Gentle Readers

Special Reports for HR Professionals—1997

GENTLE READERS: Special Reports for HR Professionals - 1997

Collection of email reports.

The Management Advantage, Inc.
P.O. Box 3708, Walnut Creek, CA 94598-0708
Voice: 925-671-0404 FAX: 925-825-3930
info@management-advantage.com

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- from a *Declaration of Principles* jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

 All inquiries should be addressed to William H. Truesdell, The Management Advantage, Inc., P.O. Box 3708, Walnut Creek, CA 94598-9798.

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Gentle Readers,

It hardly seems we can go a day without picking up the newspaper to read an article about workplace violence. If not that, then we see visions played out before us on the evening news at dinner time. Our scientists and psychologists have yet to explain why this is happening. How to control it, however, is another matter.

The following special report was prepared at the request of the Institute for Management Excellence for their web site newsletter. You can visit them at http://www.itstime.com/newslet.htm. They have some worthwhile information to reward you for spending your time.

In the meanwhile, see if you can find some helpful information among the following practical suggestions to employers. Best wishes on your effort. None of us want to be the next cause for a news headline.

TAKING THE PUNCH OUT OF WORKPLACE VIOLENCE

William H. Truesdell, President
The Management Advantage, Inc.

The Division of Occupational Health and Safety in California's Department of Industrial Relations points to surveys which estimate that nationally between 670,000 and 2 million employees have been attacked in the workplace. Moreover, 6.6 million have been threatened and 16 million have been harassed. Those are impressive numbers, even if they are estimates.

Here are some more. The Census for Fatal Occupational Injury Statistics showed that in 1993 there were 1004 homicides in the workplace. The greatest number of violent attacks came from customers (44%), strangers accounted for 24% of attacks, co-workers caused 20%, bosses 7%, and finally former employees 3%. It seems our generally held perception of former employees as the greatest risk may not be accurate. The Centers for Disease Control in Atlanta, Georgia has classified workplace violence as a national disease epidemic.

Some states, including California, are holding employers responsible for preventing violence in their workplaces. Under California law, all employers must have a written safety plan called an Injury and Illness Prevention Program. In addition to addressing fire safety, hazardous materials handling procedures, and earthquake preparedness, these written plans must also address the subject of workplace violence prevention. Employer penalties can be severe. Willful violations now bring a citation worth a minimum of $25,000. Willful violations which result in death or serious physical harm to an employee can result in fines as great as $70,000. Then, too, there is the state law which holds individual managers criminally liable if they know of a workplace hazard with the potential of serious injury, do nothing to correct it, and someone is actually seriously hurt or

killed. That will clear your calendar for a few years while you sit behind bars.

Let's face it. It's not just the U.S. Postal Service which is having problems involving workplace violence. They just seem to garner the largest headlines. And, remember, it is customers not employees who cause the greatest number of workplace problems.

So, what can employers do? Glad you asked. Here are some practical suggestions to help you keep your workplace as safe as you want it to be for yourself, your loved ones and your employees.

Employer Actions for Prevention

Step 1: Have a Written Policy Against Workplace Violence

Be sure your policy is written and that all employees receive a copy. If you work in a state which does not require employers to have a written safety plan, consider creating an outline of actions to be taken under different emergency conditions: fire, earthquake, violence, medical emergency, etc. Have emergency telephone numbers printed on a list, laminated in plastic and placed next to every telephone, and keep those numbers updated. At last count, twenty-seven states allow citizens to legally carry concealed firearms. None of those states, as far as we know, prevent an employer from controlling people's behavior while at work. Therefore, your safety policy should contain a prohibition against bringing firearms or other weapons into the workplace. In thirty years I have never come across a situation which would warrant an employee having a weapon in the workplace. They can leave firearms in their vehicles until they leave work. Or better yet, leave them at home. Can you imagine having a fully armed staff wandering around? At best, it invites trouble.

Your policy should indicate that you have a zero tolerance for workplace violence of any kind. It should also be clear that any employee participating in any form of workplace violence will be subject to discipline, up to and including dismissal. There is usually no need to use progressive discipline with something like workplace violence.

Step 2: Identify Security Hazards in Your Workplace

Develop your own checklist for potential security hazards in your workplace. Or, ask your safety consultant, workers' compensation insurance carrier or employment attorney if they have something already developed which you can use. Make an inspection of security hazards at least once every calendar quarter. Keep a record of your inspections, including what you discovered as hazards and what actions you have taken to correct the identified problems.

Taxi cab drivers and convenience store clerks are in the highest risk group for workplace violence. What can be done to lessen that risk? Plastic barriers between passenger and driver compartments in cabs,

perhaps. Security video systems and alarm systems may help, as could improved lighting inside and outside the facility.

Law enforcement officials, hospital workers (especially emergency room workers), sales personnel, prison guards and social service workers all fall into the next lower risk level. What can be done to protect them while they are doing their jobs? Naturally, it depends on the specific analysis you do for your workplace which will give you the answer to such a question. However, you might already recognize that personal protective equipment could play a role for law enforcement officials, hospital workers and prison guards. Sad as it is, even some social service workers today are wearing bullet-proof vests. If there is a product or device which can help prevent personal injury, you should consider using it.

In the typical office environment, we are seeing more employers turning to restricted workplace access as a means of offering improved security for their workers. Door locks, electronically coded entry systems, reception areas behind plastic or glass screens are other examples of physical changes some employers have made.

Step 3: Ensure Employee Compliance With Safety and Security Policies

Once your safety policy has been written and approved, managers should review it with every employee. This can be done in groups or individually. The review should not consist of the manager mailing a copy of the policy to each employee and directing them to read it. This review should involve face-to-face conversation about specific risks in your workplace, your procedures for handling emergencies, and an opportunity for employees to voice any concerns they may have. Discuss your workplace security inspection and any action being taken to correct deficiencies you discovered.

All employees should be told that the employer takes workplace violence very seriously and policy violations will result in discipline, perhaps dismissal. Finally, be sure all employees follow the policy. This involves normal day-to-day observation and monitoring which good managers do anyway. Encourage those who do things correctly. Discipline those who do not by using coaching, warnings, suspension or dismissal.

Tell employees what has been discovered during the security audit or inspection process. And, tell employees what will be or has been done to address problems that your audit uncovered. Train employees in properly using any new security devices, systems or procedures. Invite questions and suggestions.

Most importantly, perhaps, should be the employer’s encouragement of workers to talk about any threats of violence they receive. As the employer, you know that upset in other parts of people’s lives can sometimes spill over into the work environment. You don’t want that to happen if you can prevent it. But to prevent it, you must know about it. Employees have to tell you if they are experiencing problems of that nature. Your encouragement will go a long way toward that goal of employee openness.

Step 4: Investigate All Reported Threats of Violence or Harassment

Instruct employees to report any threats of violence they may receive at work. Then, anytime an employee reports receiving a threat of violence or harassment, you as the employer should conduct an investigation of that incident. No longer is it permissible to dismiss such occurrences as we might have in the past.

If you follow this suggestion, managers will spend some of their time on these investigations. They will also spend some of their time preparing documentation associated with the investigation. That is time they would rather be spending on their production responsibilities in many cases. Unfortunately, the job of management has shifted in recent years. It now involves many activities which were uncommon or unheard of years ago. And, it often requires managers to work longer hours to get everything done. That, as they say, comes with the territory. Complaint investigations should be given a high priority by every manager. Look at it this way. If you receive a report of a threat of violence, delay your investigation because of other pressing matters, then discover after violence has actually taken place that there were some things you could have done to prevent it, how would you feel? Give such reports the attention they deserve. Otherwise, you may be the one in the line of fire.

Step 5: Develop Plans for Dealing With Violence If It Occurs

No employer can afford to take a cavalier attitude toward the subject of workplace violence. The stakes are too high. Every employer should have a plan in place for dealing with violent incidents should they occur. That is no different from having a plan for dealing with fire should it occur.

Consider in your plan such questions as: What emergency procedures should be followed? After the emergency has been handled, who should be notified? What will you do about your other employees for the balance of the workday and the day after? If employees are sent home, will they be paid for their non-worked time? Who will deal with the news media? What can be done to provide emotional relief, counseling or support to co-workers? Who should be contacted to provide such employee assistance?
What will the company tell customers and others about the incident? Are there special messages to be placed on an announcement system or telephone voice mail? How will payments for emergency services be handled? Who must approve them?

It appears that we all generally shy away from thinking about the tragedies which might come into our lives. No one likes to suffer either emotionally or physically. Yet, proper crisis management planning can save both your business as well as further injury to employees and third parties. If you don’t know how to go about developing such a plan, ask for help from your human resources or safety consultant. But, whatever you do, think

ahead and involve others in that process.

Violence in the workplace is a subject we would rather avoid considering. It is very easy to delay or dismiss such consideration with the rationalization that "It couldn't happen here."

Today, employers are being held responsible and accountable for providing safe workplaces for their workers. Those who do not are discovering unpleasant penalties including large fines and even prison sentences. The biggest losers are those who find themselves innocent victims of violence which could have been prevented if only someone had taken the time to think through the possibilities.

As the leader of your organization, what will you do about workplace violence?

FOR MORE INFORMATION ABOUT WORKPLACE VIOLENCE

University of Texas Assault Prevention Network
http://galaxy.einet.net/galaxy/Community/Safety/Assault-Prevention/apin/APINindex.html

Satore Township - book, "New Arenas for Violence"
http://www.crl.com/~mikekell/viwref.html

Thomas Staffing 12th Annual Employment Study
http://www.thomas-staffing.com

Society for Human Resource Management
http://www.shrm.org

Professional Human Resource Management Conference Room
http://www.workforceonline.com

Newsletter Articles
http://www.management-advantage.com/tma/newsltrs/

Gentle Readers,

Three federal government agencies have jointly developed and released interim regulations which implement the "Health Insurance Portability and Accountability Act (HIPAA) of 1996. These new rules will become effective June 1, 1997.

All employers who offer health insurance benefits to their workers are affected.

If you have already studied the new requirements and taken the necessary actions to prepare yourself for employee notifications and certificate issuance, you have nothing more to do. If this is the first time you have heard of HIPAA, you need to get more information.

We have prepared a two-page summary of the requirements for your convenience. And, we have added the "Certificate of Group Health Plan Coverage" and "Special Notice" forms which were issued by the DOL. These are available to you on our FAX-ON-DEMAND system at no charge. Simply dial 510-671-0412 and follow the verbal instructions. Request document number 265 to receive this special 4-page report by return call. (We are sorry that this service is only available within the United States.)

Additional information is available directly from the government. The DOL internet site has a document entitled, "Questions and Answers: Recent Changes in Health Care Law." It is available at http://gatekeeper.dol.gov/dol/pwba/public/pubs/q&aguide.htm

You may also obtain the Q&A document by calling the Pension and Welfare Benefits Administration within DOL at 1-800-998-7542. Ask for the publication by name.

We wish you continued good health and compliance readiness. Further questions about the new Benefit Portability requirements should be addressed to your health insurance provider or labor management attorney.

Gentle Readers,

Several subjects have been receiving attention within the Human Resource management community, specifically regarding Equal Employment Opportunity and Affirmative Action issues. This special report is to alert you to that increased level of interest in these subjects.

IN THIS REPORT

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1. OFCCP EXPANDING TESTER PROGRAM

While the Equal Employment Opportunity Commission (EEOC) has been using a tester program for many years, its sister agency, the Office of Federal Contract Compliance Programs (OFCCP) is just beginning to use the same approach to identify employment discrimination.

A pilot program in the agency's Region III sent white and black male job applicants with similar backgrounds into federal contractor work places in the Washington, DC area. This pilot program uncovered different treatment of white and black applicants, specifically in the banking industry. The pilot program gave the OFCCP information about who was selected for job placement. It also revealed differences in how job applicants were treated based on their race.

A report on results of this pilot program concluded that use of "testers" is a good way to determine when employers illegally discriminate in their employment process. Originally, both financial services and transportation and delivery industries were supposed to be included in the pilot program along with the banking industry. The banking industry was the only one of the three which was hiring new employees as the pilot began, however. Therefore, the pilot only involved banks in the Washington, DC area.

Fifteen branch locations of ten separate banks were targeted. Black and white testers both filled out applications in person at 12 of the 13 locations after contacting the banks by phone. Follow-up calls resulted in both testers getting interviews with six branches, but not at the same locations. Only four branches interviewed both testers. The white tester received three job offers from three separate employers while the black applicant received one. In one case, a bank interviewed the black tester, but offered a job to a white tester who had not even been interviewed. In a different branch of the same bank, the black tester was offered a job while the white applicant was

not, and neither were interviewed.

This program is now being expanded into Chicago (Region V) and San Francisco (Region IX). In Chicago, tests will involve Hispanics. In San Francisco, tests will involve women. Expect that focus will not be on who gets hired, but how applicants are treated. Details of which industries will be targeted in these expanded geographies have yet to be worked out. All federal contractors should be forewarned that they may be subject to this program. Doing a quick internal review of your employment processing systems may be a good idea. Part of that review could include reminding everyone involved in the process that equal treatment is the objective.

If you wish more information about the OFCCP's report on the preliminary Washington, DC testing program it is available on the Web at:
http://www.dol.gov/dol/esa

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2. NEW DOL REGULATIONS ON BENEFITS PORTABILITY

On June 1, 1997, new Department of Labor (DOL) regulations go into effect which implement the "Health Insurance Portability and Accountability Act" (HIPAA), signed by President Clinton last August.

It is expected that 25 million Americans will be impacted by this legislation. Most of them are employees who already are covered by employer-provided health insurance programs.

If you are an employer who offers health insurance benefits to your workers, you need to be sure you are ready to issue health insurance coverage certificates as specified by the new rules. Copies of the DOL recommended certificates are now available along with a two-page summary of the requirements. You can obtain this information from the Web at: http://gatekeeper.dol.gov/dol/pwba/public/pubs/q&aguide.htm. You may also obtain the Q&A document by calling the Pension and Welfare Benefits Administration within DOL at 1-800-998-7542. Ask for: "Questions and Answers: Recent Changes in Health Care Law." A two-page summary is also available from our FAX-ON-DEMAND help line system at no charge. Simply dial 510-671-0412 and follow the verbal instructions. Ask for document 265 to receive this special 4-page report by return call. (We are sorry that this FAX-ON-DEMAND service is only available within the United States.)

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3. DOMESTIC PARTNER REGULATIONS IN SAN FRANCISCO

Some of you conduct business with the City and County of San Francisco. When you do, you become subject to the City regulations on domestic partner benefits. This has become an issue even for employers such as United Airlines and Delta

Airlines recently. With employees working in leased space, these organizations have had to agree to comply with the ordinance.

In summary, requirements are that employers provide domestic partners the same level of benefits offered to employees' marriage partners. Treatment of coverage, processing and elligibility must be the same for both groups. Employers may require workers submit an "Affidavit of Domestic Partnership" if they also require workers to provide a copy of a marriage license to obtain benefit coverage for spouses. Domestic partnerships may be same-sex relationships or opposite-sex relationships.

Domestic partnerships are only valid under the ordinance if duly registered with a governmental domestic partner registry. According to the San Francisco Human Rights Commission, the following governmental entities offer domestic partner registries:

State of Massachusetts	Atlanta, GA
Ann Arbor, MI	Berkeley, CA
Boston, MA	Brookline, MA
Cambridge, MA	Carboro, NC
Chapel Hill, NC	District of Columbia
Davis, CA	East Lansing, MI
Hartford, CT	Ithaca, NY
Laguna Beach, CA	Madison, WI
Minneapolis, MN	New York, NY
Oakland, CA	Palo Alto, CA
Provincetown, MA	Rochester, NY
Sacramento, CA	San Francisco, CA
Seattle, WA	West Hollywood, CA

Additional information is available from the Web at:

http://www.sfhumanrights.org/lgbth

Gentle Readers,

It wasn't too many years ago that startling events and breaking news stories about the world of employee management were very rare. Not so in today's environment. In this special report we will share with you some of the latest events which will impact employers.

IN THIS REPORT (06/05/97)

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1. NEW ERGONOMICS SAFETY STANDARDS IN CALIFORNIA

Over the past three years, there have been many false starts to implementing workplace safety regulations covering ergonomic standards. It has literally been an on-again, off-again sort of progress. Well, we're on-again.

Another first for California. On July 3, 1997, it will become the first state in history to regulate repetitive stress injuries in the workplace. Repetitive Stress Injury (RSS) is sometimes referred to as Carpal Tunnel Syndrome (CTS), Repetitive Motion Injury (RMI), or Cumulative Trauma Disorder (CTD).

The legal battle over these new state standards for workplace ergonomics has yet to be resolved. Labor organizations claim that the new standards are too weak and filled with loop-holes. Trucking industry associations have also taken action to block the new standards. They claim too little is known about repetitive motion injuries to justify the new regulations, which they say will be unnecessarily costly. Both sides, labor and the trucking industry, will present their arguments at a Sacramento County Superior Court hearing September 5th, two months after the new orders go into effect.

Even though the battle is not yet over, the trend is very clear. You can expect other states to follow in California's path toward greater regulation of the workplace. Ergonomics injuries have been a particularly costly category for California employers in recent years. During the first half of this decade, CTDs represented the fastest-spreading occupational ailment. That seems to have changed a bit since 1995. The national rate of new cases reported has fallen by seven percent according to the U.S. Occupational Safety and Health Administration (OSHA).

Provisions of New Standards
Title 8, General Industry Safety Orders
Section 5110, Ergonomics

o Applies to employers with 10 or more workers. Employers with 9 or fewer workers are exempt.

o Applies to "a job, process, or operation" where a repetitive motion injury (RMI) has occurred to more than one employee under the following conditions:

1) The RMI was caused 50% or more by a repetitive job, process or operation;

2) The injured employees were performing a job process or operation involving the same repetitive motion task;

3) The RMIs were diagnosed by a licensed physician as musculoskeletal injuries;

4) The RMIs were reported within the past twelve months (but not before July 3, 1997).

All employers with ten or more workers in California must comply with these new requirements beginning July 3rd.

1) Each job in the workplace shall be evaluated to determine exposures which have caused RMIs.

2) Any exposure which has caused RMIs shall be corrected. If it can not be corrected it must be minimized.

Employers must consider engineering controls (such as workstation redesign, adjustable fixtures or tool redesign) and administrative controls (such as job rotation, work pacing or work breaks).

3) All employees must receive training on all of the following:

- The employer's program.
- The exposures which have been associated with RMIs.
- The symptoms and consequences of injuries caused by repetitive motion.
- Methods the employer will use to minimize RMIs.

According to the Society for Human Resource Management, Carpal Tunnel Syndrome (CTS), a potentially debilitating condition resulting from compression of the median nerve in the wrist, can cost $20,000 per case if treated with surgery. If the employee is unable to return to work after the surgery, the costs go even higher.

It only takes one of these cases to increase an employer's workers' compensation insurance rates. And, the payment goes on long after the employee has recovered and returned to work.

Employers would be well advised to prepare themselves for the new regulatory standards by performing a self-assessment of their workplaces if they have had any RMIs on any of their jobs.

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2. OFFICE SAFETY PLAN AVAILABLE

California safety regulations require every employer to have a written Injury and Illness Prevention Program (IPP). If you have ten or more workers, you must include ergonomics issues as part of that safety program as of July 3, 1997.

If you need help, we have it available. Our 140 page SAFETY PLAN for the normal office environment includes both ergonomics and prevention of workplace violence, as well as other required content. Each SAFETY PLAN binder comes with all the forms you will need to track implementation, including quarterly employee training. You can "fill in the blanks" on the model IPP document, or you can modify it as your workplace requirements dictate. Each binder comes with a BONUS 3.5" disk (IBM PC compatible format only) which contains the complete IPP narrative in both Word 6.0 and ASCII formats. You can import this information to any word processor and format it for printing on your own computer. Thirteen forms are also included on the disk in Word 6.0 format, and in the binder to help you record your compliance actions.

To order, call our toll-free order line:

1-888-671-0404

Ask for Order Number 706. Cost is $99.95 plus $7.00 shipping/handling. California sales tax of $8.25 will be added to all orders shipped to California addresses. Have your credit card ready when you call. We accept VISA, MasterCard, American Express and Discover cards.

Even if you are not a California employer, this program can provide many benefits in your workplace. Improve your employee communication and let your workers know you care about their safety. Order your copy today.

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3. OFCCP AND VETERANS' EMPLOYMENT AND TRAINING (VETS) FORGE AGEEMENT

The Office of Federal Contract Compliance Programs (OFCCP) and the Veterans' Employment and Training Service (VETS) have reached an agreement which will ensure more efficient use of enforcement resources, reduce duplication of effort and provide for building outreach activities.

OFCCP and VETS will work together on training and providing information to employers, veterans' groups, state employment service offices and the general public. They will also share EEO-1 and VETS-100 data, verification of job listings, complaint information and reporting of complaints filed under the Vietnam Era Veterans Reemployment Rights Act (VEVRRA).

While the OFCCP focus is on enforcement of affirmative action regulations for federal contractors, VETS has primary responsibility for administering grants to states to fund veterans' program specialists employed in State Employment Security Agencies, and grants under Title IV-C of the Job Training Partnership Act.

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4. OFCCP SUES FORD MOTOR COMPANY

The U.S. Department of Labor has filed an administrative complaint against Ford Motor Company alleging that in 1993 the company discriminated against female applicants in its assembly plant in Louisville, KY.

The suit stems from a compliance review conducted by the department's Office of Federal Contract Compliance Programs (OFCCP), beginning May 6, 1993, which found that Ford's hiring and selection procedures discriminated against female applicants for entry-level laborer positions at the plant. The complaint also alleges that, during the course of OFCCP's investigation, Ford failed to cooperate by denying the agency access to information deemed to be relevant to the case.

OFCCP in its complaint is asking that Ford provide complete relief to the affected class of women, including employment, lost wages, interest and all other benefits. The complaint was served upon Ford Motor Company on March 31, 1997.

Gentle Readers,

If you have 15 or more workers, you are subject to federal laws governing equal employment opportunity. The Equal Employment Opportunity Commission (EEOC) was established by the Civil Rights Act of 1964 as the law enforcement agency responsible for investigating violations of employment activity in that area. The Commission also handles enforcement of other federal laws which protect against discrimination in employment because of age, disability and pay differences.

IN THIS REPORT (06/23/97)

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1. EEOC COMPLAINT BACKLOG DROPS BUT VICTIMS GET MORE MONEY

The EEOC only files 161 lawsuits in fiscal 1996, down from 322 the previous year. But it won $49.3 million in damages through litigation for discrimination victims last year, about double the $24.6 million it collected the year before.

Gilbert Casellas, EEOC Chairman, says the change in results was due to the Commission's selective approach to litigating cases.

EEOC backlog of complaints has been slashed by 30% during the past two years according to Casellas. It dropped to 74,500 waiting cases in March of this year from a high of 111,000 cases in June of 1995. Even though the EEOC staff has been cut to the lowest level in 20 years, Casellas set up a priority system for handling complaints in 1994 when he took over as Chairman. He attributes these progressive results to that streamlined approach.

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2. NEW EEOC TASK FORCE TO FIND BEST PRACTICES OF PRIVATE SECTOR EMPLOYERS

The EEOC has recently established a task force, headed by Commissioner Reginald E. Jones, to study the best equal employment opportunity policies, programs, and practices of private sector employees. The task force will focus on smaller and medium-sized employers who are without professional personnel and legal staffs. It will also determine how to best assist employers in developing policies, programs, and practices.

The task force study will be divided into six major areas: (1) recruitment and hiring; (2) promotion; (3) terms and conditions of

employment; (4) termination; (5) alternative dispute resolution; and (6) other issues.

In each of these areas the task force will examine:

(1) Recruitment and Hiring
- internships
- recruitment strategies
- education and training programs
- focus on creating a diverse workforce

(2) Promotion
- programs to eliminate barriers to advancement of women, people from diverse ethnic and racial groups, persons with disabilities, and older workers
- mentoring programs
- career enhancement initiatives

(3) Terms and Conditions of Employment
- disability & religious accommodation
- pay equity, insurance benefits, work/life and family-friendly policies

(4) Termination
- retraining & placement programs for employees displaced by downsizing
- nondiscriminatory early retirement
- insurance benefits

(5) Alternative Dispute Resolution
- resolution of discrimination complaints
- effective use of ADR

(6) Other
- general EEO commitment
- networking for employment and staffing
- diversity training

If you have any suggestions or input to offer the task force, or would like to suggest they consider your organization as "best" example, address your comments to:

"Best" EEO Compliance Practices and
Procedures Task Force
EEOC
1801 L Street NW, 10th Floor
Washington, DC 20507
FAX: 202-663-4114
Voice: 202-663-4026
TDD: 202-663-4064

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3. PRESIDENTIAL INITIATIVE ON RACE

You have likely already heard about or read of the President's new initiative announced on June 14, 1997. President Clinton has launched a year-long effort to improve race relations in America.

The five goals of this program are:

(1) To articulate the President's vision of

racial reconciliation and a just, unified America.

(2) To help educate the nation about the facts surrounding the issue of race.

(3) To promote a constructive dialogue, to confront and work through the difficult and controversial issues surrounding race.

(4) To recruit and encourage leadership at all levels to help bridge racial divides.

(5) To find, develop and implement solutions in critical areas such as education, economic opportunity, housing, health care, crime and the administration of justice -- for individuals, communities, corporations and government at all levels.

It is expected that the President will present a report to the American People in the summer of 1998 which contains the results of efforts made during this year of the initiative.

If you would like more information about this program, entitled ONE AMERICA, it is available on the world wide web. Point your browser to:

http://www.whitehouse.gov/initiatives/about.html

Gentle Readers,

The Office of Federal Contract Compliance Programs is still active. They have announced plans to expand their employment "tester" program from Washington, DC to the Chicago and San Francisco regions. Chicago will focus on using testers to identify Hispanics are discriminated against in job applications and San Francisco will be testing for discrimination against women in job applications. Specific industry targets have yet to be announced, but all federal contractors should be alerted.

IN THIS REPORT (06/30/97)

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1. OFCCP EXPANDS EMPLOYMENT TESTER PROGRAM INTO TO ADDITIONAL REGIONS

The OFCCP is definitely moving forward with its plans to expand a pilot program using employment "testers" in the Washington, DC area. Expansion will be to the regions headquartered in Chicago and San Francisco.

The initial trial program in Washington, DC focused on sending blacks and whites into banks as job applicants. In each situation, the government provided candidates were essentially equally qualified. The results indicated there were problems of employment discrimination in some of the banks which participated, unknowingly, in the tests.

Plans call for the San Francisco region to begin testing for discrimination against women. Chicago will test for discrimination against Hispanics in its portion of the expanded program. Neither of the two added regions have determined what industries will be targeted among the contractor community.

The OFCCP has declared its "tester" program to be a cost-effective enforcement tool.

Contractors should be aware of this "shift" on the part of the OFCCP. Although it is charged with enforcing affirmative action regulations, affirmative action programs are based on a foundation of equal employment opportunity. Any federal contractor subject to affirmative action regulations is also subject to EEO laws. The OFCCP is an official enforcement agency for EEO laws, similar to powers given the EEOC.

Remedies for discrimination charges can be costly.
Read what happened to one such employer in the next story.

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2. CLEVELAND HOSPITAL AGREES TO PAY $320,615 TO 164 MINORITY APPLICANTS

Fairview Hospital in Cleveland has denied any discrimination involving minority applicants, and it has agreed to pay more than $320,600 to 164 minorities who applied for work, and to hire at least 24 of those applicants. The conciliation agreement was only made public recently.

This agreement caps a compliance review which began at the Hospital in June 1996. The jobs in question are entry-level clerical positions. The OFCCP said that blacks and Hispanics made up only 5 percent of the employer's workforce, while 28 percent of the qualified workforce in the Cleveland area is black and Hispanic. The pool of minority applicants for the jobs in question was nearly 25 percent minority.

Fairview explained its trouble by pointing out that the demographics of Cleveland where it is located are far different from the city of Cleveland as a whole. The Hospital said the problem results from a matter of geography and ease of access, not from discrimination.

A Fairview Hospital spokesperson said the Hospital has agreed to aggressively pursue minority applicants for its workforce in the spirit of affirmative action. It also pointed out that it has developed an affirmative action program the OFCCP has approved with this conciliation agreement.

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3. CALIFORNIA EMPLOYERS -- DON'T FORGET NEW ERGONOMIC STANDARDS BECOME EFFECTIVE ON JULY 3RD.

California's new Cal-OSHA regulations requiring all employers to identify ergonomic hazards if they have had a history of employee injuries are going into effect on July 3rd. This in spite of law suits filed by the trucking industry association and others to prevent activation of the new rules.

Any employer with one employee must have a written Injury and Illness Prevention Program. Employers with 9 or fewer workers are exempt from the new ergonomics standards. They are not exempt, however, from the Cal-OSHA provisions regarding workplace violence prevention.

If you need to add these two subjects to your organization's IPP, we have the reference you need. It is designed for the normal office environment, but can be adapted to any employer situation. Our binder contains thirteen forms you can readily copy and use in your safety plan implementation to track employee training and build a documentation file which you can use to defend yourself against unfounded charges.

Don't get caught without an accurate and complete safety program in your office. Penalties can be as high as $7,000 for not having a viable plan in place. You can order your copy of this Safety Plan binder (with a computer disk containing the entire plan and all forms in MSWord 6.0 format) for only $99.95 plus $7.00 S/H and California sales tax for shipments to California destinations.

To get your copy, call toll-free 1-888-671-0404 and have your credit card ready. We accept VISA, MasterCard, American Express and Discover cards.

Gentle Readers,

Last week we began our special report by saying the Office of Federal Contract Compliance Programs was still active. As it turns out, the OFCCP has been more active than even we had thought.

IN THIS REPORT (07/02/97)

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1. OFCCP TESTER PROGRAM IN DC RESULTS IN NEGOTIATIONS WITH BANKING INDUSTRY

Shirley J. Wilcher, deputy assistant secretary for federal contract compliance programs at the Department of Labor, has met with top banking officials in the wake of recent tester "stings." The pilot program showed black male applicants being denied job opportunities while white male applicants with the same level of skills and experience were placed or given job offers.

Included in the meeting were officials from the American Bankers association. Wilcher's objective for the meeting was to determine "how to begin to set things right" and to find policies that work.

Wilcher points to the pilot tester program as proof that racial discrimination is alive and well in the employment community. She has vowed to focus the efforts of her agency on uncovering more and negotiating remedies when it is found.

She called testing "a targeting device" that permits the OFCCP to identify federal contractors that appear to have discriminatory hiring practices. She has said the OFCCP will use this approach to identify specific contractors (employers) who will be scheduled for full and complete compliance reviews under the agency's charter.

BNA reports that Wilcher and the OFCCP continue to discuss problem areas with the banking employers who were discovered to be discriminating during the Washington, DC tester pilot program. She has said that the OFCCP and representatives of the banking community have AGREED TO FORM A PARTNERSHIP TO DEVELOP "BEST PRACTICES," which is in early development.

If you want evidence that the government is going to make life uncomfortable (even unbearable) for employers who discriminate unlawfully, here it is. The pilot program actually involved less than six banking institutions and its result is now going to potentially influence the entire banking industry.

It is going to be very interesting to see what develops as the tester program is expanded to the Chicago and San Francisco OFCCP regions. To this date, the agency has not publicly identified the industries it will target in the next wave of pokes and prods.

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2. GINGRICH CALLS PRESIDENTS RACIAL PROGRAM WEAK -- BACKS H.R. 1909 -- NEW CIVIL RIGHTS LEGISLATION

Republicans, led by Speaker Newt Gingrich are pushing a new ten point program they claim is better than the rhetoric offered by President Clinton in his "One America" initiative for racial harmony.

One of those ten points is now known as H.R. 1909, the Civil Rights Act of 1997, introduced in the House of Representatives on June 17, 1997. This new proposal would:

* Prohibit discrimination and preferential treatment in any federal contract or sub-contract, federal employment, or any other federally conducted program or activity.
* Specifically ban discrimination in those relationships based on race, color, national origin, or sex.
* Permit affirmative action which recruits qualified women and minorities into job applicant pools as long as such programs do not offer a preference based on race, color, national origin or sex.

The new law, as proposed, would not apply to the military, Indian tribes, or institutions which are historically Black colleges or universities.

As defined in the legislation proposal, "preference" means "an advantage of any kind, and includes a quota, set-aside, numerical goal, timetable, or other numerical objective."

If this proposal were passed today, the federal contractor affirmative action program would very likely abandon all utilization analysis. Today, regulations demand that utilization analysis be used to generate goals and time tables for those minority groups or women which are computed to be underutilized compared to the qualified, available workforce.

Watch this one. It is going to continue to receive a great deal of attention in Washington. The debate isn't yet over. It has only just begun. Don't expect any action which would approve this or any other form of this legislation during the remainder of this year. On the other hand, the OFCCP can be expected to move forward with is effort to modify existing affirmative action regulations by the end of this year.

Gentle Readers,

Some new laws seem to be endorsed by business.

Hope you're having a good summer.

IN THIS REPORT (07/22/97)

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1. EMPLOYEE REPORTING BEGINS EARLY FOR SOME

The Wall Street Journal reported in the 7/22/97 edition that employers have already begun reporting new hires to help catch "deadbeat dads."

Last year's welfare-reform law ("Personal Responsibility and Work Opportunity Act") requires companies to report certain data on new employees to state employment agencies within 20 days of hiring. The program was scheduled to begin on October 1, 1998 in those states which do not already have a similar reporting program. It was planned to begin October 1, 1997 in those states which have established their own similar reporting requirement for new employees.

It appears now that some states have started early to meet the new mandate. Maryland and Virginia make employers report newly added workers since July 1st. According to the Wall Street Journal, Lockheed Martin Corp, from its facility in Teaneck, N.J., ran a report for several states. It found 10,137 employees to report to Maryland.

Reporting requirements were designed as a strategy for states locating parents who renege on child support. Apparently, most of these are fathers. States want to garnish the wages of anyone who has failed to make court-ordered child support payments so the demand for welfare support in the absence of parental support may be lessened. The "Uniform Interstate Family Support Act" (UIFSA) allows employers to implement withholding orders issued in another state without having the order endorsed by a court in the employer's state.

While some still hold that the new reporting requirements are burdensome, the Wall Street Journal reports that many employers applaud the effort.

Be alert for notices coming from your state employment service or state employment taxing agency before the implementation deadline in your state.

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2. NEW BOOK ON DIVERSITY

If your organization has decided to implement a diversity management program, you will want to be sure you are meeting all of your legal and regulatory obligations for equal employment opportunity and affirmative action before embarking on your new effort.

We have just published a new book entitled, "BEFORE DIVERSITY: 103 Questions & Answers for Managers and Trainers." If you are responsible for answering questions about diversity for your organization, or a portion of it, you will want to have this handy new reference. It comes with a complete cross-referenced index for easy access to topics of interest.

Perhaps you have heard some of the following:

Question #8 Is it legal to have "secret" lists of promotion candidates?

Question #31 What's the difference between EEO and Affirmative Action, and where does diversity management fit in?

Question #32 Are there any legal dangers to conducting a diversity program?

Question #34 If we believe we have problems of discrimination, isn't it a good idea to introduce a diversity management program to resolve those problems?

Question #89 What should we look for in a good diversity training program?

Question #98 How should we go about picking a diversity training program?

Question #101 What organizations are there which could help me on these subjects if I need it?

If these questions sound like those you have been asking yourself, or have heard others in your organization asking, you need a copy of this new reference book. It contains 120 pages (5.5" X 8.5" paperback) and costs only $49.95 per copy plus $5.00 S/H. Sales tax will be added for all orders shipped to California destinations.

Credit card orders (VISA, MasterCard, American Express and Discover/NOVA) can be called in on our toll-free order line: 1-888-671-0404. Why not order your copy today and be ready when the next question about diversity comes your way?

Gentle Readers,

The last few months have brought a mixture of good news and bad news on the employment front. Nationally, unemployment figures have fallen, yet employers are searching for more people with higher skill levels. How can these conditions co-exist without causing problems?

IN THIS REPORT (07/31/97)

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1. WHERE ARE ALL THE NEW WORKERS COMING FROM?

National unemployment rates have been below 8% for many months. Recently, even California unemployment rates have fallen to levels that haven't been seen for many years. Employers are still worried about being able to recruit the quality of skilled workers they need. But, are they really having problems finding that talent?

It is no secret that unskilled jobs as a percentage of total workforce are rapidly diminishing. Although, it can be argued that there will always be some level of need for harvesting certain agricultural crops and for people to wield shovels, overall the growth of jobs is not at the laborer end of the skill spectrum.

Indeed, many jobs we used to consider low skilled are now emerging from process redesign with increased skill requirements. The Wall Street Journal on July 29, 1997 cited some examples.

"Super Steel Schenectady Inc., helping build a new locomotive for General Motors Corp., requires algebra and geometry for welders. They must figure weld angles from computer-generated designs...

"Signet Scientific Co., El Monte, Calif., a water-treatment equipment maker, trains assembly-line workers in computerized production measurements, other computer skills and math...As new photocopiers are digitally linked to computers and the Internet, technicians must replace wrench and screwdriver know-how with computer skills..."

Some industries, such as steel production, have undergone similar shifts in job requirements. The USS-Posco factory in Pittsburg, California has been rolling and coating steel coils since the 1930s. At one time the factory employed over 5,000 people. Today, it has been automated as a result of a $400 million modernization investment by partners US Steel and Pohang Iron and Steel of Korea. Workforce now numbers about 1,100 people. Many of them spent up to six months learning, both in the US and in Korea, the skills necessary for their new positions. Since the plant is now entirely automated, people govern the flow of product through the factory by using computers. They have to understand and use techniques of statistical process control. Adjustments are made based on computations of tolerance

plottings and algebra calculations. A far cry from the old days when physical strength was what moved product through the plant.

Why is it the expected shortage of qualified workers doesn't seem to have been as serious as originally feared?

It appears there are several explanations. First, downsizing of workforces generally have resulted in greater numbers of employee retirements than first anticipated. It now appears that some of those folks don't want to stay retired. Some say they have gotten bored. Whatever the reason, many of them are returning to the employment market, bringing their skills and experience with them. Older workers have become a rich new resource for employers.

Second, unemployment figures have never counted everyone who is out of work or looking for work. Because of that, it is not a really accurate measure of available labor supply. Unemployment numbers only count those people who are receiving unemployment insurance benefits. As a result, anyone who's benefits have expired, or who has not applied for those benefits, is not counted as unemployed. Anyone who has retired and willing to re-enter the job market is not counted. New entrants to the employment arena, such as graduating students, are not counted as unemployed. There is truly a larger available workforce than we had thought.

And, third, employers have been successfully retraining their workers to upgrade the skills necessary in current and future jobs.

While it is true that finding job candidates in certain industries is a chore, generally speaking, the job market is not nearly as tight as experts had predicted.

The question now is: Are you having trouble filling open positions in your organization? If so, maybe some of the following questions can help in your search for a remedy.

- What job skills are the most difficult to find?
- Are your competitors having similar difficulty?
- Are you likely to adjust your compensation program as a result, just to attract candidates?
- Have you explored professional associations at the local and national levels as possible recruiting sources?
- Have you talked with the Private Industry Council in your county?
- Have you talked with the local university or community college near your facility?
- What targeted recruiting have you done to tap into resources of minority and female and disabled candidates?
- What have contacts with organizations such as 40+ provided?
- Have you considered listing your job openings with outplacement firms such as Right Associates, Haldane or Lee Hecht Harrison?
- Have you given any thought to "growing your own" supply of qualified candidates by designing and implementing special training or apprenticeship programs?
- Have you defined the strategic impact of the recruiting problem and discussed it in an executive meeting?

- What have your current employees to offer in terms of personal linkages to potential candidate sources? Do they even know you are having trouble finding good candidates?

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2. THREE BOOKS FOR HR PROFESSIONALS

It has been several years since we prepared our last book report, but felt it was important for you to hear about three new publications every HR professional should have on their book shelf.

"Tomorrow's HR Management," is just recently released by John Wiley & Sons, Inc. Edited by Dave Ulrich, Michael R. Losey (of SHRM), and Gerry Lake, this book is a compendium of 48 articles from HR experts around the country. If you have any interest in what the future of the HR profession has in store, you will want to take a peek at this volume. Hardback lists for $35.00. It is so new, it may or may not be in your local book store. SHRM members may order from the SHRM Store by calling 1-800-444-5006. SHRM member price is $29.95.

"1001 Ways to Energize Employees," is Bob Nelson's second book of a similar bent. It addresses subjects such as empowerment, self-directed work teams, continuous improvement, inspiring personal initiative and risk, among others. It reports on actual employer programs as examples of successful approaches. Published in 1997 by Workman Publishing, it lists for $10.95 in the U.S. and $15.95 in Canada. You will find it at your local book store.

"1001 Ways to Reward Employees," was Bob Nelson's first step into the mass market of publishing. He did a wonderful job. He is amusing and practical, if that isn't an oxymoron. He offers low-cost ideas, proven strategies, achievement awards, contests, time off, and case studies as ways to get desired employee reactions. Although published in 1994, it is still good reading and a worthwhile reference. It is published by Workman Publishing and lists for $10.95 in the U.S. and $15.95 in Canada. Your local book store should have it. If they don't, get them to order it for you. You won't be disappointed.

Gentle Readers,

For years there has been a movement among employers toward use of mediation and arbitration as conditions of dispute resolution, prior to moving to court action. Some employers have even made arbitration mandatory by specifying detailed policies in their employee handbooks. Now that may be on the verge of changing.

IN THIS REPORT (08/18/97)

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1. MANDATORY ARBITRATION UNDER FIRE

On July 10, 1997, the EEOC released a policy statement on mandatory binding arbitration. The Commission's position in that policy is that mandating binding arbitration of discrimination claims as a condition of employment runs contrary to the fundamental principles of employment discrimination laws.

Text of the policy statement is available on the EEOC's web site at www.eeoc.gov. You can also obtain a copy by writing to: EEOC Office of Communications and Legislative Affairs, 1801 L Street, N.W., Washington, D.C. 20507.

Meanwhile, the Eleventh Circuit Court of Appeals has ruled that a compulsory arbitration clause in a collective bargaining agreement will bar litigation of an employee's bias claim under federal law only if the employee agrees individually to the contract. Agreement of the union in negotiating the labor contract does not count, according to the court (Brisentine v. Stone & Webster Engineering Corp., CA 11, No. 96-6866, 7/21/97).

The court said in the same ruling that, in order to bar litigation, the agreement must authorize the arbitrator to resolve the federal statutory claims rather than contract claims that may involve the same set of facts. And, the agreement must give the employee the right to insist on arbitration if the matter is not resolved to his liking in the grievance process.

The Eleventh Circuit relied on the same three-test requirement stated by the U.S. Supreme Court's 1991 holding in Gilmer v. Interstate/Johnson Lane Corp. (55 FEP Cases 1116). In the Gilmer case, the Court upheld a private agreement to arbitrate age discrimination claims.

It is obvious that this issue is far from being settled. And, the EEOC's policy statement does not carry the weight of a court ruling. However, it seems clear that the official government position would

prevent employers from making arbitration of discrimination claims a mandatory requirement. Keep watching the news.

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2. COURT SUPPORTS CALIFORNIA OVERTIME CHANGES

The march toward making California overtime requirements consistent with 47 other states and the FLSA provisions is continuing.

In step one, the California Industrial Welfare Commission (IWC) issued an order to eliminate the current requirement for payment of overtime after eight work hours in a day. Essentially, this action would place California requirements on the same footing with most of the other states in the country, requiring overtime payments only after someone has worked 40 hours in a week.

Step two in the process has just concluded. A state court has rejected arguments presented by labor groups intended to block the IWC order.

Unless a higher court overturns this ruling, the IWC order will become effective on January 1, 1998.

There is, however, a set of bills floating through the state legislative process which would override the IWC action and codify the 8-hour work day. Given the composition of the California legislature, it is predictable that one or more of these bills will be passed. It is also predictable that California's Governor Wilson will veto any of them which make it to his office.

We still have several months to go before the January 1st deadline. Anything can happen. Don't buy your new employment posters just yet.

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3. OFCCP DEFEATED IN AMERICAN AIRLINES CASE

Judge Terry R. Means of the U.S. District Court for the Northern District of Texas has ruled that the Department of Labor lacked authority under the 1973 Rehabilitation Act to require American Airlines Inc. to hire and award back pay to 96 individuals who allegedly were discriminated against in 1989 because of disabilities.

John C. Fox of Fenwick & West LLP of Palo Alto, California has been in charge of the case representing American Airlines since the action was first taken by the OFCCP. Mr. Fox, a former OFCCP attorney, successfully argued that the OFCCP had no authority under Section 503 to investigate and take enforcement action in the absence of a complaint of disability discrimination.

In 1992, Congress amended Section 503 to specifically add a prohibition against disability discrimination. Judge Means noted that the changes were not retroactive. He wrote, "The alleged discrimination committed by American took place in 1988 and 1989, and therefore the 1992 amendments are not applicable to this action."

In April, 1997, in an earlier ruling, Judge Means held that Section 503 did not prohibit discrimination against individuals with disabilities prior to the 1992 amendments. The OFCCP, therefore, lacked authority to seek back pay and job offers for the 96 applicants whom the airline did not hire.

According to Fox, the latest court ruling could effect hundreds of similar pending 503 cases.

Gentle Readers,

Affirmative action has been back in the news this past week. The legal challenges to Proposition 209 in California continue, and the OFCCP has announced its intention to continue with compliance reviews on California-based federal contractors.

IN THIS REPORT (08/25/97)

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1. 9TH CIRCUIT DENIES REHEARING ON PROP 209

On Thursday, August 21, 1997, the 9th U.S. Circuit Court of Appeals (San Francisco) refused a request for a full-court review of the challenge to California's Proposition 209. The Proposition was passed by state voters in November last year with a 54% approval. If fully implemented, it would prohibit racial preferences in the State's employment practices, university and college admissions and vendor contracting. It has widely been called the Proposition to overturn affirmative action. As written, 209 requires State actions to be based on non-discriminatory decisions regarding race, sex, and other protected categories.

Legal challenges to the voter-approved measure have been led by civil rights groups with support from the Clinton administration.

Only three weeks after its approval in November, Chief U.S. District Judge Thelton Henderson of San Francisco barred the measure's implementation. He said opponents would most likely prove it unconstitutional. On April 8, 1997, a three-judge panel of the 9th Circuit overruled Henderson. The panel said that 209 opponents were not entitled to an injunction against the measure, and that it was clearly constitutional.

Since the full eleven-judge appeals court has refused to hear the case, the next step is likely to be appeal to the U.S. Supreme Court. More than two dozen other states are considering similar anti-preference measures. It seems that level of national interest will increase likelihood that the Supreme Court will hear the case.

Unless an appeal is filed within a week, Proposition 209 will be implemented.

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2. OFCCP SENDS "DEAR CONTRACTOR" LETTERS

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has sent letters to the 250 largest federal

contractors in California. The "Dear Contractor" letter was sent to clarify the Department of Labor's position about enforcing affirmative action requirements with federal contractors.

Shirley J. Wilcher, head of the OFCCP, said, "contractors agree to have affirmative action programs when they accept federal dollars. We thought now was a good time to send a reminder."

Wilcher wants California's federal contractors to be clear about the absence of impact the State's Proposition 209 will have on federal requirements, even if 209 is upheld in the courts.

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3. CHINESE HR EXPERTS STUDY U.S. METHODS

This last week I was privileged to spend two days with a group of 29 senior HR executives from Guangdong Province, People's Republic of China. During that time I spoke with them about HR practices in the U.S., past, present and future. It was a great experience and I learned several things from the meeting (even though I was supposed to be the teacher):

- HR management problems are very similar in both countries: Attendance & punctuality, policy enforcement, benefits, compensation and all the other normal issues faced by HR professionals every day.

- These particular HR executives in Guangdong Province are taking their search for "best HR practices" on the road. They will be visiting
- San Francisco, Sacramento, Washington (DC), and Albany. (There are obligatory stops along the way at Disneyland and Las Vegas.)

- Cultural differences can easily be forgotten in deference to professional interests. In that regard, we spoke the same language.

I remember seeing groups of Japanese engineers and operations managers touring U.S. employment centers thirty years ago. They had notebooks and cameras and were serious about their studies of our methods. Now, the Chinese have advanced to the next level of study...human resource administration. They plan to send from three to four such groups to the U.S. each year for first hand experience with their professional counterparts.

How many groups of professional U.S. HR executives are touring through the employment world of Japan or China? Maybe it's just me, but I think we may be missing something here.

Gentle Readers,

Well, the government has managed to create some new rules for the OFCCP's enforcement of affirmative action regulations. In the first of what promises to be a series of new rules, the Department of Labor agency has given itself what could be broad powers to assure contractor compliance with federal regulations.

IN THIS REPORT (09/06/97)

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1. NEW OFCCP STANDARDS ON REVIEWS AND RECORDS

Affirmative Action employers (federal contractors) should be aware that new regulations were published by the Office of Federal Contract Compliance Programs (OFCCP) on August 19, 1997 in the Federal Register. They focus on how the government will review AAP documents under E.O. 11246, and contractor requirements for record maintenance.

These changes are the first of two sets expected by the end of this year. They have been undertaken by the Clinton administration as a means to "streamline nondiscrimination and affirmative action obligations that apply to federal contractors."

These new regulations are not entirely identical to the drafts published last May.

Here are the key provisions of these changes:

- Henceforth, OFCCP compliance reviews may take one of these forms:
  - Compliance Review, identical to those the agency performs today.
  - Compliance Check, involves an on-site visit to look at contractor records and assure it has developed an AAP and has the proper records required to comply with its implementation requirements.
  - Off-site Records Review, is essentially the same as today's "desk audit."
  - Focused Review, designed to inspect specific areas of concern by OFCCP.

- The definition of "government contract" has been expanded to include agreements where the government is the seller of goods and services. Until now, the government has had to be the buyer of goods or services to create a "contractor."

- Records retention requirements have been clarified and extended. Contractors must now keep all employment and personnel records for at least two years. Those records must include information

about job applicants, interview notes, hiring decisions, physical examinations, and decisions about transfers, promotions and employee development. (Contractors that employ fewer than 150 workers or have contracts smaller than $150,000 will only have to keep records for one year.)

- When contractors receive notice that a complaint has been filed or a compliance review has been scheduled, they will be required to "preserve all relevant personnel records" for the duration of the review or complaint. Contractors that destroy or fail to keep records will, under the new rules, be held in violation of E.O. 11246. The OFCCP may now presume that any missing records would have been unfavorable to the contractor. The agency says it will use this "presumption" right only on a case-by-case basis.

- All relevant computer records must be made available to the OFCCP for inspection and copying. Objections to this rule provision were ignored. Concern from contractors centered on disclosure of sensitive personnel information as well as competitive and proprietary data. Those concerns have been waved aside by the government as irrelevant.

- Contractors will no longer have to maintain paper records certifying they do not maintain illegally segregated facilities. However, all contractors will still be obligated to provide single-user rest rooms and gender-segregated dressing or sleeping areas to assure privacy between the sexes.

- Section 60-60 of the regulations has been deleted. That provision prevented OFCCP officers from conducting reviews in the same establishment more than once every two years. There is now no limit to the frequency with which the OFCCP may review an establishment.

- Pre-award reviews will only be required if the contract value exceeds $10 million.

- Sanctions for contractors that fail to honor their commitments under the new rules will be a minimum of six months' debarrment. Contractors may also be debarred for an "indeterminate period."

One important proposed change which did not take place involved the response time allowed once contractors are notified of a compliance review. The current 30-day period will be maintained.

Stay tuned, for the other shoe will fall before this year ends.

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2. AT-LUNCH WORKERS NOT FREE LABOR

When employees are on un-paid meal breaks they may not be required to perform services for the employer. A case involving Southern New England Telecommunications Corp. (SNET) has generated just such a ruling from the 2nd U.S. Circuit Court of Appeals.

The case involved outside craft workers who work on outdoor phone lines, above and below ground. Work sites were often hazardous to the public because of equipment and materials present. The company required workers to bring their lunches and eat them on-site while preventing anyone from entering the work site. Both employees and the company agreed that this safety monitoring responsibility was passive. Employees were almost never required to actively intervene. However, the court said SNET must pay these employees for their 30-minute lunch period because they were actually working during that time.

The court reasoned that the company would have to hire additional workers to perform the security monitoring activities if it could not get outside craft workers to perform those services during lunch breaks. The fact that SNET got those services for free because it didn't pay for meal periods was a violation of the Fair Labor Standards Act according to the 2nd U.S. Circuit. "By not paying these workers, SNET is effectively receiving free labor."

Reich vs. Southern New England Telecommunications Corp., 1997 WL 426499 (2nd Circuit).

Gentle Readers,

The process of "getting the word out" continues. An appellate court ruling in Florida affirmed the unacceptability of set-aside programs for one county's contractor requirements. A similar ruling comes from a separate case in California. At the same time, folks in Houston are preparing to vote on the city's affirmative action efforts.

IN THIS REPORT (09/24/97)

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1. HOUSTON BALLOT INITIATIVE ON AFFIRMATIVE ACTION

People in Houston, Texas will have a chance in November to vote on an anti-affirmative action initiative which could result in amendment of the city's charter.

The proposed amendment says: "Houston shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public government and public contracting."

With the exception that Houston's initiative does not include education, it is quite similar to Proposition 209 passed last year by California voters.

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2. SET-ASIDES SET ASIDE IN FLORIDA COUNTY

Dade County, Florida has been told by the Eleventh Circuit U.S. Court of Appeals that its ordinance requiring set-asides is unconstitutional. In its ruling the court upheld an injunction against use of the set-aside program in awarding public construction contracts.

While Dade County has been supported in its minority business set-aside program by past court rulings, in the current case it has run into a different interpretation. The case was "Engineering Contractors Association of South Florida v. Metropolitan Dade County," CA 11, No. 96-5274, 9/2/97.

The program called for construction goals of 15% for black owned enterprises, 19% for Hispanic owned enterprises, and 11% for women owned businesses on contracts with a value of over $25,000.

The current case was filed in 1994 alleging that the county did not have a compelling interest in using racial, ethnic or gender classifications in awarding construction contracts. The Contractors

Association said the programs were not narrowly tailored as required by the Supreme Court in its "Adarand" ruling.

In part, the court said, "The first measure of every government ought to undertake to eradicate discrimination is to clean its own house and to ensure that its own operations are run on a strictly race- and ethnicity-neutral basis. The county has made no effort to do that."

Expect that there will be additional cases around the country for the next few years as government entities are forced to comply with the law as it has been laid out by the U.S. Supreme Court.

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3. CALIFORNIA REQUIREMENT FOR SUBCONTRACTING RULED UNCONSTITUTIONAL

Speaking of other cases, California steps up to the plate again in "Monterey Mechanical Co. v. Wilson," CA 9, No. 96-16729, 9/3/97. The Ninth Circuit ruling found that the State's requirement that general contractors subcontract designated portions of state projects to sub-contractors owned by minorities, women and/or veterans was unacceptable.

"The state has not even attempted to show that the statute is narrowly tailored to remedy past discrimination," said the Ninth Circuit.

Monterey Mechanical bid on construction work at California Polytechnic State University at San Luis Obispo. It is a non-minority firm. The award was given to Swinerton and Walberg, another non-minority firm which bid higher than Monterey Mechanical. The reason for awarding the contract to other than the lowest bidder was that Monterey Mechanical had not complied with the State requirement for meeting subcontracting goals.

According to the ruling, Section 10115 of the California Public Contract Code places higher compliance expenses on some firms than others based on ethnicity and gender. "In the case before us," said the court, "the university offered no evidence whatsoever to justify the race and sex discrimination."

And so it goes.

EDITOR'S NOTE:

Just a reminder that we need to think about these contracting set-aside issues as different from the affirmative action requirements for employment as required by E.O. 11246 and its regulations. Employment-related affirmative action has never permitted set-asides or preferential treatment in hiring or promotion within federal contractor's organizations. To do so would result in both violation of EEO law and AAP compliance requirements.

Gentle Readers,

There continues to be much confusion about the interacting requirements of Family Leave, Workers' Compensation, ADA provisions and state laws. While we don't propose that this report will clear up all the misunderstandings, we do hope it will give you a few things to consider in your policy making.

IN THIS REPORT (10/06/97)

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1. WORKERS' COMP RECIPIENTS MAY ALSO BE ELIGIBLE FOR FAMILY LEAVE

Do you have more than 50 employees? If so, you may be covered by the federal Family and Medical Leave Act. You may also be covered by similar state laws allowing family and illness leaves of absence.

Under the federal law, employees may request FMLA leave for their own serious illness. In some cases, employees who are on Workers' Compensation leave may also be eligible for concurrent FMLA leave for up to 12 weeks. Those who are will likely be entitled under FMLA for your continued coverage of their medical insurance benefits. If you normally pay all of an employee's health benefits, you would be responsible for continuing to pay for all of the benefits while your employee is on FMLA leave status. If employees normally pay a portion of the health benefits coverage, they would be responsible for paying the same portion while on FMLA leave status.

If you policy has been to extend health benefits coverage for people on workers' compensation leave, you would want to compare that policy with the requirements of FMLA to see which combination offers your employees the best benefit.

After 12 weeks of FMLA coverage, employees may also be eligible for COBRA coverage, allowing continuation of health benefits at their own expense.

If you have anyone on workers' compensation leave you might wish to discuss the situation with your labor/management attorney. Remember, it is the employer's responsibility to properly classify workers on FMLA status, even though they don't request such a leave. If they could have received a benefit from being on FMLA status you will be responsible for assuring that they receive it. Remember, too, your state laws may offer additional employee protections which you will want to take into consideration.

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2. CALIFORNIA OVERTIME CHANGES STILL PENDING

Governor Pete Wilson has vetoed legislation which would have reinstated California's requirement that non-exempt employees be paid overtime for more than eight hours in a work day.

A state court has also denied a petition for an injunction to restore daily overtime rules eliminated by action of the Industrial Welfare Commission (IWC).

That means things are still on schedule for the changes to become effective on January 1, 1997 as planned. On that day, California employers may change their policies on overtime so it is earned only after 40 hours in a work week. (The rule about double time payment after 12 hours in a single work day will remain in effect.)

Should you wish to change your policy on overtime payment to match the new rules, be sure that you review your written materials on the subject. Your review should include your employee handbook. You can get sued quickly if you begin operating in ways different from your written policies. Be sure your policies and practices are consistent.

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3. ANOTHER MISCLASSIFICATION OF OVERTIME EXEMPTION

By now, everyone has read more than they ever wanted to know about the Microsoft case. Microsoft will be paying some large dollar amounts to satisfy penalties and back taxes on misclassified workers.

Another case recently settled which reinforces the dangers of improper classification of overtime exemption. That one involved Pacific Telesis Group, the California telephone utility. The company has agreed to pay $27.8 million in overtime pay and attorney fees to settle a class action brought by 600 sales support managers. The employees claimed they were incorrectly denied overtime pay because they were inappropriately classified as exempt due to managerial status.

Remember, there are very specific tests to be passed before any job is entitled to a classification of "exempt" under the Fair Labor Standards Act. Be sure you look at job requirements when making your assessment. Incumbent qualifications have no bearing on the classification process.

If you wish help with your classification effort, or would like a complete review of all job FLSA classifications, give us a call. We'll be glad to help.

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4. NEW PUBLICATION ON LEADERSHIP DUE FOR RELEASE

By the end of October, we will release our latest book entitled, "Nursing Home LEADERSHIP." Authored by Wayne D. Ford, Ph.D., it provides definitive answers to questions of leading the modern nursing home staff. Its more than 300 pages contain state of the art methods

for implementing quality processes that will put you well ahead of your competition. You will also find outstanding marketing and motivating techniques for both the Administrator and the Director of Nursing.

If you are in the health care business, or know someone who is, this book will be a real benefit to their professional development.

Price is $69.95 per copy, plus $7.00 S/H and $5.77 sales tax for California destinations. If you order your copy before October 24, 1997, we will include a free copy of our book, "Before Diversity: 103 Questions & Answers for Managers and Trainers." That's a $49.95 value for FREE. But you have to order your copy NOW!

Have your credit card ready and call our toll-free order line at 1-888-671-0404. Your order will be shipped before the end of October.

Gentle Readers,

There are many things happening in Washington these days. And, there are many things NOT happening in Washington these days. The EEOC is facing some possible difficulties with vacancies. In the private sector, turnover is also a problem.

IN THIS REPORT (10/10/97)

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1. EEOC VACANCIES THREATEN COMMISSION WORK

Gilbert Casellas, Chairman of the Equal Employment Opportunity Commission has announced that he will leave that job by the end of 1997. The EEOC only has five members, and two of those positions are already vacant. With Casellas leaving, there won't be a quorum available to conduct its business.

In reality, the Commission staff would continue its duties of enforcement and litigation on cases which have already been approved by the Commission. At risk are new case approvals and any policy changes which might arise for discussion.

The two existing vacancies have been languishing unattended by the President. More than a year ago, Joyce Tucker's term expired and she has not yet been replaced. She was originally a Republican appointee. Earlier this pear Vice Chairman Paul Igasaki's term expired. The President renominated Mr. Igasaki, but the Senate has yet to take action on approving that nomination. It seems some Senators are unwilling to act on his reappointment until the administration makes an appointment for the earlier Tucker vacancy.

You will recall that the administration went through its first year without having nominated a National Director for the DOL's Office of Federal Contract Compliance Programs. At the time, there was much speculation about whether or not the President was going to combine the two agencies.

There doesn't seem to be the same type of speculation now. Folks are beginning to wonder, however, if the government will allow the EEOC to become inactive by simply allowing three vacancies to remain.

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2. TURNOVER: THE EMPLOYMENT REVOLVING DOOR

The bad news: Hewitt Associates reports that costs of replacing employees has hit the range of one to one-and-a-half times annual

salary. That includes recruiting, advertising, staff overhead, operations involvement, and all other factors.

Add that to the reported 1.2% monthly turnover recently reported by the Bureau of National Affairs and you can easily see how expensive the issue has become for employers. (To estimate the cost to your organization, multiply your average annual salary by the 14.4% annual turnover rate.) If your turnover rate is lower, you are in HR heaven, as they say. Some of your colleagues are struggling with turnover rates as high as 300%.

The high technology industry has been particularly hard hit. It seems the average tenure of computer scientists and programmers is not six months.

The good news: There doesn't seem to be much.

What are employers doing to combat the trend? Some are finding they can lower their employee turnover by offering hiring bonuses which are paid out over a three year period. Workers must remain on the job to collect.

Bottom line: With such a tight job market, employers are finding it more expensive to conduct business simply because the cost of payroll has gone up so rapidly. Can inflation be far behind?

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3. CORRECTION: CALIFORNIA OVERTIME RULES

In our last "Special Report for HR Professionals" we said that the current requirement for paying double time after 12 hours work in a single day would continue under the new IWC orders. As it turns out, that is not correct.

Thanks to Dom Diguglielmo, a friend at Varian, who spotted the error and called it to our attention.

We had a conference with the Labor Commissioner's office and discovered that the original input we had received from them was incorrect.

Here's the bottom line. (Obviously, you should not change anything until after the first of January, 1998. This is just for your planning information.)

- Only five of the IWC Work Orders have changed, according to the Labor Commissioner.

IWC Order No. 1-98 Manufacturing Industry
No. 4-98 Professional, Technical, Clerical, Mechanical, and Similar Occupations.
No. 5-98 Public Housekeeping Industry
No. 7-98 Mercantile Industry
No. 9-98 Transportation Industry

- Each one contains the following sentence under the category, "Hours and Days of Work:"

"No overtime pay shall be required for hours of work in excess of any daily number."

You should have received your new IWC Order by now. If you have not, you may obtain one by visiting your nearest office of the California Department of Industrial Relations, Division of Labor Standards Enforcement. Their telephone number is usually listed in the government pages of the telephone directory.

Or, you may write your request to:

State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142-0603

We'll keep you posted, if we learn that anything else is going to change.

Gentle Readers,

Although there is no definitive guideline yet, another District Court has resolved that an individual supervisor may be held liable for acts in violation of the Family and Medical Leave Act (FMLA). You may well want to alert your operations managers to this possibility.

IN THIS REPORT (10/25/97)

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1. INDIVIDUAL SUPERVISOR LIABILITY UNDER FMLA?

Although there has yet to be a federal circuit court review in such a case, an Illinois District Court has ruled that a former employee may sue his one-time supervisors as individuals under the FMLA.

The case, Beyer v. Elkay Manufacturing Co., DC NI11, No. 97-C-50067, 9/19/97, sends another message to management people that they had better be careful when handling employee illness leave requests.

Judge Philip G. Reinhard acknowledged in his decision that federal district courts have reached conflicting results in similar situations.

Reinhard said he reached his conclusion by comparing the FMLA to the FLSA (Fair Labor Standards Act) which allows individual supervisors to be held liable if responsible for a violation.

By contrast, Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act rely on agency law principles which leave an employer liable for the actions of its agents.

Further, a Department of Labor regulation (29 CFR 825.104(d)) says individuals acting in the interest of the employer are individually liable under FMLA, like they are under FLSA.

Judge Reinhard said, "the mere fact that FMLA sets a minimum threshold of employees similar to the other discrimination acts, without any other supporting facts, cannot support a finding of no liability."

It would be a good idea to polish up the old training programs for managers and supervisors. Employers who fail to inform their supervisors and managers about this potential personal liability are doing them a serious disservice.

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2. HR SERVICE CENTERS CATCHING ON

It started a number of years ago with Oracle and Apple Computer. That makes sense, since both are leaders in the high technology industry. Using technology to serve internal employee constituents seemed a natural thing.

Since then, many other organizations have established centralized employee service centers for human resource information processing. And, more and more employers are asking their workers to take over some of the data management functions formerly performed by people in the human resources department.

Bank of America, Chevron, and Kaiser Permanente are just three examples of organizations which have established centralized human resource processing and information centers. In some cases, there are no longer any HR representatives at local work sites. They have all been moved to the central service center.

Have a question about your benefits? Want to know how to change your name after marriage or divorce? Need to add a new family member to medical insurance coverage? Wonder how many weeks of vacation you will get next year, and when you can take them? You will be able to find the answers by calling a special employee-only toll-free phone number and talking with an HR representative who may be hundreds or thousands of miles away from you.

HR is moving in this direction for the same reasons banks moved away from tellers toward ATMs. Expense control. It makes sense to automate and centralize where possible.

One consultant with a nationally known firm has estimated that 80% of HR's transactions could be handled through service bureaus or in more fully automated systems. That would leave the remaining 20% of HR activities to receive the full attention they truly deserve.

Expect that these trends will continue. You will be hearing more about such programs implemented in organizations near you as the months pass. Smart HR managers will be planning how they can take advantage of such streamlining of processes and contribute to the cost-saving efforts of their organizations. Such is the contribution demanded of strategic partners, whether internal or external.

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3. NEW PRODUCTS AND CATALOG AVAILABLE

Three new products have just been added to the list offered by The Management Advantage, Inc. in its "Employer Survival Tools" series.

Book - "The Internet Answer Book for HR Professionals"

Book - "The OSHA Answer Book (3rd Edition)"

Book - "Nursing Home Leadership"

You can find these fine products on our web site at www.management-advantage.com/products in the very near future. We are currently working on those additions.

They are also in our latest edition of our paper catalog. If you would like FREE a copy mailed to you, please send an e-mail message to

tmainc@management-advantage.com

and in the "Subject" line type: "Catalog #8 Request"

We will need your mailing address as well.

Remember, if it involves HR compliance, we probably have some references for you.

Gentle Readers,

It wasn't too many years ago that government rarely made any changes in its operating procedures. Oh sure, once in a while the price of stamps went up, but how things were done remained very much the same from year to year. These days, even our federal government is undergoing constant change, much like the private sector has been experiencing for a long time. New rules, and changes to some old rules, lead us into today's report topics.

IN THIS REPORT (11/3/97)

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1. OFCCP RELEASES FIVE-YEAR STRATEGIC PLAN

In 1993, Congress passed the Government Performance and Results Act which requires all federal agencies to develop five-year plans identifying both goals and measurements for achievement.

The OFCCP's plan was incorporated into the Department of Labor package sent to Congress at the end of September. Several key objectives are outlined for achievement between now and the year 2002:

- Complete implementation of 1997 regulatory changes involving shortened compliance reviews under a tiered approach.

- Increase by 33% the number of federal contractors who are in compliance.

- Implement as yet unidentified changes to required content of written AA Plans. Speculation continues among contractors that the 8-factor availability analysis will be reduced to 4 factors. That may ultimately be only one of the changes the OFCCP has in mind.

- Implement a revised system of selecting contractors for compliance audit. It is believed that the new system will still involve use of the EEDS (Equal Employment Data System) database shared by the OFCCP and EEOC. It contains Standard Form 100 (EEO-1, EEO-4, etc.) information from all federal contractors and other employers. Although the OFCCP has said it will begin testing the new process on October 1, 1997 it has not publicly identified how that approach will differ from existing selection procedures.

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2. FILING OF SUMMARY PLAN DESCRIPTIONS NO LONGER REQUIRED

If you have been an HR professional for longer than a few years, chances are good that you have been involved in the annual filing of your organization's summary plan descriptions for your benefit programs.

This process has been estimated to have cost plan administrators as much as $2.5 million per year.

As of August 5, 1997, the Taxpayer Relief Act of 1997 eliminates the need for submitting these documents to the Department of Labor as was originally required under the Employee Retirement Income Security Act (ERISA).

Be aware, however, that there has been no change in the requirement for summary plan descriptions to be made available to plan participants & beneficiaries. The DOL may request copies in the future and you must provide those copies within 30 days. However, the automatic filing process has ended. This should save the government money also.

So, bottom line...

Summary Plan Descriptions must still be prepared for each benefit plan as before. Copies must still be given to employees and beneficiaries as before. Copies must be given to the DOL only when requested. Failure to deliver Summary Plan Descriptions to the DOL within 30 days when they request those documents will result in fines of $100 per day, up to $1,000 per request.

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3. ANOTHER EMPLOYER PAYS FOR PAY DIFFERENCES

Some of the folks who help us feel better on special occasions have been feeling a bit poorly recently. In December 1996, the OFCCP conducted a compliance review on the headquarters establishment of American Greetings Corp. The company was found to have paid some female professional and managerial employees less than it should have.

The company has a $73 million contract to provide greeting cards to military post exchanges. The OFCCP claimed in its review that the company should pay $217,000 to 33 female employees to remedy problems uncovered during the audit. The company agreed.

(Seems like a simple business decision to us.)

The company also claimed that the adjustments represented less than one percent of the positions reviewed during the OFCCP's audit. In other words, the company felt it had a sound pay system. The OFCCP's District Director Charles Duffy seemed to agree in an October 7th announcement of the settlement. "We were especially pleased at the prompt manner in which the employer recognized the issue and took immediate steps to correct it."

Gentle Readers,

The 1997 elections are over. The people have spoken their wishes in many villages and towns across the country. What happened that might be of national interest? What will happen in the future as a result of these election outcomes?

IN THIS REPORT (11/6/97)

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1. AFFIRMATIVE ACTION: MIXED MESSAGES THIS WEEK

To begin the week, the U.S. Supreme Court declined to review "Coalition for Economic Equity v. Wilson." You will recall that this is the case which was hoped to overturn California's Proposition 209.

Perhaps a brief recap would be helpful...

Proposition 209 was placed on the ballot as a voter initiative during the state-wide elections a year ago. California voters approved the measure which would prohibit race or gender preferences in state employment, contracting or higher education admissions. Governor Pete Wilson backed "Prop 209" as it came to be called.

54% of the state's voters approved the proposition, resulting in an immediate legal challenge. Opposition to implementing Prop 209 came from many quarters, including the American Civil Liberties Union. Last August, the 9th U.S. Circuit Court of Appeals ruled that the measure did not violate the U.S. Constitution and could be implemented. The U.S. Supreme Court refused to issue an order to stay its implementation while the appeal proceeded. This week, the High Court refused to hear the case, which essentially endorsed action taken by the 9th Circuit Court.

Governor Wilson has sent a list of laws and regulations to the state legislature which he says must be altered in light of 209's implementation. He has already ordered all state agencies to stop the practice of preferential treatment in contracting. Some key people in the state legislature are vowing to block such changes. Some individuals in state agencies are also saying they will not change their contracting procedures to eliminate preferential treatment of minorities and women.

Meanwhile, voters in Houston, Texas rejected a similar measure this past Tuesday. Interestingly enough, the measure was defeated with a 54% vote, identical to Proposition 209's approval rating a year ago.

The City of Houston has a requirement that city contractors try to give 20% of their work to minority or women-owned subcontractors. Voters said they want to continue the practice.

The Wall Street Journal reports that 20 states have had anti-affirmative action measures introduced in their legislatures. So far, according to the WSJ, the only state legislature to vote on such a measure has been Pennsylvania. It was defeated.

What the future holds is anybody's guess. It is quite clear, however, that federal contractors and subcontractors are still required to have written affirmative action plans in place for their employment of minorities, women, disabled and veterans.

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2. VALUABLE WEB SITE ... FROM A LAW FIRM

Earlier this week, I was invited to attend a full-day briefing on recent developments in labor and employment law. The session was hosted by the law firm of Graham & James. It was a great experience. The partners and associates made some wonderful presentations and provided clearly outstanding materials.

You will find that Graham & James also offers free HR management materials on its web site. If you are interested, visit www/gj.com. In the San Francisco office, David M. Lofholm heads the labor and employment law department. You can reach him at 415-954-0200. If you decide to call, say Hi to him from The Management Advantage, Inc.

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3. FREE OFFER

We have 200 copies of a beautifully scenic 1998 wall calendar available to those who would like to have one. It is a nice mid-size (8" X 9") that will enhance your office with its lovely photographic displays of seasonal America.

We will send a copy to each of the first 200 people who request it. If you would like one, please send us an e-mail message with your request and your mailing address.

We'll get your FREE copy in the mail directly. Then, as Dinah Shore used to say, you can "See the USA." (Offer good for U.S. addresses only.)

Gentle Readers,

HR professionals, it seems, are constantly looking for additional resources they can use to expand their knowledge and remain current on recent developments in their world of compliance. In this report we will share some of those resources with you. After your turkey dinner, have a look at some of the web sites. Best wishes for a Happy Thanksgiving.

IN THIS REPORT (11/21/97)

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1. WEB SITE CONSOLIDATES LEGAL RESOURCES

Although it is not free, it is a worthwhile subscription service. And, you can get a free preview of the many resources it offers.

We're talking about the new HR Law Index on the World Wide Web. Point your browser to www.hrlawindex.com for a peek at a consolidated source you may find very helpful. The staff at HR Law Index does all the web searching for you. When they find something that should be added to their index, they put in a link so you can jump right to the information you wish to see.

The service is updated daily by an internal legal department and it maintains an archive of information through which you can search fairly quickly.

This site has taken a unique approach to information retrieval. It indexes specific articles rather than web site home pages. That alone can save countless hours of wandering through one Internet site after another. There is also a customizable e-mail notification option which informs subscribers when new materials are added to the index in categories selected by the subscribers.

Perry Shoom is General Manager of the service. Stephen Gibson is President. If you want to talk with Perry, his e-mail address is pshoom@hrlawindex.com.

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2. HR INTERNET RESOURCES

As you may know by now, finding the answers you need by searching the internet is not a fast process. Wouldn't it help to have a handy tool to speed things along. Knowing specific web sites that can deliver the information you seek is a decided advantage in such a search.

Well, Mark Moran and Alexander Padro have compiled just such a tool for HR professionals. In fact, it's called "The Internet Answer Book for Human Resource Professionals." In it you will find a directory of HR newsgroups and mailing lists. You will also find a directory of over 600 human resources web sites conveniently separated into 44 subject categories. Its 266 pages are packed with things you need to have handy.

Find what you are looking for quickly in the directory. Addiction, Assessment, Benefits, Compensation, Counseling Services, Ergonomics, Intranets, Payroll, Quality, Recruitment, Relocation, Safety and Security, Software/Technology, and Telecommuting are among the categories designed to help you get where you are going quickly.

You can get your own copy of this valuable reference by visiting our updated products page on the web. http://www.management-advantage.com/products/ A credit card order form is available on the same page.

If you would rather call your order in, grab your credit card and your telephone and call our toll-free order line: 1-888-671-0404.

Price of the book is $29.95 + $4.00 S/H and CA state sales tax for CA destinations.

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3. THANKSGIVING SPECIAL OFFER

In celebration of the coming holiday, and as a way of saying our Thanks to all in the community of HR Professionals, we are making a special offer to you.

Our newly published book, "Before Diversity: 103 Questions & Answers for Managers and Trainers" has been well received since its introduction. We now offer this valuable reference and training aid to you in a way that allows you to share with your colleagues.

Before Diversity: 103 Questions & Answers
for Managers and Trainers

List Price: $49.95

Through December 5, 1997 ...

Buy One ... Get One FREE!
Buy Two ... Get Two FREE!
Buy Three ... Get Five FREE!
Buy Four ... Get Six FREE!
Buy Five ... Get Ten FREE!

Orders must be placed by 5:00 p.m. PST on December 5, 1997. All orders must be prepaid. To receive this special pricing, you MUST mention it when you order.

We will even pay for the shipping if you take advantage of this Thanksgiving offer.

To order, call our toll-free order line at 1-888-671-0404, or visit our web site at http://www.management-advantage.com/products/ diversity-book.htm

HAPPY THANKSGIVING EVERYONE!

Gentle Readers,

Hope you had a restful Thanksgiving. Seemed kind a' short. Oh, well. Back to business. Congress has left for the year. Left a lot of business undone, that is. We'll look at the status of one key appointment and then jump into the subjects of census categories and SIC codes just for fun.

IN THIS REPORT (11/28/97)

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1. EEOC APPOINTMENT STILL STALLED

It has been more than three months since the Senate Labor and Human Resources Committee took up the reappointment of Paul Igasaki to the position of vice-chairman of the Equal Employment Opportunity Commission. Yet the confirmation process is stuck.

Technically, Mr. Igasaki's first term as EEOC Commissioner has expired. Under 1964 Civil Rights Act provisions, when Congress adjourns, the term ends. The White House, however, is expected to make a "recess appointment" which would temporarily extend Mr. Igasaki's current service on the Commission. His confirmation has been delayed because the Senate wishes to have the vacant "Republican" Commission seat filled before confirming Mr. Igasaki's renomination. He holds a "Democratic" Commission seat.

In the mean time, Mr. Igasaki is remaining on the federal payroll as a provisional employee so he can continue his enrollment in benefit programs. Until his current term is extended by a recess appointment, or the Senate confirms his reappointment to a second term, he lacks authority to perform as a Commissioner.

Meanwhile, EEOC Chairman Gilbert Casellas is expected to make good on his announced departure from the Commission before the end of the year.

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2. OMB FINAL STANDARDS ON RACE/ETHNIC CATEGORIES

The federal Office of Management and Budget (OMB) has released its final decisions on federally defined race and ethnic categories. Known as Statistical Policy Directive No. 15, it is titled "Race and Ethnic Standards for Federal Statistics and Administrative Reporting." The long awaited action includes several major changes from current policy...in the future, individuals will be able to specify more than one race/ethnic category on the census and other government forms.

Changed: the Asian or Pacific Islander category has been separated into two categories. They are "Asian" and "Native Hawaiian or Other Pacific Islander."

Changed: Ethnicity categories will be "Hispanic or Latino" and "Not Hispanic or Latino."

Changed: People will be allowed to select more than one category to describe themselves. OMB rejected a recommendation to create a "multiracial" category.

How multiple category selections will impact Standard Form 100 Reports (EEO-1, EEO-4, etc.) remains to be seen. Also unclear is how the process of statistical analysis for affirmative action plans will be affected. New guidelines must yet be developed that will implement these new OMB standards. OMB had no suggestions.

New race/ethnic category definitions are:

- "American Indian or Alaska Native." A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

- "Asian." A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

- "Black or African American." A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

- "Hispanic or Latino." A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."

- "Not Hispanic or Latino."

- "Native Hawaiian or Other Pacific Islander." A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

- "White." A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

OMB received a number of requests to add an ethnic category for Arabs/Middle Easterners so that data could be obtained that could be useful in monitoring discrimination. During public comment, however, it became clear that there is no agreement on a definition for this category. OMB says further research is necessary.

The new standards are effective immediately for all new and revised record keeping or other required reports, but OMB has given agencies a

final deadline of January 1, 2003 to implement changes. That means the earliest you can expect to see the "mark one or more of the different racial groups" option will be in the 2000 Census and its attendant reports. Next spring (1998) a dress rehearsal for that census will be undertaken.

If you wish to see the complete statement of new OMB standards, visit their web site at: http://www.whitehouse.gov/WH/EOP/omb/html/fedreg/OMBdir15.html

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3. NEW CLASSIFICATIONS TO REPLACE SIC CODES

Most business people recognize the term "SIC Code," which stands for Standard Industrial Classification. SIC codes are used to identify the type of work done by an organization.

Well, soon SIC codes will go the way of the buggy whip. They will be replaced with NAICS codes. NAICS represents: "North American Industry Classification System." It is an approach developed by the United States in cooperation with Canada and Mexico. The intention of our government in making the change is to produce statistics which are more comparable internationally.

Beginning in December (actually we already received our short form) the U.S. Census Bureau will be surveying over 5 million businesses. Responses will comprise the "1997 Economic Census."

This data gathering exercise is conducted every five years and is used to identify national and local business trends that are essential to measuring economic growth. The Census figures also help update other widely used figures such as the gross domestic product and monthly retail sales.

Information collected in the Economic Census includes the number of employees, payroll, and types and value of goods and services produced during 1997.

TELL A FRIEND

If you enjoy THE ADVANTAGE and these SPECIAL REPORTS FOR HR PROFESSIONALS, why not tell a friend? We would be delighted to add your friends to our e-mail subscriber list. You are welcome to forward this report to your friends as a sample of what they have been missing.

The price is right! Both publications are FREE of charge.

To subscribe, suggest that your friend send an e-mail message to: tmainc@management-advantage.com and in the "Subject" line write: Subscribe THE ADVANTAGE. We will take care of the rest.

Gentle Readers,

Santa's about to make his run. I wonder if he has checked lately on his elves' overtime payment. His payroll must really bulge at this time of the year.

There is some news on the EEOC front. No new appointments yet, but Chairman Gilbert F. Casellas just signed a new set of guidelines on the application of civil rights laws to contingent workers. If Santa uses temporary help, he had better be listening to this.

IN THIS REPORT (12/22/97)

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1. YOU ARE AMONG GOOD COMPANY

Our list of subscribers has grown from 200 to over 800 in just six months. Apparently, there are a lot of HR professionals who feel they receive some benefit from our quarterly newsletter, THE ADVANTAGE, and these periodic SPECIAL REPORTS. We are glad to share the information. We do so in the hope that employers around the country will find it easier to keep abreast of constantly changing compliance requirements. And, we hope you will think of us when you discover a need for consulting support in the areas of EEO, Affirmative Action, policies, procedures, or complaint investigations.

We thought you might like to know a little about the company you keep. Among our important subscribers, like you, we find folks from:

Federal Agencies:	EPA, DOE, NASA, Air Force, Navy, Army
Universities:	Purdue, Baylor, Univ of Dallas, Oklahoma State, Pepperdine, UCLA, SMSU
States:	Florida, California, Kentucky
Counties:	Harris, TX, Douglas, NE, Hernando, FL
Cities:	Buffalo, NY, Hillsboro, OR, Fresno, CA
Companies:	Bechtel, Chevron, GTE, IBM, Boeing, JP Morgan, IQuest, Fingerhut, Lucent Technology, Concentric, CRM Films, GE,

Ford, Prudential, Airtouch

The World Bank also has an interest in these subjects. Thanks to you all for being a part of our extended professional family.

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2. EEOC GUIDELINES ON CONTINGENT WORKERS

On December 3, 1997, EEOC Chairman Gilbert F. Casellas signed Notice Number 915.002 which describes how the Commission will handle the application of EEO laws to contingent workers.

If you are a placement agency, employment agency, or staffing firm this is important to you. If you ever have used, or ever plan to use, temporary agency personnel this is important to you also.

Federal laws covered by these guidelines include: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act (ADEA); the Americans with Disabilities Act (ADA); and the Equal Pay Act (EPA). It applies to "a large subgroup of the contingent work force – those who are hired and paid by a 'staffing firm'..." The notice cites statistics compiled by the National Association of Temporary and Staffing Services (NATSS) which show that the temporary help industry currently employs more than 2.3 million individuals. It points out that number represents a 100% growth since 1991.

Temporary help these days is not limited to clerical support. It now includes occupations in accounting, law, sales, and management.

- Are staffing firm workers "employees" within the meaning of the federal employment discrimination laws?

  Yes, in the great majority of circumstances. If the worker is on the staffing company payroll and the minimum number of employees make the staffing company subject to one or more of the laws, that worker is covered. Independent contractors are not covered, but then they are not on anyone's payroll either. For guidance on how to count employees to determine if an employer is covered by one or more of the federal laws, see "EEOC & Walters v. Metropolitan Educational Enterprises, 117 S. Ct. 660 (1997)." The EEOC Compliance Manual also contains guidelines.

- Who is the employer? (The staffing firm or the client organization?

  The EEOC says both are employers if both groups exercise control over the worker's employment. That situation constitutes a "joint employer" condition.

- Is a worker covered if the staffing firm assigns that worker to a federal agency?

The "joint employer" relationships could easily still exist. If the staffing agency discriminates against the worker, the staffing agency is liable "whether or not the individual is on the federal payroll."

- If a worker is denied a job assignment by a staffing firm because its client refuses to accept the worker for discriminatory reasons, is the staffing firm liable? Is the client?

  The staffing firm is liable for its discriminatory assignment decisions. Liability can be found on any of the following bases: 1) as an employer of the workers assigned to clients (for discriminatory job assignments); 2) as a third party interferer (for discriminatory interference in the workers' employment opportunities with the firm's client); and/or 3) as an employment agency for (discriminatory job referrals). The fact that a staffing firm's discriminatory assignment practice is based on its client's requirement is no defense. Furthermore, the staffing firm is liable if it administers on behalf of its client a test or other selection requirement that has an adverse impact on a protected class and is not job-related for the position in question and consistent with business necessity.

  A client that rejects workers for discriminatory reasons is liable either as a joint employer or third party interferer if it has the requisite number of employees to be covered under the applicable anti-discrimination statute.

- If a client discriminates against a worker assigned by a staffing firm, who is liable?

  If the client qualifies as an employer, it is liable for discriminating against the worker on the same basis that it would be liable for discriminating against any of its other employees.

  The staffing firm is liable if it participates in the client's discrimination. The firm is also liable if it knew or should have known about the client's discrimination and failed to undertake prompt corrective measures within its control.

- How are back wages and damages allocated between the two employers if a discrimination complaint is found to be valid?

  The employers are "jointly and severally liable for back pay, front pay, and compensatory damages." The full amount can come from one of the employers alone or from both employers combined. "Damages should be allocated between the respondents in a way that maximizes the payable relief to (the complaining party)."

For more information, ask for a copy of the notice from the EEOC office nearest you, or from The Bureau of National Affairs at 202-452-4200.

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3. HAPPY HOLIDAYS! SEE YOU NEXT YEAR

We thank you for your support during this past year. And, we wish each of you all the joy that this special season has to offer.

Our office will be closed on December 25 and 26. We will also be closed on January 1 and 2, 1998. We are looking forward to serving your EEO/AAP needs in 1998.

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