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OFCCP UPDATING DISABILITY REGS

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The Office of Federal Contract Compliance Programs (OFCCP) has opened for public comment its intention to strengthen its enforcement authority over federal contractors in the area of hiring disabled workers. Until September 21, 2010, comments are welcomed for consideration by the agency. Following that date, OFCCP will study the input and design specific regulatory change proposals that will again be issued for public comment.

Questions on the table currently are:

- How can the affirmative action requirements of Section 503 be strengthened to measurably increase employment opportunities of covered contractors for individuals with disabilities? If available, include examples or information illustrating the effectiveness of the suggested new requirements.
- What measures have contractors and subcontractors taken to fulfill the current affirmative action requirements of Section 503? How much did these measures cost?
- What barriers currently impede Federal contractors from hiring people with disabilities?
- Are there changes that could be made to the existing language on permissible qualifications standards that would better ensure equal employment opportunities for individuals with disabilities?

Widely recognized as a weakness of the process requiring federal contractors to recruit and hire disabled workers is the nature of the data gathering process related to disabilities. No person is compelled to identify themselves as disabled, even though the disability may be physical and obvious to a casual observer. Employers are not required, nor permitted to designate any individual as disabled if he or she has not self-identified. There are a great many people in the workforce who do not wish to be seen as having any limitations, physical or mental. That wish to avoid being labeled as disabled stands in the way of the government effort to increase its leverage over employers in this regard.

If you have comments you would like to share with the OFCCP about this subject, go to

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b1fd5a>

DOL CLARIFIES FMLA DEFINITION OF “SON AND DAUGHTER”

The U.S. Department of Labor (DOL), Wage and Hour Division (WHD) has issued a “clarification” of its definition for “son and daughter” as it is used in the *Family and Medical Leave Act (FMLA)*. It was issued by Nancy J. Leppink, Deputy Administrator of the Division.

The FMLA allows workers at employer organizations subject to its provisions to take up to 12 weeks of unpaid leave during any 12-month period to care for family members or themselves. The 1993 law also provides employees a right to take time off for the adoption or birth of a child. The newly released definitions are intended to clarify that these rights extend to the various parenting relationships that exist in today’s world. It is seen as a victory for the community of non-traditional families in the country.

“...either day-to-day care or financial support may establish an in loco parentis relationship...”

“No one who steps in to parent a child when that child’s biological parents are absent or incapacitated should be denied leave by an employer because he or she is not the legal guardian,” said Secretary of Labor Hilda L. Solis. This administrative interpretation provides guidance to employers in applying the FMLA’s provisions in the workplace and ensures that employees are aware of their rights.

According to this new publication:

“The definition of ‘son or daughter’ under the FMLA includes not only a biological or adopted child, but also a ‘foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.’ “Congress intended the definition of ‘son or daughter’ to reflect ‘the reality that many children in the United States today do not live in traditional ‘nuclear’ families with their biological father and mother. Increasingly, those who find themselves in need of workplace accommodation of their child care responsibilities are not the biological parent of the children they care for, but their adoptive, step, or foster parents, their guardians, or sometimes simply their grandparents or other relatives or adults.’ Congress stated that the definition was intended to be ‘construed to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child.’

“In loco parentis is commonly understood to refer to ‘a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties.”

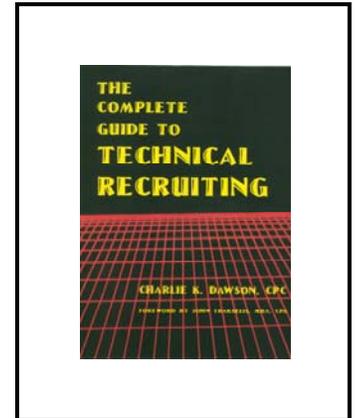
“...it is the Administrator’s interpretation that either day-to-day care or financial support may establish an in loco parentis relationship where the employee intends to assume the responsibilities of a parent with regard to a child. In all cases, whether an employee stands in loco parentis to a child will depend on the particular facts.”

http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm

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<http://www.management-advantage.com/products/recruit1.htm>



POTPOURRI

- **First Person Jailed for Violating HIPPA**

A former UCLA Healthcare System employee pleaded guilty to four counts of illegally reading private and confidential medical records, mostly from celebrities and other high-profile patients. Huping Zhou, 48, of Los Angeles, a former UCLA Healthcare System employee, is a licensed cardiothoracic surgeon in China, and was employed in 2003 at UCLA Healthcare System as a researcher with the UCLA School of Medicine. On October 29, 2003, Zhou received a notice of intent to dismiss him from UCLA Healthcare for job performance reasons unrelated to his illegal access of medical records. That night, Zhou, without any legal or medical reason, accessed and read his immediate supervisor's medical records and those of other co-workers. For the next three weeks, Zhou continued his illegal accessing of patient records and expanded his illegal conduct to include confidential health records belonging to various celebrities including Drew Barrymore, Arnold Schwarzenegger and Tom Hanks. He has been sentenced to four months in federal prison and was fined \$2,000.

<http://losangeles.fbi.gov/dojpressrel/pressrel10/la010810a.htm>

- **EEOC Turns 45**

July 2, 2010, marked the [45th anniversary of the U.S. Equal Employment Opportunity Commission \(EEOC\)](#). Created by the historic *Civil Rights Act of 1964*, the EEOC was founded to enforce *Title VII* of that Act, which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin.

<http://eeoc.gov/eeoc/newsroom/release/7-2-10.cfm>



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CALIFORNIA COURT SAYS PICKETING CAN BE CONTROLLED BY EMPLOYER

On July 19, 2010, the Sacramento-based 3rd Appellate District Court in California struck down state laws and Labor Code provisions that forced employers to permit unions to picket at their doorways. Saying, "such legislation violates the First and Fourteenth Amendments of the United States Constitution and, therefore is invalid," the opinion in *Ralphs Grocery Company v. United Food and Commercial Workers Union Local 8* will shake up labor management in the state.

The Court determined that "the front entrance and apron of the Foods Co (Ralphs) store is a private forum where Ralphs can restrict speech without constitutional constraints..." Further, the Court said that laws and regulations that restrict employers (or others) based on a definition of speech content cannot be enforced. California has for nearly 40 years provided preference to Union rights to demonstrate over employer rights to control those demonstrations. This opinion now appears to invalidate that stance.

We urge you to contact your labor attorney for more information.

<http://www.courtinfo.ca.gov/opinions/documents/C060413.PDF>

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