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EEOC SEEMS TO BE GIVING UP A KEY OBJECTIVE

INSIDE THIS ISSUE

- 1 EEOC Seems to Be Giving Up a Key Objective
- 1 E-Verify May Be Reauthorized By Congress
- 2 OFCCP Recordkeeping Requirements
- 3 *Secrets of Affirmative Action Compliance* (8th Edition)
- 4 Subscriptions...

A primary goal of the Equal Employment Opportunity Commission (EEOC) has been to speed up work on private-sector discrimination complaint cases. It has said it wished to complete its investigations on at least 75% of its cases in 180 days or less by the year 2012.

Since setting that objective, the agency has seen a sharply rising workload and a shrinking staff because of budget restrictions.

On July 28, 2008, the Commission approved a new strategic plan that reduces the target from 75% to 54%. It admits that doing better is no longer possible. The conclusion we should reach is that the Commission will tolerate investigations lasting more than 180 days in half of its private sector cases. Today, only 50% of EEOC complaint investigations are completed in 180 days or less.

Please see *EEOC* on page 2

E-VERIFY MAY BE REAUTHORIZED BY CONGRESS

Overwhelming support for extending the E-Verify program was evidenced by the 407 to 2 vote in the House of Representatives on July 31st. The measure now goes to a joint House/Senate committee for consideration.

The measure, H.R. 6633, would extend the program for five years. Initially, the bill called for a ten year extension, but some business groups, including the Society for Human Resource Management (SHRM) invested heavily in getting that time period reduced. They had argued for a period not to exceed three years.

This legislation was considered on the House's suspension calendar. Suspension calendar bills are debated for only 40 minutes, they may not be amended and require a two-thirds vote for passage. Bipartisan agreement was reached in both the Judiciary Committee and the Ways

Please see *E-Verify* Page 3

E-Verify will sunset in November 2008 if Congress doesn't act to extend the program.

OFCCP RECORDKEEPING REQUIREMENTS

One of the most confusing parts of current federal regulations for federal contractors revolves around the subject of records retention.

The Office of Federal Contract Compliance (OFCCP) is holding contractors accountable for retaining every individual expression of interest in employment. That is not to say, every expression of interest equates to a qualified applicant. Yet, the first contact must be retained, be it a resume, a telephone log, emails, a job application form, or some other contact record.

Once the stack of “expressions of interest” has been assembled, the employer should use a list of job qualification requirements to screen each individual. The result of that screening will be a group that meets basic job qualification requirements. That group represents “job applicants.”

Job applicants must be given an invitation to self-identify their race/ethnicity and sex. That information must be retained and linked to the specific job opening for which the applicant is considered.

All of these records must be retained for either one or two years depending on the size of the employer and the value of the federal contract. If the contractor has 149 workers or less and the value of the contract is under \$150,000 then records must only be kept for one year. All other contractors must keep their records for two years.

[SOURCE: 41 CFR 60-1.12]

EEOC from page 1

Deidre Flippen, EEOC’s research, information and planning director explained that the agency is experiencing “dramatic increases in the number of charges being filed. At the same time, it has experienced significant reductions in the resources required to process those charges.”

The number of discrimination charges, both private and federal sector, filed with the EEOC increased by 10% between fiscal 2005 and fiscal 2007. That number continues to increase and could hit 96,000 by the end of fiscal 2008, the EEOC said.

In May of this year, Congress passed the *Genetic Information Nondiscrimination Act* and assigned responsibility for enforcement to the EEOC. That has only added to the burden of investigations. If Congress takes action strengthening the *Americans with Disabilities Act*, there could be another bump up in complaint filings.

[SOURCE: <http://www.federaltimes.com/index.php?S=3659561>]

*Individuals’
“expressions of
Interest” must be
retained by federal
contractors*

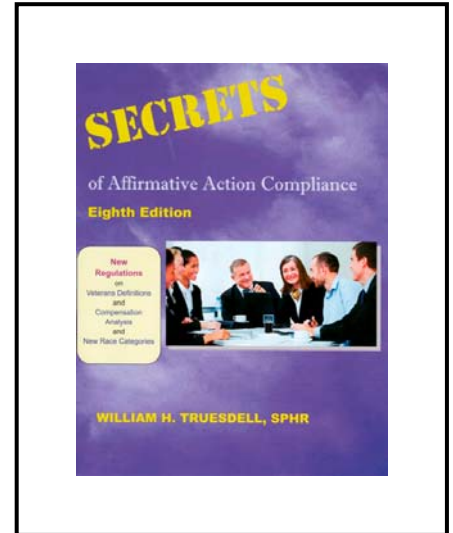
96,000 new EEOC complaints possible in FY2008, a jump upward of 16% over the previous year.

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***E-Verify* from page 2**

and Means Committee.

As it stands, the House Bill would keep E-Verify a voluntary program even though some states have made it an employment requirement to one degree or another. And, President Bush issued Executive Order 12989 on June 6th ordering all Federal Contractors to use the E-Verify program. Regulations have yet to be released to implement the executive order, but they are expected before the end of this year when the current administration will be preparing to leave office.

According to CCH Business & Corporate Compliance, “As part of the proposed Employee Verification Amendment Act, Ways and means Social Security Chairman Michael R. McNulty (D-NY) and ranking member Sam Johnson (R-TX) successfully secured provisions in the bill guaranteeing that DHS provide timely reimbursements to the Social Security Administration (SSA) for E-Verify’s use of SSA resources. This compromise ensures that SSA’s own funds are fully available to serve Social Security and SSI beneficiaries, McNulty and Johnson said. In addition, with the accuracy of E-Verify heavily debated in Congress, the bill requires the Government Accountability Office (GAO) to conduct a study of the program’s erroneous tentative non-confirmations and E-Verify’s impact on small business.”

Without the Senate’s support, E-Verify will sunset in November. There are currently two measures under consideration in the Senate. S 3257 was introduced by Senator Arlen Specter (R-PA) and would extend E-Verify for



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Please see *E-Verify* on Page 4

E-Verify from page 3

five years. S 3093, introduced by Senator Charles Grassley (R-IA) would make the E-Verify program permanent and give employers the option to verify the employment eligibility of all their employees, not just new hires. It would also authorize the Department of Homeland Security (DHS) to require companies to use the E-Verify program if a pattern of illegal hiring is found. Senator Grassley has led a group of twelve senators to request Majority Leader Harry Reid (D-NV) work to be sure E-Verify is reauthorized before it is scheduled to sunset in November.

As you might expect, there have been several legislative hurdles thrust in front of the Senate process. Other suggestions have come forward with numerous requirements proposed for the E-Verify system. Whether or not any or all of these measures will receive attention before the end of this year is yet uncertain. Congress is currently on its summer vacation and there is very little time remaining for its session when it returns. The election-year recess will happen well in advance of the November elections.

[SOURCE: <http://hr.cch.com/news/employment/080508a.asp>]

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