



Gentle Readers

**Special Reports for
HR Professionals
2008**

Collection of email reports.

GENTLE READERS: Special Reports for HR Professionals - 2008

Collection of email reports covering January through June of 2008. All subsequent reports are posted individually on the web at www.hrwebstore.com/newsletr/newsletr.html

The Management Advantage, Inc.

P.O. Box 3708, Walnut Creek, CA 94598-0708

Voice: 925-671-0404 FAX: 925-825-3930

info@management-advantage.com

“This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.”

- from a *Declaration of Principles* jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Copyright © 2008 The Management Advantage, Inc. All rights reserved, including the right to reproduce this work or portions thereof, in any form, except for the inclusion of brief quotations in a review. All inquiries should be addressed to William H. Truesdell, The Management Advantage, Inc., P.O. Box 3708, Walnut Creek, CA 94598-9798.

Printed in the United States of America.

Published by: The Management Advantage, Inc., P.O. Box 3708, Walnut Creek, CA 94598-0708.

Table of Contents

Report Date	Contents	Page
1-4-2008 #454	<ol style="list-style-type: none"> 1. EEOC Approves Diminished Retiree Health Plans 2. Study Helps Explain Why High Performers Quit 3. New Regulations Require Code of Business Ethics & Conduct 	8
1-11-2008 #455	<ol style="list-style-type: none"> 1. Arizona & Tennessee Now Have Active Immigration Laws 2. Expansion of Family Leave Included in Presidential Veto 3. New Additions to HR Web Store.com 	11
1-18-2008 #456	<ol style="list-style-type: none"> 1. Pilots May Now Work Until They Reach the Age of 65 2. EEOC May be in Trouble with New Call Center Operation 3. New Motivational Posters in HR Web Store 4. Lively Listening: Nine Simple Rules 	14
1-25-2008 #457	<ol style="list-style-type: none"> 1. EEOC Unveils New Wynton Marsalis PSAs for TV & Internet 2. New Diversity Lexicon Now Available in HR Web Store 3. New California Paid Family Leave Brochure Now Available 	18
2-1-2008 #458	<ol style="list-style-type: none"> 1. President Signs Bill Creating Leave for Military Families 2. OSHA 300-A Summary Form Must Now be Posted 3. California Employers May Terminate Medical Marijuana Users 	20
2-8-2008 #459	<ol style="list-style-type: none"> 1. Voted Best Employers by Disabled Workers 2. OSHA Warns Against Cold Weather Dangers for Employees 3. OFCCP Posts Another Record Year for Audits & Recoveries 	23
2-15-2008 #460	<ol style="list-style-type: none"> 1. DOL Has Posted Draft Regulations for FMLA Modifications 2. Do You Know the Four Generations in Your Workforce? 3. EEOC Budget to Rise in 2009 by \$13 Million 	26

Report Date	Contents	Page
2-22-2008 #461	<ol style="list-style-type: none"> 1. New York Cracks Down on Independent Contractor Mis-Classification 2. EEOC Reduces Reasons for Closing Cases 3. OSHA Seeking Nominations for Advisory Group 4. OFCCP Appoints Dr. Javaid Kaiser to Head Statistical Section 	29
2-29-2008 #462	<ol style="list-style-type: none"> 1. Worksite Enforcement Has a Role in Immigration Control 2. Recruiting Disabled Job Candidates 3. DOL Has Compliance Assistance at the Ready 	32
3/7/2008 #463	<ol style="list-style-type: none"> 1. OFCCP Releases New Contractor Scheduling Letter List 2. EEOC Admits It Can't Take on Call Center Now 3. Changes Proposed for VETS-100 Report 	35
3-14-2008 #464	<ol style="list-style-type: none"> 1. AAP Book Now Available in 8th Edition 2. 2008 Catalog Available for Download 3. EEOC Reports Nine Percent Increase in Bias Complaints 	37
3-21-2008 #465	<ol style="list-style-type: none"> 1. Walgreens Expands into Workplace Clinics 2. Growing List of States Friendly to Nursing Mothers 5. DOL Database Now Available for Disabled Job Candidates 	39
3-28-2008 #466	<ol style="list-style-type: none"> 1. California Court Awards Starbucks Baristas \$105 Million 2. Alabama Attorney to be New EEOC Appointee 3. Washington, DC Council Passes Paid Sick Leave Law 	42
4-4-2008 #467	<ol style="list-style-type: none"> 1. VA Creating a Mobile Nurse Corps in Pilot Project 2. New OSHA Combustible Dust Control Rules & Poster 3. OSHA Sends High Incident Rate Letters to 14,000 Employers 	45
4-11-2008 #468	<ol style="list-style-type: none"> 1. Mississippi Now Requires Employment Authorization Check 2. EEOC Will Not Change Applicant Definition 3. Rhode Island Now Requires Employment Verification 	48
4-18-2008 #469	<ol style="list-style-type: none"> 1. New Jersey Becomes Latest State to Provide Paid Family Leave 2. H-1B Visa Quota Reached in One Week 3. Register Now for 2008 Professional Seminar Series 	51

Report Date	Contents	Page
4-25-2008 #470	<ol style="list-style-type: none"> 1. California Supreme Court Exempts Supervisors from Liability 2. NILG National Conference Registration Now Open 3. EEOC Plans to Change Rule for Age Discrimination Exemption 	54
5-2-2008 #471	<ol style="list-style-type: none"> 1. EEOC Issues New Guidelines for Veterans with Service-Connected Disabilities Under ADA and USERRA 2. Florida Governor Signs Law Allowing Firearms in Locked Vehicles at Work 3. OFCCP Updates VEVRAA Regulations for Job Listing Requirement 	57
5-9-2008 #472	<ol style="list-style-type: none"> 1. Should You Use the Government's E-Verify System? 2. New Equal Employment NonDiscrimination Protection Coming 3. A New Trend in Executive Compensation Methodology 	60
5-16-2008 #473	<ol style="list-style-type: none"> 1. DOL Posts New Web Site Tool on Recordkeeping & Reporting 2. EEOC Seeks Comments on Proposed Extension to Form 100s 3. OFCCP Will End its ALJ Support Center on June 30, 2008 	63
5-23-2008 #474	<ol style="list-style-type: none"> 1. VETS-100 Changes Finalized 2. President Signs Genetic NonDiscrimination Bill 	66
5-30-2008 #475	<ol style="list-style-type: none"> 1. Supreme Court Posts Two Opinions About Retaliation 2. DOL Proposes Rules to Modernize H-2B Visa Program 3. EEO-1 Statistics Out for 2006 	68
6-13-2008 #476	<ol style="list-style-type: none"> 1. OFCCP Asks for Comments on Request to Extend Scheduling Letter 2. All Federal Contractors Now Required to Use E-Verify 3. Do You Know Requirements for Notification if You Have a Data Security Breach? 	70
6-20-2008 #477	<ol style="list-style-type: none"> 1. Supreme Court Blocks Public Employee Discrimination Lawsuits by a "Class of One" 2. DOL Reorganizes Web Help for Small Employers 3. It's All Politics – by Joni Daniels 	75

Report Date	Contents	Page
6-27-2008 #478	1. NLRB to Issue Final Board and ALJ Decisions Online 2. Revisiting Employment Testing 3. What Our Words Say About Us	78
	<p>The balance of “<i>Special Reports for HR Professionals</i>” for this year can be found on the web at www.hrwebstore.com/newsletr/newsletr.html</p>	

Gentle Readers,

Happy New Year!

New FAR regulations for federal contractors require a Code of Business Ethics and Conduct. There may be some explanation for why people are quitting their employment with your organization. And, the EEOC has taken action to protect employers from liability under the Age Discrimination in Employment Act if they coordinate retiree benefits with Medicare.

Bill Truesdell
Editor

IN THIS REPORT (Report #454, 1/4/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **EEOC APPROVES DIMINISHED RETIREE HEALTH PLANS**
2. **STUDY HELPS EXPLAIN WHY HIGH PERFORMERS QUIT**
3. **NEW REGULATIONS REQUIRE CODE OF BUSINESS ETHICS & CONDUCT**

1. **EEOC APPROVES DIMINISHED RETIREE HEALTH PLANS**

On December 26, 2007, the Equal Employment Opportunity Commission (EEOC) announced its final rule allowing employers that provide retiree health benefits to continue the long-standing practice of coordinating those benefits with Medicare (or comparable state health benefits) without violating the Age Discrimination in Employment Act (ADEA).

This rule is a direct result of a controversial decision in 2000 by the U.S. Court of Appeals for the Third Circuit in *Erie County Retirees Association v. County of Erie*. The court held that the ADEA requires that the health insurance benefits received by Medicare-eligible retirees be the same, or cost the employer the same, as the health insurance benefits received by younger retirees. After the Erie County decision, labor unions and employers alike informed the EEOC that complying with the decision would force companies to reduce or eliminate the retiree health benefits they currently provided -- leaving millions of retirees aged 55 and over with less health insurance, or no health insurance at all.

To correct the problem, the new regulation provides an exemption for ADEA coverage for this common and long-standing employer practice. The Commission voted to approve this regulation on April 22, 2004, but the AARP sued the EEOC in early 2005 to prevent its publication. After several years of litigation, the EEOC emerged victorious as the Third Circuit Court of Appeals found that the rule was "a reasonable,

necessary and proper exercise of [EEOC's] authority."

For more go to www.eeoc.gov/press/12-26-07.html

2. STUDY HELPS EXPLAIN WHY HIGH PERFORMERS QUIT

A new study by Leadership IQ points out that 47% of high performers are actively looking for other jobs -- they are posting and submitting resumes, and even going on interviews.

While it's terrible that almost half of high performers are thinking about quitting, what's perhaps even worse is that low performers want to stay! Only 18% of low performing employees are actively seeking other jobs, and 25% of middle performers are actively looking around the job market.

According to Mark Murphy, CEO of Leadership IQ, "The worst part of this is that we typically cause our high performers to quit by how we treat them. Frankly, we treat our high performers worse than any other employee. When a manager has a tough project upon which the whole company depends, to whom do they turn? Who gets the late hours and the stress? It's not the low performers, because managers want the project done right. Instead managers turn to their handful of high performers. Over and over we ask our high performers to go above and beyond, making their jobs tough and burning them out at a terrible pace. Meanwhile, low performers often get easier jobs because their bosses dread dealing with them and may avoid them altogether."

For more go to www.leadershipiq.com/quitting.html

3. NEW REGULATIONS REQUIRE CODE OF BUSINESS ETHICS & CONDUCT

As of December 24, 2007, there is a new set of regulations for all federal contractors. They have nothing to do with affirmative action, but apply to all federal contractors. For contractors whose contract value is expected to exceed \$5,000,000 and last for 120 days or longer, there are specific additional requirements.

For the larger organizations, within 30 days of commencing a new contract, the contractor must establish a written code of business ethics and conduct and provide a copy of the code to each employee engaged in the performance of the contract. The employer must also actively promote compliance with the new code of ethics and conduct.

In addition, the contractor must acquire an agency poster displaying the toll-free telephone number for employees to use in reporting fraud, should that occur. The fraud hotline will be run by the government agency and investigations will be conducted by the government into each complaint.

Should the government agency offer its own Fraud Hotline poster, you must use it. If there is not a specific poster created by the agency your company is contracting with you must post the Fraud Hotline poster

prepared by the Office of the Inspector General (OIG).

If you are a federal contractor of any size, you need a copy of the new regulations. Here is a PDF file (85.8 KB) of the final federal regulation in the FAR (Federal Acquisition Regulations).

www.management-advantage.com/media/CodeofBusinessEthics.pdf

By the way, all of these same rules apply to subcontractors.

Gentle Readers,

President Bush vetoes defense spending bill containing revisions to the FMLA that would have allowed leave to family members of wounded military personnel. Arizona and Tennessee laws go into effect to control immigration. And, some reminders about the latest additions to the HR Web Store.com.

Bill Truesdell
Editor

IN THIS REPORT (Report #455, 1/11/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **ARIZONA & TENNESSEE NOW HAVE ACTIVE IMMIGRATION LAWS**
2. **EXPANSION OF FAMILY LEAVE INCLUDED IN PRESIDENTIAL VETO**
3. **NEW ADDITIONS TO HR WEB STORE.COM**

-
1. **ARIZONA & TENNESSEE NOW HAVE ACTIVE IMMIGRATION LAWS**

On January 1st, employers in Arizona and Tennessee will begin having to comply with controversial new immigration laws that make those states enforcers of immigration law right along with the federal government. Whether state and local governments have the legal right to be doing this is the subject of many court battles around the country since the Founding Fathers clearly gave Congress the sole authority to regulate immigration. But with a Congress seemingly paralyzed in its attempts to get a handle on immigration policy and with 1400 bills pending around the country, the new reality is that employers will need to comply with a whole new set of laws on top of the existing federal rules.

The Arizona and Tennessee rules are similar in sanctioning employers who violate immigration laws with the revocation of their business licenses. This punishment is seemingly much more serious than the federal punishment of a fine since loss of a business license is really the death penalty for a business. Both rules provide a defense if employers have been complying with I-9 rules. Tennessee provides an additional safe harbor if employers have used the new E-Verify electronic employment verification system. Arizona goes a step further in actually mandating that all employers use E-Verify. This will represent a major expansion in the number of employers using E-Verify and it is far from clear whether the E-Verify system can handle the additional load. A recent report commissioned by the DHS itself noted that there is an unacceptable false positive rate and that as many as 10% of naturalized citizens show up in the E-Verify as being unauthorized to work.

Employers in Arizona had fought the new law and had been attempting to

keep it from taking effect on the 1st. However, a judge has just denied an injunction order and the law will, in fact, take effect. An injunction is still holding in another measure aimed at employers DHS's social security number no match rule. DHS's rule would sanction employers who are notified that their employees' social security numbers and names do not match. One of the key issues in that case is also the high rate of false findings in the Social Security Administration database and the inability of that agency to resolve questions in a timely manner. However, DHS is promising to re-release a modified rule any day now that would attempt to meet the objections of the judge.

[SOURCE: Siskind's Immigration Bulletin, Immigration Law Offices of Siskind Susser Bland, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: <http://www.visalaw.com>]

2. EXPANSION OF FAMILY LEAVE INCLUDED IN PRESIDENTIAL VETO

Buried in the National Defense Authorization Act of 2008 was a provision to expand the Family and Medical Leave Act (FMLA), giving more benefits to families of U.S. military members. Congress passed the legislation on December 14, 2007. On December 28, 2007, President Bush announced that he was withholding his approval of the measure because of issues related to the war in Iraq. Section 585 of that proposal would have allowed family members of military personnel who are wounded or called to active duty, access to unpaid leave of absence from their civilian employment. It would have amended the Family and Medical Leave Act of 1993, providing up to 26 weeks of leave to care for a seriously injured or ill family member who is a member of the U.S. armed forces.

We expect that the attempted revisions to FMLA will be reinserted in legislation again this year. We'll let you know if that happens.

In the mean time, California employers are obligated to abide by the new law that these federal provisions were patterned after. On October 9, 2007, California Governor Arnold Schwarzenegger signed AB 392. Because it was designated an emergency measure, its requirements become effective immediately.

If you are a California employer with 25 or more workers, you must allow an employee who is a spouse of a member of the Armed Forces, National Guard, or Reserves to take up to 10 days of unpaid leave during a "qualified leave period" when the employee's spouse is home on leave. For a copy of the new AB 392 law in PDF format <http://www.management-advantage.com/products/whatsnew.htm> .

3. NEW ADDITIONS TO HR WEB STORE.COM

"Gentle Readers," a compilation of the entire year-2007 newsletters has been posted in PDF format in the "Newsletter" section of the HR Web Store.com (<http://www.management-advantage.com/newsletr/newsletr.html>). It's FREE, so if you missed any of the issues from last year, you will be able to get them in this compilation. All previous year issues have also been listed and are also available in PDF format for your convenience. Each of them has a complete index to help you locate subjects quickly.

Recent additions to the HR Web Store.com include:

- o Secrets of Hiring and Firing - eBook. New. This 2008 publication is available only in eBook format (PDF file) from the HR Web Store.com. Download your copy for only \$9.95. (<http://www.management-advantage.com/products/SecretsofHiringandFiring.htm>)

- o Flexible LED Book Light with Red Laser. Super-bright, long-lasting LED light with red laser pointer and powerful magnet only \$4.95, including battery. (<http://www.management-advantage.com/products/BookLight-FlexibleLED-Laser.htm>)

- o Applicant Tracker (software). Manage your employment process and generate the reports you need for disparate impact analysis of your new hires. Add candidates manually or import records from major web-based resume matching sites. (<http://www.management-advantage.com/products/ApplicantTracker.htm>) All that convenience and compliance help for only \$179.95.

- o Adverse Impact Toolkit (Excel spreadsheet macro-software) If you have more than 15 people on the payroll and have customers in states other than the one in which you are headquartered, you are probably subject to the Guidelines on Employee Selection Procedures in 41 CFR 60-3. Those rules require employers to test their selection processes to assure there is no illegal discrimination against minorities, women or other protected groups. This software package can save you thousands or tens of thousands of dollars in complaint settlements. (<http://www.management-advantage.com/products/AdverseImpactCD.htm>) Newly updated (Version 4.0) still offered at only \$995.00.

Come visit the HR Web Store.com often. You will find all sorts of helpful products designed to give you the leverage you need in your compliance efforts.

Gentle Readers

Commercial airline pilots may now work until they reach the age of 65. There is some news from the EEOC. It appears their plan to take call center operations back in-house is not working as well as they had hoped. And, we introduce you to some wonderful new poster products that will help you beautify your work setting and inspire your people. Finally, our friend Helen Wilkie shares some secrets of proper listening as a way to build relationships.

Bill Truesdell
Editor

IN THIS REPORT (Report #456, 1/18/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **PILOTS MAY NOW WORK UNTIL THEY REACH THE AGE OF 65**
2. **EEOC MAY BE IN TROUBLE WITH NEW CALL CENTER OPERATION**
3. **NEW MOTIVATIONAL POSTERS IN HR WEB STORE**
4. **LIVELY LISTENING: NINE SIMPLE RULES**

-
1. **PILOTS MAY NOW WORK UNTIL THEY REACH THE AGE OF 65**

President Bush signed legislation on December 13, 2007, that raises the mandatory retirement age for commercial airline pilots from 60 to 65. It becomes effective immediately and is not retroactive. That means anyone who reached the age of 60 before December 13, 2007, will not be permitted to get reinstatement.

The new law is codified as 49 USC Section 44729. In order to continue working, pilots over the age of 60 will have to maintain a first-class medical certificate and have a physical examination every six months.

International rules prohibit anyone from being in command of a commercial aircraft on an international flight who is over the age of 60 if there isn't some other qualified pilot on the flight deck who is under the age of 60. Until the international rules are changed, that will continue to be a requirement.

The Secretary of Transportation is responsible for implementing the new mandatory retirement age for commercial pilots. If you are in the airline industry, look for new regulations to be published in the near future. If you are part of the traveling public, consider the value of a more experienced pilot on the flight deck...someone who has "seen it all" and is able to react based on experience as well as talent.

2. EEOC MAY BE IN TROUBLE WITH NEW CALL CENTER OPERATION

The Equal Employment Opportunity Commission (EEOC) is assigned the responsibility of enforcement for several Civil Rights laws. And, there are some very specific requirements for timeliness when it comes to filing a charge of illegal discrimination with the Commission. Complicating that process has been the recent refusal by the Commissioners to renew the contract for its Call Center management vendor. Led by Commissioner Stuart Ishimaru, the voice of opposition to having a vendor handle initial telephone calls to the EEOC won the argument...even though the vote was split 2-2. The tie-breaking vote would have been cast by the fifth Commissioner, but there is no fifth Commissioner. The seat has been vacant for months. So, the EEOC began handling its own calls...poorly. The volume was too great, the preparation and training time for transition too short.

If you go to the EEOC web site today you will find a prominent link to a note about "Telephone Service Delays." It says the EEOC is sorry if you can't reach them by telephone. If you are getting close to your deadline for filing a charge, you can FAX your complaint to them. It doesn't say how you will know that the Commission actually received your FAX and that it will take action. If you aren't sure what to do, the note directs you to the EEOC web site for answers. (www.eeoc.gov)

In a related story, Commissioner Stuart Ishimaru, having been appointed to a second five-year term by President Bush, was finally reconfirmed by the Senate on December 31, 2007. In recent days, Commissioner Ishimaru has condemned the Salvation Army for firing two long-time workers who spoke only Spanish. He has been an outspoken critic of English-only policies. He has also openly criticized employers that use cognitive tests as part of their employment screening process. He contends that such tests have no place in an employment selection process because they sometimes result in disparate impact against minorities or women.

3. NEW MOTIVATIONAL POSTERS IN HR WEB STORE

They're both decorative and inspirational. Take a look and we're sure you will agree. And, it doesn't matter whether you have a lot of wall space or just a little. These new products come in two handy sizes to suit your needs. For less than ten dollars, you can add an inspirational quotation to your office or work area. They are so good, you may want some at home, too.

Choose from posters about achievement, clarity, excellence, effort, luck, organization, potential, punctuality, results, success, time, and many more.

There are 22 titles from which to select. Take a look. You're sure to find something to fit both your needs and your budget.

<http://www.management-advantage.com/products/posters/motivationalpostersindex.htm>

4. LIVELY LISTENING: NINE SIMPLE RULES
by Helen Wilkie

Listening is an important communication skill that is widely underused. Here are nine simple steps to improve your listening skills and make you a more effective communicator both at home and at work.

1. Decide to listen

Listening is not the same as hearing, and it's not waiting your turn to speak. For each conversation, make a conscious decision to listen, and then do it actively.

2. Avoid selective listening

Listen to the end, and don't assume you know what the other person was going to say. Also, don't tune people out just because you don't like them.

3. Give acknowledgement and feedback

Verbal acknowledgement such as "I understand", or body language such as a nod or a smile (or puzzled frown) let the speaker know you are listening and encourage more effective conversation.

4. Ask appropriate questions

Use open-ended questions (i.e. those that can't be answered in one word) to elicit more information, and closed-ended questions to confirm facts.

5. Listen for non-verbal cues

For clarity and credibility, a person's words, tone of voice and body language should be congruent. If they are not, lean towards believing the non-verbal message.

6. Listen with your whole body

If you sit forward and maintain eye contact, you not only give the impression of listening, but you actually do listen more effectively.

7. Separate fact from opinion and propaganda

We all recognize the propanganda that comes at us from the advertising industry, but we don't always realize it can come in regular conversation too. When someone makes a statement, ask yourself if it is fact, or just what that person wants you to believe. It can make a big difference to your response.

8. Control your emotional response

Learn to recognize when someone has pressed one of your 'hot buttons'. You can then decide how to respond, rather than give in to a 'knee-jerk' reaction. The person who can control emotional response always has the upper hand.

9. Make notes

Notes can be physical--on paper or a computer screen--or mental. Practice the technique of making mental notes and your conversational skills will increase dramatically.

Many people never have the sense they are being listened to. By giving them the gift of listening, you can create a bond that automatically contributes to better ongoing communication and effectiveness at work.

Helen Wilkie is a professional keynote speaker and workshop leader specializing in workplace communication. If you'd like to have her facilitate a World Cafe for your organization, e-mail her at hwilkie@mhwcom.com For more information on her services, or to subscribe to her free e-zine, "Communi-keys", visit <http://www.mhwcom.com>

Gentle Readers,

Lots of new "stuff" this week. Wynton Marsalis has teamed with the EEOC to generate some Public Service Announcements about equal employment opportunity. And, there is a new handy reference guide for EEO/AA/Diversity you should not be without. Finally, California has made a couple of announcements that employers within that state will want to learn about and understand.

Bill Truesdell
Editor

IN THIS REPORT (Report #457, 1/25/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **EEOC UNVEILS NEW WYNTON MARSALIS PSAs FOR TV & INTERNET**
2. **NEW DIVERSITY LEXICON NOW AVAILABLE IN HR WEB STORE**
3. **NEW CALIFORNIA PAID FAMILY LEAVE BROCHURE NOW REQUIRED**

-
1. **EEOC UNVEILS NEW WYNTON MARSALIS PSAs FOR TV & INTERNET**

The Equal Employment Opportunity Commission (EEOC) has released two brief video Public Service Announcements (PSAs) featuring renowned musician Wynton Marsalis. The spots are only about 20 seconds long each and were filmed at Jazz at Lincoln Center's New York facility in October. The EEOC plans an aggressive push to air the PSAs on television and cable stations, on web sites and on radio. The spots are close-captioned for the hearing-impaired.

For a preview on your web browser go to
<http://www.eeoc.gov/psa/marsalis.html> .

-
2. **NEW DIVERSITY LEXICON NOW AVAILABLE IN HR WEB STORE**

Finally, someone condensed words, terms, phrases, regulations, events, holidays and more into a single pocket-sized volume you can carry in your pocket, purse, or briefcase. Profiles in Diversity Journal has published this new 95-page reference that anyone involved in EEO, Affirmative Action or Diversity will want to have handy each day. For those new to this HR specialty, it will be of increased importance.

Line managers, supervisors and even executives will find information in this book that will help them identify and respond to issues so important in today's workplace.

Officially titled, "The International Diversity & Inclusion Lexicon," there are over 700 ideas and concepts within its covers. It might be

small, but it's packed with power.

The book lists for \$14.95 per copy. As an introductory special, we are offering it for only \$9.95 each at <http://www.management-advantage.com/products/DiversityLexicon.htm> . While there, why not browse around the store and see some of the other new offerings that have been added recently.

3. NEW CALIFORNIA PAID FAMILY LEAVE BROCHURE REQUIRED

On January 16, 2008, the California Employment Development Department (EDD) posted a new brochure on its web site that is now required for all new employees and any employee wanting to apply for paid family leave to care for a seriously ill family member or bond with a new minor child. These brochures may be downloaded and provided as official notices to employees.

You will find the new brochure at <http://www.edd.ca.gov/direp/pflpub.asp> .

Also new in California...

The state's Department of Fair Employment and Housing (DFEH), the agency responsible for investigating complaints of illegal employment discrimination in California, has begun using a new on-line appointment system. Effective January 7, 2008, the system was made available to anyone in the state wishing to file a complaint under California's Fair Employment and Housing Act. DFEH has a reciprocity agreement with the Equal Employment Opportunity Commission (EEOC), so when complaints are filed at both agencies, only one agency will actually conduct the investigation and resolve the complaint. The new system is located at <http://www.dfeh.ca.gov/onlineAppt/> . The agency is quick to point out that appointments can still be made by telephone during regular business hours Monday through Friday, 8:00 a.m. to 4:00 p.m., by calling 800-884-1684 (within California) or 916-478-7200 (outside California). Hearing-impaired individuals may call TTY 800-700-7320. So the Internet filing is an additional access method for California residents who believe they have been treated illegally in the workplace. (Any California employer with 5 or more employees on the payroll is covered by the Fair Employment and Housing Act.)

The web-based complaint process is available in both English and Spanish.

Gentle Readers,

The big news this week is passage by Congress and signing by President Bush of the new FMLA provisions for military family leave. It applies to more than employee spouses. Then we offer a gentle reminder to those of you who must post your OSHA 300-A summary form. Today is the day. Finally, a bit of clarification about drug testing and medical marijuana use from California's Supreme Court. Quite a week.

Bill Truesdell
Editor

IN THIS REPORT (Report #458, 2/1/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **PRESIDENT SIGNS BILL CREATING LEAVE FOR MILITARY FAMILIES**
2. **OSHA 300-A SUMMARY FORM MUST NOW BE POSTED**
3. **CALIFORNIA EMPLOYERS MAY TERMINATE MEDICAL MARIJUANA USERS**

-
1. **PRESIDENT SIGNS BILL CREATING LEAVE FOR MILITARY FAMILIES**

The big news this week comes after years of Congressional debate and at least one Presidential veto. The Family and Medical Leave Act (FMLA) has now been modified by Section 585 of the new National Defense Authorization Act (NDAA), signed by President Bush on January 28, 2008. (http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm)

The new provisions will permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the [U.S.] Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

The provisions for these new employment leaves of absence are effective on the date of the President's signing (January 28, 2008). Unfortunately, the regulations have yet to be prepared by the Department of Labor (DOL). The agency has promised that they will be forthcoming quickly.

A new type of leave permitted under this law will be what some are calling "Active Duty Leave." One of the unknowns at this time is how the DOL will define "qualifying exigency." The provisions of this new FMLA requirement offer leaves "for any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation." This provision is not going to be effective

until there is a definition of "qualifying exigency" from the DOL in regulatory form. The agency is encouraging employers to provide this type of leave to employees even before the definition has been determined. You might want to discuss any modifications you make to your FMLA policy with your management attorney before implementing them. It could save you some problems in the future.

Another new FMLA provision is what is being called the "Caregiver Leave." It specifically provides that any eligible employee may take up to 26 weeks of FMLA leave to care for a spouse, son, daughter, parent or next of kin who is a covered service member who has a "serious illness or injury" incurred while on active duty. The law defines "covered service member," "next of kin" and "serious injury or illness" as they apply to the leave eligibility. This new Caregiver Leave is available only during a single 12-month period.

Paid leave, if the employer offers it, may be substituted for any portion of the protected service leave. Either of the new leaves may be taken on a reduced schedule basis. Full time absence on leave status is not required.

For a copy of the entire NDAA go to <http://thomas.loc.gov/cgi-bin/query/D?c110:1:./temp/~c11099Fkxl::> (HR 4986).

To get a brief summary of the new FMLA military family leave requirements, and those for California employers by contrast, go to <http://www.management-advantage.com/products/free-military-spouse.htm> .

2. OSHA 300-A SUMMARY FORM MUST NOW BE POSTED

February 1st is the day on which employers with 10 or more employees must post a copy of the summary form for last year's job-related injuries and illnesses. The summary form eliminates all the personal details involved in each instance.

Be sure you post the OSHA 300-A in a location that can be accessed by all employees. It must remain posted until April 30th.

The most common question about this posting requirement is this: Do I have to post a summary if we had no reportable accidents or illnesses last year? The answer is, "Yes, you must post the summary form." Simply enter zeros for each column total.

This requirement comes to you courtesy of federal regulation standards at 29 CFR. The standard number is 1904.32. You can get a copy at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12776 .

3. CALIFORNIA EMPLOYERS MAY TERMINATE MEDICAL MARIJUANA USERS

If you are a California employer and you have employees with medical prescriptions for marijuana use, you may find yourself caught between state law and federal law.

Federal law still considers marijuana a controlled substance, illegal for possession and use. Further, the federal Drug-free Workplace Act, makes it a requirement that some employers test job applicants and employees for use of alcohol and illegal drugs, including marijuana.

In California the Compassionate Use Act of 1996 allows the use of "medical marijuana." Under that state law, an individual who has a prescription from a licensed physician may use the drug to ease their medical condition. Since it was enacted, this state law has been in conflict with federal drug laws. Some other states have found themselves in similar positions with similar state measures. Federal drug enforcement raids on the medical marijuana clubs have highlighted this conflict.

Now, a California State Supreme Court ruling has said there is no state protection for individuals using prescribed marijuana from employer action to ban their employment or terminate their employment should conditions arise which would demand such action.

The Court said, nothing in the text or history of the Compassionate Use Act suggests that voters intended the measure to address the respective rights and duties of employers and employees. Legally constructed drug testing programs for job applicants or existing employees may continue to prevail in management of employee or applicant drug use.

We will have to wait to see what other states do on this same issue.

The case is Gary Ross v. Ragingwire Telecommunications, Inc., (S138130, Ct.App. 3 C043392, Super.Ct. No. 02AS05476). You will find the opinion at <http://www.courtinfo.ca.gov/opinions/documents/S138130.PDF> .

Gentle Readers,

Record OFCCP results for the last fiscal year have been posted on the agency web site. OSHA offers some cautions and suggestions for cold weather working conditions. And, finally, the latest survey results for the best places to work for disabled employees.

Bill Truesdell
Editor

IN THIS REPORT (Report #459, 2/8/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **VOTED BEST EMPLOYERS BY DISABLED WORKERS**
2. **OSHA WARNS AGAINST COLD WEATHER DANGERS FOR EMPLOYEES**
3. **OFCCP POSTS ANOTHER RECORD YEAR FOR AUDITS & RECOVERIES**

-
1. **VOTED BEST EMPLOYERS BY DISABLED WORKERS**

Careers & the DISABLED magazine has published results of its annual survey, identifying the best employers for disabled workers. The survey asked, "Who would you most like to work for?" or "What employer do you believe would provide a positive working environment for people with disabilities?" As before, they have separated private and public sector results. They listed the top 50 employers in the private sector category. There are 20 organizations identified on the public sector list. For the complete list, please refer to the Winter 2007/2008 edition of the magazine. Subscriptions are \$13.00 per year in the U.S. You can subscribe at the publisher's web site. Equal Opportunity Publications, Inc. can be found at www.eop.com. If you are a human resources professional you should read this magazine.

Private Sector (top 5 companies)

1. IBM
2. Procter and Gamble
3. McDonald's
4. JPMorgan Chase
5. Merrill Lynch

Public Sector (top 5 organizations)

1. Social Security Administration (SSA)
2. National Security Agency (NSA)
3. Federal Bureau of Investigation (FBI)
4. Central Intelligence Agency (CIA)
5. Internal Revenue Service (IRS)

It's possible that your organization is on the list, too. Check out the balance of the results in the magazine's Winter issue.

2. OSHA WARNS AGAINST COLD WEATHER DANGERS FOR EMPLOYEES

Some areas of the nation have already experienced the harsh, sometimes damaging effects of winter. With the cold weather upon us, OSHA is encouraging employers and employees to take necessary precautions to prevent and treat cold-related health problems. Employees who work outside - such as in construction, commercial fishing, maritime and agriculture - are especially vulnerable. Other work groups with elevated risks include trucking, airlines, and highway maintenance.

Exposure to freezing and cold temperatures for extended periods of time may cause serious health problems such as trench foot, frostbite and hypothermia. In extreme cases, including cold water submersion, exposure can lead to death. Danger signs include uncontrolled shivering, slurred speech, clumsy movements, fatigue and confused behavior. If these signs are observed, call immediately for emergency help.

For more information about these recommendations go to http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=14894

OSHA publishes what they are calling "Cold Stress Cards." You can get copies in English or Spanish for free either at the agency's web site (<http://www.osha.gov/Publications/coldcard/coldcard.html>) or by calling 202-693-1888.

3. OFCCP POSTS ANOTHER RECORD YEAR FOR AUDITS & RECOVERIES

The Office of Federal Contract Compliance Programs (OFCCP) has jurisdiction over all federal contractors. It audits federal contractors to assure compliance with affirmative action compliance for women and minorities, disabled and veterans. In Fiscal Year (FY) 2007 that ended on September 30, 2007, the agency posted a record amount of financial remedies for job applicants and employees who had been treated illegally by employers. They also conducted 24% more compliance evaluations of affirmative action programs than were done in the previous year. The agency is geared up to the new enforcement reality...do most of the work in their own offices and only spend time and money on systemic discrimination investigations. Recovery results have proven the strategy to work quite well for the enforcement folks.

Here's how things turned out for the past three fiscal years:

Fiscal Year	Financial Remedies	Workers Affected	Compliance Evaluations
2007	\$51,681,000	22,251	4,923
2006	\$51,525,000	15,273	3,975
2005	\$45,156,000	14,761	2,730

You can get all the details at
<http://www.dol.gov/esa/ofccp/enforc07.pdf>

Gentle Readers,

The lead story this week is Monday's Federal Register publication of the DOL's intentions for modifying FMLA regulations. This was prompted by the recent Congressional approval of Military Family Leave. It also incorporates changes motivated by input at hearings held over the past 9 years. Their proposal covers over 200 pages. Then, it seems that the EEOC may actually get MORE money in its 2009 budget. Lately, it has experienced lower budgets, so this is a pleasant turnaround for them. And, finally, we ask if you understand the four basic generations that are likely in your workplace these days. Each one can require a different management approach.

Bill Truesdell
Editor

IN THIS REPORT (Report #460, 2/15/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **DOL HAS POSTED DRAFT REGULATIONS FOR FMLA MODIFICATIONS**
2. **DO YOU KNOW THE FOUR GENERATIONS IN YOUR WORKFORCE?**
3. **EEOC BUDGET TO RISE IN 2009 BY \$13 MILLION**

-
1. **DOL HAS POSTED DRAFT REGULATIONS FOR FMLA MODIFICATIONS**

On Monday, February 11, 2008, the Department of Labor (DOL) posted its proposal for revising the Family and Medical Leave Act of 1993 (FMLA). There are several changes embedded in the proposal. The most prominent is addition of the Military Family Leave.

"The proposed changes are based on the Department's experience of nearly fifteen years administering the law, two previous Department of Labor studies on the FMLA in 1996 and 2001, several U.S. Supreme Court and lower court rulings, and the public comments received in response to a Request for Information (RFI) published in the Federal Register in December 2006 requesting Information about experiences with the FMLA and comments on the effectiveness of these regulations."

"The Department is also seeking public comment on issues to be addressed in final regulations regarding military family leave."

Comments must be received by the Department on or before April 11, 2008. Comments should be identified by RIN 1215-AB35 and may be sent electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> .

There is a really excellent summary of the changes proposed, prepared by the law firm of Jackson-Lewis, at <http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1291> Some of

the details will be more palatable than others to employers.

(Federal Register, Volume 72 (2008), Pages 7875 - 8001, 02/11/2008, 29 CFR 825)

2. DO YOU KNOW THE FOUR GENERATIONS IN YOUR WORKFORCE?

Years ago, there was only one generational "handle" used to describe a collective group of people. It was "Baby-Boomers."

As it turns out, today there are at least four different generations in our workplaces and each of them has a different "handle." Each is defined by Patricia Kempthorne, founder and executive director of The Twiga Foundation, a Boise, Idaho, nonprofit that focuses on family and workplace issues.

Here they are:

Traditionalists (age 62 and older): Known for their dedication and sacrifice, a penchant for conformity, respect for rules and authority, putting duty before pleasure and being disciplined about work. Traditional managers interacting with younger workers need to ask for their opinion, challenge them, find them a mentor and provide them with timely feedback.

Baby Boomers (ages 42 to 61): Largest of the four groups. Known for their focus on personal gratification, a live-to-work attitude, putting in long hours on the job in order to get ahead, and having a team-oriented nature. Managers in this group working with younger workers should get to the point when communicating. Don't hesitate to use email in place of face-to-face conversations, get away from the notion of workers having to "pay their dues," and realize that established rules and etiquette may have to be altered for success.

Generation X (ages 29 to 42): Known for their self-reliance, being skeptical, having a work-to-live attitude (seeing work as a means for supporting their life style), being focused on results rather than process and for flexibility and adaptability. Managers in this group working with Baby Boomer employees would be well advised to show them respect, use fact-to-face conversations rather than email and give full attention when having a conversation.

Generation Y or Millenials (age 28 and younger): Known for their diversity and independence and being comfortable with technology. They are uncomfortable when they don't have technology at their fingertips. Millenial managers working with older workers should know the chain of command in the workplace, place value on the individual's personal experience, and appreciate their dedication to the job.

[SOURCE: The News-Press, Gannett News Service, "For Workplace Harmony, Know Your Generations," February 11, 2008. <http://www.news-press.com/apps/pbcs.dll/article?AID=/20080211/BUSINESS/802110302/1014> and Twiga Foundation, Inc. 816 W. Bannock Street Ste. #306 Boise, Idaho 83702 (p)208.343.1551 (f)208.343.1720 info@twigafoundation.org, <http://www.twigafoundation.org/>]

3. EEOC BUDGET TO RISE IN 2009 BY \$13 MILLION

It's not final until approved by Congress, but in the proposal from President Bush at least, the Equal Employment Opportunity Commission (EEOC) has been given a \$13 million increase for the Fiscal Year (FY) 2009 budget. In round numbers, that's a 4 percent increase from FY 2008.

The bottom line is \$342 million compared to \$329 million in the 2008 budget. In recent years, these proposed amounts have been adjusted downward by Congressional committees. We'll have to wait and see if this proposal follows the same pattern. You can find the budget proposals for all independent government agencies at <http://www.whitehouse.gov/omb/budget/fy2009/pdf/appendix/oia.pdf> . They are listed in alphabetical order.

The bulk of this increase will go to staff increases. In FY 2007 the agency was authorized 2,264 full-time equivalents. That amount will rise to 2,541 in 2009. This reflects a net increase, even after accounting for the return of EEOC's national call center to an internal function requiring EEOC staff headcount.

Gentle Readers,

There have been some changes in EEOC regulations. New York State has cracked down on employers that misuse the "independent contractor" classification. Settlements, including penalties, are large. Next, OSHA is gathering nominations for its National Advisory Committee. Finally, OFCCP has found a new statistician to head its systemic discrimination efforts.

Bill Truesdell
Editor

IN THIS REPORT (Report #461, 2/22/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **NEW YORK CRACKS DOWN ON INDEPENDENT CONTRACTOR MIS-CLASSIFICATION**
2. **EEOC REDUCES REASONS FOR CLOSING CASES**
3. **OSHA SEEKING NOMINATIONS FOR ADVISORY GROUP**
4. **OFCCP APPOINTS DR. JAVAID KAISER TO HEAD STATISTICAL SECTION**

-
1. **NEW YORK CRACKS DOWN ON INDEPENDENT CONTRACTOR MIS-CLASSIFICATION**

New York State has collected nearly \$1 million in unpaid taxes due to \$19 million in wages that were not properly reported by employers. And, workers suffered underpayment of \$3 million in compensation because some employers wished to pay them "under the table."

All this has come to light as a result of the task force established last September by Governor Eliot Spitzer. It was created to crack down on companies that illegally classify employees as independent contractors, often to avoid paying unemployment insurance taxes and workers' compensation premiums. Motivation for creation of the task force came from labor leaders' complaints that unionized trucking companies and construction contractors were being undercut by competitors that classified many of their employees as independent contractors.

To date, the task force has investigated 117 companies. So far, state officials have found that 2,078 employees had been misclassified as independent contractors. The task force also found 646 workers who were owed minimum and overtime wages totaling about \$3 million. The state's Labor Commissioner, M. Patricia Smith, told a news conference that soon after being visited by the task force, one employer began paying unemployment insurance taxes for 205 employees it previously had not reported.

Employers that have been found in violation of state labor laws will be required to pay back taxes, back wages and unpaid workers' compensation premiums, with state officials often assessing additional penalties.

Smith said that people who are misclassified as independent contractors go "unprotected by the most basic labor rights."

[SOURCE: New York Times, Steven Greenhouse, February 12, 2008, <http://www.nytimes.com/2008/02/12/nyregion/12labor.html>]

2. EEOC REDUCES REASONS FOR CLOSING CASES

On January 18, 2008, the Equal Employment Opportunity Commission (EEOC) published its final rule on reasons for dismissal. (73 Fed. Reg. 3387) Since 1977 the Commission has been permitted to close a case if the charging party failed to respond to the EEOC investigator, moved and could not be found, or refused a settlement offer that would have made the charging party whole in financial terms.

Those provisions have now been eliminated from EEOC regulations, 29 CFR Sec 1601.18 (b) through (d). There are five remaining reasons for the agency to close a case...

- 1) There was no reasonable cause found for the charge.
- 2) The charge was not filed in a timely way.
- 3) The charge fails to state a claim on which relief can be granted.
- 4) The charging party requests a right to sue letter before the case investigation is complete (administrative closure) 29 CFR Sec 1601.28(a).
- 5) The charge cannot be investigated completely within the 180 days allocated by 29 CFR Sec 1601.28(a).

According to the EEOC, the reasons dropped from its regulations were originally adopted to help it manage its case load. Over time, these reasons for dismissal of cases have caused confusion and difficulty in pursuing law suits filed by complainants. EEOC says those case-handling provisions are no longer required.

3. OSHA SEEKING NOMINATIONS FOR ADVISORY GROUP

The Department of Labor's Occupational Safety and Health Administration (OSHA) that nominations are being accepted for persons to serve on the National Advisory Committee on Occupational Safety and Health. The committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

Nominations will be accepted for five vacancies in the following

categories: two public representatives, one management representative, one safety representative and one health representative. Members will serve a two-year term. Any interested person or organization may nominate one or more qualified persons for membership.

Nominations must be submitted no later than February 29, 2008 and should be submitted to the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, D.C. 20210. The phone number is (202) 693-2350.

Questions on the NACOSH nominations process can be addressed to Deborah Crawford at (202) 693-1932 or crawford.deborah@dol.gov .

Nominations are also accepted electronically, by FAX at (202) 693-1948, messenger, or courier service. All nominations for NACOSH must include the agency name and docket number for this Federal Register notice, OSHA-2008-0002. Nominees should be identified by name, occupation or position, address and telephone number. The category which the candidate would represent should be specified and a resume of the nominee's background, experience, and qualifications should be included. For more information on submission procedures, go to www.regulations.gov .

[SOURCE:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=14930]

4. OFCCP APPOINTS DR. JAVAID KAISER TO HEAD STATISTICAL SECTION

Effective February 19, 2008, Dr. Javaid Kaiser will take over as the Director of Statistical Analysis at the Office of Federal Contract Compliance Programs (OFCCP). He will fill the vacancy created when Dr. Michael Sinclair left the agency in October last year.

Dr. Kaiser comes to OFCCP from the position as Director of the Office of Applied Studies at the Substance Abuse and Mental Health Services Administration. He has also been a researcher at Virginia Polytechnic Institute and East Carolina University among others.

By filling this vacancy, Mr. Charles James, National Director of OFCCP seems to be saying that his agency's focus on systemic discrimination issues will continue unabated.

Gentle Readers,

This week we point you to a centralized Department of Labor web site that indexes all the help you might need from that Department of the U.S. Government. Then, if you haven't heard about ICE's Worksite Enforcement program, we'll tell you how to find out. And, finally, we discuss how you can easily find the type of qualifications among disabled candidates for your job openings.

Bill Truesdell
Editor

IN THIS REPORT (Report #462, 2/29/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **WORKSITE ENFORCEMENT HAS A ROLE IN IMMIGRATION CONTROL**
2. **RECRUITING DISABLED JOB CANDIDATES**
3. **DOL HAS COMPLIANCE ASSISTANCE AT THE READY**

-
1. **WORKSITE ENFORCEMENT HAS A ROLE IN IMMIGRATION CONTROL**

U.S. Immigration and Customs Enforcement (ICE) has created some guidance for employers on employee vetting according to immigration laws. They begin their presentation with, "Effective worksite enforcement plays an important role in the fight against illegal immigration and in protecting our homeland. U.S. Immigration and Customs Enforcement (ICE) has developed a comprehensive worksite enforcement strategy that promotes national security, protects critical infrastructure and ensures fair labor standards."

ICE personnel will actually conduct investigations of situations where employers are suspected of violating the requirements of federal immigration law. "Worksite enforcement investigations often involve egregious violations of criminal statutes by employers and widespread abuses, and by uncovering such violations, ICE can send a strong deterrent message to other employers who knowingly employ illegal aliens. These worksite enforcement cases often involve additional violations such as alien smuggling, alien harboring, document fraud, money laundering, fraud or worker exploitation."

For more about the ICE operations and worksite enforcement investigations go to <http://www.ice.gov/pi/worksite/index.htm>

The Worksite Enforcement Advisory can be found at http://www.ice.gov/doclib/pi/news/newsreleases/articles/wse_advisory_v27.pdf

2. RECRUITING DISABLED JOB CANDIDATES

The first priority in searching for job candidates is to find someone capable of solving a problem faced by the employer. People are generally not hired because they need work. They are hired to solve an employer problem. Resumes are a tool for communicating to potential employers how the individual has solved problems for previous employers. For example, computer programmers solve the problem of specific project development. Teachers solve the problem of student learning needs. Managers solve the problem of workforce guidance and control. And, on it goes.

If you have never worked with a qualified disabled person, you have a treat in store when you finally have that opportunity. Employers should be looking for job candidates that can solve the problem they need solving. In some cases, that will produce candidates who have a physical or mental disability. The disability may not even impact their ability to perform the job and get the problem solved.

So, how can employers find such talent among the disabled workforce population? The Office of Disability Employment Policy (ODEP) within the U.S. Department of Labor (DOL) has some suggestions.

Go to <http://www.dol.gov/odep/pubs/fact/connect.htm> for some thoughts on the subject and links to recruitment resources. Who knows, you might just find what you are looking for.

3. DOL HAS COMPLIANCE ASSISTANCE AT THE READY

If you happen to have some questions about the need for employers to comply with certain federal labor laws, you have a resource on the Web that can help uncover the answers.

The Office of Compliance Assistance Policy (OCAP) says about its web site, "All of our compliance assistance activities are designed to provide businesses, workers, and others with the knowledge and tools they need to comply with DOL's rules." The OCAP web site is at <http://www.dol.gov/compliance/> .

Here is an index for the DOL assistance you may find you need at some point.

By Topic

- [Wages & Hours Worked](#)
- [Benefits: Health, Retirement, Leave](#)
- [Hiring Issues](#)
- [Termination Issues](#)
- [Equal Opportunity](#)

- [Safety and Health In the Workplace](#)
- [Whistleblower and Non-Retaliation Protections](#)
- [Plant Closings and Layoffs](#)
- [Unions and Union Members](#)
- [Posters](#)
- [Recordkeeping](#)

By Audience

- [New and Small Businesses](#)
- [Youth in the Workplace](#)
- [Foreign Workers](#)
- [Veterans](#)

By Major Law

- [Fair Labor Standards Act \(FLSA\)](#)
 - [Family and Medical Leave Act \(FMLA\)](#)
 - [ERISA](#)
 - [Occupational Safety and Health \(OSH\) Act](#)
 - [more...](#)
-

Gentle Readers,

The OFCCP's latest FCSS-generated list of audit eligible contractor establishments has been released by agency headquarters and will be used beginning this coming Monday. The EEOC has extended its national call center contract with Vangent while it strives to bring the function "in-house." And, the Veterans Employment and Training Service has announced that it has begun the process of revising the VETS-100 form used by federal contractors.

Bill Truesdell
Editor

IN THIS REPORT (Report #463, 3/7/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **OFCCP RELEASES NEW CONTRACTOR SCHEDULING LETTER LIST**
2. **EEOC ADMITS IT CAN'T TAKE ON CALL CENTER NOW**
3. **CHANGES PROPOSED FOR VETS-100 REPORT**

-
1. **OFCCP RELEASES NEW CONTRACTOR SCHEDULING LETTER LIST**

Following its tradition, the Office of Federal Contract compliance Programs (OFCCP) has issued its second list of audit-eligible contractors to its field offices. They may begin using the new list on March 10, 2008, this coming Monday. The first list was issued by the agency at the beginning of its fiscal year in October last year.

There are approximately 5,000 "facilities" on this list. It has been compiled by the OFCCP's Federal Contractor Selection System (FCSS). If you are a federal contractor, information about you and your contract(s) can get into this database in several ways. If you check the box "We are a federal contractor" on the EEO-1 form, your information can get into FCSS. If your contract is discovered through a search of federal agency databases holding contract information, you can get into the FCSS. That is a thrust recently undertaken by the current OFCCP administration called "Contracts First Initiative." It is designed to capture information about federal contractors who had not previously identified themselves, or who were actively trying to avoid identification.

By policy, OFCCP excludes from the audit list any company that has received the Secretary of Labor's Opportunity Award or an Exemplary Voluntary Efforts Award within the past three years. Also excluded are establishments covered by Functional Affirmative Action Program (FAAP) agreements, and those who are, or will be, undergoing a Corporate Management Compliance Evaluation (CMCE). Also by policy, the agency

excludes establishments that have undergone a compliance evaluation within the past 24 months, and those that are now undergoing an audit.

If your organization has multiple affirmative action establishments, FCSS will limit the number of NEW compliance evaluations in any year to 25.

For a copy of the announcement, go to the OFCCP's web site at http://www.dol.gov/esa/regs/compliance/ofccp/CSAL_02_20_2008.pdf

2. EEOC ADMITS IT CAN'T TAKE ON CALL CENTER NOW

The Equal Employment Opportunity Commission (EEOC) has voted to extend a telephone call center service contract with its vendor, Vangent, Inc. The extension will last up to a year. Originally, the Commission had planned to bring the call center functions "in house" at the beginning of 2008.

Finding that its plans might have been a bit optimistic, the EEOC voted unanimously on February 19 to continue the private vendor contract so its constituents could be served properly. The contract has previously been extended for three months, to last through the end of March 2008.

Now, beginning this week, EEOC employees in 15 field offices will start the process of handling calls from people with potential discrimination complaints. Ultimately, the 90,000 calls now received by the vendor-staffed national call center will be handled by 61 of EEOC's own employees.

[SOURCE: "EEOC Compliance Manual," 2-29-2008, Bureau of National Affairs, www.bna.com]

3. CHANGES PROPOSED FOR VETS-100 REPORT

The Veterans' Employment and Training Service announced on February 15, 2008, that it has begun the process of gaining approval for revisions to its VETS-100 annual report. The new form will contain information consistent with definitions in the 2002 Jobs for Veterans Act.

All federal contractors with contracts valued at \$100,000 or more as of December 1, 2003, or later will be required to use the new form once it is available. Any contractor that has a contract dated before December 1, 2003, will continue to use the current form, even after the new version is available. A date for availability of the new format has not been set. It is still not known whether the new format will be used for federal contractor filing of the required information this coming September 30th.

Public comments on the form changes will be accepted until March 17th. Comments may be submitted by email to OIRA_submission@omb.eop.gov.

Gentle Readers,

The EEOC has recorded a nine percent increase in complaints from employees about their workplace. This week we announce the introduction of the 8th Edition of our best selling book, *Secrets of Affirmative Action Compliance*. Pre-order your hard copy and save 25%, or get an eBook copy today for half the cost of the normal printed copy price. While you're thinking of it, why not download a copy of our 2008 catalog. We give you the link.

Bill Truesdell
Editor

IN THIS REPORT (Report #464, 3/14/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **AAP BOOK NOW AVAILABLE IN 8TH EDITION**
2. **2008 CATALOG AVAILABLE FOR DOWNLOAD**
3. **EEOC REPORTS NINE PERCENT INCREASE IN BIAS COMPLAINTS**

1. **AAP BOOK NOW AVAILABLE IN 8TH EDITION**

The 8th Edition has gone to the printer. Hard copies will begin shipping around the middle to the end of April. If you pre-order your hard copy before they return from the printer, you will receive a 25% discount on the list price. If you wait until the books have returned from the printer and begin shipping, that offer will no longer be available.

If you want your copy sooner rather than later, we can offer you two other alternatives. One is an instant download of a PDF eBook version. It's a whopping file of 18.5 MB and will take a VERY long time to download if you don't have a cable access to the Internet. One nice feature of the electronic version of the new edition is that it has been color-enhanced in the text chapters.

And, if you would like to receive the eBook file on CD-ROM, we can send it to you in the U.S. Mail.

The price of the hard copy will be \$99.95. We've held our prices even in the face of rising printing costs. Your price if pre-ordered will be \$75.00, a savings of \$24.95.

Cost of either the eBook download or eBook on CD-ROM is only \$49.95. Shipping charges apply to the CD-ROM version.

Get the latest in regulatory updates. Veterans regulations and category definitions have changed, for example. We share with you the OFCCP's protocol for its three-phase compensation analysis, that is

procedure rather than regulation. We also share with you suggestions for handling the application definition regulation, conflicts between OFCCP and EEOC rules, and much, much more.

To order your copy, go to <http://www.management-advantage.com/products/AAP8.htm>

2. 2008 CATALOG AVAILABLE FOR DOWNLOAD

A time will come when you need some reference materials or a software program to track applicants or perform other human resource functions. You may discover you need safety or survival supplies, motivational posters or labor law compliance posters for a work location in some remote state. Whatever it is you need, you will likely find it available in our 2008 catalog of products and self-help tools for HR professionals.

From stress management to affirmative action compliance to FMLA leave tracking and management, we can provide the resources you need when you need them.

Why not download the catalog now so you will have it when you find you need something? It could come in handy.

<http://www.management-advantage.com/catalog.htm>

3. EEOC REPORTS NINE PERCENT INCREASE IN BIAS COMPLAINTS

Overall in fiscal year 2007, the number of complaints about workplace discrimination moved up by 9 percent. When we look at the individual categories, though, some amazing numbers come at us.

o Retaliation complaints	Up	18%
o Age complaints	Up	15%
o Disability complaints	Up	14%
o Religion complaints	Up	13%
o Race complaints	Up	12%
o National Origin complaints	Up	12%
o Sex/Gender complaints	Up	7%

See all of the raw numbers in the EEOC's report. Go to <http://www.eeoc.gov/press/3-5-08.html>

Gentle Readers,

It is now easier to find qualified job candidates who just happen to be disabled. The list of states friendly to nursing mothers at work is growing.

And, Walgreens is expanding into workplace clinics. We hope you have had a good week.

Bill Truesdell
Editor

IN THIS REPORT (Report #465, 3/21/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **WALGREENS EXPANDS INTO WORKPLACE CLINICS**
2. **GROWING LIST OF STATES FRIENDLY TO NURSING MOTHERS**
3. **DOL DATABASE NOW AVAILABLE FOR DISABLED JOB CANDIDATES**

1. **WALGREENS EXPANDS INTO WORKPLACE CLINICS**

Walgreens Co. has announced that it will acquire the parent company of a Nashville-based operator of work site health-care centers. The deal gives the drug chain control of I-trax owner of CHMD Meridian Healthcare. Walgreens has also announced the purchase of Whole Health Management of Cleveland, Ohio.

When completed, the deals will give Walgreens control of 1,800 employees at health centers and pharmacies at employers' locations scattered across the country. Doctors, nurses, physician assistants, nurse practitioners or pharmacists staff many of those locations. A company spokesperson said, "There are 7,600 potential work sites where we can open up combinations of health centers and onsite pharmacies." There are an additional 146 Take Care in-store clinics that are usually run by nurse practitioners and physicians' assistants. They expect the health clinics to eventually generate \$3 billion in revenue.

http://news.walgreens.com/article_display.cfm?article_id=4917

2. **GROWING LIST OF STATES FRIENDLY TO NURSING MOTHERS**

Mothers who return to work while still nursing their babies are getting less hassle from employers and co-workers in some states. That's because there has been a move over the last few years to legislate protections for lactating women who have a need to express milk during the course of the workday. In most situations, private locations are

required for that purpose. Some laws even specify that restrooms are not an acceptable location for expressing and collecting breast milk.

Indiana has joined the list of states with such protections. And, it is the first to require employers to accommodate the storage of breast milk. It says, "...an employer shall: 1. provide a refrigerator or other cold storage space for keeping milk that has been expressed; or 2. allow the employee to provide the employee's own portable cold storage device for keeping milk that has been expressed until the end of the employee's work day."

The list of protective states keeps growing. The following states have lactation accommodation laws for nursing mothers: California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, Mississippi, Oklahoma, Rhode Island, Tennessee and Virginia. Texas and Washington encourage businesses to provide facilities and time for employees to express milk and offer employers that do so to advertise themselves as "mother-friendly" and "infant-friendly" workplaces. Hawaii and the District of Columbia prohibit employers from discriminating against women on the basis of breastfeeding.

Be sure you know the requirements in your state(s). Talk with your management attorney if there are any questions.

[SOURCE: Littler.com, ASAPs, National, March 2008]

<http://www.littler.com/presspublications/index.cfm?event=pubItem&pubItemID=18482&childViewID=249&type=all§ion=Press%20%20Publications&subject=ASAPs&title=Indiana%20Joins%20the%20List%20of%20States%20Providing%20Legal%20Protections%20to%20Nursing%20Mothers%20At%20the%20Workplace>

3. DOL DATABASE NOW AVAILABLE FOR DISABLED JOB CANDIDATES

The U.S. Department of Labor (DOL) has announced the availability of a database of more than 1,700 job candidates with disabilities. Employers can register to use the database in candidate searches by going to <http://www.dol.gov/opa/media/press/odep/odep20080389.htm>

The Workforce Recruitment Program for College Students with Disabilities, co-sponsored by the Labor Department's Office of Disability Employment Policy and the U.S. Department of Defense, compiled the database by sending recruiters to nearly 200 college campuses across the country to interview eligible undergraduate and post-graduate students. Many of the students are seeking summer job opportunities, while others have graduated and are looking for permanent employment.

In using the database, an employer sets the criteria for each candidate search by specifying location, college/university, degree program, position type and length of appointment. Job seekers represent many high-demand fields of study, including accounting, administration, business, communications, computers, criminal justice, education, engineering, human resources/equal employment opportunity, health care, law, the social sciences and the sciences.

The Office of Disability Employment Policy is leading a 21st century federal response to the historic underemployment of people with disabilities.

Gentle Readers,

Starbucks shift supervisors may want something stronger than coffee after hearing about the latest court ruling excluding them from the tip pool. If you have employees in Washington, DC you will want to begin adapting to the new law requiring paid employee sick time off. And, there may soon be a fifth and final member of the Equal Employment Opportunity Commission.

Bill Truesdell
Editor

IN THIS REPORT (Report #466, 3/28/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **CALIFORNIA COURT AWARDS STARBUCKS BARISTAS \$105 MILLION**
 2. **ALABAMA ATTORNEY TO BE NEW EEOC APPOINTEE**
 3. **WASHINGTON, DC COUNCIL PASSES PAID SICK LEAVE LAW**
-

1. **CALIFORNIA COURT AWARDS STARBUCKS BARISTAS \$105 MILLION**

Last week, March 20, 2008, the California Superior Court in San Diego awarded baristas at Starbucks cafes in California \$105 million in a dispute over payment of tips. The company has promised it will appeal the decision, saying it is "fundamentally unfair and beyond all common sense and reason."

The dispute centers on who shares in the communal tip fund at each store. The company had a practice of including shift supervisors with baristas in the distribution of tip pools. The law suit, filed by a Jou Chau, claimed supervisor participation was a violation of California's Labor Code. The suit was certified as a class action by Judge Patricia Y. Cowett, the same jurist who issued the finding.

California's Labor Code says tips can be pooled and shared among workers but restaurant owners or their "agents," which are typically construed to mean managers and supervisors, cannot share in the money. Shift supervisors, like baristas at Starbucks, make coffee and serve customers, but they are also responsible for directing other employees, setting schedules and doing other managerial work.

Starbucks is still facing another class-action lawsuit in which supervisors asserted that they should be entitled to overtime pay.

If this ruling is upheld, it will have obvious implications for the entire restaurant industry in California.

[SOURCE: New York Times,
<http://www.nytimes.com/2008/03/21/business/21sbux.html>]

2. ALABAMA ATTORNEY TO BE NEW EEOC APPOINTEE

The White House announced on March 20, 2008, that the President intends to nominate Alabama attorney Constance Barker to the Equal Employment Opportunity Commission (EEOC). If confirmed, she would fill the remainder of a five-year term through June 2011.

Ms. Barker is with Capell & Howard, a law firm in Montgomery. She was previously general counsel for the Mobile County Board of Education and is a former prosecutor. She received her bachelor's degree from the University of Notre Dame and her law degree from the University of Alabama in 1977.

This is the fifth seat on the Commission. It is designated a Republican seat under the tradition that three Commissioners be from the party of the President and the other two come from the opposing party. Whoever becomes President in 2009 will be able to fill vacancies under that arrangement as 5-year terms expire on a staggered time schedule.

[SOURCE: Al.com,
http://blog/al.com/sweethome/2008/03/bush_intends_to_appoint_alabam.htm
1]

3. WASHINGTON, DC COUNCIL PASSES PAID SICK LEAVE LAW

The City Council of Washington, DC has joined San Francisco in mandating that certain employers offer PAID sick leave to all employees working in the District. The measure, called "Accrued Sick and Safe Leave Act of 2007," was passed unanimously on March 4, 2008.

It will go into effect on April 3, 2008, 30 days after it was approved. Unless Congress intervenes, employers with 51 or more workers must provide 7 paid sick days per year. Organizations with 31 to 50 employees must provide 6 paid sick days per year. Employers with 11 to 30 employees must provide 5 paid sick days per year. And, employers with 10 or fewer workers must provide 3 paid sick days per year. Employees will be eligible for this benefit after working for a year.

The paid time off may be used by employees for absences from work resulting from physical or mental illness or injury or the need for preventative care for ones' self or to care for a child, parent, spouse or domestic partner. And, if the employee or the employee's family member is a victim of stalking, domestic violence or sexual violence, these paid sick days can be used to obtain psychological or other counseling.

Employers may seek exclusion from this benefit requirement by applying for a "hardship" exemption. What that means is yet unclear.

San Francisco began requiring paid sick leave for workers based within the city back in February 2007.

Obviously, if you have employees in Washington, DC you should be huddling with your employment attorney to assess how your benefits program and employment policies should change as a result of this new legislation.

[SOURCE: Jackson Lewis, Preventive Strategies and Positive Solutions for the Workplace,
<http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1310>]

Gentle Readers,

The Veterans Affairs Department is creating a cadre of traveling nurses to respond to spikes in workloads around their network of facilities. OSHA has notified 14,000 employers that they have incident rates exceeding twice the national average. And, OSHA has offered employers some tools for dealing with work places where dust explosions are a risk.

Bill Truesdell
Editor

IN THIS REPORT (Report #467, 4/4/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **VA CREATING A MOBILE NURSE CORPS IN PILOT PROJECT**
2. **NEW OSHA COMBUSTIBLE DUST CONTROL RULES & POSTER**
3. **OSHA SENDS HIGH INCIDENT RATE LETTERS TO 14,000 EMPLOYERS**

-
1. **VA CREATING A MOBILE NURSE CORPS IN PILOT PROJECT**

The Veterans Affairs Department is creating a pilot project of mobile assignments for a group of nurses who could be sent to various medical facilities depending on need.

Nursing is one of the occupational fields where the government is experiencing high levels of competition from the private sector. Recruiting and retaining nurses has been especially difficult for the Veterans Affairs Department.

The Travel Nurse Corps, headquartered at the Phoenix VA Health Care System, at first will place as many as 75 nurses at VA medical centers across the country. Participating nurses may be temporarily assigned to distant medical centers and clinics to help nursing staffs that have vacancies, to reduce wait times or the reliance upon contractors, or to maintain high-skill services and procedures. Those who become VA travel nurses are compensated for their time on duty and their travel. They also receive standard government per diem allowances, which include lodging, meals and incidentals.

The program is also intended to establish a potential pool for national emergencies and to reduce the use of contracted nurses. The program is to serve as a model for an expanded VA travel corps with nurses who have varying specialties. Further information is available at www.travelnurse.va.gov .

[SOURCE: FEDweek, Federal Manager's Daily Report, March 21, 2008, www.fedweek.com]

2. NEW OSHA COMBUSTIBLE DUST CONTROL RULES & POSTER

The Occupational Safety and Health Administration (OSHA) has issued a bulletin on the dangers of industrial dust explosions. Anyone in the grain milling industry knows very well the hazards associated with fine dust particles permeating the air within confined spaces. Explosions in grain mills have been a serious problem since the day someone decided to put grinding wheels inside a building. All it takes is one spark from something simple like accidentally dropping a steel tool onto a concrete floor. But it is not only the employers who grind wheat or corn into flour who need to be concerned.

Combustible dust explosion hazards exist in a variety of industries, including: agriculture, chemicals, food (e.g., candy, sugar, spice, starch, flour, feed), grain, fertilizer, tobacco, plastics, wood, forest, paper, pulp, rubber, furniture, textiles, pesticides, pharmaceuticals, tire and rubber manufacturing, dyes, coal, metal processing (e.g., aluminum, chromium, iron, magnesium, and zinc), recycling operations, and fossil fuel power generation (coal).

Accidents involving dust explosions are generally big and often result in death and serious injury. If you are in one of these "at risk" groups, be sure to access the resources offered by the OSHA web site, including a new poster for your labor law compliance bulletin board.

OSHA Bulletin on Preventing Dust Fires and Explosions
<http://www.osha.gov/dts/shib/shib073105.html>

Fact Sheet:
http://www.osha.gov/OshDoc/data_General_Facts/OSHAcombustibledust.pdf

Poster:
<http://www.osha.gov/Publications/combustibledustposter.pdf>

3. OSHA SENDS HIGH INCIDENT RATE LETTERS TO 14,000 EMPLOYERS

The Occupational Safety and Health Administration (OSHA) has sent 14,000 letters to employers in the country who have illness and injury rates more than double the national average. The agency urges employers to take action to reduce their rate of lost-time injuries and illnesses.

The employers are those whose establishments are covered by Federal OSHA and reported the highest "Days Away from work, Restricted work or job Transfer injury and illness" (DART) rate to OSHA in a survey of 2006 injury and illness data. For every 100 full-time workers, the 14,000 employers had 5.4 or more injuries or illnesses which resulted in days away from work, restricted work or job transfer. The national average is 2.3.

The letter encourages employers to consider hiring an outside safety and health consultant, talking with their insurance carrier, or contacting the workers' compensation agency in their state for advice. An excellent way for employers with 250 or fewer workers to address safety and health is to ask for assistance from OSHA's on-site consultation program. The consultation program is administered by state agencies and operated separately from OSHA's inspection program.

For more information go to

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=14999 .

Gentle Readers,

Big news this week...the EEOC has cancelled its plans to add more Q & A's to the Uniform Guidelines, defining job applicant. The battle of enforcement agencies, at least on this issue, is over. Next, Mississippi is requiring an employment check using eVerify. Not to be outdone, Rhode Island also is requiring employers to use eVerify.

Bill Truesdell
Editor

IN THIS REPORT (Report #468, 4/11/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **MISSISSIPPI NOW REQUIRES EMPLOYMENT AUTHORIZATION CHECK**
2. **EEOC WILL NOT CHANGE APPLICANT DEFINITION**
3. **RHODE ISLAND NOW REQUIRES EMPLOYMENT VERIFICATION**

1. **MISSISSIPPI NOW REQUIRES EMPLOYMENT AUTHORIZATION CHECK**

The Mississippi Employment Protection Act (SB2988) was signed into law on March 18, 2008. It requires employers in the state to use E-Verify to confirm each new hire has the legal right to work in this country. "The Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws."

The law will go into effect on a progressive schedule. Here are the planned implementation dates based on employer type and size.

(a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

If an employer relies on E-Verify results when hiring, or accepts an applicant it eventually hires through the state employment service, it will be exempt from liability under the new law. And, make no mistake. This new law has some teeth in it.

"It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both." In addition, a state contractor can lose its public contracts for up to three years, and it can lose any licenses, including its business license, and the right to do business in Mississippi for up to a year.

All third party employers must register with the state employment service before conducting business in the state.

For a copy of the new law, go to:

<http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2900-2999/SB2988PS.pdf>

2. EEOC WILL NOT CHANGE APPLICANT DEFINITION

The Equal Employment Opportunity Commission (EEOC) has published notice that it will not modify the existing definition of job applicant. On March 25, 2008, the Commission said, "The Equal Employment Opportunity Commission (EEOC or Commission) gives notice of its intent to submit the Uniform Guidelines on Employee Selection Procedures (UGESP or Uniform Guidelines),\1\ without change, to the Office of Management and Budget (OMB) for a three-year approval under the Paperwork Reduction Act of 1995 (PRA)."

There had been a battle of sorts between the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor and the EEOC, that reports directly to the White House, over how broad the definition of applicant should be. OFCCP published its "Internet Applicant" definition regulation a couple years ago and has been enforcing its use for some time. The EEOC had attempted to use a definition that did not embrace the need for people to be qualified for the job in question before being considered a job applicant. OFCCP included the need for an individual to possess the necessary qualifications before an employer becomes obligated to treat them as an applicant.

EEOC said in its announcement, "Based on the comments received to the March 4, 2004 PRA document, the EEOC does not intend to finalize the five additional Questions and Answers that include clarification of the definition of 'applicant.'"

This battle, at least, is over.

[SOURCE: Federal Register: March 25, 2008 (Volume 73, Number 58), Notices, Pages 15754-15755, <http://edocket.access.gpo.gov/2008/E8-5903.htm>]

3. RHODE ISLAND NOW REQUIRES EMPLOYMENT VERIFICATION

Donald L. Carcieri, Governor of Rhode Island, has issued an Executive Order that places some new requirements on private employers and state agencies when hiring new workers. The new order requires all state agencies and "all companies, contractors and vendors doing business in the State of Rhode Island to use the federal E-Verify program" to ensure that their employees are legally eligible to work in the state.

Governor Carcieri cited Congress' failure to enact immigration control as the reason for his actions.

http://www.governor.ri.gov/documents/Immigration_Exec_Order_08-01.pdf

Gentle Readers,

Last week, New Jersey joined two other states in offering paid family leave programs to help replace some of an employee's wages while caring for sick family members. Then, we tell you how to get registered for an outstanding affirmative action update program at a location not far from you. Biddle Consulting Group is once again teaming up with Jackson Lewis LLP to bring you the latest information on the subject. Finally, the H-1B visa application box got filled within the first week. No more applications are being accepted for the 2009 fiscal year.

Bill Truesdell
Editor

IN THIS REPORT (Report #469, 4/18/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **NEW JERSEY BECOMES LATEST STATE TO PROVIDE PAID FAMILY LEAVE**
2. **H-1B VISA QUOTA REACHED IN ONE WEEK**
3. **REGISTER NOW FOR 2008 PROFESSIONAL SEMINAR SERIES**

-
1. **NEW JERSEY BECOMES LATEST STATE TO PROVIDE PAID FAMILY LEAVE**

On April 7, 2008, New Jersey Governor Jon S. Corzine signed the state's Paid Family Leave legislation. The new law establishes a family leave insurance fund which will be financed through worker payroll deductions, the same model used by other states.

To date, California and Washington have enacted laws providing for paid family leave. Several other states are in the process of considering such a law. Some states, such as Minnesota, have created laws allowing employees covered by sick leave programs to use up to a certain amount for care of sick family members. Washington and California up to this point have been the only two states that actually offered a "wage replacement" program for some or all of an employee's earnings while on leave for family care purposes.

Washington allows employees up to five weeks of paid leave at a maximum of \$250 per week. California allows public and private employees to collect 55 percent of their regular income, up to a maximum of \$882 per week for six weeks. The new law allows New Jersey workers to collect up to two-thirds of their pay, to a maximum of \$524 a week. Workers can still take the full 12 weeks off if they need it (under the federal Family and Medical Leave Act - FMLA), but the six weeks of paid time runs concurrently.

Now that New Jersey is in the growing group of states providing for such a benefit, it is likely to be held up as one of the models for those other states considering such programs.

Governor Corzine issued a statement about the new legislation saying he supports it wholeheartedly.

<http://www.state.nj.us/governor/news/news/2008/approved/20080407c.html>

2. H-1B VISA QUOTA REACHED IN ONE WEEK

The U.S. Citizenship and Immigration Services (USCIS) announced on April 8, 2008 that it has received enough H-1B petitions to meet the Congressionally-mandated cap for fiscal year 2009. USCIS has also received more than 20,000 H-1B petitions filed on behalf of persons exempt from the cap under the "advanced degree" exemption. Before running the random selection process, USCIS will complete initial data entry for all filings received during the filing period ending on April 7, 2008. Due to the high number of petitions, USCIS is not yet able to announce the precise day on which it will conduct the random selection process.

The cap for 2009 is 65,000 visas in the H-1B category. The 20,000 issued under the exemption are in addition to the cap. The agency will conduct the selection process for "advanced degree" exemption petitions first. All "advanced degree" petitions not selected will be part of the random selection process for the 65,000 limit.

The USCIS press release can be found at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=c5b6628090e29110VgnVCM1000004718190aRCRD&vgnnextchnel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

3. REGISTER NOW FOR 2008 PROFESSIONAL SEMINAR SERIES

Biddle Consulting Group, Inc. and Jackson Lewis LLP will be conducting six one-day seminars in various cities around the country. They will focus on important topics in EEO and Affirmative Action compliance.

Seminar topics will include:

- o Understanding Federal EEO Enforcement Agency Trends
- o How to Prepare for an OFCCP Audit Under the OFCCP's New Rules
- o Update on the Not so New Internet Applicant Rule
- o Leveraging Affirmative Action Goals Into Your Diversity Initiatives
- o I Think My Test is Valid ... Why Do You Ask?
- o Shoring Up for the Coming Tidal Wave of Compensation Claims

Sessions will be held in the following locations:

- o June 3, 2008 - Boston, MA
- o June 5, 2008 - Orlando, FL
- o September 22, 2008 - Chicago, IL
- o September 24, 2008 - Dallas, TX

- o November 4, 2008 - San Francisco, CA
- o November 18, 2008 - Los Angeles, CA

If you are involved with affirmative action issues, you should plan to attend. Early Bird registration fee is only \$495, but you have to beat the deadlines to qualify.

Register by calling Criselda Rivet at 800-999-0438 Extension 109, or by email at crivet@biddle.com . You can probably use this program to meet part of your PHR or SPHR re-certification requirement.

Gentle Readers,

Supervisors in California can breathe a little easier this week since the state Supreme Court has absolved them of personal liability for charges of retaliation. Then, we point you to the opportunity for registering to attend this year's National Industry Liaison Group conference in Anaheim, California. Finally, you may wish to make note of the proposed rule changes from the EEOC regarding the ADEA exemption from liability requiring "reasonable factors other than age (RFOA)" not business necessity.

Bill Truesdell
Editor

IN THIS REPORT (Report #470, 4/25/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **CALIFORNIA SUPREME COURT EXEMPTS SUPERVISORS FROM LIABILITY**
2. **NILG NATIONAL CONFERENCE REGISTRATION NOW OPEN**
3. **EEOC PLANS TO CHANGE RULE FOR AGE DISCRIMINATION EXEMPTION**

1. **CALIFORNIA SUPREME COURT EXEMPTS SUPERVISORS FROM LIABILITY**

In a 4 to 3 decision, the California State Supreme Court on March 3, 2008, issued its opinion in *Jones v. The Lodge at Torrey Pines Partnership* saying supervisors cannot be held personally liable for retaliation under the state's Fair Employment and Housing Act (FEHA).

Jones had sued his employer AND his manager for sexual orientation discrimination and retaliation. The Court said in this ruling that supervisors may not be held personally liable for retaliation. That, they said is liability for the employer. It was ten years ago that the State Supreme Court said in another opinion (*Reno v. Baird*) that supervisors are not to be held personally liable for discrimination under the FEHA, California's equal employment opportunity law.

If supervisors are harassing an employee, they may be held personally liable under current state rules. Harassment is behavior that falls outside the supervisor's job responsibilities and therefore subjects the individual supervisor to liability without protection of the agent relationship.

The Court said it is not wise to place supervisors in a position where they may fear taking disciplinary action against an employee because it could result in their own personal liability for such a decision.

You may obtain a copy of this 54-page opinion at
<http://www.courtinfo.ca.gov/opinions/documents/S151022.PDF>

2. NILG NATIONAL CONFERENCE REGISTRATION NOW OPEN

The Pacific Industry Liaison Group (ILG) will be hosting the 26th annual Industry Liaison Group National Conference from July 29, 2008 through August 1, 2008. The gathering will be held at the Hyatt Regency Orange County in Anaheim, California. The hotel is just a half-mile from Disneyland for anyone who has yet to visit the original Magic Kingdom.

The conference agenda is filled with presentations by key players in the national field of affirmative action management. Here are just a few you will be able to hear:

- o Charles E. James, Sr., National Director of OFCCP
- o Naomi C. Earp, Chair Equal Employment Opportunity Commission
- o John Fox, Esq., Manatt Phelps Phillips, LLP
- o George Chaffey, Council, Littler Mendelson LLP
- o Javid Kaiser, Ph.D., Director of Statistical Analysis, OFCCP
- o Jeffrey Norris, President of the Equal Employment Advisory Council
- o Mickey Silberman, Esq., Jackson Lewis, LLP
- o Cari Dominguez, Immediate Past Chair, Equal Employment Opportunity Commission
- o Richard Fischer, Ph.D., OFCCP Testing Expert
- o Many key industrial leaders from around the country

This will likely be Charles James' final NILG appearance as the National Director of OFCCP. Hear him summarize his views about the accomplishments his agency has made and the work left to be done under a new administration.

Get your reservations in early so you don't miss out. Go to www.pacificilg.org/agenda.htm .

3. EEOC PLANS TO CHANGE RULE FOR AGE DISCRIMINATION EXEMPTION

On the last day of March, the Equal Employment Opportunity Commission (EEOC) published a proposed rule in the Federal Register (March 31, 2008, Volume 73, Number 62, Pages 16807-16809). The change they propose would bring the agency's enforcement stance in line with the U.S. Supreme Court's ruling in *Smith v. City of Jackson* (544 U.S. 228, 2005). In that case the Court held that the Age Discrimination in Employment Act (ADEA) authorizes recovery for disparate impact claims of discrimination. That supported how the EEOC had been operating for some time.

Then, the Court held that the "reasonable factors other than age (RFOA)" test, rather than the business-necessity test, is the appropriate standard for determining the lawfulness of a practice that disproportionately affects older individuals. EEOC has been saying that RFOA is not a defense against disparate impact charges unless it was justified as a business necessity.

The Commission is proposing to revise it's current regulation to state that an employment practice that has an adverse impact on individuals within the protected age group on the basis of older age is discriminatory unless the practice is justified by a "reasonable factor other than age (RFOA)." The proposed revision also states that the individual challenging the allegedly unlawful employment practice bears the burden of isolating and identifying the specific employment practice responsible for the adverse impact.

For a copy of the proposed rule change to <http://edocket.access.gpo.gov/2008/E8-6517.htm> .

Gentle Readers,

This week we hear about a new Florida law permitting firearms in the parking lot, updated regulations related to veterans affirmative action and job posting at state employment services, and new guidelines the EEOC has issued related to veterans with service-connected disabilities.

Bill Truesdell
Editor

IN THIS REPORT (Report #471, 5/2/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **EEOC ISSUES NEW GUIDELINES FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES UNDER ADA AND USERRA**
2. **FLORIDA GOVERNOR SIGNS LAW ALLOWING FIREARMS IN LOCKED VEHICLES AT WORK**
3. **OFCCP UPDATES VEVRAA REGULATIONS FOR JOB LISTING REQUIREMENT**

-
1. **EEOC ISSUES NEW GUIDELINES FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES UNDER ADA AND USERRA**

The Equal Employment Opportunity Commission (EEOC) has posted on its web site two sets of guidelines for employers who hire veterans with service-connected disabilities. These guidelines point out the differences between employer responsibilities under the Americans with Disabilities Act (ADA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

These two separate federal laws provide important protections for veterans with disabilities. USERRA is enforced by the U.S. Department of Labor (DOL) and the ADA is enforced by the EEOC.

If you have veterans with disabilities in your workforce you will want a copy of these two new documents. One document tackles ten key questions about the issues involved. Those include everything from, "How does USERRA differ from the ADA?" to "May an employer give preference in hiring to a veteran with a service-connected disability over other applicants?"

The other document tackles the same issues from the veteran's viewpoint. It explains how to deal with the disability issue when seeking employment and what protections are offered by these laws.

- 1) www.eeoc.gov/facts/veterans-disabilities.html
- 2) www.eeoc.gov/facts/veterans-disabilities-employers.html

2. FLORIDA GOVERNOR SIGNS LAW ALLOWING FIREARMS IN LOCKED VEHICLES AT WORK

After several years of political fighting in the state legislature, the governor was sent H.B. 503 for approval. He signed it into law on April 15, 2008.

The law is scheduled to take effect on July 1, 2008. It allows customers, workers and visitors who have been issued concealed-carry permits to store firearms in their vehicles while those vehicles are locked and on company property. Neither private nor public employers may prevent employees from having firearms in their vehicles under those conditions. Schools, correctional institutions, nuclear power plants, and facilities involved in national defense, aerospace or homeland security, and properties where explosives are legally stored or used are exempt from this law.

Florida is the sixth state to have passed such laws. Other states include Alaska, Kentucky, Minnesota, Mississippi, and Oklahoma.

For a copy of the enrolled legislation go to:

http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0503er.xml&DocumentType=Bill&BillNumber=0503&Session=2008

3. OFCCP UPDATES VEVRAA REGULATIONS FOR JOB LISTING REQUIREMENT

On April 7, 2008, the Office of Federal Contract Compliance Programs (OFCCP) published in the Federal Register its final rule governing the regulations at 41 CFR 60-250 having to do with the listing of job openings with state employment agencies. Until now there has been a difference in requirements between 60-250 and 60-300 which implements the Jobs for Veterans Act (JVA) of 2002.

SUMMARY: This final rule revises the regulations implementing the nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). The regulations in part 60-250 implement the nondiscrimination and affirmative action provisions of VEVRAA prior to their amendment in 2002 by the JVA, and apply to contracts entered into before December 1, 2003. This final rule revises the mandatory job listing provision in the part 60-250 regulations to provide that listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the mandatory job listing requirements under the part 60-250 regulations.

Bottom line, since the disappearance of America's Job Bank last year, all job openings must be listed with the local state employment service where the job will be located. There are three exceptions provided for in the regulations.

- 1) Jobs that are at the senior executive level.
- 2) Jobs that are going to last only 3 days or less.
- 3) Jobs that will only be filled from internal sources.

The regulations covering government contracts prior to December 1, 2003, and those covering contracts following that date are now in sync.

For a copy of the final rule go to:

<http://edocket.access.gpo.gov/2008/E8-7123.htm>

Gentle Readers,

There is a new EEO protection on the horizon if President Bush signs the Genetic Information Nondiscrimination Act as expected. We ask about using the government's E-Verify system for new employees, and then notice a brand new approach to involving shareholders in the executive compensation process.

Bill Truesdell
Editor

IN THIS REPORT (Report #472, 5/9/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **SHOULD YOU USE THE GOVERNMENT'S E-VERIFY SYSTEM?**
2. **NEW EQUAL EMPLOYMENT NONDISCRIMINATION PROTECTION COMING**
3. **A NEW TREND IN EXECUTIVE COMPENSATION METHODOLOGY?**

-
1. **SHOULD YOU USE THE GOVERNMENT'S E-VERIFY SYSTEM?**

There has been a lot of interest lately about the government's E-Verify system. It is a system designed to confirm that documents provided by new employees are accurate for Social Security Number and work authorization visas. Of the 7 million employers in the United States, only about 52,000 are participating in this Department of Homeland Security (DHS) program.

We've prepared a FREE report that you can obtain by going to <http://www.management-advantage.com/products/E-VerifyReport.htm>

In it you will find some advantages for employers who participate in the program, learn if you might be required to participate, and discover some information about the debate raging in Congress now about creating a program to replace E-Verify. Immigration has taken a back seat as a campaign issue, but it is an active issue with lawmakers. The proposal most likely to receive the greatest attention is HR 5515, the New Employee Verification Act (NEVA).

DHS has stepped up its enforcement visits to employer locations. And, some company officers have been arrested on charges of violating federal law by hiring illegal workers.

Is it possible that E-Verify can help? Or, will it be necessary to wait for something more effective in the future? Read our report and draw your own conclusions.

2. NEW EQUAL EMPLOYMENT NONDISCRIMINATION PROTECTION COMING

Coming to an employment location near you...the Genetic Information Nondiscrimination Act of 2007. HR493 was passed by both houses of Congress and on May 1, 2008, it was sent to the White House for President Bush's signature. He is expected to oblige by making the bill an approved law. His signature may be coming as early as next week.

Some states have already banned genetic information in employment decision making and health insurance coverage determinations. Now, once approved by the President, the federal government will have provided that any employer subject to the Civil Rights Act of 1964 (with 15 or more people on the payroll and engaged in interstate commerce) will be subject to this new legislation.

Title I will prohibit discrimination in health insurance & applies HIPAA regulations to genetic information. That means employers will be required to protect genetic information as they protect other medical records, allowing only those with a business need-to-know access to those records.

Title II will prohibit employment discrimination based on genetic information.

Further, employers will be prohibited from intentionally gathering genetic information about employees or job applicants.

For a copy of the 110-page bill, go to <http://thomas.loc.gov/> and enter HR493 in the search box, check "Bill Number" and you will be taken to the bill information.

3. A NEW TREND IN EXECUTIVE COMPENSATION METHODOLOGY?

According to the New York Times, AFLAC on Monday became the first American company to give shareholders a say in its executive compensation program. It asked shareholders to vote on top management's compensation. The outcome? Company investors seem to think the executives are doing a fine job.

Daniel P. Amos has been AFLAC's chief executive officer for the past 18 years. During that time investors have seen their stock value increase 3,000 percent. And, according to the vote outcome, investors don't mind paying Mr. Amos \$11.96 a million compensation package because they have been doing well financially along with him. "There's no question that I make a lot of money," he said in an interview after the stockholder meeting. "But I couldn't be sure that all of our shareholders understood the concept of pay for performance, that I do well only if they do well." Apparently, they understood just fine.

Separately, a group of companies and investors, led by Pfizer, Walden Asset Management and the American Federation of State, County and Municipal Employees, has been working with the Millstein Center for

Corporate Governance and Performance at the Yale School of management to see whether they can forge common ground concerning say on pay.

Say-on-pay votes do not enable shareholders to usurp the compensation committee's authority. They are a retrospective thumbs-up-or-down vote on pay that was awarded the previous year - in other words, a show of confidence or lack thereof in the committee's actions.

Say-on-pay votes have been common in Britain and Australia for several years, and governance experts say they have most likely reined in compensation in those countries.

Is this something that will catch on in the U.S.? Perhaps. It's certain many public companies have been dealing with shareholder resolutions about excessive compensation in their annual meetings.

[SOURCE: The New York Times, May 6, 2008, "AFLAC Investors Get a Say on Executive Pay, a First for a U.S. Company," Claudia H. Deutsch, <http://www.nytimes.com/2008/05/06/business/06pay.html>]

Gentle Readers,

OFCCP is going to end its support center and cease reporting on employer use of America's Job Bank listings. The DOL has posted a new tool for employers, listing reporting and record keeping requirements for 25 federal laws. And, finally, we now know that EEOC will extend EEO-4 and other Standard Form 100 report formats without changing race codes.

Bill Truesdell
Editor

IN THIS REPORT (Report #473, 5/16/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **DOL POSTS NEW WEB SITE TOOL ON RECORDKEEPING & REPORTING**
2. **EEOC SEEKS COMMENTS ON PROPOSED EXTENSION TO FORM 100s**
3. **OFCCP WILL END ITS ALJ SUPPORT CENTER ON JUNE 30, 2008**

-
1. **DOL POSTS NEW WEB SITE TOOL ON RECORDKEEPING & REPORTING**

The U.S. Department of Labor (DOL) has added a new "FirstStep" elaws advisor to help employers comply with federal Recordkeeping, Reporting and Notices. The idea is to help employers determine which of the major laws enforced by DOL require their attention.

Those laws include:

- o Black Lung Benefits Act
- o Consumer Credit Protection Act
- o The Contract Work Hours and Safety Standards Act
- o The Copeland "Anti-Kickback" Act
- o The Davis-Bacon and Related Acts (DBRA)
- o The Employee Polygraph Protection Act (EPPA)
- o Employee Retirement Income Security Act (ERISA)
- o Executive Order 11246
- o Executive Order 13201 (The Beck Poster)
- o The Fair Labor Standards Act (FLSA)
- o The Fair Labor Standards Act (FLSA)/Child Labor
- o The Family and Medical Leave Act (FMLA)
- o The Federal Mine Safety and Health Act
- o The Immigration and Nationality Act
- o Labor-Management Reporting and Disclosure Act (LMRDA)
- o The Longshore and Harbor Workers' Compensation Act (LHWCA)
- o The McNamara-O'Hara Service Contract Act (SCA)
- o The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
- o The Occupational Safety and Health (OSH) Act
- o The Rehabilitation Act of 1973, Section 503

- o Uniformed Services Employment and Reemployment Rights Act (USERRA)
- o Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)
- o The Walsh-Healey Public Contracts Act
- o Whistleblower Protection Provisions
- o Worker Adjustment and Retraining Notification Act (WARN)

All you have to do is check the box on DOL's web site corresponding to the law you wish to know more about and you will be taken to a page that details the type of information you must document and retain in order to comply with requirements.

If you are a medium-sized employer, this process can take some time, and the result will be a very long list of documentation you are required to maintain. It's probably better to spend the time learning if you don't already know what is on that list.

This is a good resource for HR professionals and you should bookmark the page in your web browser.

Go to <http://www.dol.gov/elaws/FirstStepRRN.htm>

2. EEOC SEEKS COMMENTS ON PROPOSED EXTENSION TO FORM 100s

The Equal Employment Opportunity Commission (EEOC) announced on April 18th plans to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of existing information collection for its EEO-3 Local Union Report, EEO-4 State and local Government Information Report, and EEO-5 Elementary-Secondary Staff Information Report (73 Fed. Reg. 21,132, OMB Control Nos. 3046-0006, 3046-0008, 3046-0003).

This confirms our previously published opinion that there would not be any changes to the race categories beyond those made on the EEO-1 for Private Sector employers. Public Sector employers, school districts and local unions will have to track race categories as they always have. Employees who wish to use the "2 or more races" category will have to also choose one of the traditional categories, or the employer will have to choose for them. Reporting will be done in the traditional race/ethnic categories. The new "Hawaiian and Pacific Islander" race category will also have to be ignored.

Written comments will be accepted until June 17, 2008 by Stephen Llewellyn, executive officer, executive secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W., Washington, DC 20507. Comments may also be submitted electronically at <http://www.regulations.gov> . Additionally, comments totaling six or fewer pages may be faxed to 202-663-4114.

[SOURCE: The Bureau of National Affairs, Inc., EEOC Compliance Manual, Number 355, April 30, 2008, www.bna.com]

3. OFCCP WILL END ITS ALJ SUPPORT CENTER ON JUNE 30, 2008

Following the phase-out of America's Job Bank (AJB) on July 1, 2007, the US Department of Labor's Employment and Training Administration continued to operate a service center to respond to inquiries from employers requiring assistance to comply with Office of Federal Contract Compliance Programs (OFCCP) reporting requirements. Reports will continue to be available until June 30, 2008 when the service center will cease operations. Federal Contractors who used AJB for the OFCCP recruitment activities are encouraged to request a comprehensive compliance report well before the service center ceases operation. Requests for reports should be sent to ajb@labor.state.ny.us .

Gentle Readers,

Big news this week...the VETS-100 form has had revisions finalized. And, the Genetic Information Nondiscrimination Act (GINA) has been signed by President Bush. Employers have 12 to 18 months to make sure their systems comply with these new requirements and prohibitions.

Bill Truesdell
Editor

IN THIS REPORT (Report #474, 5/23/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

- 1. VETS-100 CHANGES FINALIZED**
- 2. PRESIDENT SIGNS GENETIC NON-DISCRIMINATION BILL**

1. VETS-100 CHANGES FINALIZED

On Monday, May 19, 2008, the Veterans' Employment and Training Service (VETS) in the U.S. Department of Labor, issued its final regulations, updating the VETS-100 report. Most federal contractors must file a VETS-100 report each year. It contains information about the known employees who have experience in the uniformed services of the United States.

In 2002, Congress passed the Jobs for Veterans Act (JVA). That legislation changed the categories and definitions of veterans that government contractors are required to track in their workforce and now the VETS-100 form has been updated to match those updated categories. New regulations have been added at 41 CFR 61-300 to cover this updated form content. Federal contractor affirmative action obligations for veterans under the JVA are described at 41 CFR 60-300.

The new categories for veterans are:

- o Disabled Veterans
- o Other Protected Veterans
- o Armed Forces Service Medal Veterans
- o Recently Separated Veterans

You may notice that Vietnam Era Veterans are no longer singled out in a separate category. Those employees who identify themselves as Vietnam Era Veterans will likely be included in one of the new categories, depending on their circumstances.

For a copy of a PDF version of the Federal Register posting of this final announcement, see "What's New" on the right-hand menu of any HR

Web Store page. Or, simply go to <http://www.management-advantage.com/products/whatsnew.htm>

Thanks to John C. Fox, Esq., at Manatt, Phelps and Phillips, LLP for alerting us to this latest development. John can be reached for legal advice at jfox@manatt.com. If you're an affirmative action employer and not one of his clients, you should talk with him about getting on his client list. You'll be well served.

2. PRESIDENT SIGNS GENETIC NON-DISCRIMINATION BILL

On Wednesday, May 21, 2008, President Bush signed into law the bill sent to him by Congress only 20 days earlier. There are some specific restrictions for employers and insurance companies. Here's a quick summary...

- o Employers are generally prohibited from gathering, or purchasing, genetic information about employees or employees' family members
- o Employers are prohibited from making employment decisions using genetic information about applicants, employees or their family members
- o If state laws offer greater protection than this new federal legislation, the state law will prevail

"Family members" are defined as spouse, dependent child, parent, grandparent or great-grandparent.

The bill was specifically targeted at insurance industry practices of using genetic information when making decisions about applications for medical coverage. The new law prohibits an insured or self-insured health care plan from denying eligibility for health care coverage based on genetic information about the individual or a family member. Health insurance rates may not be adjusted based on genetic information of the individual or family members. If a health plan participant is denied continuing coverage because of genetic information, the law now provides for a penalty of \$100 per day for the period of time the individual is not covered, and reinstatement back to the date of original break in coverage. Plans can now be fined a minimum of \$2,500 up to a maximum of \$15,000 for a "de minimis" violation. For multiple violations the maximum penalty is \$500,000. These group health plan provisions will become effective in May 2009, a year after the President's signature.

All employment provisions of the law will become effective in November 2009, 18 months after the President's signature.

For a copy of the 110-page bill, go to <http://thomas.loc.gov/> and enter HR493 in the search box, check "Bill Number" and you will be taken to the bill information.

Gentle Readers,

This week, the U.S. Supreme Court has weighed in on "retaliation" issues, the DOL proposes new rules for H-2B visas and the EEOC has posted its 2006 summary for data from the EEO-1 report.

Bill Truesdell
Editor

IN THIS REPORT (Report #475, 5/30/2008)

CELEBRATING OVER 20 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **SUPREME COURT POSTS TWO OPINIONS ABOUT RETALIATION**
2. **DOL PROPOSES RULES TO MODERNIZE H-2B VISA PROGRAM**
3. **EEO-1 STATISTICS OUT FOR 2006**

1. **SUPREME COURT POSTS TWO OPINIONS ABOUT RETALIATION**

On May 27, 2008, the U.S. Supreme Court issued its opinion in two cases dealing with retaliation issues. In each, the Court said retaliation is a valid issue and should be allowed protection.

In the first case, a postal worker claimed she was retaliated against after she filed an administrative ADEA complaint. The First Circuit Court of Appeals said that the Age Discrimination in Employment Act prohibits discrimination based on age, but does not cover retaliation. The Supreme Court disagreed and reversed the ruling of that appeals court.

<http://www.supremecourtus.gov/opinions/07pdf/06-1321.pdf>

In the second case, a black employee of CBOCS West, Inc. complained to his managers that one of his co-workers was dismissed because he was black, in violation of nondiscrimination laws. Following that he was terminated by the employer and he claimed that was retaliation for his expression of concern. The Supreme Court agreed with him.

<http://www.supremecourtus.gov/opinions/07pdf/06-1431.pdf>

2. **DOL PROPOSES RULES TO MODERNIZE H-2B VISA PROGRAM**

On May 22, 2008, the U.S. Department of Labor (DOL) issued a proposal to modernize the application process and enhance worker protections under the H-2B temporary labor certification program.

When a shortage of U.S. workers is demonstrated, the H-2B program makes it possible for employers to apply for temporary, non-agricultural foreign workers to fill their temporary or seasonal needs.

While the DOL has authority over the way the H-2B visa program is constructed, the Department of Homeland Security (DHS) has authority over immigration enforcement that impacts this and other visa programs.

For more information and a link to the Federal Register posting of the proposed rule, go to <http://www.dol.gov/opa/media/press/eta/eta20080709.htm> .

3. EEO-1 STATISTICS OUT FOR 2006

The Equal Employment Opportunity Commission (EEOC) has released its data report for the 2006 EEO-1 report of the Private Sector. In addition to EEO-1, there are other Standard Form 100 reports that capture information about Labor Unions, the Public Sector (State & Local Governments) and educational institutions from elementary to college.

It's interesting to just play with numbers to see what they might tell us. Let's take California as an example.

The California Employment Development Department (EDD) estimates the state's population in 2007 was 37,662,518. 49.7% of those folks were men and 50.3% were women. That total population number was 11.2% higher than the Census 2000 level.

California's Civilian Workforce in 2007 was 17,602,073, just 47% of the state's population. Less than half of the state's residents were counted among civilian workers.

Then, we look at the EEO-1 report. In September, 2006 (only a few months prior to 2007) the EEO-1 report captured 4,631,589 people. That is only 26% of the Civilian Workforce in the state. And it is only 12% of the state's population.

In 2006, nearly 50,000 employers nationwide with more than 55 million employees filed EEO-1 reports. All private sector employers with 100 or more workers on the payroll and all government contractors with 50 or more people on the payroll must file EEO-1 reports annually.

It is quite clear that the private sector is contributing quite well to the economic health of the state. The same can probably be said for the country as a whole.

For your copy of the 2006 EEO-1 data summary reports, go to <http://www.eeoc.gov/stats/jobpat/jobpat.html> .

Gentle Readers,

Data breaches involving sensitive employee/retiree or consumer information are occurring with greater frequency these days. Some employers, because they are either not aware of legal requirements, or don't really care, are slow to take action to even notify people whose data was lost. We offer some thoughts and a list of state compliance requirements you will want to use. Then, some breaking news about a new requirement for federal contractors to use the government's E-Verify system. Finally, you may have an interest in our comments to the DOL about OFCCP's request to extend approval for its scheduling letter without changes. We object.

Bill Truesdell
Editor

IN THIS REPORT (Report #476, 6/13/2008)

CELEBRATING OVER 21 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **OFCCP ASKS FOR COMMENTS ON REQUEST TO EXTEND SCHEDULING LETTER**
2. **ALL FEDERAL CONTRACTORS NOW REQUIRED TO USE E-VERIFY**
3. **DO YOU KNOW REQUIREMENTS FOR NOTIFICATION IF YOU HAVE A DATA SECURITY BREACH?**

-
1. **OFCCP ASKS FOR COMMENTS ON REQUEST TO EXTEND SCHEDULING LETTER**

On May 6, 2008, the Office of Federal Contract Compliance Programs (OFCCP) posted a notice in the Federal Register soliciting comments on its request to extend its compliance evaluation scheduling letter without any changes. The extension requested would last for three years.

As you know, the Scheduling Letter has an addendum attachment containing 11 data items that OFCCP wants to have submitted with the AAP documents. Item #11 seeks compensation data. That has been a point of contention for many years. The problem has always been finding a way to accurately use statistical significance testing on data elements that contain very small populations. OFCCP hired statisticians and testing experts to develop protocol it could apply to contractors' compensation data in its effort to identify those employers who are illegally discriminating. The remedies have netted OFCCP an opportunity to collect in excess of \$50 Million in the last fiscal year.

Unfortunately, the agency did not seek approval for all the data

demands it has continued to make. As a result, we have prepared a response to OMB and the Department of Labor that objects to extension of the scheduling letter because of OFCCP's unauthorized behavior. Whether you agree or not, you might like to read our comments. You can get a copy of the letter in PDF format at <http://www.management-advantage.com/products/whatsnew.htm> .

If you would like to submit your own comments, you may address them to Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Avenue NW, Room S3201, Washington, DC 20210. Input must be received by July 7, 2008.

2. ALL FEDERAL CONTRACTORS NOW REQUIRED TO USE E-VERIFY

June 6, 2008, is the magic date. That is when President George W. Bush signed an amendment to Executive Order 12989 making it mandatory for all federal contractors to use the government's E-Verify program to confirm new employees have a legal right to work in this country. E-Verify as we have told you previously (Special Report for HR Professionals #472, 5/9/2008, <http://www.management-advantage.com/products/E-VerifyReport.htm>) was designed as a voluntary program. It is soon going to be mandatory for federal contractors. <http://www.whitehouse.gov/news/releases/2008/06/20080609-2.html>

Currently nine states have made it mandatory for employers to use the E-Verify system. And, the Society for Human Resource Management's (SHRM) president, Sue Messinger, testified before Congress last month in opposition to the current E-Verify program. She supported a more rigorous form of verification system already in place in the states that track parents who are delinquent in child support payments. http://www.shrm.org/hrnews_published/archives/CMS_025535.asp

This new requirement for federal contractors will likely apply to ALL businesses with goods and services contracts. All contracting officers in the federal government are now responsible for including in their contracts the requirement that the vendor use an employment verification system designated by the Secretary of Homeland Security. That designation is currently E-Verify.

According to Littler, a national employment and labor law firm, "These requirements will become effective once an implementing regulation is published by the government. A Proposed Rule is expected to be published in the Federal Register in the next two weeks. The Rule should clarify at least two major issues identified with the Executive Order:

1. Whether the Executive Branch intends the amended provisions to apply only to new Federal contracts going forward, or whether a policy will be developed to implement the requirement for all contacts already in existence; and
2. ...employers [will be required] to use E-Verify even for already-existing employees, if those employees will be assigned to work under the federal contract. However, the E-Verify program itself

specifically instructs that employers can use the program only for new hires."

For more from Littler's report go to:

<http://www.littler.com/presspublications/index.cfm?event=pubItem&pubItemID=19147&childViewID=249&type=all§ion=Press%20%20Publications&subject=ASAPs>

If you do not currently use the E-Verify system, and you have contracts with the federal government, you should immediately speak with your attorney and request guidance for your particular situation. Chances are, you will be able to wait until the regulations come forth before jumping into the registration process. Yet, it would be a good time to learn all you can about the E-Verify system and get your organization ready for the inevitable. When you register for E-Verify you are required to agree to very broad government access to your employment records. That has been one of the employer objections to this current system.

3. DO YOU KNOW REQUIREMENTS FOR NOTIFICATION IF YOU HAVE A DATA SECURITY BREACH?

At least 43 states, the District of Columbia and Puerto Rico have enacted legislation requiring notification of security breaches involving personal information. It seems that we read about another incident every day or two. And, they are not small issues.

Data thieves often gain access to information in one or both of the following ways:

- o Hacking into (or using passwords) to access databases on employer's host computers.
- o Stealing laptop computers that have been carelessly left in vehicles, at airports, and other public places.

A surprising number of these incidents involve contractors and consultants who behave badly and offer prime targets to thieves. In one specific incident less than a year ago, AT&T hired a contractor to analyze benefit information and provided the consultant with a data file containing the social security numbers, names, addresses and other personal information for every retired worker who was still living at the time. The consultant put this information on a laptop computer (so it could be used conveniently) and proceeded to have the computer stolen from a vehicle where the laptop was left unaccompanied. Records for thousands of retirees were on that machine. In its notice to retirees the company said, "you need not be concerned because the data was in a password-protected file."

According to an article by Rita Zeidner a senior writer for HR Magazine examples of other incidents include:

- o The theft of a laptop containing the personnel information, including names, dates of birth and social security numbers of employees of Harrisonburg (Pennsylvania) City Schools. The computer

was stolen from an insurance vendor's car.

- o A breach in an Oklahoma State University computer server exposed names, addresses and social security numbers of about 70,000 students, staff and faculty who bought parking and transit services permits in the past six years.

- o About 13,000 employees of the pharmaceutical firm Pfizer Inc., including about 5,000 from Connecticut, had their personal information compromised when a company laptop and flash drive were stolen.

(http://www.shrm.org/hrnews_published/articles/CMS_025651.asp)

[SHRM.org website article, "Data Breach Message Not Always Reaching Consumers"]

Consumer information losses can involve credit card or debit card numbers, personal identification numbers (PINs), merchant account numbers, and in some instances, even social security numbers.

In some cases, the reaction from employers who lose this type of information is a big ... YAWN. They seem to think that such happenings are just a risk of doing business these days. There is little contrition expressed to those whose data has gone missing. And, in some cases, employers are not even aware that they may have a legal obligation to notify every individual whose personal and private information has been breached.

Do you know what the requirements are in your state? Do you have an Emergency Action Plan that you can implement immediately if such a tragedy occurs to your organization and its people? How much are you willing to spend to protect your people from identity theft should the data go missing all of a sudden...even if it's not your organization's fault?

When AT&T realized its data was stolen, it sent a letter to all retirees explaining that the computer was taken. There was little information about the circumstances and there was no email address, office location address, or telephone number for the person who signed the letter. The company did offer to pay for a 12-month subscription to Equifax and it listed an 800 telephone number it said retirees could call to obtain more information. When called, no one at that number even knew of the problem.

In conclusion, HR professionals should be able to do two things right away if they discover a breach in sensitive employee data:

- 1) Implement the company's Emergency Action Plan for Data Breaches - that should include notification of customers, employees or retirees whose records have been compromised with enough detail to satisfy basic communication needs. There should also be a valid contact point offered if additional information is desired.

- 2) Terminate any employee or contractor/consultant who is responsible for the stolen laptop computer and resulting data loss. There should be no excuse for handling data in a way that subjects it to theft. Personal and confidential information should be treated and guarded like bullion from Fort Knox.

Do nothing, and before long, there will be a critical mass of individuals affected by this problem that Congress will be pressured to put some civil and criminal sanctions into effect against those responsible for data loss.

If you don't know what your state requires in its notification regulations, you will find the list of states that currently have requirements listed here:

<http://www.ncsl.org/programs/lis/cip/priv/breachlaws.htm> (The National Conference of State Legislatures)

Do you have a story to tell about data theft? Write to us and let us know what you have experienced. (newsletter@management-advantage.com)

Gentle Readers,

We tell you about a new Supreme Court ruling for public employers that makes it easier for them to decide on personnel actions without the fear of winding up in court because of unequal treatment when the class of employees only numbers one. And, then the DOL has reorganized its web help offerings for small employers into "First-Step" access points for key issues. Finally, we share some insight from our friend Joni Daniels about office politics.

Bill Truesdell
Editor

IN THIS REPORT (Report #477, 6/20/2008)

CELEBRATING OVER 21 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **SUPREME COURT BLOCKS PUBLIC EMPLOYEE DISCRIMINATION LAWSUITS BY A "CLASS OF ONE"**
2. **DOL REORGANIZES WEB HELP FOR SMALL EMPLOYERS**
3. **IT'S ALL POLITICS**

-
1. **SUPREME COURT BLOCKS PUBLIC EMPLOYEE DISCRIMINATION LAWSUITS BY A "CLASS OF ONE"**

It's an important case for public employers such as cities, counties, special districts and the like. On June 9, 2008, the United States Supreme Court published its ruling in a case that said in essence, managers and supervisors of public employers should not face the fear that every personnel decision they make will wind up being a federal case. In fact, Chief Justice Roberts, who wrote the majority opinion, said "...the Court is guided, as in the past, by the 'common-sense realization that government offices could not function if every employment decision became a constitutional matter.'"

In this case, Engquist was an Oregon public employee. She filed suit against her agency, her supervisor, and a co-worker claiming she had been discriminated against based on her race, sex, and national origin, and she also brought a so-called "class-of-one" claim, alleging that she was fired not because she was a member of an identified class, but simply for arbitrary, vindictive, and malicious reasons.

The Court writes, "The class-of-one theory of equal protection does not apply in the public employment context." Further, it said, "Recognition of a claim that the State treated an employee differently from others for a bad reason, or for no reason at all, is simply contrary to the at-will concept. The Constitution does not require repudiating that familiar doctrine...The Equal Protection Clause does not require '[t]his displacement of managerial discretion by judicial supervision.'"

[SOURCE: Engquist v. Oregon Department of Agriculture et al, No 07-474, June 9, 2008, <http://www.supremecourtus.gov/opinions/07pdf/07-474.pdf>]

2. DOL REORGANIZES WEB HELP FOR SMALL EMPLOYERS

The U.S. Department of Labor (DOL) has created new access points for employers that want help with understanding federal employment laws, recordkeeping and reporting requirements and poster requirements. Called "FirstStep" access points, they offer summaries for each of these three areas of interest.

If you are an employer that is curious about what federal posters you are required to have or what federal legislation you might be subject to, this will help you identify those obligations. Be aware as you use these tools, however, that they apply to federal requirements only. All of the state requirements you must comply with are layered on top of the federal requirements.

To access these "FirstStep" tools, go to www.dol.gov/elaws/firststep/ .

If you would like to order laminated posters containing all required displays for your state and the federal government, go to <http://www.management-advantage.com/products/posters.htm> . We are currently taking orders that will be shipped when the new Family and Medical Leave Act poster updates have been released by the DOL. The Department had originally promised to release content requirements for that poster by the end of May. Now they are estimating late summer or early fall. Why not let us put you on the list of orders to be filled when the new information becomes available?

3. IT'S ALL POLITICS

By Joni Daniels

In the workplace, almost everyone competes for things: opportunities, money, customers, resources, and promotions, face time with colleagues, prestige, recognition, advancement, and power. Because so many people plot and scheme, it illustrates the truth about politicking - it works.

When it comes to the political game, people can be divided into three types:

The IDEALIST - focused on work. They don't like politics, work hard, follow the rules, try to do what is 'fair' and 'right,' and feel frustrated when decisions made are not 'fair' or 'right.' They end up sounding like organizational martyrs, griping about how unfair things are.

The SCHEMER - often arrogant, sometimes a bully and always with a clear focus on what is best for them. They climb over others, manipulate, deceive and exploit people and situations to get the upper hand.

The PRAGMATIST - respects the rules and gets that the unofficial rules of politics can be more important. They know that decision makers have both personal and professional buttons that need to be pressed.

Politicking describes the act of examining business relationships and learning how to influence others more effectively. It means using informal AND formal channels and that isn't always a bad thing. Understanding politics and knowing how to exert a little influence can help you pull people together and achieve outcomes that are in the firm's best interest.

Office politics is a lot like the national political scene. You can play the game, learn to play it well, or get left behind. It's completely up to you.

Nationally recognized consultant, trainer, author and professional speaker [Joni Daniels](http://www.jonidaniels.com) has helped thousands of people become empowered about accomplishing their professional and personal goals. She is a sought after resource for Fortune 500 clients, professional organizations, higher education, and business publications. Sign up for her free quarterly newsletter at www.jonidaniels.com/newsletter.html.

Gentle Readers,

The NLRB has announced it will post its Board actions and ALJ decisions online. And, we take another crack at the subject of test validation as it applies to the employment process. Finally, some words that have lost their meaning and others you may wish to use instead.

Bill Truesdell
Editor

IN THIS REPORT (Report #478, 6/27/2008)

CELEBRATING OVER 21 YEARS OF SERVING CLIENTS JUST LIKE YOU!

1. **NLRB TO ISSUE FINAL BOARD AND ALJ DECISIONS ONLINE**
2. **REVISITING EMPLOYMENT TESTING**
3. **WHAT OUR WORDS SAY ABOUT US**

-
1. **NLRB TO ISSUE FINAL BOARD AND ALJ DECISIONS ONLINE**

On June 6, 2008, the National Labor Relations Board (NLRB) announced the beginning of a pilot project to issue decisions of its Board and Administrative Law Judges (ALJ) in online format. It is hoping to reduce its costs and provide more rapid and wider distribution of the materials through electronic means. They call this "E-Issuance."

Decisions will be issued at the close of each business day by being listed on a daily "docket sheet" posted on the NLRB website at www.nlrb.gov. The full text of Board and ALJ decisions will be posted on the NLRB website at 2:00 p.m. Eastern Time the first business day following posting of the docket sheet.

For parties to actions heard by the Board, if they voluntarily elect to be notified electronically, the text of the Board or ALJ decision will be available to them the day before the decision is posted and publicly available on the NLRB website. Parties who do not register for "E-Service" will continue to receive formal service of the Board's or ALJ's decision by traditional means, usually via U.S. Mail.

The pilot will be implemented in two stages, beginning in July 2008. In the first stage, parties will be allowed to opt in to the pilot program by registering for E-Service. During this registration period, parties to cases currently pending before the Board or the Division of Judges will receive a mailing from the Agency with instructions regarding how to register for E-Service. Registration will be optional.

The second stage will begin in August 2008, when the Board will launch E-Issuance of all final Board and ALJ decisions. Parties who have registered for E-Service will then begin to receive, simultaneously with the posting of the docket sheet on the NLRB website, formal notice of the Board's or ALJ's decision in their case(s) via email with an immediate electronic link to the text of the decision.

For a copy of the NLRB announcement go to
http://www.nlrb.gov/shared_files/Press%20Releases/2008/R-2661.pdf

2. REVISITING EMPLOYMENT TESTING

What is it that employers want most in an employee?

The answer is, "A good match to the job requirements." If we have a good match to job requirements we are much more likely to get satisfactory performance from an incumbent. But, some employers still insist on using selection criteria that have no relationship to the job requirements.

In April 2007, FedEx agreed to settle a massive class action law suit by employees for a total of \$55 million. It is one of the largest settlements in such a case. One of the key agreements the company made was to stop using a "Basic Skills Test" as a screening device for promotions. (See this article for more on the settlement: <http://www.law.com/jsp/article.jsp?id=1176195854483>) The case data pointed out that only 47 percent of blacks and 62 percent of Latinos pass the Basic Skills Test, as compared with 86 percent of white employees. That shouldn't have taken a lawsuit to determine.

We don't wish to put FedEx in a bad light. It is not the only employer being caught up in such charges.

o June 2005 Ford Motor Company settled a race discrimination complaint in which African American hourly employees at Ford alleged they were denied skilled trades apprenticeships based on a written application test that had a disparate impact on them. A class of about 3,400 African Americans nationwide received \$8.55 million. In December 2007, Ford settled another case brought by African American applicants who said they were screened out of an apprentice program illegally. The National United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) was also a defendant in the case because the test was used to select apprentices in the Ford-UAW Joint Apprenticeship Program and the lawsuit settlement affects people covered by the union agreement.

o November 2005 Dial Corporation settled its case of disparate impact brought by women who said they were screened out of jobs by a physical strength test. Cost to the company...\$3 million.

The Equal Employment Opportunity Commission (EEOC) has offered for quite some time its recommendations about how to handle the testing of employment screening devices so such problems can be avoided.
http://www.eeoc.gov/policy/docs/factemployment_procedures.html

Is it any wonder that the big publicity goes to large employers with "deep pockets?" That doesn't exempt smaller employers from the risk of EEOC lawsuit, however.

Here's the deal...

If you use a test of any kind in your employment selection process, you must be able to prove that it is 1) a valid selection tool for the job you are using it on, and 2) that it does not have a disparate impact on any group in the selection process. That means, in basic terms, that it cannot screen out minorities or women at a rate greater than it screens out men or non-minorities. And, all of that is proven by statistical analysis. So, if you purchase and use a paper-and-pencil test as a way to screen candidates for one or more of your jobs, be sure you can prove that the test has validity for your job application. The test publisher should offer to help you with that. If you use a test your organization has created internally, you still have responsibility for assuring it is valid for your application. You will find all of the rules and guidelines about how to do that in federal regulations at 41 CFR 60-3.5. The "Uniform Guidelines on Employee Selection Procedures" have been with us since 1978 and require all employers with 15 or more people on the payroll, who engage in interstate commerce, to perform statistical testing on their employment data every year. Interstate commerce may mean that you purchase goods from someone in another state or that you sell your goods or services to someone in another state. That captures a lot of employers in these days of Internet commerce.

Demonstrating that your employment process doesn't discriminate against any race, ethnic group, or gender is your responsibility. It is one of the key functions performed by modern HR professionals. Remember, everyone has a race. And, gender includes men as well as women. If you have questions about all of the statistical analysis necessary, we suggest you invest in a copy of Dr. Dan Biddle's book, "Adverse Impact and Test Validation." You will find it at <http://www.management-advantage.com/products/AdverseImpactBook.htm> .

If you are looking for someone to help you perform the analyses, give us a call at 888-671-0404 and we can set up a consulting agreement.

3. WHAT OUR WORDS SAY ABOUT US

If you listen to general conversation around you chances are you will hear some people saying things like, "That was awesome!" and, "Brilliant!" They are really saying they think the idea is worthy of praise. But, since the words they use are now so over used and mis-used, they have lost their original meanings. This is an example of people speaking by habit. Over using words like these suggest that people who say them aren't really thinking about their communication.

o Awesome means extremely impressive or daunting, inspiring great admiration, apprehension, or fear. Thus, the Grand Canyon is awesome but your new shoes are not.

o Brilliant literally means very bright or radiant, and when applied to a person can mean outstandingly clever. So your brother may be a brilliant scholar, but the fact that he is coming to dinner is not brilliant.

Instead of saying "awesome," next time try to say "great," "inspiring," "admirable," or even "nice." Rather than "brilliant," see if you can't substitute words such as "clever," "radiant," "smart," or "erudite."

Next...how often have you heard this exchange: "Thank you." "No problem." Just when did "No problem" become the equivalent of "You're welcome?"

Our friend Helen Wilkie has made it her business to work with people to improve communication. She offers us some helpful hints about words that haven't yet lost their meanings that we might wish to consider using in our own communications. See her suggestions for unspoiled words at <http://www.masteringbusinesswriting.com/Words.html>

INDEX

"FirstStep" elaws advisor.....	63	Central Intelligence Agency	23
"Hawaiian and Pacific Islander" race category.....	64	Chaffey, George.....	55
AB 392	12	Chau, Jou	42
<i>Accrued Sick and Safe Leave Act of 2007</i>	43	Child labor.....	63
Active Duty Leave.....	20	CHMD Meridian Healthcare	39
ADA	6, 57	<i>Civil Rights Act of 1964</i>	61
ADEA.....	8, 54, 55, 68	CMCE.....	35
Administrative Law Judges	<i>See</i> ALJ	Code of Business Ethics & Conduct.....	8
Adverse Impact Toolkit.....	13	Cold weather dangers	23
Affirmative Action	4	Commercial aircraft.....	14
AFLAC.....	61, 62	Communi-keys	17
<i>Age Discrimination in Employment Act</i>	<i>See</i>	<i>Compassionate Use Act of 1996</i>	22
ADEA		Connecticut.....	40, 73
Airline pilots.....	14	<i>Consumer Credit Protection Act</i>	63
Alabama	5, 43	<i>Contract Work Hours and Safety Standards Act</i>	
Alaska.....	58	63
ALJ.....	6, 7, 63, 65, 78, 79	<i>Copeland "Anti-Kickback" Act</i>	63
American Bar Association.....	3	Corporate Management Compliance Evaluation	
American Federation of State, County and		<i>See</i> CMCE
Municipal Employees	61	Corzine, Governor Jon S.	51
<i>Americans with Disabilities Act</i>	<i>See</i> ADA	Daniels, Joni	6, 75, 76, 77
America's Job Bank	58, 63, 65	Data breaches	73
Amos, Daniel P.....	61	<i>Davis-Bacon and Related Acts</i>	63
Applicant definition.....	48, 49	Department of Defense.....	40
Applicant Tracker.....	13	Department of Fair Employment and Housing	
Arizona.....	11	<i>See</i> DFEH
Armed Forces Service Medal Veterans	66	Department of Homeland Security	<i>See</i> DHS
AT&T.....	72	Department of Labor	<i>See</i> DOL
Australia	62	Deutsch, Claudia H.....	62
Baby-Boomers.....	27	DFEH.....	19
Barker, Constance	43	DHS	11, 60, 69
Basic Skills Test	79	Dial Corporation.....	79
Beck Poster.....	63	Director of Statistical Analysis....	<i>See</i> Kaiser, Dr.
Bell, Hazel M.	71	Javaid	
Best employers	23	Disabled job candidates	32, 39, 40
Biddle Consulting Group.....	51, 52	Disabled Veterans.....	66
Biddle, Dr. Dan	80	Disneyland.....	55
<i>Black Lung Benefits Act</i>	63	District of Columbia	40, 72
Book light.....	13	Diversity Lexicon	18
Britain.....	62	DOL.....	4, 5, 6, 20, 26, 32, 39, 40, 57, 63, 64, 68, 69, 70, 75
Bulletin on Preventing Dust Fires and		Dominguez, Cari.....	55
Explosions	46	Earp, Naomi C.	55
Bureau of National Affairs	36, 64	East Carolina University.....	31
Bush, President George W. 11, 12, 14, 15, 20, 28,		EDD <i>See</i> Employment Development Department	
60, 61, 66, 67		Educational institutions from elementary to	
California... 4, 5, 6, 12, 18, 19, 20, 21, 40, 42, 51,		college.....	69
54, 55, 69		EEO-1	6, 35, 64, 68, 69
California State Supreme Court.....	22, 54	EEO-3 Local Union Report	64
Call Center (EEOC).....	4, 35, 36	EEO-4 State and local Government Information	
Capell & Howard.....	43	Report	64
Carcieri, Governor Donald L.....	50	EEO-5 Elementary-Secondary Staff Information	
<i>Careers & the disABLED</i> magazine	23	Report	64
Caregiver Leave	21		

EEOC	4, 5, 6, 8, 14, 18, 26, 29, 35, 36, 37, 38, 42, 43, 48, 49, 54, 55, 57, 63, 64, 68, 69, 79, 80	Gentle Readers...	8, 11, 13, 14, 18, 20, 23, 26, 29, 32, 35, 37, 39, 42, 45, 48, 51, 54, 57, 60, 63, 66, 68, 70, 75, 78
EEOC BUDGET	28	Georgia	6, 40
EEOC Compliance Manual	36, 64	Greenhouse, Steven	30
E-Issuance	78, 79	Guidelines on Employee Selection Procedures	13, 49, 80
Emergency Action Plan.....	73	H.B. 503, Florida	58
<i>Employee Polygraph Protection Act</i>	63	H-1B visa.....	51
<i>Employee Retirement Income Security Act</i>	<i>See</i>	H-2B visas	68
ERISA		Hawaii	40
Employment and Training Administration.....	65	Health Care System	45
Employment Development Department	19, 69	HIPAA.....	61
<i>Employment Protection Act</i> (SB2988)	48	HR Magazine.....	72
<i>Engquist v. Oregon Department of Agriculture</i>	76	HR Web Store.....	4, 5, 11, 13, 67
EO Survey	<i>See</i> Equal Opportunity Survey	IBM	23
Equal Opportunity Publications, Inc.	23	ICE.....	32
<i>Erie County Retirees Association v. County of</i> <i>Erie</i>	8	Idealist	76
ERISA	34, 63	Illinois.....	40
E-Verify.....	6, 11, 48, 49, 50, 60, 70, 71, 72	Illness and injury rates	46
Executive compensation	60, 61	Immigration	11, 32
Executive Order 11246.....	63	Immigration and Customs Enforcement ..	<i>See</i> ICE
Executive Order 13201.....	63	<i>Immigration and Nationality Act</i>	63
Exemplary Voluntary Efforts Award	35	Independent contractor	29
FAAP.....	35	Industry Liaison Group National Conference..	55
<i>Fair Employment and Housing Act, California</i>	19, 54	Internal Revenue Service.....	23
<i>Fair Labor Standards Act</i>	34, 63	Internet Applicant.....	49, 52
<i>Family and Medical Leave Act</i> 12, 20, 26, 34, 51, 63, 76		Ishimaru, EEOC Commissioner Stuart.....	15
Family leave	11, 18, 51	Jackson Lewis.....	44, 51, 52, 55
FCSS.....	35, 36	James, Charles, Jr.	31, 55
Federal Acquisition Regulations	10	<i>Jobs for Veterans Act</i>	36, 58, 66
Federal Bureau of Investigation	23	<i>Jones v. The Lodge at Torrey Pines Partnership</i>	54
Federal Contractor Selection System ...	<i>See</i> FCSS	JPMorgan Chase.....	23
Federal Manager's Daily Report.....	45	Kaiser, Dr. Javid	29, 31
<i>Federal Mine Safety and Health Act</i>	63	Kempthorne, Patricia.....	27
Federal Register.....	26, 31, 50, 55, 58, 66, 69, 70	Kentucky.....	58
FedEx	79	Labor Code, California	42
FEDweek.....	45	Labor Unions	69
Fischer, Richard.....	55	<i>Labor-Management Reporting and Disclosure</i> <i>Act</i>	63
Florida	6, 57, 58	Leadership IQ	9
FMLA.....	4, 11, 12, 20, 26, 34, 38, 51, 63	Leave for Military Families	20
Ford Motor Company	79	Littler	40, 55, 71, 72
Ford-UAW Joint Apprenticeship Program.....	79	Lively Listening.....	14
Fort Knox	73	Llewellyn, Stephen	64
Fox, John	55, 67	<i>Longshore and Harbor Workers' Compensation</i> <i>Act</i>	63
Functional Affirmative Action Program.....	<i>See</i>	Magic Kingdom.....	55
FAAP		Management	2, 3
Gannett News Service	27	Manatt, Phelps and Phillips	67
<i>Gary Ross v. Ragingwire Telecommunications,</i> <i>Inc.</i>	22	Marsalis, Wynton.....	4, 18
Generation X	27	McDonald's.....	23
Generation Y	27	<i>McNamara-O'Hara Service Contract Act</i>	63
		Medical marijuana users	20
		Merrill Lynch.....	23

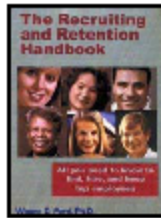
Messinger, Sue	71	Pragmatist	77
<i>Migrant and Seasonal Agricultural Worker</i>		Preventive Strategies and Positive Solutions for	
<i>Protection Act</i>	63	the Workplace	44
Military Family Leave	26	Procter and Gamble	23
Millenials	27	Profiles in Diversity Journal	18
Millstein Center for Corporate Governance and		Propaganda	16
Performance	62	Public Sector (State & Local Governments)....	69
Minnesota	40, 51, 58	Reasonable factors other than age	54, 55
Mississippi	5, 40, 48, 49, 58	Recently Separated Veterans	66
Motivational posters	14	<i>Rehabilitation Act of 1973, Section 503</i>	63
Murphy, Mark	9	<i>Reno v. Baird</i>	54
National Advisory Committee on Occupational		Request for Information	26
Safety and Health	30	Retaliation	54, 68
<i>National Defense Authorization Act</i>	See NDAA	Retiree health plans	8
National Director of OFCCP	See James, Charles,	RFOA	55, 56, See Reasonable Factors Other
Jr.		Than Age	
National Labor Relations Board	See NLRB	Rhode Island	5, 40, 48, 50
National Security Agency	23	Rivet, Criselda	53
National United Automobile, Aerospace and		Roberts, Justice	75
Agricultural Implement Workers of America		San Francisco	43, 44, 53
.....	See UAW	Scheduling Letter	5, 6, 70
NDAA	12, 20	Schemer	76
NEVA	60	Schwarzenegger, California Governor Arnold	12
New categories for veterans	66	Secretary of Labor's Opportunity Award	35
<i>New Employee Verification Act</i>	See NEVA	Secretary of Transportation	14
New Jersey	5, 51, 52	<i>Secrets of Hiring and Firing</i>	13
New York	5, 18, 29, 42, 61	SHRM	71, 73
New York Times	30, 62	Silberman, Mickey	55
NLRB	7, 78, 79	Sinclair, Dr. Michael	31
Norris, Jeffrey	55	Siskind's Immigration Bulletin	12
OCAP	33	<i>Smith v. City of Jackson</i>	55
<i>Occupational Safety and Health (OSH) Act</i>	34, 63	Smith, NY Labor Commissioner M. Patricia...	29
<i>Occupational Safety and Health Act of 1970</i> ...	30	Social Security Administration	12, 23
Occupational Safety and Health Administration		Society for Human Resource Management	See
.....	See OSHA, See OSHA	SHRM	
ODEP	33	<i>Special Reports for HR Professionals</i>	2
OFCCP 4, 5, 6, 23, 29, 35, 36, 37, 49, 52, 55, 57,		Spitzer, Governor Eliot	29
58, 63, 65, 70		Standard Form 100	63, 69
Office of Compliance Assistance Policy	See	Starbucks	5, 42
OCAP		Supreme Court, California	20
Office of Disability Employment Policy ...	40, 41,	Supreme Court, U.S.	26, 55, 68
See ODEP		Tennessee	4, 11, 40
Office of Federal Contract Compliance Progra		Texas	40
.....	See OFCCP	The Management Advantage, Inc	2, 3
Office of Management and Budget	See OMB	The News-Press	27
Oklahoma	40, 58	The Twiga Foundation	27
Oklahoma State University	73	Third Circuit Court of Appeals	8
OMB	49, 64, 71	Traditionalists	27
OSHA	4, 5, 20, 23, 29, 45, 46, 47	Travel Nurse Corps	45
OSHA 300-A SUMMARY	20	Truesdell	3
OSHA Docket Office	31	U.S. Citizenship and Immigration Services	See
Other Protected Veterans	66	USCIS	
Pacific Industry Liaison Group	55	UAW	79
Paid sick leave to all employees	43	<i>Uniformed Services Employment and</i>	
Pfizer	61, 73	<i>Reemployment Rights Act</i>	See USERRA, See
		USERRA	

University of Alabama	43	Walgreens	5, 39
University of Notre Dame	43	<i>Walsh-Healey Public Contracts Act</i>	64
USCIS.....	52	WARN.....	64
USERRA	6, 57, 64	Washington.....	5, 31, 40, 42, 44, 51, 64, 71
Veterans Affairs Department.....	45	Whistleblower Protection Provisions.....	64
Veterans' Employment and Training Service ..	36, 66	White House	43, 49, 61
Veterans with service-connected disabilities	57	Why high performers quit.....	8, 9
VETS-100.....	5, 6, 35, 36, 66	Wilkie, Helen.....	14, 16, 17, 81
VEVRAA	6, 57, 58, 64	<i>Worker Adjustment and Retraining Notification Act</i>	<i>See</i> WARN
<i>Vietnam Era Veterans' Readjustment Assistance Act of 1974</i>	58	Workforce Recruitment Program	40
Virginia.....	31, 40	Workplace discrimination.....	38
Virginia Polytechnic Institute	31	Workplace Harmony.....	27
Walden Asset Management	61	Yale School of Management	62
		Zeidner, Rita	72

Valuable Publications

from

The Management Advantage, Inc.



\$49.95



\$49.95



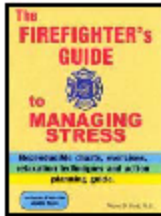
\$44.95



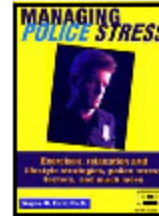
\$39.95



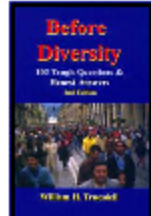
\$39.95



\$39.95



\$39.95



\$14.95



\$29.95



\$9.95



\$14.95



\$49.95



\$49.95



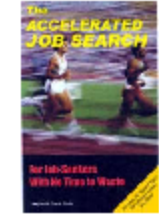
\$99.95



\$14.95



\$29.95



\$14.95



\$69.95



\$49.95

HR Web Store™

<http://www.hrwebstore.com>

Toll-FREE Order Line: 1-888-671-0404 FAX: 925-825-3930

Prices subject to change without notice.

HRW000001 6-14-06

Valuable Software
from
The Management Advantage, Inc.



\$199.95



\$199.95



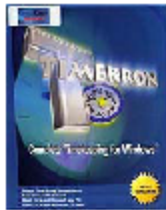
\$199.95



\$199.95



\$189.95



Timekeeping
\$105.95



\$49.95



HRIS
\$295.00



AAP Preparation
\$2,995.00



AAP Planner
AAP Preparation
\$2,995.00



HRIS
\$279.00



\$179.95



Survey Select
\$995.00



Schedule Soft - Employee Scheduling Up to 100 Employees
\$799.00



Adverse Impact
\$995.00



\$179.00



\$599.00



\$399.00



\$399.00



Scheduling
\$495.00

HR Web Store™

<http://www.hrwebstore.com>

Toll-FREE Order Line: 1-888-671-0404 FAX: 925-825-3930

Prices subject to change without notice.

2008/04/01 6:14:06



Notes



Notes



Notes



Archive of “Special Reports for HR Professionals” from 2008

Including Information About:

- **Federal EEO Laws & Regulations**
- **Federal & State Enforcement Activities**
- **Affirmative Action Developments**
- **Legal Case Decisions Affecting EEO and Affirmative Action Issues**
- **Employee Management Best Practices Information from Companies You Know Well**
- **Safety Regulations & Management**
- **Workplace Violence Prevention**



The Management Advantage, Inc.

1-888-671-0404