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www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

OFCCP DIRECTIVE ON E.O. 13496

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Democrats and Republicans have some basic philosophical differences. Among them is the way they treat union issues in a labor context. Under President Bush there was an Executive Order that required federal contractors to post the "Beck Order." That poster informed employees that they could direct their union to not spend any of their personal dues contribution on political issues. Under President Obama, that order was rescinded and a new poster requirement has been put in its place. This new poster informs employees of their rights to belong to a union. The *National Labor Relations Act (NLRA)* covers many employees working for federal contractors.

The Office of Federal Contract Compliance Programs (OFCCP) shares responsibility for enforcing this new Executive Order 13496 with the Office of Labor-Management Standards (OLMS). Both are within the U.S. Department of Labor. On June 15, 2010, Patricia A. Shiu, Director of OFCCP issued a Directive to her organization detailing how she expects her Compliance Officers to inspect contractor compliance with the Executive Order requirements. (Directive 290, <http://www.dol.gov/ofccp/regs/compliance/directives/dir290.pdf>)

In a nutshell, federal contractors can expect additional focus on this issue if they are selected for a compliance evaluation that includes an on-site visit. Non-exempt contractors are required by the Order and regulations (29 CFR 471.2(d), (e) and (f)) to physically post the employee notice. A contractor who customarily posts employee notices about terms and conditions of employment electronically must also post the required E.O. 13496 notice electronically.

In addition, contractors must include the Employee Notice Clause in all of their subcontracts and purchase orders on or after June 21, 2010. This can be done by reference to 29 CFR Part 471, Appendix A to Subpart A.

The notice, posted physically or electronically, must state: "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." There must also be a link shown to the OLMS website.

Non-compliance by contractors will result in a Conciliation Agreement with OFCCP.

OFCCP AND UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROMPT EMPLOYER STATISTICAL ANALYSIS

*A newly updated
reference for non-
statistician HR
professionals.*

The Obama Administration is committed to holding employers accountable for any missteps during hiring or other employment decision making. So far we haven't heard anything as harsh as Shirley Wilcher's comment that, "I know you are discriminating and I'm going to prove it." As you may recall, Ms. Wilcher was Director of OFCCP under the Clinton Administration. Yet, the Obama Administration has made it clear that they will use statistical analysis of new hires, compensation programs and other conditions where employment decisions are affecting employee selection outcomes.

As such, employers have been put on notice that they must deliver data to government auditors and investigators that will then be used in statistical testing to determine if any disparate impact has occurred at the employer's establishment. Smart employers will conduct their own analysis in advance so they know what the government will find in their data set.

There are software programs available that will help HR professionals do the arithmetic and compute standard deviations, probability and regression outcomes. Excel even comes bundled with a statistical package that will do some of these computations. Yet, none of it is any help if the HR professional doesn't understand what the analysis is testing and what the results mean.

Enter the newly released fifth edition of a great desk reference book. Titled, ***The Radical Statistician***, by Dr. Jim Higgins, this book comes in PDF ebook format for easy portability. It gives easy examples and carefully crafted explanations for a host of analysis techniques. It shows you how to identify applicants who would make the best employees, develop and test marketing campaigns to find out which ones work best, design control panels, dash boards and work spaces that help people perform at their maximum efficiency. It also helps you identify and predict who will be the best athletes, confirm that all products produced in a factory conform to the same high standards, and decide which new flavor of ice cream would be most accepted by the public. Those are just a few examples that you will find in this guide for the non-statistician.

Statistics are the life blood of modern business management. More and more, human resource managers are being expected to use statistical analysis to determine best practices for application in their organizations.

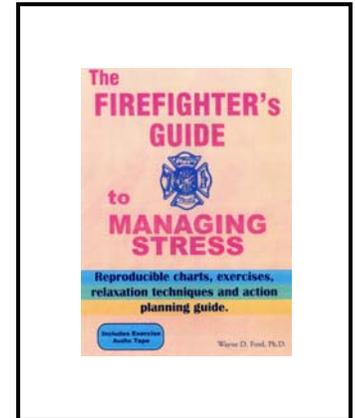
Get your personal copy of this reference and you will constantly use it to get through your day. It will help you understand the results you get with all those software programs. You will be able to find problems long before you send your data to the government for agency discovery efforts.

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

The Firefighter's Guide to Managing Stress

Expectations of a firefighter to be fearless, emotionally stable at all times, and totally dedicated to protecting the public, create a tall order and a stressful one. Meeting these goals can be an overwhelming task. This guide explains the critical areas of the firefighter's work and home life that cause excess stress, and then takes the reader through a precise program which is proven to reduce dangerous stress.

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



POTPOURRI

- **OFCCP Wants Jurisdiction Over Hospitals**

The question of jurisdiction is being pressed by OFCCP related to hospitals. Two cases (*OFCCP v. UPMC Braddock*, DOL OALJ, No. 2007-OFC-1, decided 1/16/08 and *OFCCP v. Florida Hospital of Orlando*, DOL OALJ, No 2009-OFC-02, pending) are being argued in federal court and before an Administrative Law Judge to determine if hospitals that provide or broker medical services for federal employees or veterans are in fact contractors or sub-contractors. The Office of Personnel Management (OPM) has treated hospitals like they are not contractors. OFCCP claims OPM has no authority to over-ride its authority to enforce affirmative action and equal employment opportunity rules and regulations. We await the outcomes of these legal processes.

- **OFCCP Testing Disparate Impact By Using “Most Favorably Treated Group”**

In an unpublished move, the OFCCP has appeared to change its method for preparing disparate impact analysis. In the past, it has compared minority sub-groups and total minorities against White cohorts. Now, it seems to be taking the position that it will use data that represents the “most favorably treated” group, regardless if that is White or a minority group. Our contention, and that of many legal experts, has been that “most favorably treated” group comparisons are the only appropriate method for analyzing disparate impact data.

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OFCCP TO RESCIND COMPENSATION STANDARDS AND ACTIVE CASE MANAGEMENT DIRECTIVES

On July 20, 2010, Vice President Joe Biden announced recommendations from the National Equal Pay Enforcement Task Force.

http://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf

The report carries no date, signature, or task force composition information, but it is represented as official policy of the Administration. Item "E" says, "OFCCP will publish a Notice of Proposed Recission to rescind the 2006 standards entitled 'Interpreting Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination' and related guidance." It also says, "OFCCP will formally rescind Directive 285, Active Case Management, which prohibits an onsite audit of a contractor unless a desk audit identified 10 victims of discrimination. ♦ OFCCP has lifted the limitation on the number of contractors eligible for a full audit review at any one time. ♦ OFCCP will hire more than 200 employees, most of whom will be Compliance Officers, the front line employees responsible for detecting discriminatory practices."

The report also announces a renegotiation of EEOC/OFCCP's agreement to allow fines by OFCCP.

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The Management Advantage, Inc.

PO Box 3708
Walnut Creek, CA 94598
925-671-0404

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Editor: William H. Truesdell, SPHR

billt@management-advantage.com



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