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NEWS FROM FEDERAL ENFORCEMENT OFFICIALS

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Here are some highlights from various federal enforcement efforts that have been announced recently...

- U.S. Immigration & Customs Enforcement (ICE) fined 17 Massachusetts employers a total of \$349,619.54 for issues related to Form I-9 violations. Fines ranged from under \$1,000 to over \$150,000 per employer.
<http://www.ice.gov/news/releases/1211/121114boston.htm>
- The Occupational Safety and Health Administration (OSHA) has warned employers in the retail industry that they must be prepared for holiday crowds and prevent trappings like those that have happened in the past. There are specific actions employers are expected to take if they have any reason to expect there will be large crowds at their store(s) waiting to enter when the store opens.
http://www.osha.gov/OshDoc/data_General_Facts/Crowd_Control.html
- The Equal Employment Opportunity Commission (EEOC) settled a disability discrimination law suit against Rite Aid Corporation for \$250,000. The Commission's investigation found in favor of the employee who said he had been denied promotions because he has epilepsy. Then came the retaliation. The company threatened to terminate the worker if he didn't undergo a fitness-for-duty examination. They sent him to a physician who had no experience with epilepsy and then terminated him contrary to the medical releases he had been given by his own neurologist. He had worked at the company's customer service center in Perryman, MD for 10 years without any injury to himself or to others resulting from his seizures. Now the company has a 3-year consent decree.
<http://www.eeoc.gov/eeoc/newsroom/release/11-7-12c.cfm>

WHAT'S HAPPENING AT OFCCP? (AN OPINION)

By William H. Truesdell, SPHR

Who knows?

The least transparent of all Department of Labor enforcement agencies continues to be a mystery to federal contractors.

As a run-up to the presidential election, most federal enforcement agencies “go silent” not wanting to somehow make a *faux faux* that could embarrass the president. The most recent election is not the first time that has happened. Actually, it is a common practice every time a president is running for re-election. Unfortunately, it leaves a vacuum of sorts in the enforcement process. In the case of the Office of Federal Contract Compliance Programs (OFCCP), contractors are left to wonder what they will be held accountable for doing.

Before OFCCP went silent, there were several regulatory proposals pending in various stages of the proposal-approval process.

- VEVRAA regulatory revisions are currently dangled over the contractor community waiting for release of the final version by OFCCP. As some experts have said, “It’s hard to be against veterans.” Still, we have not yet seen the final regs.
- Disability regulatory revision proposals received a scathing review by contractors and legal experts. Since those blistering comments were submitted to the agency there has been nary a whiff of an indication that more will be forthcoming. Since the re-election of President Obama, it is likely that the new rules will be issued as proposed, including a 7 percent quota. We just don’t know when that shoe will drop.
- Request for a new compensation survey tool, similar to the Equal Opportunity Survey that was eliminated during the Bush Administration, seems to have run into a road block. Contractors almost universally opposed the proposal content. Then, the National Academy of Sciences (NAS) published a draft of its report on “Collecting Compensation Data from Employers.” It said nothing should be done until there is a specific plan for how the data is to be used and sufficient security provisions in place to protect the data that has already been collected. It cited significant security deficiencies in the current data handling system. So, we probably shouldn’t expect to hear any more about this until those issues are addressed. One expert estimates at least six years will go by before that happens.

A fall update to the OFCCP’s regulatory agenda is due out any time now. The latest information can be found at:

<http://www.dol.gov/ofccp/regs/compliance/RegulatoryAgenda.htm>

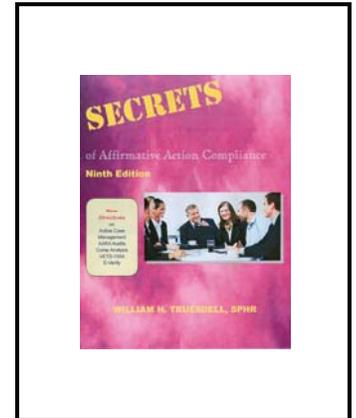
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Secrets of Affirmative Action Compliance

Now in its 9th edition, this book has become the desk reference for federal contractors around the country. Learn how to comply with affirmative action requirements for minorities and women, disabled, and veterans. Included are both narrative and statistical analysis requirements. There is even a bonus disk containing an ebook copy of this outstanding publication.

<http://www.management-advantage.com/products/AAP9.htm>

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WHAT'S HAPPENING AT OFCCP?

- The proposed contractor audit scheduling letter and its attached itemized listing of submission requirements was also strongly opposed by the contractor community, primarily because of the suggested requirements for compensation data. We've heard nothing about this proposal since the NAS report surfaced with its six specific recommendations for the agencies to follow. One of those recommendations was that the OFCCP seek legislation that would provide data security, reducing contractor concerns. We probably can't expect much to happen with the new scheduling letter unless a lot of revisions are made to the current proposal. The agency has not given us any clues about what will be done.
- Updating of the regulations governing construction industry goals for women and minorities has been something proclaimed by Director Shiu to be of the highest priority. Yet, nothing has come of those claims. The agency has too few staff at headquarters to do this work.
- Publishing an updated Federal Contractor Compliance Manual (FCCM) is also something Director Shiu has said is critically important. Even though some recent case law has said the agency doesn't have to follow its own published practices, it would be helpful to contractors for the agency to at least give some hint of procedural consistency. So far, we've heard nothing of it. Nor, have we seen the new FCCM that has been promised for years. The agency has too few staff at headquarters to do this work.

We are looking forward to the next announcement from OFCCP about its contractor oversight regulations. It's not at all clear that contractors will be happy with those pronouncements, but at least there will be some idea of where Director Shiu intends to take her enforcement group now that the election is over. We may be seeing more contentiousness between OFCCP and the contractor community if OFCCP management continues to do whatever it wants. Arbitrary enforcement is not a healthy practice.

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CALIFORNIA'S NEW PERSONNEL FILE ACCESS LAW

On September 30, 2012 California Governor Jerry Brown signed AB2674 into law and it amended Labor Code section 1198.5. That is now consistent with section 226. Starting on January 1, 2013, among other things, it provides that employers must comply (within 21 days) with a written request from an employee or former employee to review personnel file contents and receive a copy of some of the documents in that file. Residential employers and local and state government employers are exempt from the requirements. Copies of records relating to the employee's performance or any grievance concerning the employee must be provided when requested. Specifically excluded from the requirement to give copies of records are those related to an investigation of possible criminal offense, letters of reference from former employers, records made before the employee was hired, and records related to promotional exams. Penalties for not complying with the new requirements include a fine of up to \$750 from the Labor Commissioner, court costs, attorney fees and injunctive relief. These requirements must be met for written requests made by former employees as well. Only one request per year per employee or former employee is permitted. Be sure to discuss these requirements with your management attorney before designating someone in your organization to handle these requests.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2651-2700/ab_2674_bill_20120930_chaptered.pdf

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