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Special Report for HR Professionals

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EEOC & OFCCP ENFORCE "RACE" PROTECTIONS FOR EVERYONE

It is a common myth that protections against race discrimination only apply to minorities. In fact, everyone has a race (or ethnicity), and therefore everyone enjoys protection against employment discrimination based on race or ethnicity.

On a federal level, the Equal Employment Opportunity Commission (EEOC) is responsible for enforcing *Title VII of the Civil Rights Act of 1964* which offers protection against illegal discrimination in employment actions based on race, color, religion, sex or national origin. Title VII provisions apply to employers who engage in interstate commerce and have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. "Interstate commerce" includes "any trade, traffic, commerce, transportation, transmission or communication" that occurs between or among state geographies. So, if you order supplies or equipment from a vendor in another state, you are engaging in interstate commerce. The same conclusion is reached if you have customers or clients in a state outside your own state. There is no minimum dollar threshold. Virtually any business can be engaging in interstate commerce these days. So, if you have 15 or more workers on the payroll, you will likely be covered by the provisions and requirements of Title VII. In 2009, the EEOC resolved a complaint at a Jack in the Box restaurant involving a White hostess who claimed she was harassed by her Black co-workers. (http://www.eeoc.gov/eeoc/litigation/selected/racial_harassment.cfm) The EEOC recognizes White as a race and acts to protect those employees who are White.

The Office of Federal Contractor Compliance Programs (OFCCP) is responsible for enforcing Title VII in the federal contractor community. On 10/20/2011, the agency issued a press release (one of its enforcement tools) announcing the settlement of its investigation into Caviness Beef Packers of Amarillo, Texas and its treatment of Black, White and Asian job applicants. There were 746 applicants in the affected pool. The company agreed to pay back wages and interest and make 81 job offers as positions opened up. (<http://www.dol.gov/opa/media/press/ofccp/OFCCP20111521.htm>)

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OFCCP ADDS SOME NEW FAQs ABOUT ITS INTERNET APPLICANT RULES

OFCCP has added several new Frequently Asked Questions (FAQ) to its posted list of issues associated with the rule on Internet applicant recordkeeping requirements. Here are some of them:

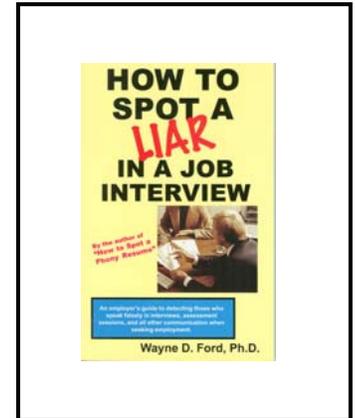
- Do contractors need to rewrite all their job descriptions to reference basic qualifications?
- A contractor uses software to search a large resume database for job seekers who are the "best fit" for the qualifications required for a particular position. The software uses a "hit" feature that identifies and ranks candidates who best match the job qualification search criteria. Is the software a data management technique such that resumes reviewed by the software have not been considered for a particular position?
- If a contractor believes that a search of a large external resume database will identify a large number of resumes meeting the basic qualifications for a position, how may the contractor reduce the number of resumes it will be required to retain as a result of the search?
- Section 60-1.3(5) of the Internet Applicant rule states that one way a contractor can conclude that a job seeker is not interested in a position is the individual's passive demonstration of disinterest shown through repeated non-responsiveness to inquiries from the contractor about interest in the position. How many times must a contractor attempt to contact an individual to conclude that he or she has shown disinterest through "repeated non-responsiveness to inquiries"?
- Do contractors need to retain records of searches that do not produce any candidates with basic qualifications?
- Some contractors search large, external resume databases that for a fee will maintain, on behalf of the contractor, copies of resumes identified by the contractor as meeting the basic qualifications for a particular position. Is it possible for contractors to comply with Internet Applicant recordkeeping without having resumes maintained on their behalf by the external resume database?
- If a covered employer contracts with an employment agency to screen and refer job seekers using the employer's selection procedures, what records must be maintained?
- Can a contractor ask a recruiting firm to keep, on its behalf, the records required by the Internet Applicant Final Rule?
- How can a recruiting firm that is not a federal contractor or subcontractor obtain a certificate indicating that its practices are in compliance with OFCCP's recordkeeping requirements?
- If a job fair recruiter suggests that a job seeker apply for a position through a specific requisition, and the job seeker fails to do so, is the job seeker an applicant or an Internet Applicant?

You can find the OFCCP's new FAQs on its web site at http://www.dol.gov/ofccp/regs/compliance/faqs/ia_ppfaqs.htm#Q3BQ
Each added entry is marked, "NEW."

How to Spot a Liar in a Job Interview

It sometimes seems like people will do anything these days to get a job. Some of the behavior managers and HR professionals are seeing include lying during job interviews. People make claims believing that the interviewer will “never catch them.” Fabrications are only the beginning. Learn how to tell when the applicant is lying. Learn how to test a person’s honesty during the interview.

http://www.management-advantage.com/products/liar_book.htm



POTPOURRI

- **Run, Hide, Fight. Surviving an Active Shooter Event**

Aurora, Colorado’s tragic and senseless theatre shooting is just one of a series of similar events around the country. While it is not possible to guarantee you will never face such a situation, it is possible to prepare yourself if it ever happens to you. And, there is a very good training aid that can help you prepare so you can react appropriately on that off-chance you encounter a shooting event. The City of Houston, Texas has produced a 6-minute video that explains in very simple terms the three things you should do. It is titled, “**Run, Hide, Fight. Surviving an Active Shooter Event.**” You can see it on YouTube at <http://www.youtube.com/watch?v=5VcSwejU2D0> And, at the web site for “Ready Houston” emergency preparedness at <http://www.readyhouston.tx.gov/runhidefightenglish.html> Production was assisted by a grant from the Department of Homeland Security.

- **Are Resumes A Tool Of The Past?**

There are some HR professionals that suggest the resume is no longer a viable tool in the American employment process. On-line networking sites such as LinkedIn have taken their place they say. Read more about the discussion and draw your own conclusion at Human Resource Executive Online.

<http://www.hreonline.com/HRE/story.jsp?storyId=533349890>

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EEOC & OFCCP ENFORCE RACE PROTECTIONS FOR EVERYONE

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In a second OFCCP case, Houston, Texas company JacintoPort agreed to pay \$219,000 in back wages and interest to 48 African American and 21 Caucasian job applicants who wished to become longshoremen but were prevented from that goal by illegal race discrimination. (<http://www.dol.gov/opa/media/press/ofccp/OFCCP20120015.htm>)

With that track record on the enforcement front, it is wise for all employers to be sure their management training programs reinforce the notion that race includes "White." It is just as inappropriate, and illegal, to discriminate against White employees and job applicants as it is to discriminate against members of minority groups. It's not illegal "reverse discrimination." It's just illegal discrimination.

So, if you know someone who thinks race protections are just for minorities, you can correct that incorrect impression.

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