

http://www

Special Report for HR Professionals

July 18 2008
Number 480

The Management Advantage, Inc., PO Box 3708, Walnut Creek, CA 94598
www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

EEOC CRITICIZED BY GOVERNMENT ACCOUNTABILITY OFFICE

INSIDE THIS ISSUE

- 1 EEOC Criticized by Government Accountability Office
- 1 New Ruling on Disability Accommodation in 7th Circuit
- 2 OMB Approves I-9 Form for Another Year
- 3 DOL Wants to Extend Construction Contractor Requirements
- 4 Subscriptions...

The Equal Employment Opportunity Commission (EEOC) has been told by the Government Accountability Office (GAO) that it could experience mission failure if the agency does not find a way to keep pace with its workload.

The EEOC has lost more than a quarter of its mission-critical staff since 2000. In the next four years, all of its senior executives will be retirement-eligible, if not retired by that time according to the GAO report.

Since 2004, the EEOC's workload has grown by 10 percent. The result: Investigators' caseloads have grown 22 percent, cases take an average of 34 days longer to close, and EEOC ended last year with more than 55,000

Please see *EEOC* on page 2

New Ruling on Disability Accommodation in 7th Circuit

The 7th Circuit Court of Appeals issued an opinion stating that it is permissible to reject an accommodation request if that accommodation would excuse an employee from performing all jobs in a set of rotational assignments when non-disabled employees must be capable of performing all of the assignments as they rotate through those jobs.

Beginning in 1982, Liutauras Dargis was employed as a correctional officer with the Cook County [Illinois] Sheriffs Office. In February 2000, Dargis suffered a stroke while on duty. When Dargis attempted to return to work in July 2001, the Sheriffs Office declined to reinstate him due to physical restrictions imposed by Dargis's physician, placing him instead on leave without pay.

Please see *Disability* on Page 3

Employees may be required to perform duties of all jobs when rotation through them is necessary.

OMB Approves I-9 Form for Another Year

On June 16, 2008, the United States Customs and Immigration Service (USCIS) made available an updated I-9 Form. While there are not any substantive changes in the content of the form, it is necessary for the agency to obtain yearly approval for use of the form. That approval comes from the Office of Management and Budget (OMB) after a review required by the Paperwork Reduction Act.

Without a valid OMB document number, the government can't require you to submit data.

The new approval is noted at the top right of the form and looks like this: OMB No. 1615-0047; Expires 06/30/09

Technically, without a valid OMB document number and current expiration date, the government cannot require you to complete and/or submit data. Since the I-9 Form is required for every new employee in employers of any size, it is important that OMB approve the use of this form in a timely way.

While it is alright if you use the most recent form, you should download the new one and begin using it as soon as practical. You will find it at <http://www.uscis.gov/files/form/I-9.pdf>

If you have questions about documents or their application to the I-9 requirements, your management attorney can be of help.

EEOC from page 1

open cases, compared with 30,000 in 2004.

The GAO wrote in its June 23, 2008, report, "We found that [EEOC] does not approach work-force planning strategically - based on mission needs, customer expectations, workload and work force - or systematically...EEOC's draft strategic human capital plan does not currently integrate work-force data with workload data."

The agency expects to complete its human capital plan by the end of the fiscal year [September 30, 2008], Anthony Kaminski, EEOC's chief operating officer, wrote in a June 9 response to the report. He noted the EEOC also includes work-force analyses in its annual budget planning.

SOURCE: Castelli, Elise, "EEOC loses staff, unable to keep pace with workload," FederalTimes.com June 23, 2008, <http://federaltimes.com/index.php?S=3595233>

DOL Wants to Extend Construction Contractor Requirements

The Office of Federal Contract Compliance Programs (OFCCP) has posted a request for input about extending affirmative action requirements for Federal construction contractors.

On June 17th OFCCP published its request in the Federal Register (73 Fed. Reg. 34333, OMB No. 1215-0163) The current OMB approval on OFCCP's data collection from Federal construction contractors will expire on December 31, 2008.

OFCCP now estimates that there are 240,534 construction contractors doing business with the Federal government.

Written comments will be accepted until August 18, 2008 and should be addressed to Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW, Room S-3201, Washington, DC 20210. Or they may be sent by email to bell.hazel@dol.gov.

Disability from page 2

The employee's physician stated her belief that Dargis could return to work as of July 2, 2001, subject to the following limitations: (1) no physical contact [with inmates], (2) no physical activity other than sitting in a chair with brief episodes of standing and walking, (3) no lifting, kneeling, stooping, or running, and (4) a work environment with adequate heat and air conditioning.

The Job Description sets forth a correctional officers duties as follows: Observes and supervises the behavior of inmates confined to Cook Countys Correctional Institutions. Enforces rules and regulations established for the maintenance of order, discipline and safety. Makes rounds of assigned area to insure that all security procedures are adhered to and all inmates under surveillance are accounted for. Communicates with inmates to ascertain attitudes, problems and rehabilitation. Performs a variety of other related duties to assist with jail operations.

"The prison has to be able to call upon its full staff of correctional officers for help in putting down a prison riot, and therefore each officer must have experience in the positions, such as searching and escorting inmates, that provide the necessary training and experience for responding effectively to a riot, as well as the capability for such response. Obviously a prison riot is an extreme threat.

Please see *Disability* on Page 4



Sponsored by
Merit Resource Group

Effective business decisions
and human resources
decisions go hand-in-hand.
Merit Resource Group helps its
clients create this synergy by
providing HR expertise to
match unique company needs.

www.MeritHR.com



For a copy of the Court's
opinion, go to:

<http://www.ca7.uscourts.gov/tmp/EG0QCR83.pdf>

SOURCE:

Dargis v. Sheahan, 7th
Cir., No. 05-2575 (May
16, 2008)

Disability from page 3

But there are many other duties that include disciplining prisoners, inspections, intervening in disputes, and dealing with routine but sometimes tense situations that cannot be subtracted from the performance expectations of a correctional officer. This necessary ability to respond to emergencies was the exact reason provided by [the employer] for why Cook County correctional officers must be able to rotate through all positions. [I]t is the

position of the Sheriffs Office that the ability to rotate through all positions, including the majority of them that involve inmate contact, is a prerequisite for someone being qualified to perform the essential functions of a correctional officer."

Because Dargis was unable to show he was qualified to perform the duties of all rotational job assignments that correctional officers must perform, with or without accommodation, the employer was ultimately supported by the Court in this situation.

Subscriptions...

You are welcome to forward this message, in its entirety, to anyone you believe would benefit from receiving it. You may not post this message or its contents on a web page for further distribution. We encourage new subscribers and are pleased to continue our offer of FREE distribution for these SPECIAL REPORTS. An archive of our newsletters can be found on our web site. Just look for "Newsletters" then select "Gentle Readers."

<http://www.hrwebstore.com>

Special Reports for HR Professionals are only available to our newsletter subscribers. However, you may receive a copy from one of your professional colleagues or friends. Please check the origin address to be sure.



The Management Advantage, Inc.

PO Box 3708
Walnut Creek, CA 94598
925-671-0404

www.hrwebstore.com

©2008 - All Rights Reserved

Privacy Policy: Our subscriber list is considered confidential information. We do not sell or rent our subscriber or customer lists to anyone else. Your privacy is our primary concern. If you ever wish to unsubscribe, please click on the "unsubscribe" link below. If you would like to SUBSCRIBE to our FREE publications, please register your subscription by going to

www.hrwebstore.com/newsletr/newsletr.html

