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INSIDE THIS ISSUE

RICCI DECISION FROM SUPREME COURT CLARIFIES EMPLOYMENT TESTING

It was the last day of the 2009 U.S. Supreme Court session and the long-awaited ruling on *Ricci et al v. DeStefano et al* was finally released. (No. 07-1428, June 29, 2009) At issue was the City of New Haven, CT practice of selecting Fire Department lieutenants and captains through the use of written and oral examinations. The selection procedure had been negotiated with the City's unions representing fire fighters and had a long history of use in the City. There was never a question about the City's right to develop and use employment selection examinations. The question before the Court was whether or not the City had the right to reject the test results based on racial results. The Court said it did not.

A summary article about this case and its important lessons for HR professionals is available at http://www.management-advantage.com/products/Ricci.htm . Authored by William H. Truesdell, SPHR and Dan A. Biddle, PhD, some key issues dealing with employment testing were "up for grabs" in this case. The lawsuit was filed by White fire fighters who had taken the tests and emerged as the top ranked candidates for promotion. Black fire fighters did not make it to the top ranks and would not have been promoted if the City had proceeded with its process. The City chose to promote no one because of the test results.

After hiring an outside consulting firm that specialized in test validation, a test was developed using inputs from existing lieutenants and captains to be sure job requirements were understood and that they would be the focus of the eventual test questions. People of all races in those jobs were consulted for input about job requirements.

Using such input, the consultant developed 100 written multiple-choice questions that focused on specific job requirements. All questions were taken from books the City Fire Department had approved as references. References were listed for candidates to use in studying prior to the test.

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The consultant prepared a written report on the validity of each test and offered it to the City. The City did not want to receive that study report, saying it did not believe any test could be valid if results excluded Black candidates from the top candidate positions. There was strong political pressure from community groups representing the interests of Black candidates.

Employers that have developed and validated employment tests should stand by the results and not reject them based on the race of candidates emerging as highest ranked.

The Court said, there must be a "strong basis in evidence" that disparate impact exists from test results before they can be dismissed. If test results are to be overturned based on race, there can be no question that illegal discrimination will occur if test results are accepted. HR professionals should consult their legal counsel for guidance on the interpretation of "strong basis in evidence" standard.

Ultimately, the Court said *Title VII* of the *Civil Rights Act of 1964* does not permit the City (or any employer) to make employment decisions based on race without that evidence. In this case, the City created its own problem because it failed to follow its procedure and did not accept its consultant's validation study.

In 1976 the Supreme Court ruled in the case *of McDonald v. Santa Fe Transportation* (427 U.S. 273) that *Title VII* prohibits racial discrimination in private employment against white persons upon the same standards as racial discrimination against nonwhites. Everyone has a race and everyone is protected against racial discrimination.

Seven very important lessons have emerged from the Ricci case. Get your copy of this critical report today. Follow the link on page one.

FEDERAL MINIMUM WAGE INCREASE ON JULY 24, 2009

A third annual increase in federal minimum wage is going into effect on July 24, 2009. On that date the new minimum wage will be $7.25 per hour.

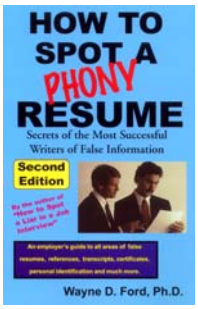
To employers in states that have higher minimum wage requirements this is not an issue, except that new posters may be required to reflect the new federal minimum.

If you are in a state that relies on the federal minimum rather than requiring something higher, you will need to be sure all of your employees below the new level are raised to that level on the 24th. That is a simple payroll issue, but is sure to impact budgets as well.

If you need to update your posters, go to http://www.management-advantage.com/products/posters.htm for the latest in compliant content. We offer All-On-One wall posters that are laminated for longevity. Both federal and state content appears on the same sheet.

How to Spot a Phony Resume

If you have responsibility for hiring employees in your organization, you will want to have this book by your side as you process each candidate. **Human Resource Managers** nearly universally complain that resumes they receive from job candidates are inflated in content. What may be a "slight enhancement" to one person is a "complete fabrication" to another. There are ethical issues involved and questions about legal liability if those mistruths cause injury to others. Find out how to spot the false information and how you can avoid the games people want to play with you when you try to verify their resume information. In today's economy this is particularly important.



http://www.management-advantage.com/products/resume-book.htm

E-VERIFY TO START IN SEPTEMBER FOR FED CONTRACTORS

The effective date of the final rule requiring certain federal contractors and subcontractors to use E-Verify has been delayed until September 8, 2009**. The rule will only affect federal contractors who are awarded a new contract after September 8, 2009 that includes the Federal Acquisition Regulation (FAR) E-Verify clause (73 FR 67704)**.

Federal contractors may **NOT** use E-Verify to verify current employees until the rule becomes effective and they are awarded a contract that includes the FAR E-Verify Clause.

The new rule implements Executive Order 12989, as amended by President George W. Bush on June 6, 2008, directing federal agencies to require that federal contractors agree to electronically verify the employment eligibility of their employees. The amended Executive Order reinforces the policy, first announced in 1996, that the federal government does business with companies that have a legal workforce. This new rule requires federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.

http://www.dhs.gov/ynews/releases/pr_1247063976814.shtm
http://www.uscis.gov/files/article/far-delay.pdf

ICE AUDITING EMPLOYER I-9's

The Immigration and Customs Enforcement (ICE) arm of the Homeland Security Department has issued a warning to employers that it will audit 652 businesses around the country to determine their compliance with Form I-9 requirements.

On July 7, 2009, the agency announced that it had settled on $40,000 as the fine Krispy Kreme Doughnut Corporation will be required to pay for violating the prohibition on hiring illegal workers. It alleged the company had employed dozens of illegal aliens at one of its doughnut factories in Cincinnati.

ICE declined to identify the 652 targeted businesses. It would only say that they were selected as a result of leads and other investigative means. Since April of this year, the agency has been focusing on employers in its effort to stem the tide of illegal alien employment. Financial penalties are thought by the agency to be a key factor in its enforcement tool kit.

http://www.ice.gov/pi/nr/0907/090707cincinnati.htm

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