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Special Report for HR Professionals

February 21, 2014
Number 561

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

IS CUTTING CORNERS ON PERSONNEL SELECTION WORTH 2.2 MILLION DOLLARS?

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It should go without saying that making money is at the top of the list of priorities at most organizations. A corollary is that wasting money is usually highly frowned upon—at least by those organizations who plan to survive.

Therefore, it seems like a natural conclusion that every organization would demand that its managers select only the most knowledgeable, creative, productive, and dependable new employees from the applicants who show interest in their positions. And yet, we see over and over that, for some reason, some organizations allow selection decisions that are based on factors which are irrelevant to the job with the result being unlawful discrimination.

One of the latest examples brought to us by the OFCCP is the case where *Cargill Meat Solutions*, headquartered in Wichita, Kansas has agreed to settle charges of hiring discrimination based on race and gender. (<http://www.dol.gov/opa/media/press/ofccp/OFCCP20140010.htm>)

Under the agreement, Cargill will pay \$2,236,218 in back wages and interest to 2,959 applicants who were rejected for production jobs at facilities in Springdale, Arkansas; Fort Morgan, Colorado; and Beardstown, Illinois, between 2005 and 2009. The affected workers include: female applicants at Springdale and Fort Morgan, Caucasian and Hispanic applicants at Fort Morgan, and African American and Caucasian applicants at Beardstown. In addition, the company will extend 354 job offers to the affected workers as positions become available.

It is interesting to note that Caucasians were identified as being among those negatively impacted by the company's practices. This should serve as a warning to those organizations who tend to focus solely on their treatment of minorities and women in their affirmative action compliance efforts.

It is doubtful that Cargill intended to discriminate as a matter of policy. It is much more likely that the OFCCP's findings resulted from a series of avoidable issues that can easily be addressed. Several of the steps simply involve fulfilling obligations for being a Federal contractor. This includes, keeping required records, analyzing recruiting and hiring outcomes for signs of systematic discrimination relating to gender, race, age, etc. If contractors fail in one area, it is likely that they have failed to ensure that all selection procedures and devices (tests, interviews, practical exercises, etc.) are based directly and demonstrably on the knowledge, skills and abilities that are important to job performance and required at entry to the position.

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EEOC RELEASES FISCAL YEAR 2013 ENFORCEMENT AND LITIGATION DATA

On February 5, the U.S. Equal Employment Opportunity Commission (EEOC) released data illustrating their EEO-related litigation efforts including detailed breakdowns of the 93,727 charges of workplace discrimination that they agency received.

The data indicates that during the 2013 fiscal year, which runs from October 1 through September 30, the agency obtained the highest monetary recovery in its history through its administrative process. The year saw a 7.7 million dollar increase in monetary recovery to a total of \$372.1 million dollar. The data tables also provide detailed breakdowns for the 93,727 charges of workplace discrimination the agency received.

It is noteworthy that, while the monetary recovery increased from the previous year, the actual number of charges received actually decreased. Whereas 2012 saw 99,412 charges received by the EEOC, in 2013 the number dropped to 93,727. According to the data, the most frequently cited basis for discrimination charges was "retaliation". This continues the trend that has been observed in previous years. The second most common charge was race discrimination followed by sex discrimination and then, lastly disability-related discrimination.

In fiscal year 2013, the EEOC filed 131 merit-related lawsuits where the primary allegation was discrimination. Lawsuits filed under Title VII of the Civil Rights Act of 1964 were the most numerous (78), followed by lawsuits filed under the Americans with Disabilities Act (51).

During the fiscal year, the Commission resolved 209 merit-related lawsuits, with the result being \$39 million in monetary benefits to victim, plus wide-ranging injunctive relief, tailored to the particular issue in the lawsuits.

To view the data, visit: <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>

OFF-THE-SHELF vs CUSTOMIZED PRE-EMPLOYMENT TESTS

Occasionally, employers find themselves faced with the question of whether they should rely on off-the-shelf tests or develop their own custom tests for use in making hiring decisions. The answer to this question is not a simple as it sounds as there are pros and cons to each type of test.

On the one hand, off-the-shelf tests have the advantage of having little or no development costs making it possible for them to be implemented quickly. Further, often there is a track record of off-the-shelf tests--perhaps even a history of surviving challenges in court.

One factor that employers need to consider, however, is that it is a requirement under the Federal Uniform Guidelines on Employee Selection Procedures (41 CFR 60-3) that a test be valid for the "specific" job it is used for. As a result, it is not enough for the test to have been shown valid for other employers or even other locations of the same employer. They must show that the test is valid for the specific job(s) and situation(s) where it is used. This is called "situational specificity."

Aside from defensibility, the biggest weakness of off-the-shelf pre-employment tests is the fact that by design they focus on general skills applicable to many jobs rather than the specific knowledge, skills, and abilities that are a required for maximum performance on any specific job. For example, many off-the-shelf tests include general subtests such as reading comprehension, numeracy, analytical reasoning, etc. While many jobs require these skills, the level, content, and context of these skills can differ dramatically.

As a result, off-the-shelf tests tend to provide a broad assessment of an applicant's skills. They are kind of like an x-ray compared to a CAT scan. While an x-ray is useful in many cases, it usually does not have the diagnostic power and resolution of a CAT scan. Therefore, while it has some cost benefits, it should not be oversold. Where possible, an employer can benefit from pre-employment tests designed specifically to identify high quality applicants for "their" specific jobs.

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

POTPOURRI

■ New Jersey dairy company to pay nearly \$325,000 to settle charges of sex and race discrimination

The U.S. Department of Labor's Office of Federal Contract Compliance Programs announced that federal contractor *Cream-O-Land Dairy Inc.* has resolved claims of sex and race discrimination affecting 227 workers who applied for jobs at the company's dairy plant in Florence, N.J. An OFCCP review of the facility determined that the dairy company used a hiring process that violated Executive Order 11246 because it discriminated against women, African Americans and Asian Americans who applied for warehouse positions in 2010.

*Source: <http://www.dol.gov/opa/media/press/ofccp/OFCCP20132307.htm>

■ OFCCP Posts final disability self-ID Form

The OFCCPs new Disability Self-ID form has been posted to their website with an OMB reference number and an expiration date of 1/31/2017. The form is mandatory for use beginning March 24, 2014 in alignment with Subpart C of the regulations. As a reminder for those who update their AAP prior to March 24, 2014, they may wait to use the form until the renewal of the AAP. However, the OFCCP is encouraging that contractors use the form as soon as possible after March 24th. The form can be used electronically but must employ content as prescribed by OFCCP.

*Source: http://www.dol.gov/ofccp/regs/compliance/sec503/SelfId_Disability_CC_305_012214_JRF_QA_508c.pdf

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In other words, contractors often fail to validate their selection devices. If they do, even in the face of disparities in group hiring rates, the contractor is much more likely to be able to defend their hiring decisions based on the fact that their carefully designed and validated selection devices are tied to the requirements of the job. Of course other factors need to be considered, but absent a demonstrably valid test, the presence of adverse impact in selection almost surely will cost an employer dearly.

We recommend, therefore, that if you have not conducted a systematic job analysis and ensured that all interview questions, practical exercises, or other assessment tools measure only those factors that are key to job success, you do so at the earliest possible opportunity. It is better to do it on the front end than attempt to do it on the back end.

It makes good business sense and will very likely save you money and bad publicity in the long run.

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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

Contributing Editor: Jim Higgins, Ed.D.

billt@management-advantage.com

OHiggins@surewest.net

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