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Special Report for HR Professionals

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EMPLOYEE ARBITRATION REQUIREMENT BANNED FOR DOD CONTRACTORS

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It was only a few weeks ago, but it will have an impact on the contractor community for years to come. On December 19, 2009, Congress passed a Department of Defense (DOD) appropriations measure that will fund the department for the coming year. Buried in that new law (*The Department of Defense Appropriations Act of 2010*) is an amendment by Senator Al Franken (D-Minn) that prevents any money being paid to a federal contractor with a DOD contract worth more than \$1 million unless that contractor agrees to avoid creating or cancels existing requirements for employees to arbitrate their complaints under the *Civil Rights Act of 1964*.

The new law goes into effect immediately. Specified in the ban are complaints filed under Title VII of the *Civil Rights Act*, and claims of sexual assault or harassment-related tort.

The amendment says in full, (H.R. 3326):

Sec. 8116. (a) None of the funds appropriated or otherwise made available by this Act may be used for any existing or new Federal contract if the contractor or a subcontractor at any tier requires that an employee or independent contractor, as a condition of employment, sign a contract that mandates that the employee or independent contractor performing work under the contract or subcontract resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision or retention.

Please note that it says subcontractors are included in the coverage “**at any tier.**” It is not clear if the prime contractor and higher level subcontractors will be denied payment if a lower level subcontractor violates this new requirement. You will want to discuss this with your policy advisors, including your management attorney.

See *Arbitration* on page 2

Arbitration continued from page 1

Section 8116 goes on to require all contractors and subcontractors to demand certification from their subcontractors that this requirement is being met in their organizations.

(b) None of the funds appropriated or otherwise made available by this Act may be expended for any Federal contract awarded more than 180 days after the effective date of this Act unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce any provision of, any agreement as described...

It seems that employment arbitration requirements are no longer possible for DOD contractors and subcontractors with contracts exceeding \$1 million.

Will you have to establish an enforcement program with your subcontractors? Perhaps. Your management attorney can be of service in answering that question.

And, it is not yet clear what government contracting officers will be requiring in the form of certification. Unless a standard is specified, you can expect that companies will be creating a wide range of forms and requirements, some valid and some speculative. Stay close to your attorney for updates on requirements.

The Franken Amendment substantially alters how many federal contractors conduct their business with employees. Re-examining policies related to employment arbitration requirements is now something that should be on the front burner if you are in a qualifying organization. You have until February 17, 2010, the effective date of this new requirement.

A PDF version of the entire bill can be obtained at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326enr.txt.pdf

[Thanks to Linda Grossman for input on this story. Linda can be reached at planapp@aol.com]

PRESIDENT OBAMA ORDERS CRACKDOWN ON TAX CHEATING CONTRACTORS

On January 20, 2010 a Presidential Memorandum was released, putting a common sense restriction in place to put government on the side of the taxpayer: blocking contractors who are delinquent on their taxes from receiving new government contracts. He also called on Congress to go further and give the government the tools necessary to ensure that the public's tax dollars are not used to boost the profits of companies who refuse to pay their taxes.

<http://www.whitehouse.gov/blog/2010/01/20/blocking-government-contracts-tax-cheats>

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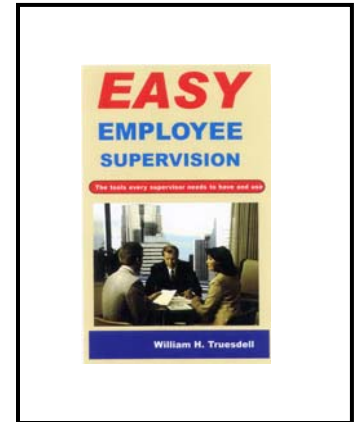
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Easy Employee Supervision

If ever there was a need for training new supervisors this is that time. Employers can no longer “hang a tie on someone and call them a manager.” It’s not fair to the new supervisor, it’s not fair to the employees being supervised and it’s not fair to the employer. Too many things can go wrong when people try to manage without training in what is permissible and what is not. Here is the training aid you have been looking for.

http://www.management-advantage.com/products/easy_book.htm



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- **OFCCP Removes 25-Establishment Limit on Audits**

For federal contractors with multiple establishments, the Corporate Scheduling Announcement Letter (CSAL) has been a courtesy alert from the Office of Federal Contract Compliance Programs (OFCCP) that they will perform two or more audits in the coming year. CSAL letters are sent as a matter of policy, not regulatory requirement. The practice can be ended at any time.

Another policy that OFCCP had until recently was to limit the number of audits for any one employer to no more than 25 per year. That cap has been lifted and there is no longer a limit to the number of audits that one employer can have during a given year.



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Enforcement Agencies Receive Increased Funding

The Equal Employment Opportunity Commission (EEOC) has been appropriated an increased budget for the current fiscal year...a \$23 million increase to be precise. The new budget at the Commission is \$367.3 million, as part of the 2010 consolidated appropriations bill (HR 3288) that President Obama signed into law on December 16, 2009.

The Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor was allocated \$103.3 million, an increase of \$21 million over the previous fiscal year.

Both agencies have said they will be hiring additional enforcement agents to deal with complaint processing and audits of federal contractors. OFCCP expects an increase in its workload due to the need for audits of all contracts assigned under the *American Recovery and Reinvestment Act (ARRA)*.

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