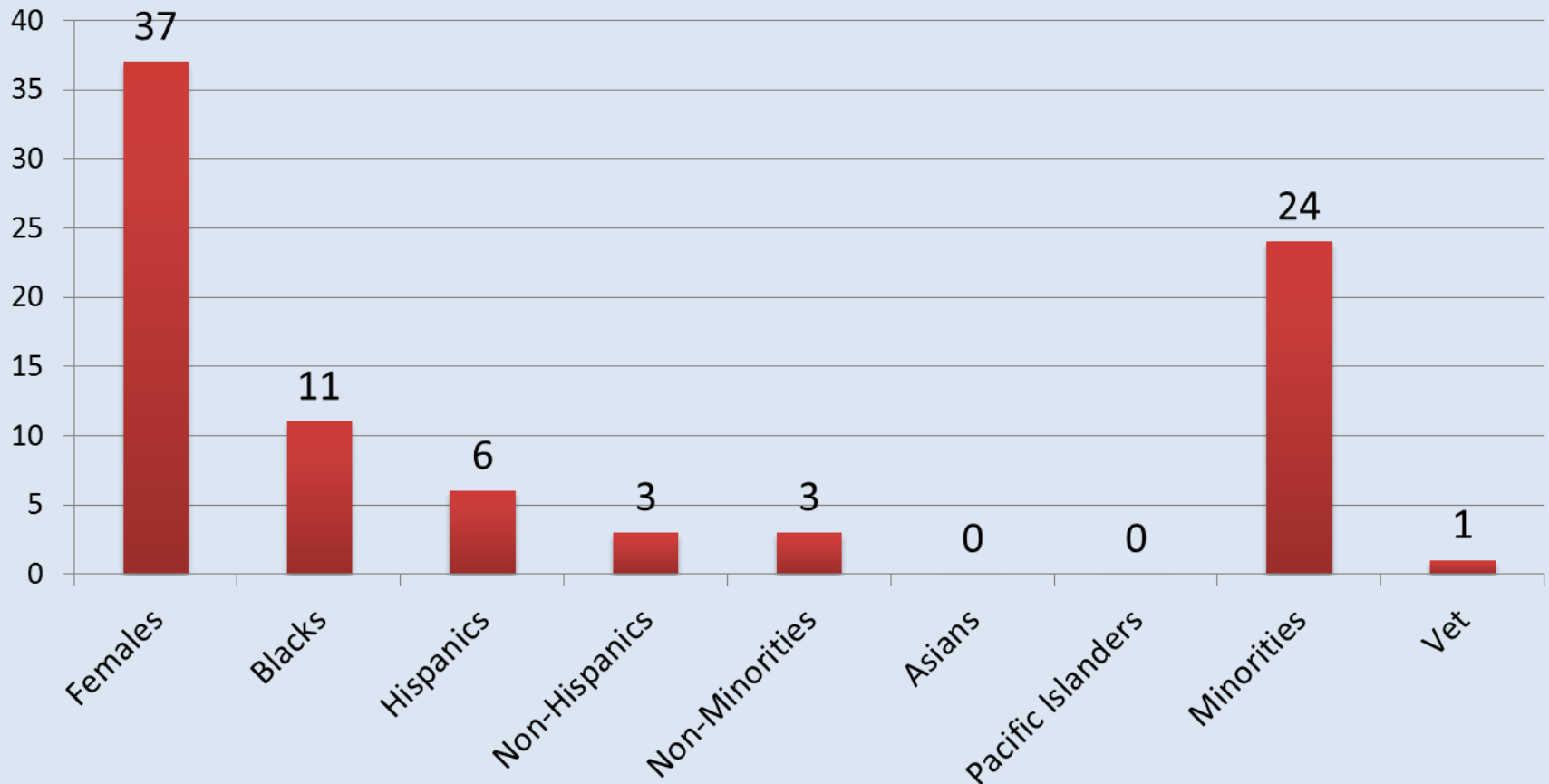




Number of settlements by industry

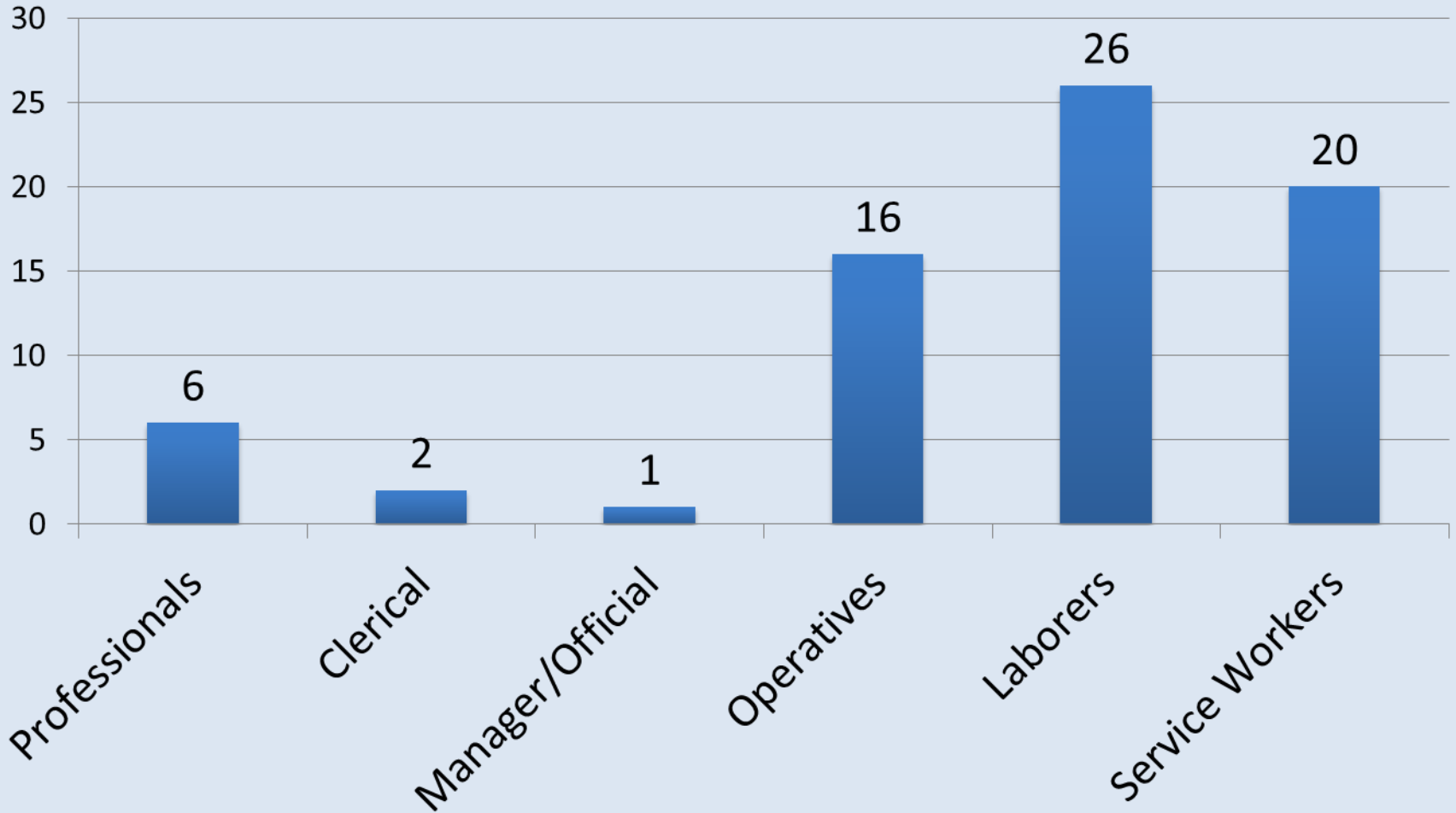


Number by protected class affected





Types of jobs



Some cases of interest

- One compensation allegation lead to a settlement of just under **\$400,000.**
- One settlement included financial remedies for both Black and White applicants as separate subgroups (Hispanics were highest selected)
- Numerous settlements used **alternative data to applicant flow**
 - Traditional availability analyses (e.g., % of hires or representation in workforce to % in labor pool)
 - One settlement alleged discrimination against veterans
 - Alleged that contractor did not post jobs appropriately
 - The job posting agency identified 79 veterans who could have been qualified, and conducted some type of ‘hybrid’ analysis.
 - This group of labor pool candidates was merged with actual applicant flow data (which included 1 veteran applicant who was hired) and OFCCP computed the 2 SD test

Notes from comp cases

- Majority of settlements seem to use a cohort type analysis to identify disparity.
 - Settlement requires salary adjustments.
 - Atypical jobs: creative artists, finance manager, IT analyst, Aerospace assembler, etc.
- Current state of the Compensation standards?
- One worry: *Rudebusch v. Hughes* cases?

Questions or Comments?

Please submit to:

webinar@cceq.org