



Gentle Readers

**Special Reports for
HR Professionals—
1998**

**GENTLE READERS:
Special Reports for HR
Professionals - 1998**

Collection of email reports.

The Management Advantage, Inc.

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Gentle Readers,

HAPPY NEW YEAR EVERYONE!

As we turn the calendar pages to a new year, it seems appropriate to look for a few moments at the resources we can use in the next twelve months. If it is true that "government is here to help" then you will be impressed when you look over two of the web sites we suggest in this report.

Best wishes for a productive and healthy 1998.

IN THIS REPORT (1/2/98)

1. **FORM I-9 EXTENSION SIGNED**
2. **DOL PUTS ADVICE ON WEB SITE**
3. **CHECK OUT THE CENSUS WEB SITE**

1. **FORM I-9 EXTENSION SIGNED**

Although it happened on October 6, 1997, few people are aware that the President signed into law an extension of the current Form I-9. This was necessary because the INS (Immigration and Naturalization Service) has been given the task of reducing the number of acceptable documents for employment verification. That agency was to have published a new Form I-9 by September 30, 1997.

Since the new Form I-9 is not ready, the President has given the INS another six months to make its alterations to the document and reduce the number of acceptable documents for employment verification.

Although the INS published interim rules on September 30, 1997, there has been no opportunity for public comment. Therefore, the extension has been provided to allow for input from the employer community and others. As proposed, the new rules would not alter List B documents (identity), nor List C documents (work authorization). Two documents would be removed from List A, however: Certificate of United States Citizenship and the Certification of Naturalization. List A will still include: A U.S. passport; An Alien Registration Receipt Card or Permanent Resident Card (Form I-551); A foreign passport with a Temporary I-551 stamp; An Employment Authorization Document (EAD) issued by the INS which contains a photograph (Form I-766), Form I-688, Form I-688A, or Form I-688B; In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Arrival-Departure Record (Form I-94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

The INS has pledged to suspend enforcement actions against employers who continue to rely on existing employment verification forms, guidance and procedures. It said it is taking this action to suspend enforcement because there has been little advance public notice of the proposed changes. It has yet to propose what the revised Form I-9 will look like after it is finally re-issued.

If you wish more information about the current status of this revision process, visit the INS web page at:
<http://www.ins.usdoj.gov/employer/index.html>

2. DOL PUTS ADVICE ON WEB SITE

The U.S. Department of Labor has expanded its web site to include what it is calling "Employment Laws Assistance for Workers and Small Businesses." While this new access won't be of much help to an expert, it can be very beneficial for an HR generalist who needs specific information about one of the laws enforced by DOL.

For example, the Employment Standards Administration (ESA) offers on-line information about FMLA requirements. It speaks to both employee responsibilities and employer responsibilities. What are valid reasons for a leave request? What rights and benefits do the employee and employer have? (OFCCP's Interactive Compliance Assistance Advisor is not yet running. There are no estimates posted on the site about when it will be made available.)

There is also information available for OSHA compliance. Have questions about asbestos, confined spaces, fire safety or the Cadmium Standard? Get answers here quickly and easily.

The Veterans' Employment and Training Service offers information about employment questions relating to USERRA and the veteran's preference system for federal job hiring.

Want more? You can always ask for help from the local office of the DOL agency serving that subject area. Point your browser to:
<http://www.DOL.gov/elaws/>

3. CHECK OUT THE CENSUS WEB SITE

While some agencies of the government are struggling to offer real value in their web sites, the Bureau of the Census has already arrived. If you haven't seen their site, you should really take a few moments to look it over. There is a wealth of information available. Go to:
<http://www.census.gov> .

There are scores of reports you can download. You will find hundreds of tables and charts available to satisfy almost any analytical appetite.

Want to look at trends and predict the future? Here are just two examples of information you might consider:

1) Labor force participation rate of married women with children under 6 years old:

1960	18.6%
1970	30.3%
1980	45.1%
1996	62.7%

2) Fastest growing occupations between 1994 and 2005?

Personal & home care aides	+119%
Home health aides	+102%
Systems analysts	+ 92%
Computer engineers	+ 91%

Does such information tell us anything about how we should expect employee requests for child care benefits to increase? Does it explain what we should expect if we must recruit computer or home health specialists?

The Census web site is a virtual treasure trove. You will love what you can dig up.

Gentle Readers,

Some new resources you may find helpful and a chance to input to our new publication about your experiences with applicant resumes. You can influence the content of our upcoming book by telling us about your experiences. The questions are simple and won't take much of your time. We hope you will want to participate.

IN THIS REPORT (Report #23, 1/9/98)

-
1. **NEW IN 1998 - Cal-COBRA**
 2. **ANSWERS TO ELDER CARE QUESTIONS**
 3. **NEW SOURCE FOR HR FORMS**
 4. **WHAT EXPERIENCES HAVE YOU HAD WITH UNTRUTHFUL RESUMES?**

1. **NEW IN 1998 - Cal-COBRA**

Anyone who has employees in California will want to log the following information...

Effective 1-1-98, Cal-COBRA (California Continuation Benefits Replacement Act) impacts employers with two to nineteen employees on the payroll. As you know, employers are not subject to federal COBRA regulations until they have 20 employees on their payroll.

Cal-COBRA requires insurance carriers to provide COBRA-like coverage for this new group of employees. Employers are required to assist in this compliance by notifying the insurance carrier of a qualifying event that would result in a loss of coverage for a qualified beneficiary under the group benefit plan.

Employers are required to provide notice of an employee's qualifying event to the insurance carrier within 31 days of the qualifying event.

Qualifying events for Cal-COBRA are the same as those for COBRA with one exception: an employer's bankruptcy is not included as a qualifying event for Cal-COBRA.

2. **ANSWERS TO ELDER CARE QUESTIONS**

There are still folks in the world who do things because they are right, rather than to make a buck. One such person is Karen Stevenson Brown, CPA.

Karen has created a web site called "Elder Web." On it you will find a wealth of resources for almost any aspect of elder care you can mention. There are links to other sites by the dozens. There are

links to articles on the subject. There are convenient category indexes that can speed your search for a specific topic.

If you are charged with researching elder care benefits for your organization, mark this site as one you must see before concluding your project. It may be the only one you will need to see.
<http://www.elderweb.com>

3. NEW SOURCE FOR HR FORMS

The web is so much fun. There are untold numbers of resources available to help the HR professional. One you might want to explore specializes in production of forms for many different HR management functions - from disciplinary actions to employee evaluation forms.

Want something for tracking or recognition of your employees? These folks have it. Take a look at Star Business Forms at:
<http://www.starform.com>

4. WHAT EXPERIENCES HAVE YOU HAD WITH UNTRUTHFUL RESUMES?

We are in the process of developing a new publication on the issues surrounding resume inaccuracies. (Some HR Managers we have talked with call them ".")

Our publication will offer you help in knowing how to recognize these "exaggerations," "false claims," and "outright lies." We would like to focus on the portions of the problem which are giving you the greatest difficulty.

Will you please send us your response to the following questions? We would very much appreciate your input.

1. What is most likely to be overstated or exaggerated on a resume?
2. What is the most difficult part of a resume to verify?
3. What percent of resumes you receive have inaccurate or exaggerated information on them?
4. Do you always attempt to verify the contents of resumes you receive? If not, why?
5. Do you have a policy that allows termination of employees if they have falsified employment applications or resumes? Have you ever exercised that option?

Thank you for your assistance. Please e-mail your responses to tmainc@management-advantage.com. We need them for summarization by January 15, 1998.

Gentle Readers,

There continues to be great interest in the issue of workplace violence prevention. A colleague has offered what may be THE clearinghouse of web information on the subject. And then, there's the government...

IN THIS REPORT (Report #24, 1/16/98)

-
1. **WEB CLEARING HOUSE FOR INFO ON PREVENTING WORKPLACE VIOLENCE**
 2. **EEOC UPDATE (OFCCP, too)**
 3. **EEOC BEST PRACTICES TASK FORCE REPORT**

-
1. **WEB CLEARING HOUSE FOR INFO ON PREVENTING WORKPLACE VIOLENCE**

Thanks to Larry Chavez, Hostage Negotiator for the Sacramento, California Police Department, we have a new web site to recommend to you. You will recall Larry's contribution to our January, 1998 issue of THE ADVANTAGE newsletter, "What Organizations and Individuals Have Done to Invite Workplace Violence."

If you ever want articles, books, discussion groups, or other references for the subject, check out:
<http://www.svn.net/mikekell/index.html#Places>

The site is known as "Satore Township," but don't let that fool you. It lists everything from recent acts of workplace violence to suggestions for prevention and guidelines on dismissing employees that can lower the risk of violent reactions.

At the very least, you should make a note of this reference resource in your browser so you will be able to reach out when you have the need.

Thanks, Larry.

-
2. **EEOC UPDATE (OFCCP, too)**

Well, Chairman Gilbert F. Casellas is gone. Gone to practice law in the private sector of Washington, DC. As he was getting ready to leave, President Clinton announced the recess appointment of Paul M. Igasaki to serve as Vice Chair of the Commission.

The Senate had held Igasaki's reappointment at ransom for political reasons. The President waited until Congress adjourned for the year, then made an end run with his recess appointment. It effectively allows the Commission to continue with the conduct of daily business. Without Igasaki, there would not have been enough Commissioners to officially conduct business.

The piper will be paid when Congress returns for its next session and the formal appointment confirmation process begins once again.

In the mean time, there is nothing to note from the OFCCP. While other Department of Labor agencies are at work, demonstrating their involvement with both employers and workers across the country, OFCCP has been quiet as a church mouse. There haven't even been any press releases or updates to the agency's web pages in months. Has something died, or what? Government contractors are still receiving their scheduling letters for compliance audits. It's just all gotten very quiet all of a sudden. Any ideas why?

3. EEOC BEST PRACTICES TASK FORCE REPORT

Before leaving office, EEOC Chairman Gilbert F. Casellas insisted that its Best Practices Task Force, headed by Commissioner Reginald E. Jones, conclude its work and issue its report.

You can read the Executive Summary of that report at the EEOC's web site. Go to: <http://www.eeoc.gov/task/prac2.html> .

Focusing on the private sector, the task force said leading companies adopt what it called a "SPLENDID" approach to employee management issues. That's more than a pat on the back for employers. It's also an acronym meaning: STUDY, PLAN, LEAD, ENCOURAGE, NOTICE, DISCUSSION, INCLUSION, and DEDICATION. That's some pretty creative task force work.

On a more substantial level, the task force has recommended that the Commission place greater emphasis on development of procedural and substantive guidance. It also encouraged a comprehensive and speedy review of Volume II of the Compliance Manual with input from external stakeholders in close coordination with the Commission staff.

The task force also made twelve recommendations for Commission consideration. One of those recommendations was that the Commission consider holding its meetings at various locations around the country, not just in Washington, DC.

Gentle Readers,

We are announcing a new service which may be helpful to some of you. And, there are some additional web sites listed in this issue where you may find information you can use.

IN THIS REPORT (Report #25, 1/23/98)

-
1. **NEW SERVICE AVAILABLE**
 2. **DOES HR HAVE BRAND IDENTITY?**
 3. **WEB SITES FOR HR PROFESSIONALS**

1. **NEW SERVICE AVAILABLE**

We have just received authorization from the Social Security Administration to provide you with access to the Agency's Social Security Number (SSN) verification service. Although any employer may apply for authorization to make such requests directly to the Agency, we have undertaken the application process so you won't have to.

This service will allow you to input each employee's SSN, name, date of birth and gender to determine if all of those elements are accurate according to the government's records. You will receive feedback indicating which, if any of the information elements is not correct.

Why would you want to verify employee SSNs? For two reasons. First, every employer has the responsibility for reporting on W-2 documents each employee's annual earnings and tax withholdings. It is the employer's obligation to make sure SSN information is accurate. Second, verification will assure you that information offered by your employees on the required I-9 employment authorization form is also accurate. Penalties for inaccurate or fictitious information on I-9 forms have run as high as \$1,000 per employee.

If you have fewer than 300 employees on your payroll, your request can be submitted on a paper record. If you wish to verify more than 300 employee records, we can help you with the required magnetic record format.

Our fee for handling this request on your behalf and returning the verification results to you is only \$1.50 per employee record.

Please call our toll-free number to obtain a copy of the single-page written agreement which is required for this service. We look forward to serving you. 1-888-671-0404.

2. DOES HR HAVE BRAND IDENTITY?

Alvin Collins, Muzak's programming director said to the Wall Street Journal:

"Next to Spam, we have the most negative brand identity in the world."

3. WEB SITES FOR HR PROFESSIONALS

- <http://www.teleport.com/~erwilson/links.html>
Dozens of web links for HR professionals.
 - <http://www.gilgordon.com/>
Telecommuting resources and conferences.
 - <http://www.census.gov/pubinfo/www/video/measure.mov>
QuickTime Video "We Measure America". The latest in music videos from our Census Bureau.
 - <http://plue.sedac.ciesin.org/plue/ddviewer/>
Demographic Data Viewer produces maps that display demographics you select.
 - <http://www.census.gov/prod/3/97pubs/cenbr975.pdf>
Article: "Disabilities Affect One Fifth of All Americans." Will download article in PDF format.
 - <http://www.census.gov/Press-Release/cb97-207.html>
Updated population estimates for states & counties by race & Hispanic origin.
-

Gentle Readers,

Diversity is only an intellectual subject until you find yourself in another culture absent the daily events and conveniences thought of as "normal." One of our colleagues describes her experiences in Korea. You may find it interesting.

IN THIS REPORT (Report #26, 2/2/98)

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1. **A WESTERNER IN KOREA**
 2. **TELECOMMUTING EXPLOSION**
 3. **WEB SITE FOR CASUAL FRIDAYS?**
-

1. **A WESTERNER IN KOREA**

(Jan Robinson is an HR Professional from California who now lives in South Korea with her husband. They moved there recently because of her husband's job. She has been helping with the relocation of other company executives. These are a few of her observations about her experience. They are reprinted here with her permission.)

I know I said the next installment would deal with my observations about Korean people and food. But shopping to outfit the apartments of the next three staff members who will be coming over to Korea next week reinforces some of the differences between how East and West live.

Kitchen: Dish towels are the size of our washcloths, No dishwashers (automatic, that is), so you go through a lot of dish towels each time you do dishes.

It is very hard to find western-style dish sets: dinner and salad plates, cereal/soup bowls, cups and saucers in a set with matching serving pieces. Because their meals are always centered around rice, large soup-type bowls are the common lot, and cups and saucers are easy to come by. Dinner and salad plates are non-existent. Flatware, as we know it, is also almost non-existent. Koreans use soup spoons and chopsticks. Large pieces of food are cut with kitchen shears or one's own chopsticks. So no forks, no dinner knives. The dish sets we do find are either the cutesy kind with little bears, kittens, puppies and hearts on them, or plastic. If they are western, they are tremendously expensive. Plain, clear glasses are also a rarity. They are also usually decorated and usually plastic.

No serrated knives, SOS pads, Comet, paper towel holders or baskets of any kind (at least that I've found so far). Although, if it's storage items you want, you can find any food are cut with kitchen shears or one's own chopsticks. So no forks, no dinner knives. The dish sets we do find are either the cutesy kind with little bears, kittens, puppies and hearts on them, or plastic. If they are western, they are tremendously expensive. Plain, clear glasses are also a rarity. They

are also usually decorated and usually plastic. No serrated knives, SOS pads, Comet, paper towel holders or baskets of any kind (at least that I've found so far). Although, if it's storage items you want, you can find any size and shape in plastic. Also no silverware divided trays for inside the drawer, only plastic boxes with two divisions, one for the soup spoons, one for the chopsticks.

In fact the Koreans must have invented plastic, or else they are using plastic as land fill. Everything seems to be made of plastic: glasses, pitchers, handles of pots and pans, dishes, some furniture, flowers, decorative items, hooks, you name it, you can find it in plastic!

An interesting conundrum: Wherever you shop, your purchases are put in plastic bags. The result is that at the end of a normal shopping day you can easily have accumulated 2 dozen plastic bags. Yet we are not allowed to use these bags for our garbage. We are required - under penalty of a fine - to bag all of our garbage, large or small, in - you guessed it - SPECIALLY-MADE PLASTIC bags! And they are small, about 6 gallon capacity. And adding insult to injury, you have to pay for these bags! Yesterday I had two garbage bags full of - you guessed it again - other empty plastic bags!

Some of the labels of bottles and foods you buy have a little English name on them, or maybe a picture (e.g. at the meat counter you think you're buying beef because there's a picture of a cow's head on the label), but often the labels are entirely in Korean. As a result buying food is a bit of a mystery trip. I think I finally found a bottle of ammonia the other night; I don't know for sure because I have yet to open it! We'll see.

Waste baskets -- plastic only, of course -- tend to be tiny. Same with buckets. Brooms and mops have very short handles. My broom handle doesn't quite come to my waist. One of our staff people is 6' 7", so sweeping or mopping his apartment is almost painful! Zip-lock bags don't exist, although other plastic bags for storage are easy to find.

Electronic goods and appliances are plentiful. Instructions in Korean but, again, all the casings tend to be plastic. I did find a toaster that is better than any I have found in the US, and I believe it's much cheaper here as well. I found quite decent coffee makers, irons, desk lamps and toasters reasonably priced. Ironing boards are very short, few are the floor model, most being made to sit on a table. And they are overall smaller than our standard ones.

Bedroom: Koreans do not use sheets or pillow cases, so they are non-existent here. Same holds true for mattress pads. No blankets or bed spreads per se, but comforters are common, since that is the "blanket" for Koreans. The largest comforter available fits exactly the top of a double bed, without draping over the sides at all. Koreans use something like a comforter in thickness, but partially fitted and then ruffled, to cover the mattress and hide the sides of the mattress as well, which coordinates with the comforter. Pillow covers can be purchased to match both of these covers for a matched look. But the westerner who wants soft sheets, blankets, a spread and a normal pillow as we know it is out of luck unless it has been sent from the US or

Europe. And again, all of the patterns are floral, checks, or little animals in pastel colors. No manly-type patterns seem to exist.

The best I could do for our 2 arriving males was to find a check pattern in Dark blue and white.

In my search for light by which to read I have finally located light bulbs brighter than 30 watts. I found both 60 and 100 watt bulbs and now luxuriate in being able to read a book! No 3-way bulbs, but beggars can't be choosers. In the bulb hunt I also found light bulbs to boggle the imagination: picture a large, clear bulb, and, instead of the standard filament, imagine a big, black flower, with little white stars wired to it, or a little bouquet inside, or maybe a little animal. Yes, in light bulbs! The wonders of modern technology never cease to amaze!

I ordered an extra piece to my what was-almost-the-length-of-the-bedroom-wall wardrobe, making it run the entire length of the wall. This style comes in either 51 or 102 cm. sections. This new purchase was the 51 cm variety. Most of the furniture, unless you buy imports, is press-board covered in veneer, and each piece weighs a ton. Furniture often comes ready-to-be-assembled, the customer's nightmare of a purchase. But the good news here is that the person who delivers also puts it together, and they will not accept a tip. This piece was ready assembled but there was a lot of work to getting it inserted into the middles of the 3 piece set I already had.

I did all the shopping (so far at least) for all the household items for the new arrivals) at Kim's Club, one of Korea's equivalent to Price Costco. The store is on 3 levels, and of course, you use a shopping cart like the grocery store kind. The only way to get to the cashier counter is to take the escalator up or down a floor, as the case may be, regardless of how full your cart is. No elevators. This is a real exercise in balance, I can tell you.

I experienced what I think may be one of the newest cost-cutting measures at a department store today, probably introduced in response to the suffering economy here. If you want to use a Visa or any other global charge card, there is a surcharge of 6%. This practice is brand new in this area as I used the card yesterday, last week and the week before with no surcharge. Apparently each customer gets to use a card only once a month free of surcharge. I have also noticed that no one writes checks, cash only is the way of handling transactions. Since the largest bill is 10,000 won (now worth about \$7) it takes a lot of bills to buy almost anything. While these practices can be somewhat inconvenient sometimes, especially for those of us "plastic money" types, it does make sense and save money for businesses.

I understand there have in fact been some changes here in Korean apartment life over the past 20 or so years. For example they no longer are all gray but are in fact still pretty identical and somewhat boring. And it was apparently common to have a small gas heater on the wall in the bathroom that had to be lit before getting hot water...the water passed up through it first. Lighting it was always a challenge I hear. That practice, thank the Buddha, has gone by the wayside.

(Thanks, Jan, for sharing your experiences.)

2. TELECOMMUTING EXPLOSION

According to Home Office Commuting magazine, telecommuting has taken off in an explosion of participation.

"At the current rate of growth, the total number of telecommuters will easily reach 20 million by the year 2000. (The number of telecommuters jumped 7 percent - from 7.1 to 7.6 million - in the past year alone.) Fully two-thirds of those telecommuting employees work for firms with 100 or fewer employees. The top 10 industries for telecommuting in 1997:"

Health Care	13.6%
Education	9.0%
Architecture/Engineering/Construction	8.8%
Communications	8.3%
Manufacturing	7.4%
Business Services	6.5%
Agriculture/Mining	5.2%
Wholesale	5.0%
Retail	4.9%
Transportation/Utilities	4.3%

3. WEB SITE FOR CASUAL FRIDAYS?

Levi Strauss & Co. has opened a web site to help those people wondering what casual business wear might look like. The company says it offers, "essential information for your employees & managers."

Take a look for yourself.

www.msn.com/styleguide .

Gentle Readers,

What's going on in Washington? (Other than scandal that is.) The 1999 federal budget has been released for consideration. Rather than a deficit, it shows an overall surplus. And, there are proposed increases in the budgets for both OFCCP and EEOC.

IN THIS REPORT (Report #27, 2/6/98)

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1. **OFCCP NEWS**
 2. **OFCCP BUDGET SLATED FOR INCREASE**
 3. **OFCCP CASE SETTLES FOR \$400,000**

1. **OFCCP NEWS**

In a conversation with OFCCP's national headquarters this week we learned a few things we thought you might like to know. Here, then, is a summary of the questions and answers:

Q Has the new "tiered" compliance evaluation process been implemented in any OFCCP region?

A The Agency has not completed its work on development of its instructions to its field offices, so there has been no "official" implementation of the new compliance evaluation process. Anything being done currently is informally negotiated between District Directors and contractors on a case-by-case basis. Expect that the Seattle (Region IX) approach will constitute about 80% of the national procedures once they are released. There is no firm date for completion of these new guidelines to the Regions.

Q Ms. Shirley J. Wilcher, Deputy Assistant Secretary and National Director of the OFCCP has said it is one of her top priorities to issue proposed changes in regulations governing AAP content. Those regulations (Section 60-2) have been promised for some time. When can they be expected?

A There is no specific release date. The Agency staff expects they will be made available within the next six months, by June most likely. (Any later and the politics of this year's November elections could interfere.)

Q As part of the Section 60-2 changes, the Agency is considering a different AAP format for employers with fewer than 150 workers.

What format is being considered?

A It will still require contractors to have a written AAP document. There will be less data required if the current thinking prevails. Beyond that, the staff wouldn't comment. It seems that a new edition of the 60-2 proposal has been issued almost every week for the past several months. So far, the Agency's executives have yet to agree on a version they want to endorse and release as the proposal. Once released, there will be opportunity for public comment prior to the finalization of any changes. The Agency is not obliged to act on input it receives during the public comment period, however.

2. OFCCP BUDGET SLATED FOR INCREASE

The OFCCP has received a proposed \$6 million increase in its operating budget for FY 1999. If it is actually granted the entire amount, its budget would be \$62.3 million for the year. That's roughly a 10 percent increase.

The EEOC, by contrast, has been allotted a 15 percent increase under the 1999 budget proposal.

3. OFCCP CASE SETTLES FOR \$400,000

I-NET of Bethesda, MD (now owned by Wang Laboratories) has agreed to pay \$400,000 to settle OFCCP charges of pay inequity. Enforcement authorities at OFCCP said they could not find differences in qualifications or seniority to justify why women in several jobs during 1993 were paid less than male co-workers in the same grade levels. When the company was reviewed, there was no formal performance appraisal process in place.

With this settlement OFCCP ended a four-year review of I-NET's pay data. The company had originally been cited in a 1992 compliance review and agreed to a conciliation agreement which called for submitting progress reports to the Agency. The progress reports triggered a more extensive follow-up review of "a much larger pattern and practice of alleged discrimination in pay." Twenty-seven of the 153 females noted by the OFCCP as victims of pay discrimination were minorities.

Gentle Readers,

From sexual harassment settlements to substance abuse assistance, there is news from Washington. And, we have a new resource for all HR Professionals which you will want to seriously consider using. All that, coming up next.

IN THIS REPORT (Report #28, 2/13/98)

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1. **LARGEST SEX HARASSMENT SETTLEMENT IN EEOC HISTORY**
 2. **LABOR DEPARTMENT OPENS WEB SITE FOR SUBSTANCE ABUSE INFORMATION**
 3. **HOW TO SPOT A PHONY RESUME**

1. **LARGEST SEX HARASSMENT SETTLEMENT IN EEOC HISTORY**

It was February 5, 1998, and in Westborough, Massachusetts the Astra USA corporation was signing a settlement agreement with the Equal Employment Opportunity Commission (EEOC) to put to rest charges that at least 30 men, including senior executives, made unwanted sexual advances toward at least 80 women. The settlement cost the company \$10 million.

The EEOC interviewed 120 women, and according to EEOC attorney James Lee, at least 80 said they were victims of sexual harassment. At least one man also claimed he was punished by company officials for protesting the conduct. When the complaints were first made a few years ago, Astra USA had about 1,400 employees.

Astra USA is the US arm of Swedish pharmaceutical giant Astra Ab. Some former employees said the "Astra way" was to get along you had to go along with the sexual harassment. They described the environment as an "Animal House" atmosphere where eight hours of work were followed by eight hours of partying and drinking.

The \$10 million settlement will be allocated to both current and former employees. Claims may be filed with the EEOC for a share of the settlement. Each person may receive up to \$300,000.

Before this case, the largest sexual harassment settlement ever won by the EEOC was with recruitment firm Management Resources International. That case represented \$1.3 million in April 1997. The third largest settlement in such a case was a \$1.2 million agreement reached with Del Labs in August 1995.

2. **LABOR DEPARTMENT OPENS WEB SITE FOR SUBSTANCE ABUSE INFORMATION**

The U.S. Department of Labor has established a web site that is intended to help employers combat substance abuse in the workplace. Called SAID, the Substance Abuse Information Database, it highlights

federal and state workplace drug testing regulations. You will also find some examples of best practices, surveys and studies on the subject.

There are also links to other types of information and assistance, such as employee assistance programs, which employers may find helpful. If you have a drug policy in your organization, you will want to review this site to see if you can benefit from its depth of information. Point your browser to:

<http://www.dol.gov/dol/asp/public/programs/drugs/said.htm> .

3. HOW TO SPOT A PHONY RESUME

At the printer now is our latest book, "How to Spot a PHONY Resume." Written by Wayne D. Ford, Ph.D., this volume gives human resource professionals a fighting chance against the explosion of inaccurate resumes, applications, and references being submitted by job candidates.

It shows how dishonest applicants can enhance their education, certifications, and even alter their personal identification. It also tells human resource professionals how to combat those fabrications.

If you use the materials in this book you will lower your risks of negligent hiring, avoid public embarrassment for your organization, and reassure senior management that there are no hidden surprises coming with the latest employee you have hired.

Many of you responded to our survey a while ago and confirmed that resume inaccuracies are a major problem in today's employment world. You also confirmed that the problem creates more work for you as HR Professionals.

What a great tool this book will be for you! You will even learn some of the secret games job candidates play with prospective employers when those employers try to check references. You will be amazed! And, you will be able to avoid falling into those traps when you know what to look for.

We will begin shipping on March 12, 1998 (or sooner). If you want to reserve your copy, now is the time. Your credit card will not be charged until your book is actually shipped to you. You will receive 126 pages (5.5" X 8"). A complete display of the table of contents is shown on our product web page.

To order, visit our web site at:

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

or call our toll-free order line at 1-888-671-0404 to be sure your order is among the first we process when the presses stop rolling.

You will notice that a new logo has been added to our web site. For ten years we have been members of the local Better Business Bureau.

This past year, we joined the national BBBOnLine organization so our clients and customers could have assurance that we subscribe to their principles.

Oh, yes. The best part ...

This great management tool only costs \$14.95!

Of, course, there is state sales tax for orders shipped to California addresses (\$1.23 each) and a S/H charge of only \$4.00 per copy. How can you beat that? And you still have our 30-Day Satisfaction Guarantee. If you don't like any of our products for any reason, we will refund your money within 30 days with no questions asked. Simply return the product to us with a copy of your sales receipt or invoice.

Now, you can begin to close the employment gates on these dishonest job candidates. It is much better to catch them during your applicant processing than after they have been hired and placed in a sensitive position.

Gentle Readers,

Often, we do not recognize things which we see in our everyday lives. What color is the chair in the lobby? What artwork is closest to your desk? Where is the nearest fire extinguisher? Are we equally non-observant about state labor regs?

IN THIS REPORT (Report #29, 2/28/98)

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1. **CALIFORNIA "REPORTING TIME PAY" REQUIREMENT IGNORED BY MANY EMPLOYERS**
 2. **SINGLE REMARK HOSTILE ENVIRONMENT?**
 3. **THE COWBOY'S GUIDE TO LIFE**
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1. **CALIFORNIA "REPORTING TIME PAY" REQUIREMENT IGNORED BY MANY EMPLOYERS**

Have you ever run a red light or failed to make a complete stop at a stop sign? Most of us probably have done both on one or more occasions. We know that it is illegal, but we didn't get caught, so there's no real problem, right? It's only when law enforcement officials decide to focus on red light running or "rolling stops" that the penalties begin to make an impression.

Labor law may have some parallels. In California, for example, employers are required to pay for unworked time if an employee reports to work a scheduled shift and is sent home because there isn't enough work for everyone on duty or their shift had been canceled and nobody notified them. If you are a California employer, look at the Industrial Welfare Commission (IWC) Wage Order you have posted with your other required employee information. Go to section 5 of the order and you will find "Reporting Time Pay."

The requirement is designed to protect employees by providing at least partial pay for what they thought would be a preset number of work hours. If you cancel an employee's work after they have reported, this requirement says you must pay them a MINIMUM of two hours and a MAXIMUM of four hours even though they don't work. If a worker has been scheduled for less than two hours of work which are canceled, the two hour minimum applies. If a worker is scheduled to work an eight hour shift, the four hour maximum would apply.

There are exceptions, as you might expect. Most wage orders allow employers to avoid these payments when:

- The employer's operations cannot begin or continue because of threats to employees or property, or when recommended by civil authorities (a bomb threat for example).
- Public utilities fail to supply electricity, water or gas, or there is a failure in the public utilities or sewer system.

- The interruption of work is caused by an act of God or cause not within the employer's control, such as an earthquake or flood. (Labor Commissioner rulings have held that mechanical breakdowns of an employer's equipment which require the employer to shut down operations do not excuse the reporting time pay requirement.)
- An unusual or unexpected occurrence during off-work hours makes it impossible for the employer to open for business and the employer has made every reasonable effort to notify employees not to report.
- The employee is not fit for duty. (For example, the employee reports to work under the influence of drugs or alcohol, or is extremely ill.)
- The employee is fired or sent home as a disciplinary action after the proper "reporting time pay" period. However, if an employee reports to work and is terminated before that period is up, reporting time pay would be owed the employee for the remaining unworked portion of the time.

Don't be caught by a Labor Commission complaint and find yourself in the position of having to write a big check to pay penalties. Read section five of your IWC order today and be sure your management staff is abiding by it properly.

2. SINGLE REMARK HOSTILE ENVIRONMENT?

Is it possible for a single remark to create a hostile work environment? Based on case law, most of us have thought that "hostile environment" required severe and pervasive conduct. Not so according to a New Jersey court. This court has said that a single phrase can constitute "severe" conduct. (Taylor v. Metzger, NJ Sup. Ct., 1998)

In this situation a senior official called a subordinate a "jungle bunny," known and acknowledged to be a racial slur. The subordinate wanted an apology, and got one that was only half-hearted. As time went on, this employee told her co-workers about the incident but received little support from them. She was shunned by co-workers as a "troublemaker."

The court reasoned in its ruling that:

- The official making the comment had power over the subordinate. Being in a position to alter working conditions makes managers hold to a higher standard of behavior than other employees.
- The employee had nowhere to go within the company to get help for her situation. Complaints were to be handled by the "lines of organization."

- The employee's working conditions had changed when others began treating her differently.
- The comment made by the company official was "severe." The court said that was enough. The remark did not also have to constitute "pervasive behavior."

To avoid this type of situation in your organization, reinforce your zero-tolerance policy for racist jokes, religious jokes, sex-related jokes and off-color comments of any kind. Managers, especially, should be held accountable for such serious errors. The employer surely will be.

3. THE COWBOY'S GUIDE TO LIFE

These were passed on to me by a colleague. If I knew the author's name, I would be delighted to give credit. For now, you might enjoy these anonymous pieces of sage advice.

- Lettin' the cat outta the bag is a whole lot easier 'n puttin' it back.
- If yer ridin' ahead of the herd, take a look back every now and then to make sure it's still there.
- If you get to thinkin' you're a person of some influence, try orderin' somebody else's dog around.
- If you find yerself in a hole, the first thing to do is stop diggin'.
- When you give a lesson in meanness to a critter or a person, don't be surprised if they learn their lesson.
- Never miss a good chance to shut up.

Gentle Readers,

Yesterday was a big day for employers in this country. The U.S. Supreme Court issued its unanimous ruling in the same-sex harassment case of *Oncale v. Sundowner Offshore Services*. Employers will be well advised to reinforce their sexual harassment prevention programs as a result of this ruling.

IN THIS REPORT (Report #30, 3/05/98)

1. SUPREME COURT RULES ON SAME-SEX HARASSMENT - UNANIMOUS OPINION

The U.S. Supreme Court yesterday issued its ruling in the case of a Louisiana oil worker who said he had to quit his job to avoid sexual harassment from his co-workers and at least one supervisor.

(*Oncale v. Sundowner Offshore Services, Inc.*, 1998 WL 88039 U.S.)

The Court's ruling was unanimous. Justice Scalia wrote the opinion and Justice Thomas filed a concurring opinion. A complete copy of the five-page opinion can be found at the Wall Street Journal web site at: <http://www.wsj.com> You must be a subscriber to the Wall Street Journal on-line service to access the opinion.

The Court held that sex discrimination consisting of same-sex harassment is actionable under Title VII. Title VII's prohibition of discrimination "because of ... sex" protects men as well as women.

Some of the points made by the Court:

- Title VII is directed at discrimination because of sex, not merely conduct tinged with offensive sexual connotations.
- The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances.

In this specific case, Joseph Oncale was working for Sundowner Offshore Services on a Chevron U.S.A., Inc. oil platform in the Gulf of Mexico. He was employed as a roustabout on an eight-man crew. On several occasions, Oncale was forcibly subjected to sex-related, humiliating actions against him by his co-workers and a supervisor in the presence of the rest of the crew. Two of the workers also physically assaulted Oncale in a sexual manner, and one other threatened him with rape.

From the Court's opinion:

"Oncale's complaints to supervisory personnel produced no remedial action; in fact, the company's Safety Compliance Clerk ... told Oncale that (two of the workers) 'picked on him all the time too,' and called him a name suggesting homosexuality. Oncale eventually quit - asking that his pink slip reflect that he 'voluntarily left due to sexual harassment and verbal abuse.' When asked at his deposition why he left Sundowner, Oncale stated 'I felt that if I didn't leave my job, that I would be raped or forced to have sex.'

"Oncale filed a complaint against Sundowner in the U.S. District Court for the Eastern District of Louisiana, alleging that he was discriminated against in his employment because of his sex."

The District Court, and subsequently, the Fifth Circuit Court ruled in favor of Sundowner saying, "Mr. Oncale, a male, has no cause of action under Title VII for harassment by male co-workers."

One key provision of the Court's decision in its Meritor Savings Bank decision (Meritor v. Harris, 477 U.S. 67): "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment - an environment that a reasonable person would find hostile or abusive - is beyond Title VII's purview."

Justice Scalia commented on the Harris quote by saying: "We have always regarded that requirement as crucial, and as sufficient to ensure that courts and juries do not mistake ordinary socializing in the workplace - such as male-on-male horseplay or intersexual flirtation - for discriminatory 'conditions of employment.'"

The decision gives some guidance for employers with the following: "A professional football player's working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field - even if the same behavior would reasonably be experienced as abusive by the coach's secretary (male or female) back at the office. The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed. Common sense, and an appropriate sensitivity to social conduct, will enable courts and juries to distinguish between simple teasing or roughhousing among members of the same sex, and conduct which a reasonable person ...would find severely hostile or abusive."

There you have it. We suggest you reinforce your sexual harassment prevention policy and training program, particularly with management employees.

You might even consider editing your policy to specifically mention same-sex conditions as among those prohibited by your organization.

Gentle Readers,

Last week, it was my privilege to attend the SHRM Workplace Diversity Committee meeting in Orlando, Florida. An impressive group of people sit on that committee. They are working hard to help all HR Professionals with strategies for cutting-edge issues like genetic testing.

IN THIS REPORT (Report #31, 3/15/98)

1. REPORT ON SHRM'S WORKPLACE DIVERSITY COMMITTEE MEETING

2. TECHNOLOGY EXPANSION BRINGS NEW AREA CODE

1. REPORT ON SHRM'S WORKPLACE DIVERSITY COMMITTEE MEETING

Orlando, after the tornados had killed over 40 people the week before, was struggling to get back to normal. The long scheduled Society for Human Resource Management (SHRM) national Board meeting moved forward on schedule. Each national committee also convened during the weekend of March 6 to 8. It was people in the Workplace Diversity Committee who began collections of money from all SHRM participants to aid the victims of the tornado devastation. Once again, HR professionals stepped up to respond in the time of human need.

There are twenty people on the Workplace Diversity Committee, representing all types of employers and HR practitioners around the country. Members themselves are widely diverse in race, sex, experience and education. All are senior HR professionals, many of whom have contributed ten, twelve, and even fifteen years to SHRM committees. It was a privilege to have been invited to attend this session.

Among the specific Workplace Diversity Committee goals for 1998 are:

- To develop and present a strategic plan that can be implemented over two to three years that will enable the Workplace Diversity Committee to influence others to diversify the HR profession and SHRM membership.
- To lead SHRM initiatives on public policy and corporate policy issues related to Equal Employment Opportunity, Affirmative Action and Workplace Diversity. These initiatives include:
 - To lead a multi-committee task force including representatives of Workplace Diversity along with the Compensation and Benefits, Employee and Labor Relations, Employment and Workplace Health and Safety Committees to develop a position statement on Workplace Religious Accommodation.
 - To support the Human Resource Development Committee in their Welfare to Work initiative.

- With the SHRM staff, to lead a discussion of issues related to race in the workplace on the President's Initiative on Race in America.
- To address issues related to race and ethnic classification changes for the 2000 census.
- To support SHRM staff with the development of an "issues resource kit" to help companies who are developing corporate policies that include sexual orientation and/or implementing domestic partner benefits.
- Develop and present to the SHRM Information Center a series of white papers addressing the development of Affirmative Action Plans.
- Provide consultation and advice to the American Indian Society of Engineers and Scientists (AISES) in the development of personnel processes and procedures. Specifically, review job descriptions and identify information and resources that will assist them in the development of a performance management system that adapts to the culture of Native Americans.

By the way, SHRM now has over 94,000 members and has become a recognized resource for politicians and policy makers in government and elsewhere.

2. TECHNOLOGY EXPANSION BRINGS NEW AREA CODE

It's not nearly as exciting as participation in strategic issues discussions, but one of the results of our growing technology. We have been assigned a new telephone area code effective today. The explosion of pagers, cell phones, FAX machines, internet modems and general business development have exhausted another set of phone company numbers.

From now on, you can reach The Management Advantage, Inc. in the 925 Area Code. Our main number is now 925-671-0404. Our FAX number is 925-825-3930.

Our toll-free order line will remain the same: 1-888-671-0404. Please make these changes in your records so you will be able to reach us when you wish.

Gentle Readers,

The U.S. Supreme Court decision on March 4th in the Oncale v. Sundowner Offshore Services case of same-sex sexual harassment is only the first of several rulings expected on the issue this year. What's waiting in the wings for HR Professionals?

IN THIS REPORT (Report #32, 3/20/98)

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1. **UPCOMING U.S. SUPREME COURT RULINGS ON SEXUAL HARASSMENT**
 2. **TOWER RECORDS ANNOUNCES SAME-SEX DOMESTIC PARTNER BENEFITS**
 3. **CALIFORNIA ERGONOMICS STANDARD NOW ENFORCEABLE - ALL EMPLOYERS AFFECTED**

1. **UPCOMING U.S. SUPREME COURT RULINGS ON SEXUAL HARASSMENT**

On March 5th we issued a Special Report for HR Professionals announcing the previous day's U.S. Supreme Court decision in the case of Oncale v. Sundowner Offshore Services (1998 WL 88039 U.S.). That unanimous ruling held that same-sex sexual harassment is a violation of Title VII of the Civil Rights Act of 1964.

BNA reports in its March 11, 1998 issue of Employment Discrimination that there are three additional cases of importance to HR Professionals currently being processed by the Supreme Court.

The first is Faragher v. Boca Raton, FL. Here the Court will determine if the employer is liable for a hostile environment created by supervisory employees who use their status to commit harassment. In this case, Faragher was an ocean beach lifeguard who, among others, complained about sexual harassment from two supervisors. Complaints were made to a life-guard training captain, who discouraged the women from pursuing the matter and did not report the harassment. Oral argument is scheduled for March 25, 1998. (8 EDR 579, 4/30/97)

The second is Burlington Industries Inc. v. Ellerth. The Court will consider whether an individual must show that he or she was either forced to have sex with the alleged harasser or was denied an economic job benefit or some other economic loss in order to recover in a quid pro quo situation. In the Ellerth case, the harassment Ellerth experienced did not change the terms and conditions of her employment, but her working conditions were alleged to have changed. Oral argument in this case is scheduled for April 22, 1998. (10 EDR 114, 1/28/98)

And, third, is the case of Gebster v. Lago Vista Independent School District. Here the Court will consider what standard of liability under Title IX governs a school district's responsibility for sexual harassment of a student by teachers. (9 EDR 773, 12/10/97)

2. TOWER RECORDS ANNOUNCES SAME-SEX DOMESTIC PARTNER BENEFITS

On March 1, 1998, Tower Records announced that it will offer health benefits to same-sex domestic partners of its 5,000 employees in the U.S.

The company has decided not to offer the same benefit package to domestic partners of its heterosexual employees because they have the option to legally marry and obtain coverage under existing benefit programs.

These new benefits will include medical, dental, vision and COBRA programs which will be available on April 1, 1998.

The company is based in West Sacramento, California and operates 100 stores in the U.S. and an additional 87 stores in other parts of the world.

3. CALIFORNIA ERGONOMICS STANDARD NOW ENFORCEABLE - ALL EMPLOYERS AFFECTED

Last year, Superior Court Judge James T. Ford rewrote the Cal/OSHA ergonomic regulations from the bench. Recently, the judge held that the regulation he rewrote is what Cal/OSHA must now enforce.

Judge Ford removed requirements that: repetitive motion injuries be predominantly caused by work; physicians use objective means to identify repetitive motion injuries; and that employers with fewer than 10 workers be exempt from the requirements. In addition, the "safe harbor" section of the standard was eliminated. It would have protected employers if they had addressed a repetitive motion injury problem in the workplace, unless Cal/OSHA could show a better and not unreasonably more costly alternative.

The case is expected to go to the appellate court, but chances of additional changes or reversal of Judge Ford's ruling are slim. With the latest order, all California employers are now required to implement ergonomics provisions of their written Injury and Illness Prevention Program.

Remember, in addition to ergonomics, there are also requirements to include workplace violence prevention in your safety plan.

If you don't yet have the required safety plan or would like to include ergonomics and workplace violence prevention in your current plan, we can help. We have a model Injury and Illness Prevention Program available for only \$99.95 (+ tax & S/H). It comes with detailed background information about California's safety law development, requirements, and suggestions. It also includes all the forms you will need to implement your safety plan in accord with those regulations. As a BONUS, you receive a FREE diskette containing the entire text of the model plan and all the forms so you can customize them easily on your own word processor.

To get your copy, simply call our toll-free order line at 1-888-671-0404 or visit our web site at <http://www.management-advantage.com> .

Gentle Readers,

If you use a resume scanning computer system which allows you to search a data base of job applicants you will want to hear about a new law suit filed this month in Florida. And, we have some exciting news about our web site. Read on.

IN THIS REPORT (Report #33, 3/28/98)

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1. **DO YOU USE RESUME SCANNING TO CREATE A DATA BASE OF APPLICANTS?
A NEW LAW SUIT WILL BE OF INTEREST TO YOU.**
 2. **THE MANAGEMENT ADVANTAGE, INC. ANNOUNCES ITS NEW SECURED WEB
SHOPPING SERVICE**
 3. **CALIFORNIA GOVERNOR CANCELS MWBE REQUIREMENTS FOR STATE
CONTRACTORS**
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1. **DO YOU USE RESUME SCANNING TO CREATE A DATA BASE OF APPLICANTS?
A NEW LAW SUIT WILL BE OF INTEREST TO YOU.**

Just two weeks ago, a law suit was filed in Florida against the Walt Disney Company because it uses Resumex software to search for candidates based on key words. (Hightower v. The Walt Disney Co., DC CCalif, No. 97-CV-1499, 2/11/98)

Four African-American employees are claiming that the Disney company used the resume scanning program to unlawfully discriminate against job applicants and employees based on race.

If you are unfamiliar with the process, it involves scanning resumes into a database, using special software to "extract" information about each job applicant (name, address, phone number, job history, and other information), and storing that information as an applicant record in an applicant data base. The software also allows searching that data base based on special terms to produce a list of likely candidates for any given job opening.

This case claims that the software program searches the data base using terms which are more commonly used by white applicants than by African-American applicants. The result, they claim is race discrimination.

Some of these software programs come pre-programmed with search factors built in. Other programs allow the user to designate which terms are to be used in the search.

If you currently use one of these programs in your employment operation, you might want to consider doing the following:

- Review your procedures for generating lists of job candidates based on data base searches. Be sure that all search criteria are job related. Job specific criteria are even better.

- Determine if the list of criteria can be adjusted in the software you are using. If necessary, talk with your software vendor to find out.
- Watch for developments in this case over the coming months. It will potentially impact the way you process your job applicants.

2. THE MANAGEMENT ADVANTAGE, INC. ANNOUNCES ITS NEW SECURED WEB SHOPPING SERVICE

We are pleased to tell you that our secured web site is now open for business. We have transitioned our site to a shopping cart program which accepts and processes credit card information within a secured environment. There is no more worry about credit card information being transmitted over unsecured internet avenues.

We invite you to visit to see for yourself how we have reorganized things, and hope you will be pleased with what you see.

Book mark our site. You will want to come back often. Over the next few weeks and months we are planning some major additions including a series of FREE special reports you will be able to download on the spot. And we have some new products lined up which will be added as quickly as logistics allow.

We are interested in your feedback and have provided a easy way for you to contact us with your opinions and "wish list" of professional products. We hope you will share your thoughts with us.

<http://www.management-advantage.com> .

3. CALIFORNIA GOVERNOR CANCELS MWBE REQUIREMENTS FOR STATE CONTRACTORS

California's Governor Wilson has dismantled the state's program of Minority and Women Business Enterprise contracting requirements. On March 11, 1998, he signed an executive order which eliminated a former requirement that contractors attempt to award at least 15 percent of the value of their state contracts to minority-owned businesses and five percent to women-owned businesses.

The order came two days after the March 9th denial of an en banc rehearing by the U.S. Court of Appeals for the Ninth Circuit of its September 1997 determination that such sub-contracting requirements violate the U.S. Constitution. The case was Monterey Mechanical Co. v. Wilson (CA 9, No. 96-16729, 3/9/98).

As things now stand, any contract awarded on or after March 10 must not contain MBE or WBE sub-contracting provisions. Contracts which existed prior to that date will be allowed to continue as written.

There are some state contracting requirements which the Governor's order does not change. They include:

- State code requires that contracts give three percent of their value to disabled veteran-owned businesses.
 - Local county and city government requirements for M/WBE programs imposed on their own contractors.
 - Federally funded contracts where federal contract law or regulations require set-asides for MBE and WBE programs.
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Gentle Readers,

Two celebrations and a caution in this issue. Celebrate daughters and non-discrimination. Be aware of extra costs associated with incorrectly classifying employees as independent contractors.

IN THIS REPORT (Report #34, 4/3/98)

1. **TAKE OUR DAUGHTERS TO WORK DAY**
2. **NORTHERN CALIFORNIA EMPLOYER CONFERENCE**
3. **SUPREME COURT DENIES REVIEW IN MICROSOFT CASE**

1. **TAKE OUR DAUGHTERS TO WORK DAY**

Ms. Foundation for Women has announced that this years "Take Our Daughters to Work Day" is set for celebration on April 23, 1998.

According to a 1997 Roper Starch Worldwide poll, 48.3 million adults said their company or their spouse's company participated in Take Our Daughters to Work Day.

Coincident with this year's celebration, the Ms. Foundation for Women is releasing a new book entitled, "Girls Seen and Heard: 52 Life Lessons for Our Daughters." It will be available in bookstores beginning April 13th.

For more information about how you can participate in this annual event, visit the organization's web site at <http://www.ms.foundation.org> You'll find lots of helpful tips and suggestions about organizing the day. Information is also available through an automated fax-on-demand system if you call 1-800-809-8206.

2. **NORTHERN CALIFORNIA EMPLOYER CONFERENCE**

For those of you in Northern California, you will want to mark May 13th on your calendar. On that day the Northern California Employment Round Table (NCERT) will be holding the first of two 1998 conferences for employers. This is the organization which provides liaison between employers and the California Department of Fair Employment and Housing (DFEH) which enforces employment non-discrimination laws in the state.

This upcoming conference will focus on "Easing the Recruiting and Staffing Burden." There will be presentations from successful employment managers, America's Job Bank, and the State Personnel Board. There will also be a legal update on "Avoiding Recruiting Blunders" and an update from the DFEH on enforcement as well as resources they make available to employers.

The cost is only \$75 per person for the 9:00a-1:30p program which includes continental breakfast and a networking lunch. The program will be held at the Concord Sheraton hotel, just off Hwy 680. Both public and private sectors will be represented and senior DFEH officials will be available for networking during the luncheon.

For more information, or to obtain a reservation form call our office at 1-925-671-0404.

3. SUPREME COURT DENIES REVIEW IN MICROSOFT CASE

The U.S. Supreme Court recently refused to hear an appeal of the 9th Circuit Court of Appeals ruling that Microsoft had improperly denied employee benefits to a group of workers it called "freelancers." This group of people were originally classified as independent contractors and later reclassified as employees. The re-classification resulted from an audit of their status by the Internal Revenue Service.

Workers in this group sued Microsoft for violation of the Employee Retirement Income Security Act (ERISA) claiming the company owed them benefits under the employer's savings and stock purchase plans. Their claim was made even though each of them had signed a written agreement that they enjoyed no benefits eligibility due to their status as "freelancers." The 9th Circuit held that these workers were improperly classified as independent contractors, and that they should have been treated as employees. As employees they would have had access to employee benefits.

The company must now calculate the value of employee benefits for each of the group members. No dollar amount has been announced as yet.

If you have workers you classify as independent contractors, you should reexamine their status very carefully. Improper classification can result in financial penalties including: unpaid overtime, BOTH employee and employer portions of social security and medicare taxes; and, as this case points out, retroactive access to employee benefit plans. That cost can be very high indeed. We urge you to use caution when classifying people as independent contractors.

Gentle Readers,

The world wide web offers information about a world full of things. Now, you can find out if the airplane you board has been in any "tight scrapes" lately. While thinking safety, if you are a California employer, check out the recent legal ruling on the state's ergonomics standards.

IN THIS REPORT (Report #35, 4/10/98)

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1. **HOW SAFE IS YOUR AIRPLANE?**
 2. **OLSTEN STAFFING SERVICES REPORTS ON SURVEY RESULTS**
 3. **CALIFORNIA SAFETY PROGRAM REGULATIONS SWING BACK AGAIN**

1. **HOW SAFE IS YOUR AIRPLANE?**

Do you travel by commercial airline? Does anyone in your organization travel on airplanes? Chances are in today's business world, the answer to one or both of those questions is YES.

If you have ever wondered about the safety history of your flight there is a new resource available to give you all you want to know (and maybe more than you want to know.)

Find out if the plane you are flying on has had engine fires, or the landing gear has failed to retract. Find out why it is a good idea to wear your seat belt all the time you are on a plane. You can also learn that Salt Lake City's airport has an unusually high incident rate for bird strikes. Turns out that should be expected. The airport sits on the edge of a wet lands. (Still want to fly through Salt Lake City?)

The Federal Aviation Administration has added this information to its web site. You can find out about both INCIDENTS and ACCIDENTS. Incidents describe minor events affecting safety, from tire problems to clogged toilets. Accidents are those events where injury, death or extensive aircraft damage occur.

Take a look for yourself before your next airline trip.
<http://www.faa.gov> .

2. **OLSTEN STAFFING SERVICES REPORTS ON SURVEY RESULTS**

Olsten Forum for Information Management recently conducted a survey called "Managing Workplace Technology." This survey reports on the experiences and attitudes of HR executives throughout the U.S. and Canada on current and future directions of recruiting, staffing and

management trends. Results were released in March for this 1998 look at the world of work.

Among the findings:

- 51% of companies have telecommuting arrangements. That's up from last year's 44%.
- Demand for IS professionals is acute. 56% of respondents expect to increase their full-time and part-time IS staffing over the coming year, up from 44% a year ago and 39% in 1995.
- Network management remains the top skill in demand.
- The Internet is being rapidly embraced as a way to recruit employees. The use of Internet-based recruiting has doubled over the past year, from 19% to 38% of companies.

If you would like more information about this study, contact your local office of Olsten Staffing Services. You may also call Rene Babich Dumas at 516-844-7569, or visit the company's web site at <http://www.olsten.com> .

3. CALIFORNIA SAFETY PROGRAM REGULATIONS SWING BACK AGAIN

A recent ruling by the 3rd U.S. District Court of Appeals gives employers the upper hand in the see saw legal struggle over the state's ergonomics standard. The court of appeals reinstated the original version of the ergonomics standard, including its exemption for employers with fewer than 10 people on payroll.

Back as part of the standard are provisions for:

- Repetitive motion injuries (RMIs) to be predominantly caused by work
- Requiring physicians to use objective means to identify RMIs
- Allow small businesses with fewer than 10 workers to be exempt from the ergonomics standard
- Provide a "safe harbor" for employers on the condition that once an employer addresses an RMI problem in the workplace, the employer is deemed to be in compliance with the regulation unless Cal/OSHA can show there was a better and not unreasonably more costly alternative.

For the moment, we all wait to see what the next swing of the legal pendulum will bring.

For more information, contact the Cal/OSHA Standard Board's web site at <http://www.dir.ca.gov/DIR/OS&H/OSHSB/oshsb.html> .

Correction:

In the Special Report for HR Professionals #35 we sent you last night we incorrectly indicated that the California safety program case was being handled in federal court. Actually, it is in California's Court of Appeals for the Third Appellate District.

Our apologies for any inconvenience this may have caused, and thanks to John Fox for catching the error.

Bill Truesdell
The Management Advantage, Inc.

Gentle Readers,

Drug testing, Women of Color and other cultures are the topics for this issue of our Special Report for HR Professionals. Hope you find something of value.

IN THIS REPORT (Report #35, 4/18/98)

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1. **HR MAGAZINE POLL ON DRUG TESTING POLICIES**
 2. **STUDY FINDS WOMEN OF COLOR UNDER REPRESENTED IN MANAGEMENT POSITIONS**
 3. **HELP WITH OTHER CULTURES**

1. **HR MAGAZINE POLL ON DRUG TESTING POLICIES**

In its April, 1998 issue, HR Magazine reports on a recent poll of readers concerning employer policies related to drug testing. Perhaps your organization can find some comparisons.

70% of organizations conduct drug testing on current employees. 44% said they test all employees, while 25% said they test only those employees in certain jobs. 75% of employers responding said they test all job applicants and an additional 8% said they test job applicants for certain positions.

Over half of all organizations responding said they have a random drug testing program for their workers (53%). And, in terms of the type of test used, almost all programs rely on urinalysis.

Over four out of five organizations indicated that there has been no affect on their drug testing program because of the low unemployment rate being experienced around the country.

When found to have abused substances on the job, 15% of respondents said their organizations take disciplinary action, 39% immediately terminate the problem employee, 41% refer the worker to counseling or treatment, and just under 2% take no action.

2. **STUDY FINDS WOMEN OF COLOR UNDER REPRESENTED IN MANAGEMENT JOBS**

A New York-based women's advocacy group called Catalyst has published results of its study called, "Women of Color in Management: A Statistical Picture."

The study looked at data from the 1994-1995 U.S. Census. Focusing on the private sector the study indicated that of the 2.9 million women who hold management and administrative positions, 86% were white, 7%

were African American, 5% were Hispanic and 3% were of Asian or other minority origin.

Overall the study determined that women of color constitute 23% of the female workforce in the U.S. but only 15% of women in management.

For more information, contact Monica Ann Blaizgis at 212-514-7600.

3. HELP WITH OTHER CULTURES

Are you planning a diversity training program or, perhaps, you already have one established. Do you manage a diverse workforce, and find yourself wondering about the cultural background of those people who work with you?

Some WWW sites may be of help to you. At least it wouldn't hurt to look.

International Marketing Resources
<http://www.profnet.org/intermar.html> .

Culture Page Index
<http://www.geocities.com/Athens/Forum/8363/> .

The Web of Culture
<http://www.worldculture.com/index.html> .

International Recommended Readings
http://www.inc.com/international/recommended_readings .

Continuing education is the name of the game.

Gentle Readers,

The Department of Labor's OFCCP unit has just added its list of compliant contractors to its web site. Called the Pre-Award Registry, if you are on the list, you are not subject to a pre-award review. Contractors are dropped from the list after two years.

Don't miss the information about our special no risk book offer at the end of this report!

IN THIS REPORT (Report #37, 4/24/98)

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1. **OFCCP PRE-AWARD REGISTRY NOW ON WEB**
 2. **BENEFITS OF LAUGHTER**
 3. **TAX CREDIT FOR WELFARE-TO-WORK HIRING**

1. **OFCCP PRE-AWARD REGISTRY NOW ON WEB**

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has added to its web site a list of 6800+ federal contractors who have passed compliance reviews in the past two years.

Since August 1997, only contracts valued at more than \$10 million have been subject to compliance reviews before the award is finalized. If the successful contractor has passed a compliance review by OFCCP during the past two years, no further review is necessary, and the contract may be granted.

DOL claims to update the registry each night, adding newly compliant contractors and deleting those whose two year approval period has lapsed.

Once past the two year point, contractors are again subject to pre-award audits if the contract tops the \$10 million thresh hold.

Take a look for yourself. Their address is:
http://www.dol.gov/dol/esa/public/ofcp_org.htm .

2. **BENEFITS OF LAUGHTER**

A study published in the American Psychological Association's Monitor reports the health benefits of laughter. William Fry, a psychiatrist from Stanford University, claims that laughing 100 times a day will tone you up as much as if you had spent 15 minutes pedalling a stationary bike. He says, "the stimulation of laughter increases our circulation, because of its effect on the heart and blood pressure."

3. TAX CREDIT FOR WELFARE-TO-WORK HIRING

Employers are eligible this year for a tax credit on eligible first- and second-year wages paid or incurred to long-term family assistance recipients who begin work for the organization after December 31, 1997, and before May 1, 1999.

The credit is 35% of the first \$10,000 of eligible wages in the first year of employment and 50% of the first \$10,000 of eligible wages in the second year of employment. Paid wages defined in this program include tax-free health and accident benefits and employer-provided educational and dependent care assistance.

The maximum credit is \$8,500 per qualified employee. If an employer takes the welfare-to-work credit for an employee, the work opportunity tax credit is not available for wages paid to that person.

For more information, talk with your tax professional.

Gentle Readers,

There have been quite a few court rulings recently which are important to HR Professionals. One key concept which is emerging suggests that employers may not have to find alternative jobs for disabled employees who can no longer perform their original job requirements.

IN THIS REPORT (Report #38, 5/1/98)

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1. **AIRLINES EXEMPT FROM SAN FRANCISCO DOMESTIC PARTNER BENEFIT REQUIREMENTS**
 2. **PROBLEM-SOLVING SKILLS NUMBER ONE ON EMPLOYER WISH LIST**
 3. **ADA DOES NOT REQUIRE EMPLOYERS TO FIND NEW JOBS FOR DISABLED EMPLOYEES**

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1. **AIRLINES EXEMPT FROM SAN FRANCISCO DOMESTIC PARTNER BENEFIT REQUIREMENTS**

The City of San Francisco has been told by a federal judge that it may not require airlines to provide equivalent benefits to their employees' domestic partners. In the same ruling, the court said that it may require other city contractors to offer the coverage. (Air Transport Association v. City and County of San Francisco, DC NCalif, No. 97-1763, 4/10/98)

In her April 10, 1998 ruling, Judge Claudia Wilken of the U.S. District Court for the Northern District of California said the City's requirement violates the Employee Retirement Income Security Act (ERISA) which governs health and welfare benefits.

The court noted that Congress specifically restricted local governments' ability to regulate employee benefit plans. The ruling also pointed out that local governments are prohibited by the Constitution from regulating commerce that takes place entirely in other states. Together, these factors "invalidate the ordinance."

Any regulation of City contractors is acceptable if it impacts benefits other than those which are regulated by ERISA.

So far, there have been no decisions made about possible appeals of the ruling.

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2. **PROBLEM-SOLVING SKILLS NUMBER ONE ON EMPLOYER WISH LIST**

Hal Lancaster wrote in his Wall Street Journal column "Managing Your Career" (4-28-98) about a recent study of executives. Conducted by

Caliper, an HR consulting firm in Princeton, NJ, it found that 25 percent of employers indicated they "frequently" hire people who lack the qualities they want. What are those qualities? Problem-solving and conscientiousness were mentioned more than twice as often as any other attributes.

On the other side of the coin, employees are found to want rather traditional benefits. Another survey by the National Association of Colleges and Employers found that new college graduates wanted medical insurance, dental insurance, life insurance, retirement plans, and annual salary increases. These preferences outdistanced other more unusual perks such as fitness programs, casual dress, pet-sitting services or on-site dry-cleaning services.

Sounds like the basics still apply.

3. ADA DOES NOT REQUIRE EMPLOYERS TO FIND NEW JOBS FOR DISABLED EMPLOYEES

Three rulings from the U.S. Court of Appeals for Seventh Circuit have concluded that the Americans With Disabilities Act (ADA) does not require employers to find jobs for employees who are unable to continue in their former positions because of disability. The three cases were:

Dalton v. Subaru-Isuzu Automobile Inc., CA 7, Nos. 96-2865 and 96-2920, 3/26/98.

DePaoli v. Abbott Laboratories, CA 7, No. 96-2958, 3/26/98.

Jasmantas v. Subaru-Isuzu Automotive Inc., CA 7, No. 96-2918, 3/26/98.

These decisions seem to be in agreement with the U.S. Court of Appeals for the Tenth Circuit, which recently ruled in Smith v. Midland Brake Inc., that an employer was not required under the ADA to accommodate an employee by transferring him. (10 EDR 375, 3/25/98)

These issues continue to evolve. HR Professionals must remain aware of the changes as they happen. And remember, always seek the counsel of your labor or employee management attorney when you face such situations. That counsel can save you a great deal of time and expense in the long run.

Gentle Readers,

There is still time to confirm you are ready to meet requirements of new employee registry on July 1, 1998. If you are looking for minority or women owned businesses, D & B may be able to help.

IN THIS REPORT (Report #39, 5/8/98)

1. **ARE YOU READY TO COMPLY WITH REGISTRY?**
2. **DOL GIVES US A PROFILE OF HR PROFESSION**
3. **D & B DATABASE IDENTIFIES MINORITY- AND WOMEN-OWNED BUSINESSES**

1. **ARE YOU READY TO COMPLY WITH REGISTRY?**

A few months ago we mentioned the need to get ready for July 1, 1998 implementation of the national New Employee Registry (NER). As of that date, every employee hired will not only need to complete an I-9 form, but must also be entered on the form your state designates and reported to the NER.

Some states have been running registries for some industries for many years. In most cases, not all new employees had to be reported, however. With the nationalization of this reporting effort, there will be no exceptions. Every new employee hired by every employer in every industry must be reported to the state organization which is responsible for collecting that information.

If you are unsure about which state agency should receive your information, talk with your state employment service to make that determination. Now is a good time to be sure you are ready to comply with the July 1st requirements.

2. **DOL GIVES US A PROFILE OF HR PROFESSION**

The Bureau of Labor Statistics at the Department of Labor has produced some interesting demographic information about the HR profession. For example:

- Between 1984 and 1996, the number of HR professionals increased 22 percent. (538,000 in 1996)
- Minority/Ethnic representation within HR has increased considerably since 1984.

(Percentages of HR Workforce)

	White	Black	Hispanic
1984	88.6	10.0	3.6

1996 83.8 13.2 5.4

For comparison, consider the representation in managerial and professional specialty occupations and the total workforce.

	Black	Hispanic
Managers/Prof	7.4	4.5
Total Workforce	10.7	9.2

Data was not available for other minority groups.

3. D & B DATABASE IDENTIFIES MINORITY- AND WOMEN-OWNED BUSINESSES

For the past year, Dun & Bradstreet (D & B) has been developing the country's largest database of minority- and women-owned businesses. It has worked with business groups, associations, state and local governments in this project.

For the first time, D & B's file on minority-owned businesses identifies each business by minority category, Black, Hispanic, Asian, Indian Sub-Continent or Native American. The project caused database expansion from 26,500 files to over 350,000 files. Women-owned business files in the database grew from 600,000 a year ago to over 1.7 million today as a result of this project.

If you wish to identify a minority-owned business or a woman-owned business with which you can sub-contract work or use as a supplier, take a look at the D & B information at: www.dnb.com .

FREE REPORTS NOW AVAILABLE ON OUR WEB SITE

Not these Special Reports for HR Professionals. These FREE Reports are on subjects you might find both interesting and valuable. For example, have you ever wanted a list of laws which apply to employee management in your organization? Have you ever searched for an employee orientation outline? Have you ever wondered if you had met all the posting requirements?

We've got the answers. And they are available for free at our web store where you will find HR BOOKS AND MORE. Take a peek in the HR Books & Manuals section.

<http://www.management-advantage.com> .

Gentle Readers,

All of a sudden, the OFCCP has upgraded its web site to include a much easier tiered menu system and more resources than it offered before.

IN THIS REPORT (Report #40, 5/16/98)

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1. **OFCCP UPGRADES ITS WEB SITE**
 2. **OSHA REQUIRES "AS NEEDED" BATHROOM BREAKS**
 3. **U.S. EMPLOYEES OF FOREIGN CORPORATIONS SUBJECT TO AGE DISCRIMINATION LAW**

1. **OFCCP UPGRADES ITS WEB SITE**

Turn your back for a minute and look what happens. The Office of Federal Contract Compliance Programs (OFCCP) has redesigned its web site and added public access to much more information than was previously available. The old site was cumbersome and hard to use. Menus on this newly designed site are easy to use. Some are still experiencing difficulties with links that don't work. On the whole, however, you will find the site is easy to use.

Take a look for yourself.

<http://dol.gov/dol/esa/public/ofccp.org.htm> .

While you are there, you can inspect the Compliance Manual which is now available for your reference. Nothing new has been added in some time, but what there is you can now access.

<http://www.dol.gov/dol/esa/public/regs/compliance/ofccp/how2/ofcphow2.htm>

2. **OSHA REQUIRES "AS NEEDED" BATHROOM BREAKS**

The federal Occupational Safety and Health Administration (OSHA) has issued a memorandum which clarifies its sanitation standard for general industry.

The April 6th clarification says employers must "make toilet facilities available so that employees can use them when they need to do so." It says also that an employer "may not impose unreasonable restrictions on employee use of the facilities." OSHA said that denying access to restrooms can cause workers to suffer a variety of health problems. (They really said it.)

The agency acknowledged that restroom breaks can be disruptive in some work environments such as on assembly lines. It concluded, though,

that "signal or relief worker systems" can be an effective method of maintaining production in those circumstances.

3. U.S. EMPLOYEES OF FOREIGN CORPORATIONS SUBJECT TO AGE DISCRIMINATION LAW

On March 26, 1998, the Second Circuit Court of Appeals gave its ruling in *Morelli v. Cedel*. It said that foreign employers with domestic employees are subject to the Age Discrimination in Employment Act (ADEA). The case involved a Luxembourg bank with fewer than 20 employees working in the U.S.

The court rejected the idea that the company was the equivalent of a small U.S. employer since it employed less than 20 workers in the U.S. Its ruling said an assessment of whether the company should be subjected to compliance and litigation costs is better gauged by its worldwide employment. The court also noted that a U.S. corporation with many foreign employees but less than 20 U.S. employees would clearly be subject to the Act.

(*Morelli v. Cedel*, No. 97-7277, 1998 U.S.App.LEXIS 6317, 2d Cir. March 26, 1998)

Gentle Readers,

One of our readers has asked for your help. I'm sure you will be able to provide him with some excellent resources. After doing that, take a look at some of the proposed changes for our enforcement agencies.

IN THIS REPORT (Report #41, 5/22/98)

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1. **HELP NEEDED WITH "REINVENTING GOVERNMENT"**
 2. **VICE PRESIDENT GORE PROPOSES MORE POWER FOR THE OFCCP**
 3. **AMERICA'S JOB BANK CAN SATISFY FILING REQUIREMENTS FOR JOB OPENINGS**

1. **HELP NEEDED WITH "REINVENTING GOVERNMENT"**

From the State of Missouri comes a request for help in locating success stories with "reinventing government." Tony Jackson has taken on the task of leading a group of folks in the design of a Workforce Development System for the State. They will be presenting their findings and recommendations to the Governor.

Tony says he has located a 1992 book entitled, *Reinventing Government*, written by David Osborne and Ted Gaebler. It is germane because it discusses principles of improving efficiency and effectiveness of state government.

The question for our loyal readers is this: What success stories can you share with Tony about your experiences with Reinventing Government (the process/activity, not the book)? Of course the key focus of interest is on design of state employee management systems.

If you can help, please drop him an e-mail message at: "Tony Jackson" tjackson@mail.state.mo.us And, thanks for your help.

2. **VICE PRESIDENT GORE PROPOSES MORE POWER FOR THE OFCCP**

In early April, Vice President Gore announced an initiative that would provide more enforcement authority to the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor. The agency does not currently have authority to seek damages under Title VII of the Civil Rights Act of 1964. Mr. Gore's proposal would give them that authority with the intention it be used to enforce wage discrimination laws.

Mr. Gore also called for greater coordination between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor.

At the same time, the Vice President said he would commit his support to legislation which would allow compensatory and punitive damages

under the Equal Pay Act. He claimed that the thirty-five year old law has not yet succeeded in equalizing pay for men and women in this country. The EEOC and OFCCP are currently drafting an agreement which would make the OFCCP an "agent" of the EEOC when Compliance Officers find egregious discrimination cases and wish to recover damages for employees and applicants.

(Editor's Note: This is clearly a signal to the contractor community that the Administration is going to be more aggressive in its analysis of employee compensation systems during compliance evaluations.)

3. AMERICA'S JOB BANK CAN SATISFY FILING REQUIREMENTS FOR JOB OPENINGS

America's Job Bank is an internet service provided by the U.S. Department of Labor in cooperation with most state employment service organizations around the country. Although it has been in operation for several years, it has recently enjoyed a surge of use by employers and job applicants alike. Perhaps one of the reasons is that it is free of any service charges, unemployment insurance taxes having paid for the development and operation costs.

According to Catey Mathews, a specialist with the California Employment Development Department, there has been an explosion of activity at the Internet site. Speaking at this month's Northern California Employment Round Table Employer Conference, Ms. Mathews said the Department of Labor (OFCCP) will now accept job filings with America's Job Bank just as though they had been filed with a state employment service directly. So, all federal contractors have another alternative to meeting their obligations under the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRA). State employment services actively use America's Job Bank data base.

If you want more information, contact your local state employment service or visit America's Job Bank on the internet at: www.ajb.dni.us

Gentle Readers,

We have just completed a week-long computer system conversion. That is why you didn't receive any Special Report for HR Professionals last week. With cables and disks scattered around the floor it was hard to think about HR subjects. Well, everything is back up and running again. So, we're back on line.

IN THIS REPORT (Report #42, 6/5/98)

1. **APRIL & MAY BIG REVENUE MONTHS FOR OFCCP**
 2. **NEW NLRB HELP DESK ON WEB**
 3. **EU SEX DISCRIMINATION LEGISLATION EXTENDED TO UK**
 4. **CAL/OSHA IMPOSES LARGE FINES FOR ACCIDENTS AT TWO GASOLINE STATIONS**
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1. **APRIL & MAY BIG REVENUE MONTHS FOR OFCCP**

It was April 17, 1998, and Secretary of Labor Alexis M. Herman stood at the podium and announced the largest settlement in the history of the Office of Federal Contract Compliance Programs (OFCCP). She said the agency had signed a conciliation agreement with CoreStates financial Institution, headquartered in Philadelphia. It called for \$1,150,434 in back pay and \$334,115 in salary adjustments to be distributed and awarded to 142 people: 76 women and 66 minorities. Compensation (read "Equal Pay") discrimination seems to be the primary focus for the agency these days.

On May 13, 1998, the same agency announced it had reached a \$625,000 settlement with the Los Alamos National Laboratory (LANL). This resulted from an investigation into charges of discrimination against Hispanic workers in a 1995 layoff at the New Mexico facility. Each of the 98 affected employees can expect to receive between \$3,841 and \$15,521. In addition the Laboratory reinstated 24 employees to comparable positions held prior to the force reduction.

For more information, see the OFCCP press releases at <http://www.dol.gov/dol/opa/public/media/press/esa/> .

2. **NEW NLRB HELP DESK ON WEB**

The National Labor Relations Board (NLRB) has added a new "Help Desk" feature to its web site. This new page gives visitors information on nearly 40 offenses which include some over which other agencies have jurisdiction.

The list includes: Age discrimination; Break time; Child labor; Elections; Polygraphs; Representation elections; Union financial statements; and Wrongful discharge.

To see the information, point your web browser to <http://www.nlr.gov/helpdesk.html>

3. EU SEX DISCRIMINATION LEGISLATION EXTENDED TO UK

In Strasbourg, France, European Parliament deputies voted May 12th to endorse extension of European Union (EU) legislation against sex discrimination in employment to cover the United Kingdom.

As reported in BNA's "Employment Discrimination" on May 20, 1998, the action involves an amendment to Directive 97/80/EC, which required EU member states to reverse the burden of proof in cases of claimed sex discrimination.

The directive was one of a series of EU labor measures on which the previous Conservative administration in Britain exercised "opt-out" rights secured under the 1992 Maastricht Treaty. It is expected that Ministers representing the 15 EU member state governments will now rubber-stamp the amending legislation.

4. CAL/OSHA IMPOSES LARGE FINES FOR ACCIDENTS AT TWO GASOLINE STATIONS

Anyone who lives in or has visited California in the past few months has undoubtedly noticed many gasoline stations closed as a result of underground tank work. This is due to the upcoming December 22, 1998 deadline for Underground Storage Tank (UST) retrofit or removal under California law.

With the deadline for work completion rapidly approaching there has been a shortage of qualified engineering and construction crews available to work on such projects. Two such projects have resulted in serious injury to workers and fines from California's Occupational Safety and Health Administration (Cal/OSHA). Both accidents occurred in December 1997, but investigations and determinations have just been concluded.

In the first case, at a Chevron station in Lincoln, a subcontractor employee and an engineering firm employee were seriously burned when they re-entered an underground tank on the day after an interior lining had been applied to inspect and test it. Apparently, no monitoring for combustible vapors was conducted prior to the two entering the tank. When the testing equipment was activated, gasoline vapors that had re-entered the tank through an unblocked open line exploded. The engineering firm was cited for five serious violations and fined \$23,750. The subcontractor was cited for nine serious violations and fined \$49,750.

In the second incident, a Shell station in Upland, one employee was killed and another seriously burned while working inside a UST. Static electricity generated by a high-pressure spray cleaning device is believed to have ignited combustible vapors. The citation listed 14 serious violations and a fine of \$34,140.

For more information about safety requirements in such projects, see 8 CCR Secs. 5157 and 5158.

Gentle Readers,

One reader shares information about a study conducted by her firm, OFCCP's very large settlement and President Clinton's order regarding sexual orientation fill this week's report.

IN THIS REPORT (Report #43, 6/12/98)

1. **STUDY SHOWS INCREASED MESSAGE QUANTITY AT WORK INCREASES STRESS**
2. **SOME JOB MARKET STATISTICS**
3. **OFCCP COMPENSATION ANALYSIS RESULTS IN BANK PAYING \$1.5 MILLION**
4. **FEDERAL PROHIBITION AGAINST DISCRIMINATION BASED ON SEXUAL ORIENTATION**

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1. **STUDY SHOWS INCREASED MESSAGE QUANTITY AT WORK INCREASES STRESS**

Thanks to M.J. Young, a longtime subscriber and friend for sharing this latest study data from her company, Pitney Bowes. The company recently released results of its second yearly study into the communication habits of corporate and government workers. "Pitney Bowes' Workplace Communications in the 21st Century" was conducted by the Institute of the Future. Here are some of the discoveries made by this study.

- The average worker across a broad range of positions, from administrative to senior executives, say they now send or receive about 190 messages on any given day. This volume of messaging, and the corresponding demands of managing the flow and responding in a timely and efficient manner, now shape how people in many different positions and industries actually structure their day.
- People feel overwhelmed by the demands of communication. Stress levels are directly correlated with the volume of messaging. This results from having to constantly reprioritize work and juggle schedules to keep up with the volume. About 60% of executives, managers and professionals said that the work created in responding to all these messages caused them some difficulty.
- 72% of those surveyed said they regularly work with people who are not in the office. This makes real-time, synchronous communication, like face-to-face meetings or voice-to-voice phone conversations more difficult to schedule and conduct. One result is a shift to asynchronous or "time delayed" communications like e-mail and voice mail. Thus, volume increases.
- People want real-time messaging for both relationship building and immediate closure on content. They are having trouble getting it.

Some coping strategies have emerged to help people manage the meltdown.

- Planning daily activities around an assumption of continual peak messaging load.
- Block out calendar time for messaging and related work activities.
- Turn off tools temporarily.
- Leverage support people and systems.

The single most important change workers can make to be more effective communicators, according to the study, is to ask the intended recipient or partner how they would prefer to receive information.

(See the note about additional stress management help at the end of this report.)

2. SOME JOB MARKET STATISTICS

From the Wall Street Journal comes some interesting data about the current job market. (June 4, 1998)

- National unemployment rate in April: 4.3%
- Last time unemployment was lower: Feb 1970 4.2%
- Lowest unemployment rate in nation: Columbia, SC 1.3%
- Highest unemployment rate: Merced, CA 19.0%
- Companies saying job candidate has "upper hand" in negotiating salary and benefits: 63%
- Companies saying the employer has upper hand: 13%
- Companies saying there is a shortage of job candidates: 88%
- Workers who say they would change jobs for "slightly higher pay:" 40%

3. OFCCP COMPENSATION ANALYSIS RESULTS IN BANK PAYING \$1.5 MILLION

Compensation analysis is becoming one of the focus points for the Office of Federal Contract Compliance Programs (OFCCP) as it conducts its review of federal contractors. Led by Shirley Wilcher, National Director of the agency, Compliance Officers are looking for discrimination in pay treatment. Many pitfalls here for affirmative action employers.

One recent review at a bank resulted in the bank agreeing to pay \$1.5 million to 142 women and minorities who were found to have suffered illegal discrimination in pay. They were allegedly paid less than their male and non-minority counterparts even though they had similar or greater time in grade, company seniority, and performance ratings.

While there are many questions about the methodology used by the OFCCP in its compensation analysis, this settlement is one more indication that federal contractors need to spend some serious effort reviewing their current compensation policies and analyzing their actual employee pay records. It now appears that the government is not accepting prior experience and education as factors which justify ongoing (long-term) reasons for pay differences.

Employers should conduct a job analysis for every job in the organization. Compensation programs which use "pay grades" or "banding" must also be reviewed carefully. One hazard which has surfaced recently results from the OFCCP contending that all people in a salary band (even broad bands) should be paid approximately the same amount.

Obviously, there is much to these issues than we can explain in a few paragraphs. None the less, put this subject on your staff meeting agenda so you can begin the process of reviewing your procedures and tracking systems. If you do, you may be able to avoid serious problems at your next compliance evaluation.

4. FEDERAL PROHIBITION AGAINST DISCRIMINATION BASED ON SEXUAL ORIENTATION

On May 28, 1998, President Clinton signed an executive order prohibiting employment discrimination based on sexual orientation in the federal civilian workforce.

This action amends Executive Order 11478, which had stated that federal agencies may not discriminate against employees and applicants based on race, color, religion, sex, national origin, disability or age.

While many federal agencies have individual policies prohibiting employment discrimination based on sexual orientation, the President's action creates a "uniform policy" which can be applied throughout the government.

STRESS MANAGEMENT FOR OVER-ACHIEVERS

We have just published a new book by Wayne D. Ford, Ph.D. entitled "Stress Management for Over-Achievers." It is designed to help those people who find themselves caught up in the ever increasing pace of work and personal worlds.

Knowing what causes stress is important, but knowing how to manage that stress can prevent serious health problems and job performance difficulties.

This binder is packed with valuable suggestions for handling what is becoming the most common problem facing Americans today. As a bonus, there is an audio cassette tape included at no extra charge to help readers gain control over their stress problems.

The entire package is only \$39.95 plus S/H. You can find it on our web site at:

<http://www.management-advantage.com>

Look in the HR Books and Manuals department of the products section and begin regaining control over the things in your life which are causing you stress.

Gentle Readers,

New COBRA guidance from the U.S. Supreme Court, an update to July's newsletter THE ADVANTAGE, a free catalog offer and help for stress your employees may be feeling in these turbulent times. We don't have film at 11, but you'll find the stories below.

IN THIS REPORT (Report #44, 6/19/98)

1. **U.S. SUPREME COURT DECISION ON CASE INVOLVING COBRA COVERAGE**
2. **UPDATE FOR CALIFORNIA EMPLOYERS**
3. **FREE CATALOG OFFER**
4. **FIVE NEW STRESS BOOKS NOW AVAILABLE -- EACH INCLUDES A FREE AUDIO TAPE**

1. U.S. SUPREME COURT DECISION ON CASE INVOLVING COBRA COVERAGE

On June 8, 1998, the U.S. Supreme Court issued its ruling in *Geissal v. Moore Medical Corporation* (98 C.D.O.S. 4304; __U.S.__). It tells us that employers may not deny COBRA coverage to those who would otherwise be eligible just because they are already covered by another health plan before making a COBRA election.

The Court said it relied on the wording of the Act itself to arrive at its ruling. It says that COBRA coverage may be canceled as of the day a COBRA participant first becomes covered by another group health plan "after he or she elects COBRA coverage." The Court said this language does not permit denial of COBRA coverage if the participant was already covered by another plan before making a COBRA election.

It would be a good idea to review your COBRA policy to ensure it complies with this new information. If your policy says COBRA is NOT available to people who are currently covered by another health plan, you should redraft that policy and review it with your labor attorney before implementation.

2. UPDATE FOR CALIFORNIA EMPLOYERS

In our July newsletter, THE ADVANTAGE, we told you about the case of *Lai v. Prudential Insurance Company of America*. The ruling from California's Court of Appeals adopted a broad five-part test for determining liability under the California Fair Employment and Housing Act (FEHA). As a result, employer liability for liability in sexual harassment claims was broadened.

On June 10, 1998, the California Supreme Court ordered the case "depublished." As a result, the case can no longer be cited as a legal precedent.

Nonetheless, employers would be well advised to perform the three key actions outlined in the newsletter article. As you will recall, they were:

- Evaluate job positions and titles.
- Train supervisors.
- Monitor the workplace.

Avoiding sexual harassment should be every employer's primary focus. Do that, and there will be no employer liability.

Thanks to subscribers David Lofholm and Bart Selden for notice about the Lai case depublishation.

3. FREE CATALOG OFFER

One of our business partners, GO HR PRO, has provided us with a few copies of their current catalog. We are offering them to you absolutely FREE for the asking.

In it you will find a wide range of valuable HR-related products that can make your professional life much easier. There are products related to:

- Compliance postings
- Interviewing & hiring
- Performance evaluation and motivation
- Compensation and benefits
- Training
- Policy management
- Safety and compliance
- Employee separation
- HR supplies

To get your FREE copy of this 32-page, full-color catalog just send an e-mail message with your mailing address to:

catalog@management-advantage.com

We will get a copy in the mail to you right away.

4. FIVE NEW STRESS BOOKS NOW AVAILABLE -- EACH INCLUDES A FREE AUDIO TAPE

We continue to expand our list of books available to HR Professionals (and others). Five new volumes have been published this month and are now available for shipping.

Each of these new publications is designed for a specific audience. Since stress is created differently in different occupations, dealing with that stress is sometimes frustrating. Dr. Wayne Ford has developed specific information for five different groups of individuals which will help them regain control over their personal stress.

The new titles are:

- Stress Management for Over-Achievers
- The Attorney's Guide to Stress Management
- The Firefighter's Guide to Managing Stress
- Managing Police Stress
- The Salesperson's Stress Management Guide

Each of these volumes comes with a FREE audio cassette tape containing stress management exercises including, Autogenics, Visualization, and Tension-release.

Each book is in binder format and the cost is only \$39.95 INCLUDING the FREE audio cassette tape (plus S/H & CA sales tax for CA destinations).

The cassette tape can be purchased separately for only \$9.95.

All are available on our web site where your credit cards are processed in a secured environment. You'll find easy shopping cart handling of your purchases.

To see these exciting books, visit:

<http://www.management-advantage.com>

Gentle Readers,

There is another opportunity for your organization to get national recognition for its demonstration of "best practices." The EEOC is looking for such examples so it can show case them in its 1999 report to the country. Wouldn't it be a nice feather in your cap if you were to get on the list?

IN THIS REPORT (Report #45, 6/26/98)

1. **EEOC LOOKING FOR MORE "BEST PRACTICES"**
2. **BUSINESS TRAVEL SAFETY GUIDE**
3. **WRITING AN EFFECTIVE ON-LINE JOB AD**

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1. **EEOC LOOKING FOR MORE "BEST PRACTICES"**

As you will recall, the EEOC (Equal Employment Opportunity Commission) earlier this year published a list of employers who have demonstrated operating practices and procedures which are considered outstanding examples of nondiscrimination.

In showcasing these organizations, the Commission hopes to demonstrate that it is possible for employers to comply with legal requirements AND offer role models for others to emulate.

The Commission is in the process of gathering data for its 1999 report update. If you would like to have your organization considered, you can do so by contacting the EEOC through its web site at: <http://www.eeoc.gov> or by calling the Washington, DC office at: 202-663-4900.

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2. **BUSINESS TRAVEL SAFETY GUIDE**

Do you ever have to travel on business? (Silly question) Do the executives in your organization ever travel on business? (Silly question) Are you sure you are doing everything possible to make those trips as safe as they can be? (Serious question)

One of our readers has just published a 20-page booklet called, "Travel Smarts: Business Travel Safety Guide." Aura Lee O'Banion is the owner of Safety First - Your Business Resource in Fremont, California and author of this new booklet.

She covers everything from "the basics" to airports, safety alert areas, hotels and rental cars, special tips for women, international travel and emergency procedures.

Single copies cost \$6.95 and can be ordered from Safety First by calling 510-792-3352.

3. WRITING AN EFFECTIVE ON-LINE JOB AD

Are you thinking of putting the ad for your new job opening on the internet? If so, you will want to be sure you think through the various possibilities and choices you have.

The internet reaches a lot of people. Especially if you are using one of the more well-known job banks that exist on the web. What would you do if the announcement about your single job opening brought you several thousand responses and resumes?

It could happen. There are several ways to deal with that possibility/problem. Unless you have a lot of time to spend working your way through many resumes from people who are not a good match to your job opening, you should spend a bit more time preparing your ad before posting. Here are some suggestions:

- Recognize that last-minute efforts to fill a job quickly are likely to be disappointing. Post your ad with sufficient response time for candidates, and for you to sort through all the replies.
 - Get people to disqualify themselves by being as specific as possible in your list of requirements. For example, if you are not willing to pay for relocation, say that in your ad.
 - Develop a questionnaire you can e-mail to all ad respondents that allows you to sort qualified applicants from unqualified tire-kickers.
 - Give every qualified candidate a time line as you expect it to develop. "No news" in the eyes of a job applicant means you get more e-mail inquiries and have more work to do. Tell people what to expect so you don't get bombarded with hundreds of folks asking the same question.
 - Above all, develop procedures for checking every reference used by finalists in your selection process. DO NOT rely on electronic references! And, DO get a copy of our book, "How to Spot a PHONY Resume" so you will know what other pitfalls to avoid. <http://www.management-advantage.com>
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UPDATE ON CATALOG OFFER

Your response to our offer of a FREE catalog from GO HR PRO has been wonderful. As a matter of fact, we ran out of our supply. But, don't worry. We have been forwarding all the subsequent requests to GO HR PRO so they can ship your catalog to you directly.

If it hasn't arrived yet, please wait a few more days. The mail sometimes takes a bit longer than we would like. Be assured, though, that your copy is on its way to you.

Thank you for your interest. We hope you will agree with us that GO HR PRO offers an outstanding line of products for the HR professional.

Gentle Readers,

We wish each of you a safe and happy Fourth of July holiday.

IN THIS REPORT (Report #46, 7/3/98)

1. **WHO SHOULD INVESTIGATE SEXUAL HARASSMENT CHARGES?**
2. **MASSACHUSETTS SUPREME JUDICIAL COURT SUPPORTS BOSTON'S DOMESTIC PARTNER BENEFITS**
3. **GENERAL MOTORS AGREES TO SETTLE SUIT BASED ON BEHAVIOR OF UNION REPRESENTATIVE**

1. **WHO SHOULD INVESTIGATE SEXUAL HARASSMENT CHARGES?**

On the surface, the question seems to have a simple answer. You would naturally turn to your attorney for this type of problem. At least, that is what many organizations have done when they didn't have professional human resource staff available to them.

Attorney investigators are a good resource except when:

- the attorney is not a specialist in human resource management, labor law, and the specifics of sexual harassment regulations.
- the attorney may be called in any subsequent court case as a witness to testify about the investigation and its detailed content.

Traditionally, folks have elected to have attorneys conduct their employee discrimination complaints because to do so meant the investigation could not be disclosed. If the attorney performed the investigation, the file would have been protected from disclosure by the attorney-client privilege.

Recent rulings by courts in New York, Illinois and elsewhere have weakened that protection, however.

Basically, these rulings have said that attorney-client privilege can be lost if the attorney who conducted the investigation is the same person who later gives you legal advice on how to defend your organization against an employee law suit.

What are the alternatives? There are several:

- Use a different attorney, from a different firm, to conduct the sexual harassment complaint investigation.
- Conduct the investigation yourself, if you have the time and training needed.

- Use a consultant or other specialist in the field who has experience with the type of complaint you are facing.

One caution, however. Picking any attorney to do the investigation is probably not a good idea. Lawyers who specialize in corporate law, real estate law, or something other than discrimination law are not a good choice. In-house attorneys in small firms are usually generalists and can not be expected to know the latest about discrimination issues. It is often more cost effective in the long run to rely on someone who is a specialist.

Sexual harassment complaints should be handled by an outside investigator in the following circumstances:

- Complaint is against a senior executive of your organization.
- Complaint is against you.
- Complaint is from more than one person, all directed at the same accused person.
- You are not able to begin the investigation immediately. (Discrimination complaints, especially sexual harassment complaints, should not be placed "on hold" until you have time to begin the investigation.)
- The complaint involves people or areas of your organization which are "politically sensitive."

If you wish help with a discrimination complaint investigation, give us a call. That is one of our specialties.

2. MASSACHUSETTS SUPREME JUDICIAL COURT SUPPORTS BOSTON'S DOMESTIC PARTNER BENEFITS

On June 15, 1998 the Massachusetts Supreme Judicial Court offered a 6 to 1 ruling supporting the Boston City Council's ordinance extending health coverage to domestic partners of City employees.

This ruling is expected to clear the way for a bill in the State legislature which would offer health coverage for domestic partners of all state workers. The Senate approved the action (S. 1994) on January 29th of this year. Action in the House has been delayed because its Speaker, Thomas Finneran (D) is reported to oppose it.

3. GENERAL MOTORS AGREES TO SETTLE SUIT BASED ON BEHAVIOR OF UNION REPRESENTATIVE

In a unique case filed by the Equal Employment Opportunity Commission (EEOC), a federal court has ruled that "a federal employment discrimination statute (Title VII of the Civil Rights Act of 1964)

prohibits unions from allowing their officers to racially or sexually harass company managers."

On June 15, 1998, a federal judge (Jean Hamilton, St. Louis, MO) approved a settlement agreement in which General Motors Corporation will pay \$150,000 to settle claims it failed to take prompt and appropriate action to stop a union official it employed from racially and sexually harassing three supervisors. (EEOC v. General Motors Corp., E.D. Mo., No. 4:96CV01547JCH, 6/15/98)

Gentle Readers,

We thought you might like to hear about the most recent development in government actions on behalf of employment of people with disabilities. There are some really fine periodicals available if you want to stay in touch with current events on this topic.

IN THIS REPORT (Report #47, 7/10/98)

1. **PRESIDENT SIGNS EXECUTIVE ORDER FOR NEW EMPLOYMENT TASK FORCE**
2. **PERIODICALS YOU MAY WANT IN YOUR LIBRARY**
3. **SUPREME COURT CLARIFIES EMPLOYER LIABILITY FOR SEXUAL HARASSMENT BY SUPERVISORS**

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1. **PRESIDENT SIGNS EXECUTIVE ORDER FOR NEW EMPLOYMENT TASK FORCE**

Last March 13th, President Clinton signed a new executive order which established the National Task Force on Employment of Adults with Disabilities. In comments during the ceremony, the President said he wants to develop a strategy for reducing the alarmingly high unemployment rate among Americans with disabilities.

The Department of Labor estimates that 65 percent of working age adults with disabilities are unemployed.

The new task force is led by the Secretary of Labor with members consisting of the Secretaries of Education, Commerce and Transportation. Other members include leaders of the National Council on Disability (NCD), and the President's Committee on Employment of People with Disabilities (PCEPD). Other senior executive branch officials will also be involved according to the President.

The mission of this group, according to the executive order, is to "create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population.

Part of the work to be done by this task force will involve identifying how government agencies work at cross-purposes, actually creating obstacles to employment for those with disabilities. Some examples include: Social Security's "income cliff" where those receiving SSI or SSDI are cut off when they start earning even modest incomes; Medicaid rules in many states discontinue attendant funding for those who get jobs, while some people need attendant services in order to be independent enough to work. Clinton also instructed the task force "to address (unavailability of) health insurance coverage as a barrier to employment..."

The task force is to issue reports to the President on November 15, 1998 and at intervals over the next two years. Its final report is due July 26, 2002. That happens to be the 10th anniversary of full implementation of the Americans with Disabilities Act.

2. PERIODICALS YOU MAY WANT IN YOUR LIBRARY

On the same subject, employment of people with disabilities, you may find the following magazines of some use. They offer insightful articles and editorial comments. They also offer a chance to see what your competitors are doing in the employment marketplace, recruiting people with disabilities into their workforce.

As HR Professionals around the country know, today's employment marketplace has tightened considerably. It may be time to think of some creative ways to tap into the talent bank within the disabled community.

These four-color-glossy publications offer employment resource directory information, success stories from individuals and employers, suggestions for working with people on the job, and products which may be helpful in making job accommodations.

- Enable Magazine
3659 Cortez Rd. West, Suite 110
Brandenton, FL 34210-9878
888-436-2253
FAX: 941-758-4710
Six issues yearly \$12.95/year in U.S.
Associated with "American Association of
People with Disabilities (AAPD)"
One year subscription + one year membership in AAPD = \$19.95 in
U.S.
 - Ability
1001 W. 17th St.
Costa Mesa, CA 92627
714-854-8700
FAX: 714-548-5966
TTD: 714-548-5157
Six issues yearly \$29.70/year in U.S.
 - Careers & the disabled
Equal Opportunity Publications, Inc.
1160 E. Jericho Turnpike, Suite 200
Huntington, NY 11743
516-421-9421
email: info@EOP.com
Four issues yearly \$12.00/year in U.S.
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3. SUPREME COURT CLARIFIES EMPLOYER LIABILITY FOR SEXUAL HARASSMENT BY SUPERVISORS

On June 26, 1998, the U.S. Supreme Court issued its ruling in Faragher v. Boca Raton, Fla (U.S., No. 97-282, 6/26/98) saying employers may be held liable for supervisor harassment of employees even if they didn't know of the problem. As part of its 7-2 decision, the Court also said the employer may be able to defend itself against such charges IF it has a viable complaint process in place and can demonstrate that the employee did not reasonably use that process.

However, the Court also said, that defense is not available "when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment."

Even on the surface, it seems logical for employers to take two actions immediately. First, be sure you have a viable non-harassment policy in place and all employees (including all supervisors) are trained in its meaning and application. Then, second, be sure every disciplinary action is reviewed by a central party (preferably human resources) to assure consistency and fairness. HR must now build into that review process a means of testing for supervisor harassment as the cause of employee discipline.

NEWS BRIEF:

From today's Wall Street Journal, Minor Memos, comes this piece of information...

"Internet traffic on the Monica Lewinsky scandal has been so heavy that techies have devised a new computer measurement: One 'Lewinsky' equals one trillion bits of information."

Gentle Readers,

Don't rush to implement policy changes before spending some time to analyze the consequences of the changes you plan to make. Test ideas for changes in policy with a cross section of your employee population, as well as with your management team. Someone in such a group could think of important questions which haven't occurred to you.

IN THIS REPORT (Report #48, 7/17/98)

1. **CONSEQUENCES OF POLICY CHANGES**
2. **AN INCENTIVE PROGRAM THAT DIDN'T WORK**
3. **CALIFORNIA EMPLOYEES MAY NOT TAKE EMPLOYER DOCUMENTS FOR USE IN LITIGATION**

1. **CONSEQUENCES OF POLICY CHANGES**

You have likely read several articles recently in publications directed at HR Professionals that described how single workers and older workers are feeling left out of employer benefits created to support working parents. If you haven't seen these articles, go look them up. They're important. Start with HR Magazine and Workforce magazine.

Some companies have elected to implement policies which "favor" parents, to the exclusion of employees who are not eligible under company guidelines. Unfortunately, these employers didn't spend sufficient time to "think through" the impact of their good intentions. Workers who are not eligible for such benefits as flex time programs when they are offered only to working parents leaves those excluded feeling like second class citizens of the organization.

Such situations are viewed as "unfair" and result in negative impact on individual productivity levels.

Before implementing any new policy which offers an intended benefit to a portion of the workforce, test the idea with individuals or focus groups first. Ask them to tell you how they would feel if they were not eligible to receive the new benefit. Perhaps there is a different criteria you could use to determine who can be eligible to participate in flex time programs or other such policy alternatives.

Remember, employees will measure all employer programs in terms of fairness to them. Getting their input first can save a great deal of grief later on when good intentions of a program aren't perceived as intended.

2. AN INCENTIVE PROGRAM THAT DIDN'T WORK

From Incentive magazine (July, 1998) comes a report of New York Mayor Rudy Giuliani's incentive program for the City's police officers.

Budget restraints have prohibited across-the-board raises for the Police Department for the next two years. To make up for that, the Mayor created a cash bonus system. Twenty top cops at 76 different precincts were rewarded with a \$1,400 bonus. The result...many comments from police officers which can't be printed. So far, at least 22 officers who were offered the bonus money have said thanks but no thanks. They say that to accept a bonus for doing their jobs means that others who don't get the bonus aren't doing their jobs, and that, they say, isn't true.

It's another example of a well-intentioned program creating the wrong consequence.

3. CALIFORNIA EMPLOYEES MAY NOT TAKE EMPLOYER DOCUMENTS FOR USE IN LITIGATION

It's been over a year since the California Court of Appeal offered its ruling in "Pillsbury, Madison & Sutro v. Schectman." (1997 Cal. App. LEXIS 493) Yet, there are still some important lessons here which we should think about from time to time.

When employees get angry with the organization, and feel they are being treated inappropriately, one seemingly common reaction these days is to collect "evidence" they can use when they later sue the employer. Sometimes that involves removing or copying documents which are (or should be) private and confidential.

In this particular case, the court said employees do not have the right to "self-help" discovery in litigation. The employer's ownership of its documents was given precedence over the plaintiffs' professed need for the documents in order to pursue their case.

This reminds us that employers need to maintain control over all confidential business records. Even though some employees must work with confidential records, there should be work rules in place which clearly prohibit use, copying or removal of those confidential records without the employer's permission.

Anytime an employee leaves the payroll, one of the exit interview checklist items should be the return of all company documents. This includes both originals and copies.

Gentle Readers,

You have likely heard much about "genetic testing" issues over the past several months. In the first legislative action we know of, California has placed protections on the books for employees. The new non-discrimination provisions will be enforced by the state's Department of Fair Employment and Housing.

IN THIS REPORT (Report #49, 7/24/98)

1. **EEOC RELEASES GUIDELINES ON RETALIATION CLAIMS**
 2. **CALIFORNIA GOVERNOR SIGNS LAW PROHIBITING GENETIC DISCRIMINATION IN EMPLOYMENT**
 3. **ANNOUNCEMENTS**
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1. **EEOC RELEASES GUIDELINES ON RETALIATION CLAIMS**

The Equal Employment Opportunity Commission (EEOC) has issued its new guidelines on retaliation. They have been published in the form of Section 8 of the agency's compliance manual.

The guidelines point out that an employer is prohibited from retaliating against an individual who has engaged in a protected activity. These protections apply to protected activities related to "Title VII" of the "Civil Rights Act of 1964," the "Age Discrimination in Employment Act of 1967 (ADEA)," the "Americans with Disabilities Act (ADA)," and the "Equal Pay Act (EPA)."

In these new guidelines, the EEOC points out that a protected activity is either opposition to an illegal practice under one of these laws or filing a charge of discrimination, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under one of these laws.

To be successful, a retaliation claim must meet three requirements:

- Opposition to Discrimination or Participation in Proceedings

If an individual protests in a reasonable way against a perceived unlawful practice, an employer may not retaliate for that protest.

An employer can be charged with retaliation if it refuses to hire someone because that person had opposed a previous employer's discriminatory practices.

- Adverse Action

This includes any negative treatment designed to keep the affected individual from pursuing lawful claims under the laws. Some examples are: threats, reprimands, negative performance evaluations, harassment, denial of promotion, demotion, refusal to hire, denial of job benefits, suspension and discharge.

- Proof of Causal Connection

There must be direct or circumstantial evidence that retaliation was the motive for actions taken against the complaining party. Direct evidence includes written or oral statements that the adverse action was taken as a consequence of the protected activity. (That's called shooting oneself in the foot. Ed.) Circumstantial evidence "suggests" that the employer took the action because it wished to retaliate against the individual. The employer then has a chance to show evidence that its actions were based on legitimate non-retaliatory reasons. If it can't do that, its reasons are said to be pretext, or a coverup for the true reason: retaliation.

The new guidelines also speak to the question of compensatory and punitive damages related to retaliation claims. The EEOC is prepared to seek both compensatory damages and punitive damages in its law suits against employers under the EPA, ADEA, Title VII and the ADA.

The final paragraph of the guidelines says: "Proven retaliation frequently constitutes a practice undertaken 'with malice or with reckless indifference to the federally protected rights of an aggrieved individual.' Therefore, punitive damages often will be appropriate in retaliation claims brought under any of the statutes enforced by the EEOC."

The entire text of these new guidelines is available on the Commission's web site. You can download its 28 pages as a text file or as an Acrobat file. You will find it at:

<http://www.eeoc.gov/publicat.html>

2. CALIFORNIA GOVERNOR SIGNS LAW PROHIBITING GENETIC DISCRIMINATION IN EMPLOYMENT

On July 6, 1998, California Governor Pete Wilson signed into law a bill which prohibits employment discrimination against healthy people who are predisposed to a hereditary disease. The new law will become effective on January 1, 1999.

The new law amends the state's Fair Employment and Housing Act, which prohibits employment discrimination based on an individual's race,

religion, creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age. Up to this time, medical condition has been defined to mean Cancer. With the enactment of this new amendment, medical condition will also include "genetic characteristics."

Genetic characteristics are defined to include: "identifiable genes or chromosomes that are known to be a cause of a disease or disorder in a person or his offspring, or that are determined to be associated with an increased risk of disease, in people who exhibit no symptoms of disease."

A State Senate staff analysis of the bill pointed out that more than 50 tests for genetic diseases are now available. It says that employers have begun to test and screen healthy job applicants and employees for genetic markers of future illness. The report also said that some employers have terminated employees, or refused to hire qualified, healthy applicants based on those test results.

3. ANNOUNCEMENTS

- Missing Money?

There are nearly 7,200 people who are owed almost \$13 million in benefits according to the Pension Benefit Guaranty Corporation (the federal agency that insures pensions). In the past 18 months, PBGC has located 1,400 people who were owed a total of \$4 million. If you think you might be among those yet to be found, go to the agency's internet site to be sure. <http://search.pbgc.gov>

- Update Notification Service on Our Web Site

Thanks to NetMind, we are now offering you the opportunity to receive notification each time one of our key web site pages is updated. If you use this service, you will receive an e-mail notice when we add new products, publish announcements, or offer alerts to our clients and friends. You won't miss important information. It's easy to sign up...and its FREE! Simply visit our web site and enter your e-mail address after the question, "Want to be notified?" Then select the page or pages you want to receive notice about. That's all there is to it. NetMind will send you a confirmation notice by e-mail. Then each time we make a change on the page you have registered, you will be notified automatically.

- Michigan Group Wants to Abolish Affirmative Action

A group in Michigan called the Michigan Civil Rights Initiative is gathering signatures on a petition that would place a state constitutional amendment on the ballot in November 2000. That measure is designed to ban all affirmative action programs in the public sector of the state. If successful, it would bar the state from discriminating against or giving preferential treatment to individuals or groups based on race, sex, color, ethnicity, or national origin. The ban would apply to public employment, public education, and public contracting in the state.

Gentle Readers,

Want a chance to contribute to a study of small business HR practices? Colorado State University needs your help. A second request for help comes from a Masters student in Mannheim. Let's help if we can. Still looking for a way to find exceptional professional minority candidates? Check out The Multicultural Advantage Online. And, finally, reconsider use of the term "overqualified" if it is still in your vocabulary.

IN THIS REPORT (Report #50, 7/31/98)

1. **HR ISSUES IN SMALL EMPLOYER ORGANIZATIONS**
2. **MASTERS PROJECT REQUESTS HELP**
3. **LOOKING FOR PROFESSIONALS OF COLOR?**
4. **ONE MORE TIME, DON'T SAY "OVERQUALIFIED"**
5. **ANNOUNCEMENTS AND OTHER GOOD STUFF**

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1. **HR ISSUES IN SMALL EMPLOYER ORGANIZATIONS**

Colorado State University, Department of Management, needs your help with a new study of human resource management issues facing small firms. They are looking for information about how HR practices in small firms contribute to the bottom line.

If you would be willing to participate by completing a questionnaire (requiring about 15 minutes) please contact Anne M. McCarthy, Assistant Professor of Management at the University. Her e-mail address is: mccarthy@lamar.colostate.edu

The study is open to any small business in the U.S. When you write be sure you tell her your full name, business name, and postal mailing address. If you would rather FAX your information, you may send it to 970-491-3522. Professor McCarthy will forward a questionnaire to you in the mail. Don't delay. Deadline for returning the questionnaires is August 17, 1998. And, you know how snail mail is.

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2. **MASTERS PROJECT REQUESTS HELP**

Christina Lazarus is a student in the Masters Degree program at the University of Mannheim, School of Business. She has asked if anyone can help with her study of major HRIS systems. Since many of you likely use one or another of the systems she is including in her study, you might be able to help her by sharing your experiences.

Christine wants people who can answer a 15-minute survey. If you can help, please respond to her directly at PHILIPPMAR@aol.com And, thanks.

She writes:

"In my thesis, the following six products are to be compared:

- Baan / Meta 4 Meta 4 Humano
- J.D. Edwards J.D. Edwards HRM
- Lawson Lawson Insight HR
- Oracle Oracle HRMS - HR /OTA (Oracle
 Training Administration)
- PeopleSoft PeopleSoft Personnel Management -
 Personnel Development
- SAP SAP HR Personnel Development /
 Training and Event Management

"As you are an expert in this particular field, I kindly request your assistance in this comparison. You have an overview over the products offered by the various enterprises, and you also know about users' requirements. For these reasons, you are the ideal person to answer the questions on my questionnaire. Completing the questionnaire will not take you more than 15 minutes."

Deadline for returning the completed questionnaire is Friday, August 21st 1998, either via e-mail to the address philippmar@aol.com , via fax to the number +49 403 603 019 457 or via mail to the following address:

Universität Mannheim
Lehrstuhl für Allgemeine Betriebswirtschaftslehre
und Marketing II
Univ.-Prof. Dr. Hans H. Bauer
z.H. Christina Lazarus
L 5,1
D - 68131 Mannheim

"I assure you that all the data will be treated confidentially and that the results will not be used for commercial purposes.

"I am most willing to inform you about the results of my survey.

"Thank you very much, in advance for your help and co-operation with my study.

"Yours sincerely,

"Christina Lazarus"

3. **LOOKING FOR PROFESSIONALS OF COLOR?**

The Multicultural Advantage Online provides resources for employers and professionals of color (African-American, Asian American, Hispanic and Native American).

Included are job announcements, career survival tips, an events calendar, career and networking links, diversity recruitment links and tips, job hunting tips, resources for leaders of color, networking forums, opinion polls, and other employment resources.

There are free reports as well. Job posting by employers carries a fee, but as a cost of reaching the target audience it seems very reasonable. There is even an executive search service available.

If you are looking for minority candidates at a professional level, spend a few minutes at this web site.

<http://members.aol.com/multnet/index.htm>

4. ONE MORE TIME, DON'T SAY "OVERQUALIFIED"

For years, we have been advising our clients to avoid using certain terms such as "permanent employee," "probation period," and, yes, "overqualified." There are others, but you get the idea. It's tough to break old habits.

Well, from Brooklyn, New York comes Mr. Donald Hamm, a 54-year-old accountant. Several years ago, Mr. Hamm applied for a job as an entry-level accountant with the New York City Comptroller's office. He was rejected because he was "overqualified." Since that experience, Mr. Hamm has been pursuing a law suit against the City, claiming he was discriminated against based on his age.

According to the Wall Street Journal, the judge hearing his suit in U.S. District Court may be sympathetic to Mr. Hamm. The judge recently wrote that the term "overqualified," "may simply be a code word for too old."

One more time, anyone who is "qualified" for a job should be allowed access to the candidate pool under equal employment opportunity laws. Those who are not qualified, should not get into the candidate pool for consideration. "Overqualified" should not be a reason for excluding someone from the candidate pool. There are a host of reasons an individual may have for wanting to do entry level work after having senior level experience. Myths about "overqualified" people getting bored and leaving after training, or "overqualified" people being disruptive to the flow of work assignments are not solid reasons upon which to build your rejection. Deal with each individual as you would in any other employment situation, comparing personal qualifications to job requirements.

And, remember, job discrimination law suits based on age-bias climbed to 23,796 last year. That amounts to a 184% increase in five years.

Work with your line managers to overcome the habit of saying someone is "overqualified." It's just one more thing we have to pay attention to in these times.

5. **ANNOUNCEMENTS AND OTHER GOOD STUFF**

- The President's Initiative on Race has published a list of 200 "Community Efforts to Improve Race Relations." They can be found as web site links at:
<http://www.whitehouse.gov/Initiatives/OneAmerica>

 - Americans take fewer vacation days per year than other workers. According to the Travel Industry Association, U.S. workers average 13 vacation days per year, and often spend them traveling. In Japan, workers average 25 days of vacation. In Germany the average is 35 days, and in Italy it is a total of 42 days off.
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Gentle Readers,

We have some new products you will like because they make your life much easier. And, there is movement toward finalizing the EEOC's 1999 budget. Rules for government contracting are changing...again, and there are "things" you should know about the OFCCPs compensation reviews if you are an affirmative action contractor. Aside from all that, not much is happening this summer.

IN THIS REPORT (Report #51, 8/7/98)

1. **HRIS AND TEST STUDY GUIDE ADDED TO PRODUCTS**
2. **EEOC BUDGET INCREASE APPROVED...WITHOUT TESTERS**
3. **NEW HELP FOR DISADVANTAGED BUSINESSES IN GOVERNMENT BIDDING**
4. **OFCCP FINDS DISCRIMINATION NEARLY EVERY TIME**
5. **COURT FREEZES ASSETS OF CALIFORNIA HEALTH PROGRAM**

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1. **HRIS AND TEST STUDY GUIDE ADDED TO PRODUCTS**

If you have fewer than 150 employees, you will want to take special note of the latest addition to our line of HR software products available at our web site.

!Trak-It HR, with an optional attendance module, and !Trak-It Applicant are likely just what you need to make your life easier and save adding the extra person it would otherwise require to keep up with all the necessary record keeping. Two program capacities are featured: one for up to 75 employee records and one for up to 150 employee records. Starting at only \$695, this is very probably the smartest investment in your HR department you could make. The Applicant Tracking program has no record limitation and allows you to download records directly to the HRIS when you hire the perfect candidate. No data re-entry required.

Anyone who is interested in automating their small business HR department, easily producing government-required reports, and keeping senior management well stocked with employee benefits and compensation data should take a look at the benefits of this package. On our web site under "HR Software." You can even order a full working demo of the software for \$35. It comes with a user's guide and a 30-day trial period.

Remember, every employer, employment agency, labor organization, state and local government, school district, and institution of higher education subject to Title VII is required to make and keep relevant records to determine whether unlawful employment practices have occurred.

Also newly added is a newly published study guide for everyone who is expecting to take multiple choice tests. This will be particularly helpful if you are planning to test large groups of people for any selection process or qualification list.

Called "The Ultimate Study Guide for Multiple Choice Tests" it offers specific help in developing a study plan, time management, dealing with test stress, building personal confidence and much more. You will find this newest of our publications on the web site under "HR Books and Manuals." At only \$7.95, it is a true benefit for your employees or job applicants.

Find both of these neat products by visiting: <http://www.management-advantage.com>

2. EEOC BUDGET INCREASE APPROVED...WITHOUT TESTERS

On July 15th, the House Appropriations Committee approved an \$18.5 million increase in the fiscal 1999 EEOC budget. It is intended to help the Equal Employment Opportunity Commission (EEOC) deal with its backlog of complaint cases.

The agency received a total budget allocation of \$260.5 million. That is \$18.5 million less than it had requested, and hoped to receive. It is, however, \$7 million more than the Senate Appropriations Committee approved on June 26th. Differences will have to be ironed out between the two houses of Congress.

Until the very last moment, there were efforts to cut the agency's budget because of its insistence on using "testers" to detect discriminatory hiring practices in America's workplace.

As you know, testers are those folks sent to apply for open positions at a target employer's location. Most frequently, the agency has used testers in the past to detect discrimination based on race or sex. Two people, equally qualified for the open job, are sent to apply. One is white, another minority. Other times, one is male the other female.

This practice has been proclaimed by some politicians as "entrapment" of the employer targeted.

In the end, to secure its House-approved budget increase, the EEOC agreed not to use funds for its tester program. The Senate bill (S. 2260) specifically banned use of testers in the EEOC program.

(Footnote: Affirmative Action employers should not be lulled into thinking they will never encounter testers in their employment office. The Office of Federal Contract Compliance Programs (OFCCP) is actively pursuing tester programs in several parts of the country.)

3. NEW HELP FOR DISADVANTAGED BUSINESSES IN GOVERNMENT BIDDING

On June 24, 1998, President Clinton's Administration announced a new set of policy guidelines which are aimed at helping small disadvantaged businesses win federal contracts. These new rules apply to all government agencies and departments.

Under the new plan, small disadvantaged businesses (SDBs) that show the ongoing effects of discrimination will be eligible for up to 10 percent price credit when bidding for government contracts. That could mean a SDB would win a contract if it were within 10 percent of the non-disadvantaged low bidder.

Since 1994 this approach has been used by the Defense Department, the National Aeronautics and Space Administration (NASA), and the Coast Guard. It is now being expanded government wide. Effective date of the new program is October 1, 1998.

As the new program comes in, the old self-certification program will go out. Come October 1st, companies will have to be certified as SDBs by the Small Business Administration (SBA) in order to receive benefits of this program. The standard of proof for showing that a business is socially and economically disadvantaged is being changed from the current "clear and convincing" evidence to a "preponderance of the evidence." The new standard will be used by the SBA in its certification process.

4. OFCCP FINDS DISCRIMINATION NEARLY EVERY TIME

If you are ever scheduled for a corporate level review of your affirmative action program efforts, watch out. The Office of Federal Contract Compliance Programs (OFCCP) has determined to continue using what has become known as the "DuBray Approach" to compensation analysis. Why? Because it allows them to force contractors into cash settlements, sometimes with very large value.

While the process and its surrounding problems are too complex to cover in this Special Report, suffice it to say that any contractor using salary grades in its compensation program is subject to this system of official criticism.

Joseph DuBray, Director of the OFCCP's Region headquartered in Philadelphia, has proclaimed that "employers have conceded that individuals [within any specific salary grade] are similar in talent, skills, ability, and value." Therein lies the problem, especially for organizations that have gone to the use of broad banding their compensation programs.

DuBray asks the contractor to create a ranked listing of all minorities, non-minorities, women and men within each salary grade. DuBray computes the "median" and draws a line. If women are below men or minorities are below non-minorities, DuBray will ask for evidence that the differences are due to tenure. If evidence is not produced by the contractor, the OFCCP will file a discrimination case against the employer. (The DuBray method has not been supported by any scholar or

statistician to date.) Rather than fight, most employers are writing checks, presumably to prevent protracted legal battles, even though they believe the government is wrong to take the approach it has.

If you get into this type of situation, you need help from outside. Call us. Perhaps we can help with the support that is necessary. If not, we will refer you to a legal counselor who specializes in OFCCP enforcement issues.

5. COURT FREEZES ASSETS OF CALIFORNIA HEALTH PROGRAM

The U.S. Department of Labor announced on August 6, 1998 that it had obtained a temporary restraining order freezing the assets of Novato, California based Interstate Services, Inc. (ISI), Thorndyke International, Inc. (TI), and numerous other fiduciaries and service providers to health plans operated by ISI after more than \$1 million in health benefit assets were diverted to them and others affiliated with a health care scheme known as The ERISA Advantage program.

The DOL lawsuit alleges that owners of these companies violated ERISA by diverting a substantial portion of employer contributions targeted to pay health benefits of participants and beneficiaries. Instead of paying benefits, the department alleges that the money was used to pay administrative fees, marketing fees, commissions and other non-benefit expenses.

According to an expert retained by the Labor Department, the ERISA Advantage program is not financially viable. As of June, 1998, the program owes at least five individuals approximately \$400,000 in unpaid health claims, which continue to mount.

Judge Thelton E. Henderson approved the freeze from his bench in the U.S. District Court in San Francisco.

Gentle Readers,

California has created its own web site to collect job openings from employers. Hosted by the Employment Development Department, it is akin to America's Job Bank which is run by the federal Department of Labor.

IN THIS REPORT (Report #52, 8/14/98)

1. **SHRM RELEASES NEW SURVEY OF DIVERSITY PROGRAMS**
 2. **CALIFORNIA EMPLOYERS CAN NOW LIST THEIR JOB OPENINGS ON THE EMPLOYMENT DEPARTMENT'S WEB SITE**
 3. **WHERE CAN YOU COMPLAIN ABOUT SPAM, FRAUDS AND INTERNET CONS?**
 4. **WOTC HAS ENDED ... SOON TO RESTART?**
 5. **PRESIDENT SIGNS MEMO TO SANCTION HEALTH INSURANCE COMPANIES**
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1. **SHRM RELEASES NEW SURVEY OF DIVERSITY PROGRAMS**

Within the Fortune 500 companies, only 17% do not have formal diversity management programs. Outside that elite group of employers, among smaller organizations, 36% said they have yet to create formal diversity programs.

One reason for a slower approach among smaller employers might be found in responses to questions about how organizations measure their success with diversity programs. Fully 54% of the Fortune 500 companies said they have no mechanism in place for measuring the impact their diversity program has on the organization.

(If you can't measure it, how can you tell if it is getting you what you want?)

This and other surveys are available through the SHRM office by calling 800-444-5006. If you want the full survey on diversity the cost is \$30.00 for SHRM members and \$40.00 for non-members.

2. **CALIFORNIA EMPLOYERS CAN NOW LIST THEIR JOB OPENINGS ON THE EMPLOYMENT DEPARTMENT'S WEB SITE**

Any employer in the country with \$10,000 or more in federal contracts (in a 12-month period) becomes subject to regulations on Veterans affirmative action. Part of the contractor's obligation under those regulations is to file each job opening with the state employment service in the state where the job opening exists. Since January 1, 1995, there are only three exceptions to this filing requirement:

- Top management and executive positions
- Positions that will be filled within the organization or from regularly established recall lists
- Positions lasting three days or less

There is no longer an upper limit to annual salary, beyond which it was not necessary to file job openings in the past.

The U.S. Department of Labor has a web site called America's Job Bank. Any affirmative action employer can meet its obligation to list job openings by placing its job notices on this site.

Now, California's Employment Development Department has established its own job listing service on the web. It is called CalJOBS. California employers can see what the state is offering by visiting:
<http://www.caljobs.ca.gov>

3. WHERE CAN YOU COMPLAIN ABOUT SPAM, FRAUDS AND INTERNET CONS?

If you have ever been annoyed by unsolicited e-mail or what you felt were scams or fraudulent offers, you might have wondered about how to handle the problem.

The Electronic Software Publishing Corporation has dedicated part of its web site to offer a very long list of agencies and organizations which can help you in just such a situation.

The next time you want to complain about one of these problems, point your web browser to: <http://www.elsop.com/wrc/complain.htm>

4. WOTC HAS ENDED ... SOON TO RESTART?

The Work Opportunity Tax Credit (WOTC) program has expired effective June 30, 1998. This federal program was designed to encourage employment opportunities for disadvantaged workers in nine categories of hard-to-employ individuals. Those who were eligible candidates included welfare, food stamp and Supplemental Security Income recipients.

The program offered a tax credit to employers who hired people from these categories. Throughout its history, the program has only been approved by Congress for 18 to 22 months at a time. It has expired many times in the past, and has been extended with retroactive application of the tax credit provisions.

HR 3125, introduced by Rep. Amo Houghton (R-NY), would extend the program for three years. It is currently being considered. Until approved, employers are left wondering about their tax credits.

5. PRESIDENT SIGNS MEMO TO SANCTION HEALTH INSURANCE COMPANIES

In July, President Clinton signed an executive memorandum which directs the Office of Personnel Management (OPM) to take action against any health care insurance provider that fails to comply with the "letter and spirit" of the Health Insurance Portability and Accountability Act (HIPAA).

HIPAA, law since 1996, is intended to make health insurance portable and accessible for U.S. workers who change or lose their jobs. It requires carriers to provide health care insurance to people who have lost group insurance coverage and prohibits carriers from refusing coverage for preexisting health conditions.

A March, 1998 General Accounting Office (GAO) report points out that some insurance companies were using marketing and pricing tactics to discourage people from seeking HIPAA coverage. According to the GAO, some people are being charged as much as 600 percent above normal premium rates. (The law does not place any limits on how much insurance companies can charge individuals for coverage.)

President Clinton said the federal government, as the largest purchaser of health insurance coverage, will use its leverage to prevent such abuses. Insurance industry groups gave an angry reaction to the President's memorandum. They called it "political grandstanding."

Gentle Readers,

Even in the middle of summer, our government is at work. You may have interest in our report on the new Standard Occupational Classifications. Some of you might also have an interest in the issue of "spamming." It looks as if Congress is close to taking final action on that problem. From "Spam" to "Cookies," you can't possibly go hungry.

IN THIS REPORT (Report #53, 8/21/98)

1. **STANDARD OCCUPATIONAL CLASSIFICATIONS BEING CHANGED -- WILL BE USED IN 2000 CENSUS**
2. **ANTI-SPAMMING BILL GIVEN FINAL CONSIDERATION IN CONGRESS**
3. **U.S. DOE REPORTS ON INTERNET COOKIES**

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1. **STANDARD OCCUPATIONAL CLASSIFICATIONS BEING CHANGED -- WILL BE USED IN 2000 CENSUS**

The Office of Management and Budget (OMB) is seeking public comment on the Standard Occupational Classification Revision Policy Committee's final recommendations for revising the 1980 Standard Occupational Classification (SOC) units and groups. The Committee has developed a new occupational classification system that will cover all jobs in the national economy, including occupations in the public, private, and military sectors.

All Federal agencies that collect occupational data will use the new system. All State and local government agencies are strongly encouraged to use the new national system. It will be used by the Occupational Employment Statistics (OES) program of the Bureau of Labor Statistics (BLS).

It will replace the Bureau of the Census' 1990 occupational classification system and will be used for the 2000 Census.

Affirmative action employers will be particularly interested in the new list. As you will recall, in 1980, there were 300+ occupational categories in the Census EEO file. In the 1990 EEO file we have been using 511 occupational categories. In the 2000 Census EEO file there will be 790 categories for public and private sector jobs, plus an additional 20 categories of military sector jobs.

Additionally, the new SOC will provide the framework for information being gathered through the Department of Labor's Occupational Information Network (O*NET) which will replace the Dictionary of Occupational Titles (DOT) most of you are acquainted with.

Comments are due to the OMB on or before October 9, 1998.

You can read more about the revisions, and see the proposed list of categories and job titles by going to:
http://stats.bls.gov/soc/soc_text.htm

2. ANTI-SPAMMING BILL GIVEN FINAL CONSIDERATION IN CONGRESS

A final push is being made to pass a measure in Congress which would amend the Communications Act of 1934. Two key provisions of this new legislation deal with "slamming" and "spamming."

Slamming is the problem created by telephone carriers changing your service provider without your approval.

Spamming is the problem of unsolicited email.

Title III of the law-in-making would require specific information at the top of each email message sent to anyone who didn't request that information. People who make purchases, inquiries, or requests are considered to have requested information and will not be allowed to claim they object to email sent to them. It is those who make no request for information that the new law is intended to protect.

Essentially, it will give the receiver a way to "discontinue" any future unsolicited email from the same organization. Assuming everything goes as planned, you would have to reply to each organization which sends you unsolicited email, asking to be deleted from their list. But, you would at least have a way to express your desires. Today that is not always true.

The bill has passed through the Senate and has been forwarded by the House to the full Committee on Commerce. As of August 6, 1998, it was awaiting action by the full committee.

More information is available for those interested. Go to:
<http://www.senate.gov/~murkowski/commercialemail/EMailAmendText.html>

3. U.S. DOE REPORTS ON INTERNET COOKIES

You have probably heard a lot about "cookies" as the term applies to the internet. The U.S. Department of Energy (DOE) has published a bulletin on the subject which is available at its web site,
<http://ciac.llnl.gov/ciac/bulletins/I-034.shtml>

Cookies are short pieces of data used by web servers to help identify web users. "The popular concepts and rumors about what a cookie can do has reached almost mystical proportions, frightening users and worrying their managers."

In its Vulnerability Assessment, the DOE has said: "The vulnerability of systems to damage or snooping by using web browser cookies is essentially non-existent. Cookies can only tell a web server if you have been there before and can pass short bits of information (such as

a user number) from the web server back to itself the next time you visit."

Gentle Readers,

A few items from the "other HR duties" column this week. Hope you are all having a good summer.

IN THIS REPORT (Report #54, 8/28/98)

1. **PARENT CORPORATION LIABLE FOR ENVIRONMENTAL CLEANUP**
2. **Cal-OSHA WARNS OF INCREASING VIOLATIONS OF CLEAR SPACE REQUIREMENTS**
3. **NEW RULES ABOUT DISADVANTAGED BUSINESS PUBLISHED BY ADMINISTRATION**

1. **PARENT CORPORATION LIABLE FOR ENVIRONMENTAL CLEANUP**

On June 8, 1998, the U.S. Supreme Court ruled in *United States v. Bestfoods*, that a parent corporation could be liable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund, for environmental cleanup costs at sites owned or operated by a subsidiary. The Court held that a parent corporation can be held liable if it exercised the requisite degree of control over the offending facility of its subsidiary.

Essentially, the Court said that Bestfoods can not use its corporate structure to accomplish certain wrongful purposes on the shareholders' behalf.

2. **Cal-OSHA WARNS OF INCREASING VIOLATIONS OF CLEAR SPACE REQUIREMENTS**

Although there is no single "clear space" standard, there are many clear space requirements included in OSHA safety orders. Some examples include, workspace around electrical equipment, working areas, walkways, maintenance of exits, emergency eyewash and shower equipment and portable fire extinguisher standards. Each of these safety directives calls for clear space requirements.

Obstructing required clear space can be a serious violation in the eyes of OSHA if there is a likelihood that it would result in a serious injury and the employer knew or should have known of the problem. It appears that many citations issued for portable fire extinguisher violations and emergency eyewash violations stem from a lack of adequate clear space. To date, no separate statistics are maintained for clear space-related violations.

In many organizations, safety compliance falls to the jurisdiction of the HR professional. If that is your situation, you should verify that

your organization is meeting each of the individual clear space requirements for each type of regulation you must meet. And, it would be a good idea to place "clear space" on your workplace inspection sheet so you will be sure to recheck for compliance each time you make an inspection.

3. NEW RULES ABOUT DISADVANTAGED BUSINESS PUBLISHED BY ADMINISTRATION

On June 30, 1998, three federal agencies jointly issued interim rules designed by the Clinton Administration to help small disadvantaged business win more federal contracts. The participating departments were: Defense, General Services Administration and the National Aeronautics and Space Administration.

The rules call for small disadvantaged business (SDB) subject to ongoing discrimination to be eligible for "price evaluation adjustments" which are price credits of up to 10% when bidding for government contracts. The new rules are scheduled for implementation on October 1st.

Which industries are considered subject to ongoing discrimination is something to be determined by the Commerce Department. The new program is designed to meet requirements for "narrowly tailored programs to serve a compelling government interest" as specified by the Supreme Court in the Adarand case.

If you would like to comment on the interim rules, you may do so by sending your input to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attention: Laurie Duarte, Washington, DC 20405. A complete text of the interim rules is available on the internet at:

http://www.access.gpo.gov/su_docs/aces/aces140.html

Gentle Readers,

New Y2K problems to worry about. Then, a new study on competencies required in future HR experts is now out and available. Then, look for the wisdom of appointing a specific person as your complaint investigator. Learn what recent studies have discovered your peers think about turnover costs. And, finally, explore a new web resource for recruiting the disabled.

IN THIS REPORT (Report #55, 9/4/98)

1. **SOME MORE Y2K WORRIES**
2. **HR COMPETENCIES FOR THE YEAR 2000**
3. **DESIGNATE COMPLAINT INVESTIGATOR**
4. **TURNOVER COSTS**
5. **RECRUITING TALENT FROM THE DISABLED COMMUNITY: NEW DIRECT ACCESS**

1. **SOME MORE Y2K WORRIES**

A recent announcement made at a hearing of the House Committee on Banking and Financial Services points out some new problems for computer users to think about. All are related to the coming shift into the 21st century.

- September 9, 1999: Computers may read this date as "9999," which means "end of computer file" in several computer languages.
- December 31, 1999: According to John Grover of Atlanta-based Millennium Plus Consulting, "991231" means "end of computer file" in older applications.
- February 29, 2000: 2000 is a leap year, but since turn-of-the-century years aren't usually leap years, many computers will fail to recognize the exception for February 29 in the year 2000.

2. **HR COMPETENCIES FOR THE YEAR 2000**

The Society for Human Resource Management (SHRM) Foundation has funded a comprehensive study by Dr. Stephen C. Shoonover of the Shoonover Group. Dr. Shoonover is a board-certified psychiatrist.

In the study report, "HR Competencies for the Year 2000: The Wake-Up Call!" Dr. Shoonover lists:

- Key Functional Challenges Facing the Human Resource Community

- Traditional and Future HR Methods
- Changes to HR Product and Service Offerings
- HR Competencies for Future Success

He concludes the executive summary of his report by saying, "The SHRM study highlighted that there is potentially a valuable role for HR professionals in organizations, presuming that the human resource community responds positively and creatively to the imperatives of change. To succeed, however, the human resource function must shift from being *merely* responsive to being much more proactive; from "backroom to the front line", from a "Corporate to an operation's" focus. This change should focus on transforming HR professionals into the primary structure, process and workforce consultants for organizations. As such, they will add significant value..."

The complete Competency Study can be ordered from SHRM's Distribution Center by calling 800-444-5006 Opt #1 or 770-442-8633 X362. The cost is \$95 plus shipping, handling and appropriate sales tax. (\$65 for SHRM members). An HR Toolkit is also available as a companion piece to the study report. It can be ordered from the same source for \$175 (\$145 for SHRM members).

3. DESIGNATE COMPLAINT INVESTIGATOR

By now, everyone knows that every employer should have a written policy addressing the prevention of workplace harassment, including sexual harassment. There has been a lot of court interpretation on the subject in recent weeks.

It seems that one theme which runs through many of these cases is the need for a single point of contact to be designated in an organization's policy as the company complaint handler. Of course, options for discussion of the problem should also be cited which allow employees to talk to their supervisor, or any other management person. Nonetheless, having at least one person trained in accepting and then investigating complaints of harassment is very important.

How can you be assured that the person you pick is properly trained to conduct these types of investigations? Several options are open to you. There are excellent resources available in printed form. (One of them we publish entitled, "Secrets of Investigating Discrimination Complaints".) There are public seminars available which address the subject of investigation techniques. But, the first place you should likely start is at the office of your labor attorney. Have that person spend whatever time it takes to instruct your investigator in the "art" of conducting a proper employment complaint inquiry. There are many legal considerations which will guide the process and your attorney can point those out to you. This is a good way to build the foundation of strong communication links which will be helpful when it is necessary to implement those skills later.

Use your attorney to review your investigation plan, as well as the final report. Treat each investigation as a learning experience.

You'll discover that the process isn't really very difficult, as long as you carefully follow the basic principles your attorney will give you.

Make it easy for the organization to defend itself by designating one person to handle your discrimination complaints. You will know each case is handled appropriately if you train that person in proper procedures for performing the investigation.

In the end, everyone can win because you did it right.

4. TURNOVER COSTS

The August 1998 issue of Training Magazine reports on a survey by New York-based consulting firm William M. Mercer Inc.

After factoring in lost productivity, search fees, management time to interview, and, finally, new-hire training costs, 45% of the responding firms said it cost them more than \$10,000 to fill a vacated job.

In a separate survey, Manchester Partners International, a Bala Cynwyd, PA career management consulting firm, asked employers to list their most effective strategies for retaining front-line workers, who are among the hardest to keep in today's low-unemployment economy. Topping the list were:

- More careful selection in hiring (57%)
- Better compensation and benefits (50%)
- Tuition reimbursement (47%)
- Improved training programs (45%)
- Better orientation for new hires (39%)
- Adoption of a casual dress code (38%)

5. RECRUITING TALENT FROM THE DISABLED COMMUNITY: NEW DIRECT ACCESS

If you are an affirmative action employer* you will be interested in this new internet resource designed to help you find qualified candidates within the disabled community.

It is relatively new, so don't expect too much on your first visit. However, we expect that it will catch on quickly among employers, so now is a good time to get your jobs listed (for a small fee) and beat your competition to the best candidates.

Sponsored in part by Ability Magazine and IBM, the site is designed to help candidates prepare and list their resumes as well as offering job openings.

* Any employer who receives \$10,000 or more in federal revenue for goods and/or services during a 12-month period is required to establish written affirmative action programs for both Disabled and Veterans.

Part of the affirmative action obligation involves outreach and recruiting qualified candidates from veteran and disabled communities. This new web site is one way you can meet that obligation.

Gentle Readers,

OOPS! We goofed last week and left out the web site address for the new recruiting service available to the disabled community. It's in item number one. We're sorry for the confusion.

IN THIS REPORT (Report #56, 9/11/98)

1. **AN APOLOGY AND A CORRECTION**
2. **THREE STRATEGIES FOR USING SCHOOL RECORDS**
3. **OFFICE ROMANCE DIFFICULTIES**
4. **SHRM RELEASES HIV/AIDS TOOLKIT**
5. **NEW BOOK: "EASY EMPLOYEE SUPERVISION"**

1. **AN APOLOGY AND A CORRECTION**

In our last Special Report for HR Professionals we told you about a new web site that is available for recruiting job candidates from the disabled community. However, we failed to tell you the address for that site.

We apologize. It was an oversight.

The address you should visit to see if there might be some advantage for your participating is:

<http://www.jobaccess.org>

The site is sponsored, in part, by Ability Magazine and IBM. If you have an affirmative action program for the disabled, this is another resource you should consider.

2. **THREE STRATEGIES FOR USING SCHOOL RECORDS**

From the National Alliance of Business (NAB) comes a new publication. "Hiring Smart: An Employer's Guide to Using School Records" has been created by the Business Coalition for Education Reform. It outlines three strategies for business.

- Ask! The simplest strategy is to ask recent high school graduates to provide transcripts or other school records. Even if you never look at them, just asking sends a message to students, educators and parents that school counts.

- Build in the process. A second strategy is to ask for school records and review them as one part of the hiring process. School records contain valuable information about student attendance, tardiness and course-taking history. Attendance and performance at school may transfer to the workplace.
- Connect to the job. The strategy with the highest return is to evaluate the knowledge and skills required for specific jobs and use school records to find correlations.

The Business Coalition for Education Reform is compiling an Honor Roll of businesses that are using school records as part of their hiring process. The list is available on the web at: <http://www.bcer.org> . If you would like to add your company name to the list, contact the Alliance at 202-289-2864.

If you would like to have a copy of the new publication, "Hiring Smart," call 800-787-7788. The first copy is free. There is a charge for additional copies.

3. OFFICE ROMANCE DIFFICULTIES

The Society for Human Resource Management (SHRM) recently conducted a survey of 2800 human resource professionals on the issues that arise from office romances. Here are some of the top problems indicated by that survey:

- | | |
|---|-----|
| ▪ Complaints of favoritism from coworkers | 28% |
| ▪ Claims of sexual harassment | 24% |
| ▪ Decreased productivity by those involved | 24% |
| ▪ Complaints of retaliation after relationship ends | 17% |
| ▪ Decreased morale of co-workers | 16% |

KnowledgePoint, publishers of software products for the HR Professional, conducted a survey of employees within an office environment. The respondents said they had:

- | | |
|--|-----|
| ▪ Observed flirting at work | 90% |
| ▪ Known of an extramarital affair at work | 72% |
| ▪ Flirted at work | 69% |
| ▪ Felt someone romantically involved with the boss received more favorable treatment at work | 56% |
| ▪ Dated a co-worker | 49% |
| ▪ Worked with a family member or significant other | 39% |
| ▪ Been subjected to an unwelcome romantic advance at work | 33% |
| ▪ Married or had significant relationship with a co-worker | 24% |

4. **SHRM RELEASES HIV/AIDS TOOLKIT**

The Society for Human Resource Management (SHRM) has just announced its release of its newest product of the SHRM Workplace Diversity Program. Jennifer Rhodes, Diversity Coordinator at SHRM worked closely with the National AIDS Fund to create this electronic toolkit.

It is designed to assist HR professionals with handling workplace issues involving HIV/AIDS. The kit contains detailed information on the epidemic and how employers can address it as an issue affecting the workplace.

The toolkit is available on the Internet at:

<http://www.shrm.org/diversity>

It can be accessed by both SHRM members and non-members.

5. **NEW BOOK: "EASY EMPLOYEE SUPERVISION"**

We have just released our latest publication, a new book by William H. Truesdell entitled, "Easy Employee Supervision." Its 300 pages are packed with information every supervisor and manager can use, including:

- Employee Motivation
- Planning
- Leadership
- Team Building
- Hiring New People
- Discipline & Discharge
- Performance Management
- Complaint Management
- Legal Obligations
- Personal Liabilities for Managers
- Key Management Skills
- Ethics
- Training

You can find this great reference guide in our web store with our other fine books and manuals for HR Professionals. You'll love it at only \$29.95.

While you're there, check out our latest addition to the Gifts for Professionals section. You're going to really like the new personal organizers for professionals. They are available in either black or burgundy and zip closed so you will never lose those important papers.

Gentle Readers,

A new federal law for job training programs will consolidate 60 former programs into three. What about the cost of telecommuting and how many employers cover those expenses? Finally, in the University of California system, at least one campus is implementing a plan that actually results in an increase of minority students.

IN THIS REPORT (Report #57, 9/18/98)

1. **WHO PAYS FOR TELECOMMUTING?**
 2. **UC RIVERSIDE INCREASES MINORITY ATTENDANCE**
 3. **NEW LAW CONSOLIDATES JOB TRAINING**
-

1. **WHO PAYS FOR TELECOMMUTING?**

A Kensington Report on the New Style of Working, published in the August 1998 issue of Home Office Computing Magazine reports that telecommuting often costs employees money.

The survey of more than 1,000 adult workers was conducted by the Kensington Technology Group. It found that the typical telecommuter's workstation now costs about \$3,500. It also showed that most employers aren't doing a particularly good job of providing technology, or support, for their remote workers.

- 44% of employers refuse to pay for any computing equipment
 - 59% choose not to provide ergonomic information
 - 63% fail to provide formal training and manuals
 - 94% don't inspect their employee's workstations
-

2. **UC RIVERSIDE INCREASES MINORITY ATTENDANCE**

Despite the ban on affirmative action programs in the University of California, the Riverside campus has managed to achieve a 31% minority enrollment this year, a 5% increase over last year's attendance.

How did they do it? With creativity and commitment.

Since implementation of the 1995 University ban on preferential admissions for minority students, the representation of minorities on campuses around the University of California system has generally fallen.

The Riverside Campus is showing results different from the UC system trend.

How did they do it? According to Daniel B. Wood, writing in The Christian Science Monitor on September 15, 1998, the campus has reached into poorer ethnic neighborhoods and rural regions to educate potential minority students about financial aid programs and campus jobs. They have tapped into community college systems for qualified transfer students. And, they are being creative with admission criteria, allowing special credit for extracurricular activities in which minorities tend to participate. This represents a move away from reliance solely on grade point averages and SAT scores. The University admits that it is time-consuming and expensive. It requires long-term commitment and planning. However, the results show quotas are not necessary to attract and maintain a strong minority representation among the student population.

3. NEW LAW CONSOLIDATES JOB TRAINING

On August 7, 1998, President Clinton signed into law the Workforce Investment Act of 1998. The new legislation is designed to consolidate 60 federal job training programs into three block grants oriented toward individual choice and the demands of the labor market.

The new law targets five goals:

- Create a market-driven training system.
Creates business-led local boards for the design and implementation of the training system. Individuals will choose among training providers based on performance information.
- Streamline services.
Allows states and local communities to develop comprehensive, one-stop delivery systems for employment and training services which should simplify access to employment information, job training and evaluation of trainers' performance.
- Strengthen accountability.
Establishes state and locally negotiated performance measures and requires service providers to be certified based on performance. Performance measures include: rates of job placement, retention and earnings for participants.
- Decentralize authority.
Shifts funding and decision-making authority to the states and local communities for design of local workforce investment programs.
- Encourage individual responsibility.
Establishes a voucher system, known as individual training accounts, to be used for the purchase of individual training services. This customer choice is expected to make the job training market more responsive to the skill needs of individuals and the local labor market.

In addition, the new law addresses the need to expand job opportunities for people with disabilities, encourages coordinated literacy services and reconfigures old programs for disadvantaged youth.

For the complete text of this new law, go to:

[http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=wais.access.gpo.gov&filename=h1385enr.txt&directory=/diskb/wais/data/105 cong bills](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=wais.access.gpo.gov&filename=h1385enr.txt&directory=/diskb/wais/data/105%20cong%20bills)

Gentle Readers,

If you are a federal contractor, you will be glad to know that the OFCCP has finally posted information on its web site about its new compliance check process. We tell you how to get there.

IN THIS REPORT (Report #58, 10/02/98)

1. **OFCCP PUTS COMPLIANCE CHECK INFO ON WEB**
2. **FINAL REPORT FROM PRESIDENT'S ADVISORY BOARD ON RACE**
3. **TWO FOR ONE OFFER**

1. OFCCP PUTS COMPLIANCE CHECK INFO ON WEB

Better late than never, as they say. The Office of Federal Contract Compliance Programs (OFCCP) has finally added Director Shirley Wilcher's Directive 227 to the agency's web site.

If you are a federal contractor who has received notice that you will be visited for the purpose of a compliance check, or you are just interested in the process, you can get information at:
http://www.dol.gov/dol/esa/public/ofcp_org.htm

It is labeled as a change to Compliance Manual Section 2.

2. FINAL REPORT FROM PRESIDENT'S ADVISORY BOARD ON RACE

On September 18, 1998 in a ceremony attended by President Clinton, the President's Commission on Race. The group was created fifteen months ago on June 14, 1997 when President Clinton issued Executive Order No. 13050. The Advisory Board was created to provide input to the President on how to build one America for the 21st century.

The seven member Board was given the task of examining race, racism, and the potential for racial reconciliation in America using a process of study, constructive dialogue, and action.

The final report is an account of the Board's experiences and impressions and includes all of the recommendations for action submitted by the Board to the President following its formal meetings. Some of those recommendations have already been implemented, while some await congressional action.

The 121-page report is available on the web, as is an eight-page executive summary. You can retrieve them as Adobe Acrobat files from:
<http://www.whitehouse.gov/Initiatives/OneAmerica/cevent.html>

3. TWO FOR ONE OFFER

The October special in our web store is really worth looking at. It's a two-for-one offer. When you buy one copy of our newest book, "Easy Employee Supervision" you will get a second copy of this great management tool for FREE!

Now you can afford to get yourself the help you may have been wanting, AND share the same valuable information with your professional friends.

Employee motivation, performance management, hiring and firing techniques are all covered in the 300 pages. You will find detailed information about management skills, what they are and how you can improve your own.

Don't miss out. You can count on us for the best employee management tools around.

Gentle Readers,

Any employer who has made it a practice to charge a processing fee for employment applications in California will be interested in the new state ban on such a policy.

Don't miss out on our FREE 1999 calendar offer.

IN THIS REPORT (Report #59, 10/09/98)

1. **JOB APPLICATION FEES OUTLAWED**
2. **PRIVATE "TESTERS" SUE EMPLOYERS FOR DISCRIMINATION**
3. **RESUME FORMATTING CAN CAUSE PROBLEMS**
4. **FREE CALENDAR OFFER**

1. **JOB APPLICATION FEES OUTLAWED**

California employers will want to be aware of a new law signed in September by Governor Pete Wilson. A.B. 1570 prohibits employers from requiring job applicants to pay a fee when making application for employment. It seems that the state Labor Commissioner's office had received many complaints aimed at four airlines that were charging fees to process job applications.

Lawmakers feared that such a practice would block efforts of young people and welfare recipients who were trying to find employment.

At least in California, job application processing must now be done at the employer's expense.

2. **PRIVATE "TESTERS" SUE EMPLOYERS FOR DISCRIMINATION**

From the "California Employer Advisor" comes word of "undercover testers" used by attorneys and civil rights organizations.

"The owner of five San Francisco McDonald's franchises is the latest lawsuit target. Several African-American job seekers were allegedly told that no positions were available or were told to apply in a "ghetto" neighborhood. Others were flatly refused interviews. An attorney for the applicants sent several non black testers to apply for jobs. They say they received very different treatment, and one claims to have been hired on the spot. A Chicago company faces a similar dispute. A civil rights organization sent white and black testers to apply for a receptionist position with Whitetower Surgicenter Corp. The African-Americans claim they were turned away, while the white job seekers were welcomed and ultimately given job offers."

Apparently, it's not just enforcement agencies that find testers helpful.

"California Employer Advisor," Employer Resource Institute, P.O. Box 378, Tiburon, CA 94920-0378.

3. RESUME FORMATTING CAN CAUSE PROBLEMS

Today, more and more companies are accepting resumes over the internet, or scanning hard copy into applicant data bases. Often, resumes are never actually seen by selecting managers until they have been "converted" into the format of choice for that employer.

Therein lies the problem. Scanning programs are having trouble reading characters that are underlined or in bold type. Even italics can cause problems in some of these systems. Fonts other than "plain vanilla" varieties are also grist for the trash mill. And, would you believe, paper color can also influence the "readability" of documents put through a scanner. So, fancy watermarked paper in "executive gray," "forest fawn," or "fuschia" would not likely be a good selection these days.

Resumes that can't be scanned just don't make the "digital cut." They are never actually part of a data base which can be tapped by selecting managers. Job candidates are slowly beginning to get this message. However, there are still many job seekers who believe their resumes will be read by an impressed human being. In today's world, that is less and less often the case.

4. FREE CALENDAR OFFER

Last year we extended to our subscribers the offer of a FREE photo calendar. The response was so great we have decided to repeat the offer this year. Here it is:

These calendars for 1999 show a full month at a time in only 8.25" X 7" of space. Each month is topped by an equal sized photo of spectacular scenery. 1999 photos feature locations such as

- Newfoundland Gap, Great Smoky Mountains
- Conway, New Hampshire
- Sedona, Arizona
- Central Kentucky
- Buena Vista, Virginia
- Monterey, California
- Maligne Lake, Jasper National Park, Alberta, Canada
- Hana, Maui, Hawaii

If you would like to enjoy the beauty of these locations throughout next year, simply send us an email message. We will gladly mail your

calendar to you directly. We'll even include a FREE copy of our latest product catalog.

The "Subject" of your email should read: "Calendar Offer." In your message please include:

- Your Name
- Your Title
- Your Company Name
- Your Business Street or P.O. Address
- Your Business City, State, Zip Code

Because we have only a limited supply, they will be distributed to those who request them on a first come, first served basis. When the supply is gone, we won't be able to fill further requests. This offer is good for U.S. mailing addresses only. If you want one of these beautiful calendars, you will have to act fast.

Please allow up to three weeks for delivery.

Gentle Readers,

Washington has been fairly abuzz with activity these last few weeks. Regulatory issues have filled the air. We'll try to point out some of the highlights.

IN THIS REPORT (Report #61, 10/23/98)

1. **EEOC NOMINATIONS**
2. **NEW VETERANS' EMPLOYMENT LEGISLATION**
3. **OFCCP MAKES MORE PROCEDURAL ANNOUNCEMENTS**
4. **FEDERAL CONTRACTORS WANTED FOR STUDY**

1. **EEOC NOMINATIONS**

If Congress hasn't taken action to approve the President's appointments before it adjourns for elections, the Equal Employment Opportunity Commission (EEOC) could well fall below the quorum needed for daily conduct of Commission business.

As it stands, there are only three of the five seats currently occupied at the Commission. Acting Chair, Paul Igasaki has been filling his office since the first of this year as a recess appointment. That is good for only one year, and can not be renewed as a recess appointment. Commissioner Paul Steven Miller will have served out his five year term at the end of this year also. If nothing is done, the number of active Commissioners could fall to one by 1999.

In late September, the Senate Labor and Human Resources Committee approved the nominations of Ida Castro as Chair, and Paul Igasaki as Vice Chair. It also gave approval to extending Paul Steven Miller's appointment for another five-year term.

We are anxious to learn of full Senate action. If the Commission does fall below its current quorum of three, all day-to-day business of the EEOC would continue. However, any official business requiring the Commission's approval would have to be postponed. That might include contract approval, and approval of lawsuits to be filed against employers.

2. **NEW VETERANS' EMPLOYMENT LEGISLATION**

Congress has given its approval to the Veterans Employment Opportunity Act of 1998 (S 1021). President Clinton is expected to sign the bill into law in the near future. Some of the highlights of its provisions:

- Permits the Department of Labor to accept complaints from veterans that their employment rights have been violated.
- Veterans will be able to compete on an equal basis with federal employees whenever federal jobs are opened for consideration of outside candidates.
- Violation of the veterans' preference rules for federal employment would be reason for disciplinary action.
- Extension of veterans' preference to some jobs in the legislative branch, judicial branch and White House
- Requirements that the Federal Aviation Administration (FAA) apply veterans' preference during force reductions.
- Federal agencies will be prevented from contracting with organizations that have not submitted proper VETS-100 reports, which will include information about Vietnam era and Persian Gulf, as well as disabled veterans.

For private employers contracting with the government ... those with affirmative action responsibilities ... there will be an addition to reporting and outreach requirements on veterans. Gulf War veterans will be included in these activities in the future.

3. OFCCP MAKES MORE PROCEDURAL ANNOUNCEMENTS

Shirley Wilcher, Director of the Office of Federal Contract Compliance Programs (OFCCP) has issued several directives to her national workforce of compliance officers. With each new directive she is reinforcing the position that her agency is in the business of uncovering discrimination within the federal contractor community. There is little to indicate that she has any interest in contractor input or opinion. Over fifteen years of agency/contractor cooperation and mutual support focusing on self-regulation through voluntary implementation of affirmative action programs has been nearly abandoned by the OFCCP. Contractors are left feeling betrayed by Ms. Wilcher's accusations and program shifts.

In the latest round of directives to her Regional offices, Ms. Wilcher has:

- Canceled all Standard Affirmative Action Format (SAAF) agreements effective December 31, 1998. Major contractors with national organizations such as AT&T, IBM and Hewlett Packard had been granted OFCCP agreements that they could use "standard" AAP formats in each of their establishments across the country. This saved them time in preparation and updating and made management and employee training easier because of program consistency. There was a benefit for OFCCP as well. Once approved, the standard format would make it easy for compliance audits since all establishments were expected to abide by similar plans during any given year.
- Letters of Commitment have been removed from the list of possible audit outcomes. Closure of audits where minor technical violations have been detected by a Compliance Officer will now be

handled by a Conciliation Agreement or by a Letter of Compliance with Technical Violations. This is a new closure category which will be communicated to appropriate contractors much as the Letter of Commitment used to point out technical problems. Ms. Wilcher said this change is to save the agency paper work. Yet, the same number of letters will be sent, or Conciliation Agreements transmitted. You can look for the number of Conciliation Agreements to increase as a result of this action. The significance of that is the series of follow-up visits that will be made by Compliance Officers to check on contractor implementation of corrective actions specified in the Conciliation Agreement. This change is not likely to save OFCCP officials much time, but can actually cost them more time in six-month checks for Conciliation Agreement compliance.

- Implementation of new "Compliance Checks" without advance notice to the contractor community began in mid-September this year. Results have yet to be finalized by the agency, but preliminary indications are that the Compliance Check program during the last two weeks of the month came close to doubling the agency's number of compliance visits to contractor sites for the entire year. That will look pretty good when Ms. Wilcher sits in budget hearings with Congress, discussing her agency's compliance review activity for the year. October 1st began a new federal fiscal year, so it was important to complete the initial batch of compliance checks before the end of September. Each compliance check required Compliance Officers to spend from 3 minutes to 60 minutes with a contractor at the contractor's establishment. The average seems to have come in at around 20 to 30 minutes per visit. What was done that couldn't have been done by FAX or phone or mail?

Federal contractors better brace themselves for the next wave of directives and regulatory announcements. Among them will likely be Ms. Wilcher's first-time issuance of a definition of "Applicant."

Ms. Wilcher has made it clear in several public forums this year that she will define "applicant" as "anyone who indicates an interest in employment opportunities (or promotion, or transfer opportunities) through any means whatever." She has specifically rejected the notion that her definition should include provision for candidates to be qualified before consideration.

The bottom line is this: If Shirley Wilcher's announced intentions come to pass, contractors will be responsible for gathering demographic data on every individual who sends in any solicited or unsolicited indication that he or she is interested in employment. Contractors will not be permitted to exclude "unqualified" people from the "applicant pool."

4. FEDERAL CONTRACTORS WANTED FOR STUDY

The Society for Human Resource Management (SHRM) is in the initial stages of gathering information about the impact federal contractors

believe the current and upcoming OFCCP changes will have on their organizations.

Of particular import is the estimated or computed financial impact of these changes.

If you are a federal contractor, and you would be willing to participate in a survey or study about the financial impact such regulatory and enforcement changes would have on your organization, please let us know here at The Management Advantage, Inc. We will forward contact information for all volunteers to the appropriate people at SHRM for their follow up.

In the near future, there may be an opportunity for SHRM and others to testify before Congressional hearings on these subjects. If you believe these are important issues to your organization, and that they may have financial impact on your budget, please consider volunteering to participate in this process. The amount of time required will likely vary based on the size of your organization...a small amount of time compared to what you may be forced to spend when all the government changes come your way. Contractors who are willing to be identified are particularly encouraged, however, you can be helpful to the process even if you do so based on the need to remain outside the limelight.

Forward your note by October 30, 1998 to: William H. Truesdell, President, The Management Advantage, Inc. P. O. Box 3708, Walnut Creek, CA 94598-0708 or send email to: tmainc@management-advantage.com

Gentle Readers,

Since the Congress has just recently adjourned for the term, and President Clinton has been wading through all the bills sent to him for signature, we thought you might like to hear about some of the action that has already been taken.

IN THIS REPORT (Report #63, 11/6/98)

1. **AMONG NEW FEDERAL LAWS ... VETERANS**
2. **OFCCP CONTINUES TO COLLECT DISCRIMINATION PENALTIES**
3. **ALTERNATIVE DISPUTE RESOLUTION PICKS UP SPEED**

1. **AMONG NEW FEDERAL LAWS ... VETERANS**

The Congress has passed and the President has signed the "Veterans Employment Opportunity Act." Once implemented, the new law will require federal contractors to report on the maximum and minimum number of employees during the full year covered by the report. This will be an addition to the current requirement that contractors report on the number of veterans in their workforce. (VETS-100 Report) Any contractor who fails to meet these requirements would be automatically prohibited from new contracts with any federal agency.

Additional information about this legislation may be found on the web at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d105:SN01021:@@L|/bss/d105query.html>

2. **OFCCP CONTINUES TO COLLECT DISCRIMINATION PENALTIES**

Jetsort, Inc. and Heinz Pet Products, both of Pennsylvania have agreed to pay \$450,000 and \$325,000 respectively to settle OFCCP discrimination claims.

Jetsort is a direct mail service provider. It will pay 405 minority applicants who were denied mail processing jobs. Heinz Pet Products will pay 387 female applicants who were not hired into unskilled labor jobs.

Additional settlement points include changes in each companies recruiting and hiring practices, and retroactive seniority to those applicants who can be found and hired.

Federal compensation analysis resulted in agreement from IBP Inc., a meat company in Nebraska, to pay \$300,000 in back wages and salary increases to 63 of its management women who the government says were paid less than their male counterparts. The company denies that there

was any discrimination involved and settlement was a way to avoid costly litigation with the government.

3. ALTERNATIVE DISPUTE RESOLUTION PICKS UP SPEED

On October 30, 1998, President Clinton signed into law the "Alternative Dispute Resolution Act of 1998." It authorizes all federal district courts to include a form of alternative dispute resolution (ADR) in their process. Congress intended that this new provision be used in minor situations only. The law provides that ADR can not be used when the dispute involves a violation of Constitutional rights, civil rights or when the amount of relief sought is over \$150,000.

None the less, this is a step forward in reducing the expense and time required for resolution of conflicts which would otherwise be handled by full court proceedings.

Gentle Readers,

It looks like the EEOC will continue conducting its business after all. If you have a mandatory arbitration provision in your employee handbook, now would be a good time to review that with your labor attorney. And, be sure to check up on your dental plan while you're at it.

IN THIS REPORT (Report #64, 11/13/98)

1. **EEOC APPOINTMENTS FINALLY GIVEN APPROVAL**
2. **SUPREME COURT REFUSES TO RULE ON MANDATORY ADA**
3. **DENTAL BENEFITS HAVE DECAYED**

1. **EEOC APPOINTMENTS FINALLY GIVEN APPROVAL**

Ida Castro was sworn in as chair of the Equal Employment Opportunity Commission (EEOC) on October 23, 1998. That came just two days after her confirmation by the U.S. Senate. She is the first Hispanic woman to take the helm of the EEOC. Her predecessor, Gilbert F. Casellas, resigned his post in January so he could return to private practice.

Ms. Castro has pledged to continue Casellas' agenda of reforms to further reduce the Commission's case backlog and expand the use of alternative dispute resolution.

Before coming to the EEOC, Ms. Castro was the acting director of the Women's Bureau at the U.S. Department of Labor. She held that post since 1996. She comes from a background of legal practice in the public sector, having served as senior legal counsel for the New York City Health and Hospital Corporation. She has earned both a master's degree and a law degree from Rutgers University.

In its last minute rush to conclude its business before adjourning for the year, the Senate also approved the nominations of Paul M. Igasaki and Paul Steven Miller. They each begin their second five-year terms on the Commission. Since January, Igasaki had been serving as acting chair of the EEOC, having been given that job by President Clinton's December 1997 recess appointment. He will now take over officially as vice chair of the Commission. There remains one vacancy on the five-member panel. Yet, with these confirmations, the EEOC is able to continue conducting its day-to-day business.

2. **SUPREME COURT REFUSES TO RULE ON MANDATORY ADA**

In a decision which will impact many employers, especially those in the financial services industry, the U.S. Supreme Court has refused to hear

a case from the Ninth U.S. Circuit Court of Appeals in San Francisco. The issue was mandatory arbitration in the workplace.

In 1995, Tonyja Duffield sued her employer, Robertson Stephens & Co., a brokerage firm which has since been bought by BankBoston Corporation. The Ninth Circuit ruled that Ms. Duffield had a right to sue her employer even though she had signed an agreement when she was hired saying she agreed to take any employment disputes to arbitration. In the financial world, such arbitration agreements have been typical for many years. Last year, however, securities regulators issued an exception to the industry standard, saying that civil rights complaints could be taken to court and did not have to be arbitrated.

The new industry rule is scheduled to become effective on January 1, 1999. To date, Merrill Lynch & Co. appears to be the only major securities company to give its employees a choice about where to take equal employment opportunity complaints. The SEC (Securities and Exchange Commission) has been encouraging other employers in the industry to follow Merrill's action.

3. DENTAL BENEFITS HAVE DECAYED

According to the Bureau of Labor Statistics (BLS), the number of employers offering dental benefits to their employees has dropped sharply in the last decade.

In 1995, 57% of companies provided such coverage. Compare that to 77% in 1984.

Benefits cost more today as well. 54% of those who still have dental benefits say they have to pay part of the cost of coverage. In 1984, only 34% of employers offering dental benefits required employee co-payment for coverage.

Greatest plan coverages come in the form of routine exam and X-ray expenses. According to BLS, nearly all plans cover oral surgery and prosthetics in some part. Just over two-thirds of plans, however, cover orthodontia.

Gentle Readers,

Safety is important to us all, whether traveling or at home. It never hurts to be reminded of some simple ways to avoid serious problems.

Old ideas and misfortune can sometimes bring opportunity and success, if we are listening closely to the world around us. You will be surprised at the amount of information you can glean from the Export Hotline. Then there is the story of one recruiter listening closely and creating jobs for 50 high-tech workers.

IN THIS REPORT (Report #65, 11/20/98)

1. **PROFESSIONAL DISTRACTION THIEVES ... THEIR TARGET -- THE BUSINESS TRAVELER**
2. **EXPORT HOTLINE WEBSITE OFFERS MANY FACTS**
3. **CREATIVE RECRUITING**
4. **LOOKING FOR SAFETY REGULATIONS IN CALIFORNIA?**
5. **NEW VETERANS REGULATIONS**

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1. **PROFESSIONAL DISTRACTION THIEVES ... THEIR TARGET -- THE BUSINESS TRAVELER**

by Aura Lee O'Banion

Business Travel can be hectic and disorientating. Plane transfers - crowded busy airports create a stressful environment. Unfortunately, this environment also breeds the perfect cover for criminal activity.

Professional Distraction Thieves, usually working in teams, love to work in airports and other transportation areas. Just as their name implies - they distract you. They want your laptop computer, wallet, luggage and calling card code. In short - anything of value you carry. They can be male, female, even children.

They constantly change their tactics, but some of their methods include:

- Dropping money so you will help pick it up --- and the partner takes your property.
- Soiling your clothing - then helping you clean it off. (once again - the partner takes your property)
- Fake an accident or a severe medical condition. (sometimes several partners will "work" the entire area during these events)

- Use newspapers to hide picking a purse or bag
- Bump you into someone else - usually his or her partner.

Laptop computers are a favorite target at the x-ray station. One thief clears x-ray before you - carrying a laptop computer bag. When you go through the other thief triggers the alarm so you will be delayed. When you clear security - your computer is long gone.

Here is some Travel Smart tips you should follow:

- Do not divert attention from your property. If you are distracted somehow - keep your luggage next to you - preferably making contact with your body.
- Make your luggage distinguishable - especially if it is all black. Attaching colorful items helps you readily identify your bag. If you must be separated from your bag - watch it closely so it is not removed by someone else.
- Use covered ID tags only.
- Wear a hidden wallet, and divide your valuables so you will not lose everything if robbed.
- Cover the keypad when using a calling card.
- Be conscious of your surroundings - do not drop your guard until safely at your final destination.

Aura Lee O'Banion, Author of Travel Smarts-Business Travel Safety Guide, can be reached at (510) 792-3352 or obwan830@aol.com

2. EXPORT HOTLINE WEBSITE OFFERS MANY FACTS

International trade information on a broad range of countries and industries is available free under a service sponsored by the California Chamber of Commerce and a nationwide network of corporations and non-profit organizations.

The Export Hotline's website features access to market research reports covering 80 countries and 50 industries. The information is gathered from 175 sources and updated twice weekly.

The Export Hotline also maintains Trade Bank, an electronic yellow pages containing company profiles and full contact information on more than 15,000 companies from 70 countries.

If you are an HR Professional responsible for international placement, recruiting, or planning, this site may be helpful to you.

For more information, visit the site at: <http://www.exporthotline.com>

3. CREATIVE RECRUITING

Inc. Magazine tells of one organization's creative approach to employee recruiting. In a tight labor market it pays to consider *where* resumes come from.

Last year Statprobe, an \$11-million drug-trial-research company based in Ann Arbor, Michigan, was looking for job candidates. One curriculum vitae posted last April to their web site contained a comment which may have been overlooked.

It seems that a programmer explained that she was looking for a new job because her current employer, one of Statprobe's competitors, was closing its office in Kentucky at the end of June.

By July 1, Statprobe had opened a branch office in the same Kentucky town and staffed it with 50 of the competitor's former employees. Employees didn't have to relocate, and they got nearly identical jobs with a good company. Statprobe realized it could take advantage of this opportunity to secure great talent if it would only establish an office where they lived.

Seems simple enough, but it is not the type of thinking which we seem to find in our day-to-day employment processing. Only large companies can do this type of thing you say? We would suggest that only smart and creative organizations can do this type of thing. Statprobe is ten years old and a member of the Inc. 500 list. It only had four other office locations prior to this expansion into Kentucky. It turned out to be a win-win situation for all concerned...except the competitor.

4. LOOKING FOR SAFETY REGULATIONS IN CALIFORNIA?

Every California employer is required to have a written Injury and Illness Prevention Program, and is subject to the state's regulations on employment safety.

Until now, employers have had to purchase copies of safety regulations from a vendor. Recently, however, the Department of Industrial Relations (DIR) posted ALL of the state's safety regulations on the internet. You can get them without charge.

Known as Title 8 Regulations, they include General Industry Safety Orders, Construction Safety Orders and others. You can even use a search feature on the site to identify particular subjects or issues.

There is also information available on the site about Cal/OSHA's Standards Board and the Cal/OSHA Appeals Board. You can get access to Cal/OSHA's Policy and Procedure Manual as well.

Where is it? Go to: <http://www.dir.ca.gov>

Select "What's New" from the left margin menu. On the next menu, select "DIR Title 8 Regulations" and you're there.

5. NEW VETERANS REGULATIONS

The Office of Federal Contract Compliance Programs (OFCCP) has posted its final regulations with regard to veterans affirmative action programs. These changes will bring regulations for veterans into line with those already existing for disabled affirmative action.

OFCCP is responsible for enforcing provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA) which was amended in 1976. It had originally published its proposed regulations in 1996, and only finalized them with the November 3, 1998 filing in the Federal Register.

If you would like to view the new regulations, they are available on the web at: http://www.access.gpo.gov/su_docs/aces/aces140.html You will be looking for document "FR Doc 98-29043."

By the way, that address is the one you should bookmark for all Federal Register access. It will get you into the search engines so you can locate any Federal Register publication or congressional action.

Gentle Readers,

We are mailing this Special Report early due to the Thanksgiving Holiday.

There are some new resources available to you at SHRM and commercially. And, there are new government notification requirements coming at the first of next year for many employers. Don't get caught off-guard.

Peace and good wishes to each of you on this Thanksgiving.

Bill Truesdell, Editor

IN THIS REPORT (Report #66, 11/25/98)

1. **SEXUAL ORIENTATION IN THE WORKPLACE**
2. **TEST AVAILABLE FOR VERBAL ENGLISH SKILLS**
3. **HEALTH PLAN NOTICES REQUIRED BY JANUARY 1ST**
4. **ANOTHER NOTIFICATION REQUIREMENT FOR CALIFORNIA EMPLOYERS**
5. **THANKSGIVING WISHES**

1. **SEXUAL ORIENTATION IN THE WORKPLACE**

On November 17, 1998, the Wall Street Journal reported that about 270 physical attacks on gay people, or over 10% of the total reported, happened in the workplace since 1997. These numbers come from a study done by the National Coalition of Anti-Violence Programs, a gay rights organization.

About the same time, the Society for Human Resource Management (SHRM) released its latest publication: "Sexual Orientation in the Workplace: An SHRM Diversity Initiative Issue Brief." In this publication is information on legislation and legal protections; employer policies; domestic partner benefits; balancing the rights of all employees; employee networks; and a list of additional resources.

The brief is available for purchase through the SHRMStore and costs \$19.95 for members and \$29.95 for non-members. Visit the store at <http://www.shrm.org> or call 703-548-3440.

2. **TEST AVAILABLE FOR VERBAL ENGLISH SKILLS**

Any employer who must staff jobs involving heavy customer contact or extensive telephone work knows the importance of screening for verbal

language skills. Call-centers and customer service groups are particularly interested in conversational language skills.

There is a test available now that measures English language conversation skills. It was developed by Ordinate Corporation, a language testing company based in Menlo Park, California. Firm principles are experts in signal processing, speech recognition and psycholinguistics.

The test is given over the telephone by an automated program. Persons to be tested call a toll-free number and input the code number they have been given to begin the process. Testing takes about ten minutes. Results are available on the firm's web site within 15 minutes of completing the test.

The company's press release explains that the validity of PhonePass, as the testing program is called, has been independently verified and compares favorably to traditional tests in the field. During the past 14 months, PhonePass has been site-tested at Stanford University in California and the University of Bologna in Italy.

Each test administered costs \$40 in North America and \$48 in the United Kingdom and Japan. From each of those locations, individuals who will take the test call on a designated toll-free number. Volume discounts are available for employers.

For more information, contact the Ordinate Corporation directly at 650-327-4449 or at their web site: <http://www.ordinate.com>

3. HEALTH PLAN NOTICES REQUIRED BY JANUARY 1ST

Under the new *Women's Health and Cancer Rights Act of 1998*, new notification requirements have been placed on employers and health plans. Beginning January 1, 1999, any group health plan which covers mastectomies must also cover breast reconstruction and prostheses. This new requirement applies to purchased insurance coverage, self-insured plans and HMOs provided by private and governmental employers.

An initial notice about the new law must be provided by all employers or their health plan insurer to each plan participant and beneficiary. It must be provided in the next mailing to participants and beneficiaries or in the yearly information package sent to participants and beneficiaries, whichever comes earlier.

The new law requires this notice in accord with Department of Labor regulations which have yet to be developed.

All employers who offer health care benefits to their employees are potentially affected by this new law. If you are among them, and contract with an insurance carrier or plan provider for your employee coverage, contact your plan provider or insurance carrier right away and determine how they intend to meet this obligation. If you are self-insured, we suggest you talk with your labor attorney.

4. ANOTHER NOTIFICATION REQUIREMENT FOR CALIFORNIA EMPLOYERS

Effective January 1, 1998, California Labor Code Section 3553 will require all employers to give employees the following notice:

"...any employee who is a victim of a crime that occurred at the employee's place of employment ...is eligible for workers' compensation for injuries, including psychiatric injuries, that may have resulted from the place of employment crime."

You may make up your own notice or use one prepared by your workers' compensation insurance provider. Employers will be required to provide the notice either personally or by first class mail, within one working day of the crime, or within one working day of the date the employer reasonably should have known of the crime.

If you have any question about this new requirement, please contact your workers' compensation insurance provider.

5. THANKSGIVING WISHES

Our very best wishes to you, your employees, and your families during this special time of year. We at The Management Advantage, Inc. are thankful for your support and encouragement. Your business with our firm allows us to continue offering these "Special Reports for HR Professionals" and our quarterly newsletter, *The Advantage*.

We are grateful for the many blessings we have in our lives and wish each of you the very best of Thanksgiving holidays.

Gentle Readers,

This week the Wall Street Journal has raised some points about recruiting and employee privacy which we felt worth passing along to you on the chance that you haven't already seen them.

Don't miss the wealth of information available from your state employment agency related to job candidate selection. New welfare-to-work programs offer very attractive tax incentives. Your CEO and CFO will love you for it.

IN THIS REPORT (Report #68, 12/11/98)

1. **FINDING A JOB ON THE INTERNET**
2. **EMPLOYEE SURVEILLANCE EXPANDING?**
3. **HIRE FROM NINE GROUPS AND RECEIVE TAX CREDIT**

1. FINDING A JOB ON THE INTERNET

It sounds magical. Simply turn on your computer, activate your browser and let your modem take you into the world of job opportunities. Like Willie Wonka, those visions offer up job opportunities as if they were candy blossoming from every tree.

Reality is not as sweet, however. There are literally hundreds of web sites billing themselves as career-enhancing job lists. Obviously, some are better than others depending on what your personal or organizational objectives are.

Surprising results come from a study by Bernard Haldane Associates, New York, indicating that only 20 percent of people responding to the study had actually used the internet in their job search. The same study indicated that only 15 percent had responded to a "help wanted" ad on the internet. Yet, we know from informal conversations with many employers that they use internet recruiting almost exclusively to fill their needs. Why the disparity? It appears that internet job matching is something still done primarily for high technology organizations and computer-related jobs.

Why hasn't the resource caught on with non-technology users? The answer may be that there are just too many job listing sites available. Some people are of the opinion that they want to review *all* jobs before deciding which ones to pursue. Frustration at not being able to conveniently see just those positions they seek may be another hinderance to some non-tech users.

Whatever the reasons, the internet has produced mixed results for employers as a means of finding qualified job candidates. We would be interested to learn what you have experienced.

- Have you used the internet to recruit job candidates?
- Have you recruited non-technical candidates through the internet?
- Have you hired anyone as a result of job posting(s) on the internet?
- Do you rely on internet recruiting as part of your hiring strategy?
- Why does the internet work well for you as a recruiting tool?

You can email your responses to: tmainc@management-advantage.com
 We will publish a summary of responses in a *Special Report for HR Professionals* after the first of next year.

2. EMPLOYEE SURVEILLANCE EXPANDING?

According to the Wall Street Journal, use of hidden cameras and other gadgets increases, sparking a debate over how much privacy workers are entitled to on the job.

An American Management Association study indicates that 35 percent of employers monitor their workers either by videotaping them or reviewing their phone conversations, email or computer files.

Yet, employers don't always have a free hand in the programs they wish to implement. The National Labor Relations Board last year ordered Colgate-Palmolive Co. to bargain with its union before installing hidden cameras in an employee fitness center to stem theft.

Some states are taking action to limit employer use of surveillance. In California, for example, employers may not use cameras in restrooms, locker rooms or changing rooms.

3. HIRE FROM NINE GROUPS AND RECEIVE TAX CREDITS

The *Taxpayer Relief Act of 1997* reauthorized and expanded the Work Opportunity Tax Credit (WOTC) and created a Welfare-to-Work Tax Credit for long-term welfare recipients. If you have jobs available you might consider these programs and their financial incentives.

The nine groups of candidates to consider under these new rules are:

1. Long-term welfare recipients
2. Other welfare recipients
3. Veterans
4. 18-24 year-old food stamp recipients
5. 18-24 year-old residents of Empowerment Zones or Enterprise Zones
6. 16-17 year-old summer youth employees who live in Empowerment Zones or Enterprise Zones
7. Vocational rehabilitation referrals from state or federal sources
8. Ex-felons

9. Recipients of Supplemental Security Income (SSI)

For more information about how you can take advantage of these job candidates and receive the financial benefits of accompanying tax credits, contact your state employment agency or visit the WOTC web site at: <http://www.doleta.gov/wotc.htm>

Questions about tax-related issues can be referred to Robert Wheeler at the IRS by calling 202-622-6060.

Gentle Readers,

You may find the timing of OFCCP's most recent administrative maneuvering to be a bit suspicious. Whether that is the case or not, **you have only 15 days remaining** before the deadline for comments to their latest change notice.

IN THIS REPORT (Report #68, 12/29/98)

1. OFCCP ISSUES CHANGE NOTICE

1. OFCCP ISSUES CHANGE NOTICE

Congress is gone for the holidays and continues to be hog-tied by the impeachment problem. The President is preoccupied with his own continued employment prospects, and the media is focused on all of the Washington, DC drama.

What better time to slip in some regulatory changes at the OFCCP? Apparently, that's what Shirley Wilcher, National Director thought. If one doesn't want close scrutiny, how better to avoid it than slipping the issue on the table when everyone is looking somewhere else? On December 14, 1998, her agency published in the Federal Register a notice that it intends to finalize the amendment to its agreement with the EEOC (Equal Employment Opportunity Commission). (FR Doc. 98-33067 Filed 12-11-98) Federal contractors could pay a high price for this Wilcher-slight-of-hand.

Something unusual about these changes and their notice?

Here's a list ...

- Public comment period on this notice limited to 30 days. Normal comment period is 60 days. Anyone wishing to submit opinions must do so before January 13, 1999.
- OFCCP will become an "agent" of the EEOC under the modified 1981 Memorandum of Understanding between the agencies. (46 FR 7435, Jan. 23, 1981)
- As an "agent" of the EEOC, OFCCP will have authority to make conciliation agreements, including cash settlements, against employers it finds are discriminating illegally.
- OFCCP will gain authority to issue "Right to Sue" letters to individuals.
- Given Ms. Wilcher's track record as head of the agency, it is easy to anticipate she will order this new authority be used as a lever to get financial settlements from employers.

- Unfortunately, we have observed that it is easier for some federal contractors to write a check, agreeing to OFCCP terms, just to "get them out of here." Prepare yourself with a taller stack of checks.

Federal contractors need to pay attention to this issue. If you would like to submit an opinion about this new development, be sure to do so before the January 13, 1999 deadline. You can send it to:

EEOC Executive Secretariat FAX: 202-663-4114
(FAX comments MUST number 6 or fewer pages)

Written comments should be directed to:
Frances M. Hart, Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
1801 L Street N.W.
Washington, DC 20507

If you would like to view the notice in its entirety, you will find it at the following internet address:

<http://gatekeeper.dol.gov:80/dol/esa/public/regs/fedreg/notices/98033067.htm>

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