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# Special Report for HR Professionals

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

## OFCCP CHANGES COMING

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Thanks to massive budget infusions from Congress, the Office of Federal Contract Compliance Programs (OFCCP) has grown its enforcement staff by 35% from 585 to 788. Most of the additions in the past year have been in the Compliance Officer position. Patricia Shiu, Director of the agency, has said she seeks voluntary compliance from contractors, but intends to hold them accountable for violations of employment law and affirmative action regulations.

Coming on the horizon for the agency will be proposals for goal setting requirements involving disabled and veterans under the *Vietnam Era Veterans' Readjustment Assistance Act of 1974* (VEVRAA) and Section 503 of the *Rehabilitation Act of 1973*. The hurdle to be cleared before that can happen is identification of a valid data source that can be used in determining availability of qualified disabled and veteran workers. In working with the Bureau of the Census, OFCCP thinks it may have solved that data problem.

The agency will be strictly enforcing requirements for most job openings to be listed with the state employment service in the state where the opening exists. Contractors will be expected to have evidence of those listings to show Compliance Officers during a compliance evaluation. Also being checked more carefully will be the linkages and relationships contractors are building with their recruiting sources that provide job candidates with disabilities or veteran status. In the face of high unemployment, and large numbers of returning military veterans, the Department of Labor is committed to do whatever it can to assure opportunities in the private sector for these people.

In FY 2009, OFCCP conducted 3,917 compliance evaluations of federal contractors and negotiated 694 (17.7%) conciliation agreements to correct violations found. In FY 2010 it planned to conduct 5,000 audits and in the first three quarters of that period had negotiated 559 conciliation agreements. That is a 14.9% finding of violation on an adjusted three-quarter work load.

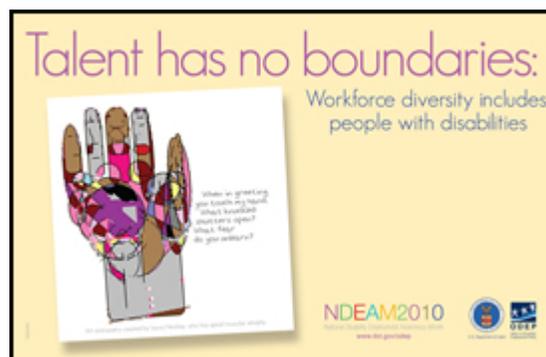
OFCCP is planning to expand the publication of information about discrimination cases it resolves and conciliation agreements it reaches with federal contractors. This is seen as a key enforcement tool in their kit.

## OCTOBER IS DISABILITY AWARENESS MONTH

Congress has designated October as the month when we should pay special attention to employment of people with disabilities. This year, the U.S. Department of Labor (DOL) has adopted the theme, "Talent has no boundaries." Their message is that workforce diversity includes people with disabilities.

You can expect to hear public service announcements on both radio and television during the month. These are produced by the DOL's Office of Disability Employment Policy (ODEP). These messages highlight the contributions of several energetic employed workers with disabilities. "The interest in these announcements has been so great that TV stations have donated over \$8 million of free air time to promote this important message to employers," according to ODEP.

Watch for public service announcements on radio and television highlighting October's designation as Disability Awareness Month.



Poster from ODEP that is available for download at their web site:  
<http://www.dol.gov/odep/programs/ndeam2010.htm>

The DOL's Bureau of Labor Statistics reports the percentage of people with disabilities in the labor force in March 2010 was 22.5 compared with 70.2 for persons with no disability. The unemployment rate for those with disabilities was 13.9 percent, compared with 10.1 percent for persons with no disability.

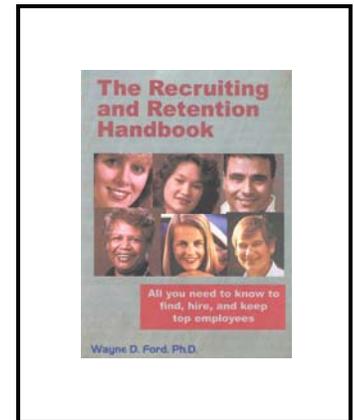
Over the past several months, the Office of Federal Contract Compliance Programs (OFCCP) has been conducting public meetings seeking comments about disability employment and how it can be influenced among the federal contractor community of employers. Patricia Shiu, OFCCP Director, has personally conducted these sessions. She and her management and policy team have begun the process of formulating regulatory changes related to Section 503 of the *Rehabilitation Act of 1973*.

It is widely expected that the OFCCP will be proposing new requirements for utilization analysis of disabled workers and goal setting for conditions where representation is below expectations. Just what mechanics will be used to accomplish that objective have yet to be revealed by the agency.

## *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.

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



## CALIFORNIA PROPOSES NEW DISABILITY REGULATIONS

On June 2, 2010, the California Fair Employment and Housing Commission adopted a proposal to update state regulations governing issues of disability discrimination in employment. The Department of Fair Employment and Housing (DFEH) has undertaken the task of holding public meetings to explain the proposal. Here are some key provisions among the changes:

- California continues to have a greatly broader definition of disability than does the federal government.
- Employers will be expected to explicitly engage in an interactive process with any employee or applicant who requests a job accommodation. It will be the employer's responsibility to initiate the interactive process following the receipt of a request to accommodate.
- Any job accommodation chosen must be "effective."
- "The employer...**shall consider** [emphasis added] the preference of the applicant or employee to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer..." This constitutes a new higher standard.
- Workers' Compensation and the *Fair Employment and Housing Act's* (FEHA) Employment Discrimination are separate systems. Satisfying one may or may not satisfy the other.
- Health Care Provider documentation will be required to provide a "concise list of restrictions which must be met to accommodate the employee." Disclosure of the nature of the disability will not be required.
- It will be "unlawful for an employer...to conduct a medical examination of an applicant before an offer of employment is extended to that applicant."
- Use of medical marijuana is not protected under the FEHA.

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## EXPERTS RECOMMEND METHODS FOR DISPARATE IMPACT TESTING

The Center for Corporate Equality (CCE) led a group of 70 attorneys, human resource practitioners, labor economists, and other statistical experts in a multi-stage effort to identify the "best practices" for conducting disparate impact testing. It has now issued a 98-page report based on that technical advisory committee effort. Some of the conclusions were:

- There is a difference between job seeker and applicant.
- Applicants who submit more than one application for an open position should only be counted once in the adverse impact analysis.
- Organizations should not "guess" the gender or race of applicants who do not self-identify their race and/or gender.
- Applicants who are offered a job should be counted as a selection regardless of whether they actually accept the offer;
- Measures of both statistical and practical significance should be included in determining the existence of adverse impact;
- And, much more.

For a copy of the free report from CCE, go to their web site at: <http://www.cceq.org/PDFs/2010tacai.pdf>

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Editor: William H. Truesdell, SPHR

[billt@management-advantage.com](mailto:billt@management-advantage.com)

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