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The Management Advantage, Inc., PO Box 3708, Walnut Creek, CA 94598
www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

OFCCP PLACES HIRING GOALS FOR DISABLED CANDIDATES INTO PROPOSED REGULATIONS

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The Office of Federal Contract Compliance Programs (OFCCP) has published proposed regulations for federal contractors related to disabled workers. Under Section 503 of the *Rehabilitation Act of 1973*, OFCCP has the obligation to regulate federal contractor activities in hiring disabled workers. Since that time, only narrative affirmative action statements have been required of contractors.

That's about to change.

OFCCP now wants contractors to set a goal of 7 percent hiring rate for disabled workers. That's a national goal that would be applied to all contractors. And, if the regulation goes final, it will become a quota for every federal contractor in every part of the country. Miss it, and you will have to be prepared to adopt written agreements with OFCCP to take specific steps to meet the quota in the future. Part of the new regulatory requirement will be at least three obligatory linkage agreements with source organizations that provide disabled job candidates. And, there will be mandatory reporting to company executives on hiring performance related to the 7 percent goal. OFCCP officially declares the new representation level of 7 percent to be a hiring goal and not a quota. But the Director, Patricia Shiu, says, "What gets measured gets done." It's a quota.

According to some experts, this is a continuing effort by the government to shift disabled people off of the government's financial support roles onto private sector employment roles. It is expected to save the government billions of dollars if the 7 percent goal is reached.

OFCCP will be tracking the performance of each state employment agency if these changes are approved. They will monitor how many disabled job candidates are actually hired once referred by a One-Stop employment center to federal contractors. Currently, contractors are required to post almost all job openings with the state employment agency for the state in which the opening exists.

Recordkeeping obligations will be expanding again. If the new rules are approved, contractors will be required to retain ALL records related to recruiting and hiring disabled workers for a minimum of five years.

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Some other provisions of the proposal are:

- Job applicants would be asked to self-identify themselves as disabled while they are still job applicants. They would be asked again after they are hired. And, annually after that.
- Written reasonable accommodation procedures must be developed by each contractor.
- New compliance evaluation procedures would be developed for determining contractor compliance with Section 503.
- Make mandatory an annual review of physical and mental job requirements for every job in each affirmative action establishment.
- Requires an annual review of effectiveness in recruiting and hiring disabled workers and a documentation of that review.
- Requires an annual survey of all employees to invite them to identify as disabled. OFCCP will specify text of invitations to be sent.
- Documentation requirements will include analysis of results each year.
 - The ratio of jobs filled to job openings.
 - The ratio of applicants with disabilities to all applicants.
 - The total number of applicants hired.
 - The ratio of individuals with disabilities hired to all hires.
- All records must be kept in the format prescribed by OFCCP and delivered to the agency in that format whenever the contractor is audited. This will likely be electronic formatting. Computers are going to be mandatory.
- All contractor records must be provided to OFCCP either on-site or off-site as the agency wishes. It will have access to everything, even medical records and private files, off-site if it wishes.
- Requires contractors to permit disabled job applicant/employee to pay the portion of reasonable accommodation expense the contractor has documented as unreasonable expense.
- Requires contractors to include these new requirements in all employee and management training programs.

The Proposed Section 503 Regulations were published in the Federal Register on December 9, 2011.

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-09/pdf/2011-31371.pdf>

The OFCCP estimates the contractor's financial burden resulting from these changes to be a total of \$473.00 per AAP establishment. We estimated the annual costs for each contractor establishment to be \$33,000 to \$450,000.

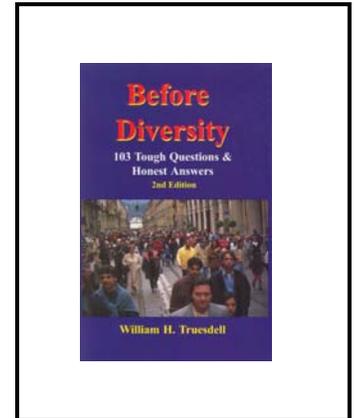
According to Secretary of Labor Hilda L. Solis, "This proposed rule represents one of the most significant advances in protecting the civil rights of workers with disabilities since the passage of the *Americans with Disabilities Act*." "For nearly 40 years, the rules have said that contractors simply need to make a 'good faith' effort to recruit and hire people with disabilities. Clearly, that's not working," said OFCCP Director Patricia A. Shiu. "Our proposal would define specific goals, require real accountability and provide the clearest possible guidance for employers seeking to comply with the law."

Public comment is being solicited with responses to the proposal due to OFCCP by February 7, 2012. Details are in the Federal Register. (76 Federal Register 77056-77104)

Before Diversity

Successful diversity management programs are based on a good foundation of equal employment opportunity among other things. Here is a guide to help you build the foundation you can then use for your diversity management program.

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



POTPOURRI

- **Best Veteran Employers: A Top-35 List**

Military.com has published its list of the best 35 veteran employers for this year. Officially called the “35 Most Valuable Employers for Military,” the list was compiled by Civilian Job News, which looked at a variety of companies, both large and small, over different industries. Included in the list are Amazon.com, The Exchange (Army & Air force Exchange Service), BNSF Railway, CACI International Inc., General Electric, Northrop Grumman, Paychex, Inc., Sears Holdings Corporation, Sprint, University of Phoenix, and Waste Management, Inc.

<http://www.military.com/veteran-jobs/content/career-advice/job-hunting/top-35-veteran-employers.html>

- **California Supreme Court Rules on Administrative Exemptions**

The California Supreme Court has issued its opinion on how exemptions from overtime requirements should be determined for administrative personnel. It gave a strict interpretation of the state’s Industrial Wage Order Number 4 that states work performed must be both qualitatively administrative in nature and quantitatively, substantially important to the management or operations of the business. The Court disregarded opinion letters from the state’s Department of Labor Standards Enforcement (DLSE) saying it is the Court’s role to construe the language. Under this opinion, it is quite possible that more positions will be classified as exempt from overtime requirements.

<http://www.metnews.com/sos.cgi?1211%2FS156555>



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DOL TARGETS CONSTRUCTION INDUSTRY IN TWO STATES

According to the national law firm Littler Mendelson, PC, the U.S. Department of Labor has significantly increased its scrutiny of construction industry employers in Connecticut and Rhode Island. (Littler Publications: <http://www.littler.com/publication-press/publication/us-department-labor-targets-connecticut-and-rhode-island-construction->)

The Hartford, CT office of the DOL's Wage and Hour Division (WHD) issued a press release on November 30, 2011 saying it will be conducting a "multiyear enforcement initiative" aimed at improving what it sees as "widespread noncompliance with minimum wage, overtime and record-keeping provisions of the Fair Labor Standards Act" in the construction industry in both Connecticut and Rhode Island. The stated goal of the investigation initiative is to "remedy systemic violations and promote sustained compliance among contractors and subcontractors working on construction projects."

<http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Northeast/20111130.xml>

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The Management Advantage, Inc.

PO Box 3708
Walnut Creek, CA 94598
925-671-0404
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www.hrwebstore.com

Editor: William H. Truesdell, SPHR
billt@management-advantage.com

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