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# Special Report for HR Professionals

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## DOL WANTS TO REQUIRE CONTRACTORS TO SET GOALS FOR HIRING DISABLED

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One of the foremost objectives of the Office of Federal Contract Compliance Programs (OFCCP) is to establish a program requiring federal contractors to set and meet numerical objectives for hiring of disabled workers. A notice of proposed rulemaking has been published with that thought in mind.

OFCCP has an ally in the Office of Disability Employment Policy (ODEP). Along with the Bureau of Labor Statistics (BLS), the Department of labor (DOL) has been publishing statistics about the employment of civilian population by sex, age, and disability status since mid-2008.

Each month, the Department releases new numbers updating those disability employment statistics. The reports focus on people who are in the civilian workforce (excluding military and incarcerated). In December 2010, for example, there were 147,477,000 people in the civilian labor force out of a population of 211,905,000. That's just under 70% of the population in the civilian work category. There were 63.4% of the population actually employed in December. And, that means there were 8.9% unemployed. In raw numbers, that represents 13,187,000 unemployed workers.

By contrast, during the same time period, there were 26,984,000 disabled people in the civilian population. Of those, 5,679,000 were in the labor force. And, of those, 4,869,000 were employed. That resulted in an unemployment rate for disabled people at 14.3% or 810,000. Only 18% of the disabled civilian population is actually in the workforce compared to 63% of non-disabled.

Federal contractors are already required to establish outreach and recruiting programs for disabled workers, including disabled U.S. military veterans. Setting numerical goals for hiring in these groups has been hindered by the lack of reliable data. Identification of disabled status is currently a voluntary process. No one is required to reveal their disabled status to an employer if they choose not to do so. Therefore, accurate data by county, state or other geography is just not available. What about the BLS information, you ask? It represents national statistics only. Are employers in Seattle and Salt Lake City going to be held to the same comparative availability as folks in Memphis, Miami or Boston? We'll see what the OFCCP has in mind later this year when they publish their proposed regulations on the subject.

<http://www.bls.gov/news.release/empsit.t06.htm>

## OFCCP JURISDICTION OVER HEALTH CARE INDUSTRY HAS CHANGED

Patricia A. Shiu, Director of the Office of Federal Contract Compliance Programs (OFCCP), signed Directive Transmittal Number 293 on December 16, 2010. To date, it is still not published on the agency's web site more than 60 days later. The following comes from BNA's Affirmative Action Compliance Manual, January 31, 2011.

If you are in the health care industry, this new directive will be important to you because it changes how OFCCP will be interpreting its jurisdiction over employer organizations in that section of the economy. We will try to summarize the new requirements here for your convenience.

Medicare Parts A & B do not create contracts. Medicare Parts C & D will subject providers to OFCCP oversight.

- If you have contracts or subcontracts with the federal government you will likely be covered. (Examples are hospital contracts that provide HMO Plan for government employees and beneficiaries; direct contracts for providing service to TRICARE, FEHBP, and Medicare's Advantage (Part C) and Prescription (Part D) program.)
- Direct federal contracts for provision of health insurance to government employees and beneficiaries that involve fee-for-service and PPO plans are AAP qualifiers.
- Contracts involving provision of administrative support, claims and data processing, customer service, marketing, medical savings plans/flexible spending plans, etc. are AAP qualifiers.
- Contracts with health care plans or companies to establish or provide the desired managed care program will capture health care providers as subcontractors are AAP qualifiers.

What is NOT going to create a covered contract or subcontract?

- Reimbursement to a health care provider from an insurer. "Because the prime contract is an insurance contract **solely** for the provision of health insurance to Federal Program members and beneficiaries, the payment of fees directly to health care providers is neither necessary to the performance of the prime contract, nor the fulfillment of an element of the prime contract."
- Medicare Parts A and B are Federal financial assistance programs that provide medical and hospital insurance to Medicare beneficiaries. The reimbursed health care provider is considered a recipient of Federal financial assistance, not a contractor.
- Receivers of grants and Federal financial assistance awards are not contractors and not subject to OFCCP jurisdiction.

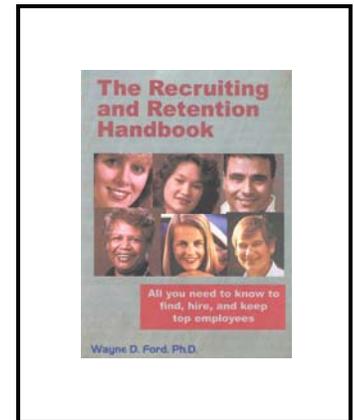
All employers with federal contracts or subcontracts should construct a table of contract information including the value amount, start date, agency supported and conclusion about qualifying for OFCCP jurisdiction.

[Cases: *UPMC Braddock et al v. Solis*, Case No. 1:09-cv-01210-PLF(D.DC); *OFCCP v. Bridgeport Hospital*, ARB Case No. 00-234, January 31, 2003; *OFCCP v. UPMC Braddock, UPMC McKeesport, and UPMC Southside*, ARB Case No. 08-048, May 29, 2009; *OFCCP v. Florida Hospital of Orlando*, ALJ Case No. 2009-OFC-00002, October 18, 2010; *United States v. Baylor University Medical Center*, 564 F. Supp. 1495, N.D. Tex. 1983.]

## *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>



## POTPOURRI

- **New E-Verify User Manual Available**

The U.S. Citizenship and Immigration Services (USCIS) has released new E-Verify User Manuals for Employers, Employer E-Verify Agents, and Federal Contractors. They are available at [www.uscis.gov](http://www.uscis.gov).

- **USCIS Reaches FY 2011 H-1B Cap**

U.S. Citizenship and Immigration Services (USCIS) announced on January 27, 2011 that it has received a sufficient number of H-1B petitions to reach the statutory cap of 65,000 for Fiscal Year 2011. <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=7fd9b9138c9cd210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

- **EEOC English Only Rules**

Equal Employment Opportunity Commissioner (EEOC) Stuart J. Ishimaru told members of the American Bar Association on November 5, 2010 that employers should closely examine their English fluency employment tests. They can be illegal if used as a pretext for national origin discrimination. The EEOC takes the position that a job requirement of English fluency is permissible only if English is required for the effective performance of a given position. He said the EEOC would challenge employment decisions based on a job applicant's foreign accent unless the individual's accent materially interferes with his or her ability to perform the job duties in question. [www.eeoc.gov](http://www.eeoc.gov) [SOURCE: BNA Affirmative Action Compliance Manual, January 31, 2011.]

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## 2011 TOP EMPLOYER LIST FROM *CAREERS & the disABLED*

*CAREERS & the disABLED* magazine has published its list of top 50 private sector employers in its Winter 2010/2011 issue. These five employers topped the list:

- *Boeing*
- *Microsoft*
- *The Walt Disney Co.*
- *Walmart*
- *Wellpoint*

Heading the list of 20 best government agencies to work for:

- *U.S. Department of State*
- *National Aeronautics & Space Administration*
- *U.S. Department of Justice*
- *U.S. Department of Education*
- *U.S. Postal Service*

Is your company or organization on the list? Check it out by getting your own copy. [www.eop.com](http://www.eop.com)

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