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

OFCCP LOOKS AT FINAL REMAINING MONTHS FOR THIS ADMINISTRATION

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Office of Federal Contract Compliance Programs (OFCCP) held its fourth webinar to discuss the recently released directives on accessibility of on-line job application systems and the Good Faith Initiative for Veterans Employment (G-FIVE).

It all boils down to two key pieces of advice regarding these new areas that will be a focus of upcoming compliance evaluations...

1) If you use an on-line job application process, be sure the top of the first page contains the NAME and TELEPHONE NUMBER (and, email address) for the individual who can receive and act on requests for accommodation in the application process. The OFCCP has cited several areas of concern in this regard. Sometimes, people are not able to read the graphics on a web site. Others find that the employer's web site does not function well with their adaptive technology (Zooming in on graphics and text to make them more readable, or converting graphics and text to voice for the sight impaired), or not being able to get a wheel chair or scooter up to a Kiosk application facility so the keyboard can be used properly. The key action OFCCP will be looking for from contractors is the clear posting of name and contact information for the person who will handle requests for reasonable accommodation in the application process. The notice should also indicate an alternate method of application if the web site is the only normal avenue and it is unusable for some reason by an individual applicant.

2) The G-FIVE program is a recognition effort that depends on contractors having had a clean audit of their AAP efforts sometime within the past 24 months. OFCCP can nominate a contractor because of the special efforts they are making to hire veterans, or contractors can nominate themselves. If you haven't had a compliance review in the past 24 months, your self-nomination will trigger the scheduling of an audit. You must pass the audit with no violation before being eligible for this award and recognition. My suggestion is that you wait for the government to select your establishment for audit at random and then

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PRESIDENT PROMISES TO SIGN ADA AMENDMENTS

On September 17, 2008, Congress completed its work on Senate Bill 3406. Both Houses passed the measure that makes some provisions clear and overturns a ruling by the U.S. Supreme Court in two cases. “The holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect.” Then in the Supreme Court opinion in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), the Court “interpreted the term ‘substantially limits’ to require a greater degree of limitation than was intended by Congress.” The new law also says, “Congress finds that the current Equal Employment Opportunity Commission (EEOC) ADA regulations defining the term ‘substantially limits’ as ‘significantly restricted’ are inconsistent with congressional intent, by expressing too high a standard.”

California employers will not see much impact from amendments to the Americans with Disabilities Act

Clearly, Congress is upset with the way the ADA has been restricted in its application by the courts. The *ADA Amendments Act of 2008* says that the ADA protects anyone who faces discrimination on the basis of a disability.

California has for some time made it clear that it does not follow Federal law with respect to disability cases. For example, California’s Government Code Section 12926.1(c) states “whether a condition limits a major life activity shall be determined without respect to any mitigating measures...regardless of federal law under the *Americans with Disabilities Act of 1990*.”

It now seems that Federal law will have a broader interpretation and wider protection. We will be eager to see how the EEOC reacts to these new provisions.

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show them what a wonderful job you are doing with veteran recruiting and employment.

There were some other interesting bits of information coming out of the conference call...

- o You may use the EEO-1 race/ethnic categories for your AAP, but you are required by the regulations to set goals only for total minorities.

- o You are not required to resurvey your workforce if you wish to begin using the new race/ethnic categories. You may set a start date for implementing the new categories and then begin the process of collecting data from new hires.

- o Self-ID is the PREFERRED method of obtaining race/sex data from applicants and employees. You may use visual observation if someone refuses to self-id, however.

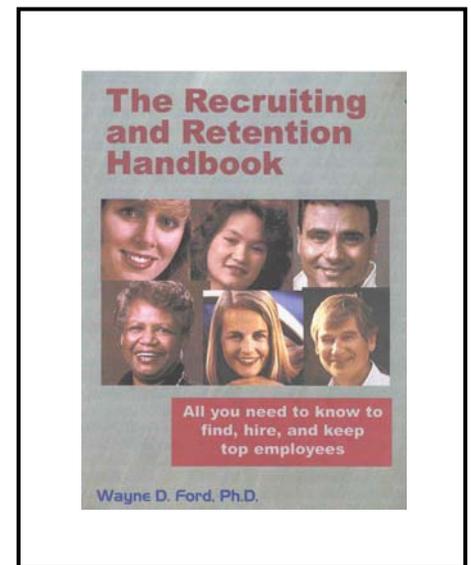
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Be sure you clearly identify the person to contact for disability accommodation requests

The Recruiting and Retention Handbook

Employers waste more money on recruiting and retention problems than they realize. If they could add a few thousand dollars to their profit and loss statement they might have a greater interest in the subject. This is the book that shows you how to do just that. You will see how the process is treated as one continuous effort. Poor recruiting practices can increase turnover dramatically. High turnover can likewise hurt recruitment. Therefore your retention efforts must begin with the first contact of the recruiter with the prospect. It must continue during the entire employment of the individual. Anything less than this and you are wasting assets in a multitude of ways.

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



EEOC WILL BE “CUTTING A WIDE SWATH” IN ITS DISPARATE IMPACT ENFORCEMENT

Naomi Earp, Chair of the Equal Employment Opportunity Commission (EEOC), told about 600 people at the National Industry Liaison Group (ILG) meeting that systemic litigation is “the wave of the future” for the Commission. Systemic litigation is legal action taken by the EEOC when it detects disparate impact on protected classes of employees.

Ms. Earp pointed out to the group that “workplace inclusion” not only refers to numerical diversity but also to employees from different racial or ethnic groups feeling they are a part of the enterprise. That is a difficult goal to accomplish, but it is the “next wave” of true inclusion according to Earp.

She indicated that the aging U.S. workforce demands that employers understand that employees can potentially pursue joint claims under the *Americans With Disabilities Act* and the *Age Discrimination in Employment Act*. The convergence of legal claims is happening more and more these days. The numbers will only get larger in the future.

[SOURCE: “EEOC Compliance Manual,” Number 359, The Bureau of National Affairs, Inc., August 29, 2008]

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EEOC will be looking for intersecting violations of multiple laws under its jurisdiction

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During the second week of October, OFCCP will send out about 2,500 scheduling letters for new audits. In March, 2009, OFCCP will send out another 5,000 scheduling letters.

o Here's the BIGGIE for this conference call...

Beginning in FY 2009, OFCCP will make it a policy to conduct an ON-SITE REVIEW as part of one compliance review in every 50 audits. There need not be any specific indicator of discrimination or AAP violation. This is positioned as a "quality control" effort on their part. If your lot is drawn as one of the 7,500 audits next year, AND you get selected for the one in 50, you will get an on-site visit by your Compliance Officer. They have not said what activities to expect during the on-site, but you can anticipate being asked for:

- Review of your I-9 Forms
- Interviews with your employees, both management and non-management
- Review of your distribution list for notices to vendors and sub-contractors
- Inspection of all posters and notices
- Demand for extensive data on compensation programs and details on every compensation decision if required to counter any statistical indications of discrimination.

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Walnut Creek, CA 94598
925-671-0404

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Editor: William H. Truesdell, SPHR

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