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BE ON NOTICE: THE LABOR DEPARTMENT IS PAYING ATTENTION TO DISCRIMINATION IN ALL ITS FORMS

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While some federal contractors pay particular attention to discrimination targeted at women and minorities, the US Department of Labor (DOL) has provided another warning to employers that discrimination against any group is unacceptable.

In an OFCCP news release dated April 25, 2013, the US Office of Federal Contract Compliance Programs (OFCCP) announced a conciliation agreement with Goodwill Industries of Southern California related to gender-based hiring discrimination. Investigators with the OFCCP determined that Goodwill's hiring process female applicants for entry-level positions as attendants at local donation centers. They found that Goodwill acted on a belief that women exhibited superior customer service skills to males.

The OFCCP's Los Angeles District Office conducted the investigation and concluded that 200 qualified men were denied the opportunity to advance to the job offer stage. As a result, Goodwill will pay \$130,970 in back wages to the affected individuals and as openings occur will make 18 job offers to qualified men who were not previously offered positions.

The OFCCP noted that "Sex discrimination in the workplace can take many forms, and we are committed to fighting all of them." This should be a wake-up call to all employers--not simply federal contractors.

All hiring decisions, in order to be legally defensible, must be based on an applicant's ability to successfully perform the job and may not be based on superficial characteristics such as gender or ethnicity. The Federal Uniform Guidelines on Personnel Selection Procedures provides clear guidance to employers on the procedures appropriate for designing and validating defensible personnel selection procedures.

Federal contractors are required to assess their hiring procedures on an annual basis to identify such potential sources of bias and to address them in a timely manner.

Source: OFCCP News Release #13-0706-SAN
<http://www.dol.gov/opa/media/press/ofccp/OFCCP20130706.htm>

WALKING THE TALK: SHOULD DOL FOLLOW THE SAME RULES IT APPLIES TO CONTRACTORS?

On April 15, 2013, Representative Rodney Alexander of Louisiana's 5th Congressional District introduced a bill that would require the United States Department of Labor to follow its own rules. Titled the Equal Standards in Hiring Americans Act, the bill would require the Department of Labor to abide by the same hiring regulations it is attempting to impose on federal Contractors.

The DOL's Office of Federal Contract Compliance Programs (OFCCP), which implements and monitors contractor compliance with equal employment rules and regulations, has issued a proposed rule that would effectively require them to ensure that seven percent of their workforces be comprised of people with disabilities. This rule would also apply to subcontractors and failure to meet the requirement could result in the loss of government contracts.

According to Representative Alexander's press release, "This proposed rule has created a wave of anxiety among those in the federal contracting community, many of whom are facing severe budget cuts and are struggling to retain current employees on their payrolls. Federal contractors are wondering how they will know if they are in compliance with the rule since it is against the law for them to ask if an employee is disabled; they are also unsure if they will be required to lay off non-disabled employees and replace them with people with disabilities in order to satisfy the rule's requirement."

Alexander continues, "Remarkably, it does not appear that DOL is in compliance with the regulations it is attempting to impose on federal contractors.

"This legislation does not prevent DOL from implementing this rule; instead, it simply says that DOL cannot impose this rule on federal contractors unless it first certifies to Congress that each office and division within DOL is in compliance with the rule's requirements.

"I appreciate the Department of Labor's devotion to ensuring Americans with disabilities are sufficiently represented in the workplace. But when it comes to hiring, I believe our government needs to set the standard—not lead from behind. We should not be asking others to meet goals we ourselves are unwilling or unable to achieve."

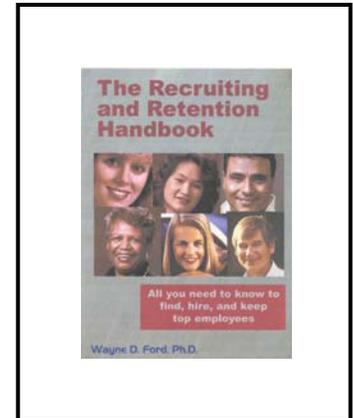
This is an interesting development as Representative Alexander raises a valid question. To the extent that hiring, promotion, and compensation are intended to be based solely on the qualifications of the employee and his or her ability to perform successfully on the job, shouldn't these rules also be applied just as stringently to those who propose and enforce them? Only time will tell whether this bill will become law.

Source: Press Release, April 15, 2013.

For Representative Alexander's press release go to: <http://alexander.house.gov/press-releases-statements/congressman-alexander-introduces-bill-to-require-department-of-labor-to-follow-its-own-regulations/>

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

■ California Department of Fair Employment & Housing Free Webinars

The California DFEH offers a variety of free webinars for employers and employees on topics related to employment discrimination. Many of these webinars will help you find ways to protect your organization from lawsuits as well as ensure employment fairness.

<http://www.dfeh.ca.gov/webinars.htm> *

■ EEOC Fact Sheet on Best Practices in Employment Testing and Selection

Employers often rely on one or more kinds of testing methodologies ranging from interviews to full-fledged assessment centers when making hiring decisions. While these tools are unique in their ability to predict an applicant's ability to successfully perform the job, their use can also open an employer up to charges of hiring discrimination if they are not designed and used correctly. The EEOC has a fact sheet that provides useful information on how to safely use these important tools.

http://www.eeoc.gov/docs/factemployment_procedures.html *

■ EEO Enforcement Statistics Show Increase in Sexual Harassment Complaints by Males

Although the number of overall sexual harassment complaints has decreased from 7,809 in 2011 to 7,571 in 2012, the number of such complaints by males has increased from 16.1% to 17.8%. This non-intuitive trend could signal additional scrutiny in this area by the OFCCP.

<http://www.employmentlawblog.info> *

** If clicking the link does not work, please copy the link into your browser and click enter.*

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TIPS FOR STAYING COMPLIANT WITH OFCCP REGULATIONS

The OFCCP appears poised to launch initiatives of interest to every federal contractor. From a new directive on compensation analysis methodology to proposed rules that would change Veteran and Disability reporting which, if passed, will require federal contractors and any associated sub-contractors to set specific goals for veteran hires, there is enough to keep your compliance team busy for quite some time. Some suggestions for remaining compliant with OFCCP regulations in this changing landscape include:

- Keep your affirmative action plan up-to-date.
- Be your own worst critic, don't wait for the OFCCP to uncover problems, uncover them first--and address them.
- Conduct adverse impact analyses for all stages of the hiring process as well as promotions and terminations. While simple qualitative approaches can be useful, statistical analyses are the gold-standard for defense in litigation settings.
- Evaluate your applicant tracking system to ensure that you collect relevant data at all stages of the hiring process.
- Work to ensure that your HRIS contains ALL relevant variables that help to explain compensation decisions.

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