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HOSPITALS RULED TO BE FEDERAL SUB-CONTRACTORS REQUIRING AAP

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In 1993 an Office of Federal Contract Compliance Programs (OFCCP) directive made hospitals and other health institutions exempt from affirmative action plan requirements if they accept payments from Medicare and Medicaid. (Order No. ADM 93-1/JUR, 12-16-93, Leonard J. Biermann, Acting Director)

Unless a hospital was a prime contractor with the government by virtue of providing contract medical services to U.S. military or veteran personnel, it has been generally accepted that they do not need to consider themselves subject to the regulations requiring affirmative action plans.

Now, it seems, some hospitals may be captured under the regulations as sub-contractors. That requirement comes from a ruling made by the Department of Labor's Administrative Review Board in the case of *OFCCP v. UPMC Braddock* (DOL ARB, No 08-048, 5/29/09 released 6/2/09).

In this case, three Pittsburgh-area hospitals received payments from a health maintenance organization (HMO) for providing medical services to U.S. government employees. The written contract between the hospitals and the HMO did not contain a requirement that the hospitals abide by equal employment opportunity (EEO) or affirmative action plan (AAP) requirements found in federal regulations.

OFCCP sent one of the hospitals a scheduling letter as notice that it would be conducting an audit of the affirmative action plans at those establishments. The hospitals responded saying they would not be sending any materials for review because they are not subject to affirmative action requirements. A legal discussion followed concerning the jurisdiction of OFCCP to demand compliance materials from the hospital.

Ultimately, OFCCP filed an administrative complaint against the hospitals and on January 16, 2008, an administrative law judge issued a ruling supporting OFCCP's position. The hospitals requested review by the

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Administrative Review Board (ARB).

The hospitals claimed they were not subject to affirmative action plan requirements because their contract with the HMO did not include that requirement. And, there was no other written requirement imposed on them that would cause them to comply with the three national affirmative action requirements (minorities and women, disabled and veterans).

The ARB decision says, “The equal opportunity provisions of the three laws are “mandatory contract clause[s] that express a significant or deeply ingrained strand of public procurement policy.’ The UPMC [Health Plan]’s **failure to include the mandatory clauses in their agreements with the Defendants does not excuse the Defendants from compliance with these laws**, each of which has been in effect for decades. As just noted, the equal opportunity clauses are incorporated by operation of each law into the Defendants’ contracts with UPMC. And, **‘where regulations apply and require the inclusion of a contract clause in every contract, the clause is incorporated into the contract, even if it has not been expressly included in a written contract or agreed to by the parties.’** [BOLD emphasis added]

It is now clear that the OFCCP has jurisdiction over sub-contractors whether or not the written contract includes an obligation to abide by affirmative action requirements. If you have a jurisdictional question, please contact your management attorney for advice on how to proceed.

http://www.oalj.dol.gov/PUBLIC/ARB/DECISIONS/ARB_DECISIONS/OFC/08_048.OFCP.PDF

EEOC CALLS AGE DISCRIMINATION A “DEVASTATING IMPACT”

Highlighting the “devastating impact” of age discrimination, the U.S. Equal Employment Opportunity Commission (EEOC) held a public hearing on July 15, 2009, to discuss recent developments under the Age Discrimination in Employment Act (ADEA), including the effect on older workers of widespread layoffs, threats to employee benefits, and recent court decisions. The Commission will consider expert panelists’ proposals for regulatory and legislative action, and today issued a technical assistance document on waivers as part of severance agreements.

The EEOC’s technical assistance document explains terminated employees’ rights and obligations when offered severance pay in exchange for a waiver of discrimination claims. The EEOC issued the document following a significant spike in age discrimination charges, and amid increased layoffs involving waivers of rights. The document, in straightforward Q&A format, is posted on the EEOC’s website at www.eeoc.gov/policy/docs/qanda_severance-agreements.html.

*Affirmative action plan requirements are **implied** by public law and sub-contractors are obligated to comply even if no written reference to that need is in their contract document.*

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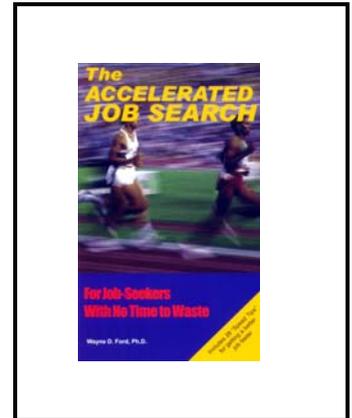
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The Accelerated Job Search

If you follow the advice in this book, your job search IS your job (unless you are currently employed and looking to change jobs). You are told to work at it every day, using the dozens of tools, tips, techniques, processes, charts, and other materials given to you.

The 28 speed tips scattered at key points throughout the book give the reader constant encouragement to keep the process moving quickly and on track. This is one book headed for the best seller list.

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



EXPECTATION + OPPORTUNITY = FULL PARTICIPATION

The U.S. Department of Labor (DOL) has announced the official theme for October's National Disability Employment Awareness Month:

Expectation + Opportunity = Full Participation

It is intended to urge employers, as they seek to fill positions to embrace the richness of America's diversity by considering the talents of all workers, including workers with disabilities.

This year's theme emphasizes the vision of the Labor Department's Office of Disability Employment Policy (ODEP): a world in which people with disabilities have unlimited employment opportunities.

ODEP provides national leadership on disability employment policy by developing and influencing the use of evidence-based disability employment policies and practices, building collaborative partnerships, and delivering authoritative and credible data on the employment of people with disabilities.

As part of its responsibility to work with employers, it has just released a new brochure based on an ODEP survey. It was the first survey of its magnitude, 3,797 businesses representing 2.4 million companies, across 12 industry sectors and various company sizes, reported on their beliefs about and strategies for recruiting, hiring, retaining and advancing employees with disabilities. The brochure is titled: *Employer Perspectives on Employment of People with Disabilities*. It is available in PDF format at <http://www.dol.gov/odep/documents/EmployerPerspectives.pdf>. Another brochure is available from the agency entitled *Diversifying Your Workforce*. You will find it at http://www.dol.gov/odep/documents/Flip%20Guide_FINAL_3%2030_508%20compliant2.pdf

For more information about this October's Disability Awareness Month go to <http://www.dol.gov/odep/media/press/theme.htm>



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DISASTER PLANNING 101

Only a few of the businesses we talk to have any form of disaster plan and the employee training needed to implement it. That's because planning for something that is uncertain doesn't generate revenue...and creating revenue must take priority. This view is especially held by small business owners. Yet, small businesses are the most vulnerable to any business interruption should disaster strike. Fires, floods, tornados, and hurricanes are only examples of the natural disasters that can befall a business enterprise.

Even if you don't have a written disaster plan, consider the idea of having supplies on hand that can help you and your employees survive should something unthinkable happen. From a compact first aid kit to emergency food and water, we have what can help you make it past the first few days of chaos if you suddenly find yourself in such a situation. Don't wish you had done something to prepare. Order your supplies today so you will have what you need if you ever find you must depend on them.

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

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