

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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OFFICE OF FEDERAL CONTRACT  
COMPLIANCE,  
United States Department of Labor,

Plaintiff,

v.

ANALOGIC CORPORATION,

Defendant.

Case No. \_\_\_\_\_

**ADMINISTRATIVE COMPLAINT**

**Introduction**

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), brings this action to enforce the contractual obligations imposed by Executive Order 11246 (30 Fed. Reg. 12319), as amended (the “Executive Order”), and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60. The Defendant, Analogic Corporation (“Analogic”), has violated the Executive Order, the regulations promulgated thereunder, and Analogic’s contractual obligations to the Federal Government, by engaging in systemic discriminatory treatment in the compensation of females employed in Assembler 2 and Assembler 3 positions at Analogic’s facility in Peabody, Massachusetts. Analogic also violated the Executive Order, the regulations promulgated thereunder and Analogic’s contractual obligations to the Federal Government by failing to include required elements in Analogic’s affirmative action program (“AAP”).

OFCCP seeks declaratory and injunctive relief; back pay, interest, salary adjustments, fringe benefits, seniority, and all other benefits of employment due to female employees in the Assembler 2 and 3 positions as a result of Analogic's discriminatory compensation practices; training of managers and all employees involved in the compensation process; in-depth analyses by Analogic of its total employment process to identify impediments to equal employment opportunity that exist on at least an annual basis; and internal auditing and reporting by Analogic that periodically measures the effectiveness of Analogic's AAP. In addition, in the event that Analogic fails to provide the requested relief, OFCCP seeks debarment of Analogic from future contracts and cancellation of Analogic's government contracts and subcontracts until such time as it has satisfied OFCCP that it has established and will carry out personnel and employment policies in compliance with the Executive Order.

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### **Jurisdiction**

1. This Court has jurisdiction of this action under Sections 208 and 209 of the Executive Order, 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30.

### **Parties**

2. OFCCP is responsible for enforcing the Executive Order and the rules and regulations issued thereunder to ensure equal employment opportunity, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, for all persons employed or seeking employment with non-exempt Government contractors and subcontractors.

3. The Defendant, Analogic, is a company with a principal place of business located at 8 Centennial Drive, Peabody, Massachusetts. In its 2015 Annual Report, Analogic stated that the company "designs, manufactures, and commercializes innovative real-time guidance,

diagnostic imaging and threat detection technologies’ and “operate[s] and reports along three business segments: Medical Imaging, Ultrasound, and Security Detection.”

4. Analogic has over 1,200 employees worldwide: approximately 900 of those employees work at the Peabody, MA location. The company reported revenues of \$540 million in fiscal year 2015.

5. At all times relevant hereto, Analogic held Federal or federally assisted contracts of \$50,000 or more.

6. Analogic is a Government contractor or subcontractor within the meaning of the Executive Order.

7. Analogic is subject to the contractual obligations imposed on Government contractors and subcontractors by the Executive Order and the implementing regulations issued thereunder. Businesses awarded Federal contracts agree, in order to promote the Government’s policy of equal opportunity, to adhere to nondiscriminatory employment policies.

8. OFCCP conducted a compliance review of Analogic beginning on December 29, 2011. As a result of this compliance review, beginning no later than January 1, 2012 and continuing thereafter at least to the extent that past discrimination has not been adequately remedied, OFCCP found that Analogic violated the Executive Order in that Analogic engaged in discriminatory compensation practices, failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, and failed to develop and implement an internal audit system that periodically measures the effectiveness of its total AAP.

## Claim For Relief

9. OFCCP incorporates by reference the allegations contained in paragraphs 1-8 as if fully incorporated herein.

### Analogic Discriminated Against Female Assemblers

10. In April of 2008, Analogic acquired all the outstanding capital stock of Copley Controls Corporation (“Copley”) based in Canton, Massachusetts.

11. One of the primary reasons Analogic acquired Copley was for its gradient amplifier line.

12. Beginning no later than January 1, 2012 and continuing thereafter, Analogic’s central Human Resources Department exercised control over hiring, retention, and compensation decisions involving the former Copley employees at the Canton facility.

13. In approximately 2010, Analogic undertook a review of its manufacturing operation positions located at the Peabody facility through a “Leveling Process.”

14. A primary purpose of the Leveling Process was to create new job descriptions that worked across product lines and to ensure that people who had similar roles were put into the same job level.

15. The position titles of Assembler 1, 2, 3 and 4 in Analogic’s Operations Department resulted from the Leveling Process.

16. Although Analogic planned to move the Copley legacy employees from the Canton facility to the Peabody Facility, Analogic excluded the Copley legacy employees from the operations review conducted under the Leveling Process.

17. In January 2011, approximately 28 Copley legacy employees in Canton were moved to Peabody and were included in the implementation of the Leveling Process.

18. The compensation of the Copley legacy employees did not change as a result of their move to the Peabody facility; their existing compensation was integrated into the new compensation structure that resulted from the Leveling Process.

19. The salary range for several female Copley legacy employees placed into the Assembler 2 positions was lower than the salary grade in the positions they occupied prior to the Leveling Process.

20. The work performed by the Copley legacy employees in the Peabody facility was substantially similar to the work they had been performing at the Canton facility.

21. At least as of January 1, 2012, and continuing thereafter, Analogic had no formal written compensation guidelines.

22. Beginning no later than January 1, 2012 and continuing thereafter, Analogic's compensation system involved opportunities for subjective decision-making by management officials with responsibility for compensation decisions for employees in the Assembler 2 and 3 positions.

23. Beginning no later than January 1, 2012 and continuing thereafter, pay-deciding officials of Analogic have exercised discretion when setting the compensation of employees in the Assembler 2 and 3 positions.

24. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4(a)(1) and 41 C.F.R. § 60-20.3(c), Analogic agreed not to discriminate against any employee in assigning rates of pay or other forms of compensation because of sex and also agreed to take affirmative action to ensure that employees are treated during employment without regard to their sex. Specifically, Analogic agreed to take affirmative action to ensure that all employees are assigned rates of pay and other forms of compensation without regard to their sex.

25. Beginning no later than January 1, 2012 and continuing thereafter at least to the extent that past discrimination has not been adequately remedied, Analogic paid female employees in the Assembler 2 and 3 positions at the Peabody facility less than comparable males employed in those positions.

26. The pay disparity between males and females employed in the Assembler 2 and 3 positions at the Peabody facility remained after adjusting for differences in legitimate, pay-determining factors.

27. Analogic's total compensation policies resulted in disparate treatment of females employed in Assembler 2 and 3 positions and was systemic in nature.

28. Analogic knew and/or should have known that its total compensation policies discriminated against female Assembler 2s and Assembler 3s in their compensation on the basis of gender.

29. Analogic also knew or should have known that its total compensation policies had a disparate impact on female compensation.

30. The regulations issued pursuant to the Executive Order provide at 41 C.F.R. § 60-1.20(b) that, in order for a contractor to be in compliance with the Executive Order, it must remedy any discrimination against members of an affected class, and must provide relief to such affected class members to remedy the effects of past discrimination.

31. To date, Analogic has not remedied the discrimination described above against females in the Assembler 2 and 3 positions and has not provided relief to affected class members to remedy the effects of past discrimination.

32. As a result of the conduct set forth at paragraphs 9-31, Analogic is violating the Executive Order and the regulations promulgated thereunder by discriminating with regard to compensation against female employees in the Assembler 2 and 3 positions based on their sex.

Analogic Failed to Perform In-Depth Analyses of Its Total Employment Process

33. The Executive Order requires Government contractors such as Analogic to develop, maintain and implement a written AAP for each of its establishments in accordance with the requirements set forth in 41 C.F.R. Part 60-2.

34. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 6-2.17, Analogic agreed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist.

35. Beginning no later than January 1, 2012, Analogic violated 41 C.F.R. § 60-2.17(b) (3) by failing to identify, through in-depth analysis, whether there were gender-based disparities in its compensation systems concerning employees in the Assembler 2 and 3 positions.

Analogic Failed to Develop and Implement An Internal Audit System

36. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-2.17(d)(1) - (4), Analogic agreed to develop and implement an internal audit system that periodically measures the effectiveness of its total AAP.

37. Beginning no later than January 1, 2012, Analogic violated 41 C.F.R. § 60-2.17(d)(1)-(4) by failing to develop and implement an internal audit system that periodically measures the effectiveness of its total AAP. Specifically, Analogic failed to monitor records of all personnel activity, failed to require internal reporting on a scheduled basis, failed to review and report results with all levels of management, and failed to both advise top

management of program effectiveness and to submit recommendations to improve unsatisfactory performance.

#### The Conciliation Process

38. On December 24, 2014 and July 17, 2015, OFCCP issued to Analogic a notice to show cause, and an amended notice to show cause, respectively, why enforcement proceedings should not be initiated based on its findings of the above-cited violations of the Executive Order. OFCCP has engaged in protracted and extensive negotiations in an attempt to secure voluntary compliance through means of conciliation and persuasion. As part of these conciliation efforts, OFCCP provided evidence to Analogic, including statistical evidence demonstrating that females in the Assembler 2 and 3 positions at the Peabody, Massachusetts facility were being discriminated against in their pay because of their sex.

39. Conciliation efforts were unsuccessful.

40. Absent Analogic's voluntary agreement, it will continue to violate the obligations imposed upon it by the Executive Order and the regulations issued pursuant thereto, unless restrained by Administrative Order,

41. All the procedures that are required prior to filing this Complaint have been met.

#### **Prayer for Relief**

WHEREFORE, OFCCP prays for a Decision and Order pursuant to 41 C.F.R. §§ 60-30.27 and 60-30.30, providing the following relief:

- 1) Permanently enjoining Analogic, its successors, officers, agents, servants, employees, divisions, subsidiaries, and all persons in active concern with them from failing and refusing to comply with the requirements of the Executive Order and the regulations promulgated thereunder;



- 2) Requiring Analogic to immediately modify its compensation system in order to eliminate any compensation disparity between females and males in the Assembler 2 and Assembler 3 positions that persists;
- 3) Requiring Analogic to provide complete relief to the affected female employees in the Assembler 2 and 3 positions including, but not limited to, back pay, interest, front pay, salary adjustments, fringe benefits, seniority and all other benefits of employment resulting from Analogic's discrimination in compensation;
- 4) Requiring Analogic to provide training to its managers and all other employees involved in the compensation process regarding Analogic's obligations as a Government contractor under the Executive Order and its implementing regulations;
- 5) Requiring Analogic to perform an in-depth analysis of its total employment process on an annual basis to determine whether and where impediments to equal employment opportunity exist, including: analyzing all impediments that result in gender based disparities; and requiring that the Defendant incorporate these analyses and determinations into the Identification of Problem Areas section of now-current and future AAPs; and
- 6) Requiring Analogic to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program as required by 41 C.F.R. § 60-2.17(d) 1-4, including identifying barriers to equal employment opportunity, particularly with regard to females, when

administering its pay practices for individuals employed in Assembler 2 and Assembler 3 positions.

In the event Analogic fails to provide relief as ordered, pursuant to 41 C.F.R. § 60-30.30, OFCCP prays that Analogic be subject to the following:

- a) an Order pursuant to Section 209(a)(5) of the Executive Order canceling all of Analogic's Government contracts and those of its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such Government contracts until such time as the Defendant satisfies the Secretary of Labor that it has established and will carry out personnel and employment policies in compliance with the Executive Order;
  - b) an Order pursuant to Section 209(a)(6) of the Executive Order and 41 C.F.R. § 60 1.27 (b) debarring Analogic and its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with them, from receiving future Government contracts until such time as the Defendant satisfies the Secretary of Labor that it has established and will carry out personnel and employment policies in compliance with the Executive Order;
- and

OFCCP further prays for such other relief as justice may require.

Post Office Address:

Office of the Solicitor  
U.S. Department of Labor  
JFK Federal Building  
Room E-375  
Boston, Massachusetts 02203  
(617) 565-2500

Date: September 27, 2016

Respectfully submitted,

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

Kelly M. Lawson  
Counsel for Civil Rights

  
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Garrett J. Lee  
Trial Attorney

U.S. DEPARTMENT OF LABOR  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of October, 2016, the foregoing *Administrative Complaint* has been served upon the Defendant Analogic Corporation and its counsel of record, by certified mail, postage prepaid, at the following address:

Kenneth M. Bello, Esq.  
Bello Welsh LLP  
125 Summer Street  
Suite 1200  
Boston, Massachusetts 02110

John J. Fry  
Registered Agent  
Analogic Corporation  
8 Centennial Drive  
Peabody, MA 01960

Conseula Pinto