



# **Gentle Readers**

**Special Reports for  
HR Professionals—  
1999**

**GENTLE READERS:  
Special Reports for HR  
Professionals - 1999**

**Collection of email reports.**

**The Management Advantage, Inc.**

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# Table of Contents

Report Date	Contents	Page
1-8-99	<ol style="list-style-type: none"> <li>1. Attention Recruiters! New Book Released for You</li> <li>2. H-1B Immigration Fees Raised</li> <li>3. Reminder About New Mastectomy Notice</li> <li>4. OSHA Issues New Forklift Regulations</li> <li>5. Update on Domestic Partners and Sexual Orientation</li> </ol>	9
1-15-99	<ol style="list-style-type: none"> <li>1. Supreme Court Ruling Impacts “At-Will” Employee Status</li> <li>2. Study Shows Decline in Worker Loyalty</li> <li>3. Final Rule on Affirmative Action for Vets</li> <li>4. Requiring Vacation During Pregnancy Leave</li> <li>5. New I-9 Form Still Not Available</li> <li>6. New Senate Committee Name</li> </ol>	12
1-22-99	<ol style="list-style-type: none"> <li>1. Official English Language Laws</li> <li>2. Update on Employee Privacy</li> <li>3. Don’t Forget OSHA Log 200</li> <li>4. Expansion of California’s Prop 65 List</li> <li>5. Get Ready for “Groundhog Job Shadow Day”</li> </ol>	16
1-29-99	<ol style="list-style-type: none"> <li>1. EEOC Complaint Statistics</li> <li>2. Highest Living Wage Ordinance in U.S.</li> <li>3. Reminder of New Requirements</li> <li>4. Double Check Your Layoff Plans</li> </ol>	19
2-5-99	<ol style="list-style-type: none"> <li>1. VETS-100 Report Help</li> <li>2. Direct From the OFCCP Director (Part 1)</li> </ol>	22
2-12-99	<ol style="list-style-type: none"> <li>1. Direct From the OFCCP Director (Part 2)</li> <li>2. Two States Increased Minimum Wage in January</li> <li>3. Resources for Business Ethics</li> </ol>	25
72-19-99	<ol style="list-style-type: none"> <li>1. Direct From the OFCCP Director (Part 3)</li> <li>2. Be Careful How You Search Applicant Databases</li> <li>3. Basic Rules for On-Line Resumes</li> <li>4. Watch for Changes at EEOC – Soon</li> </ol>	28
2-26-99	<ol style="list-style-type: none"> <li>1. OFCCP Approval Delayed by OMB</li> <li>2. New COBRA Regulations Finalized</li> <li>3. Travel Alert from U.S. Department of State</li> </ol>	32
3-5-99	<ol style="list-style-type: none"> <li>1. Major Union Victory</li> <li>2. Radio Talk Show About Life &amp; Disability</li> <li>3. 1998 Jury Verdict Study Released</li> <li>4. SHRM Recognizes Two Web Sites with Links</li> <li>5. EEOC Posts New Reasonable Accommodation Info</li> </ol>	35

<b>Report Date</b>	<b>Contents</b>	<b>Page</b>
3-12-99	<ol style="list-style-type: none"> <li>1. Paycheck Fairness Act Mistitled</li> <li>2. OSHA “Floats” New Ergonomic Standards</li> <li>3. Web Site for Those Challenged by English (Who, Me?)</li> <li>4. What Happens When the HR Manager is Shot?</li> </ol>	38
3-19-99	<ol style="list-style-type: none"> <li>1. New Web Source for Minority Candidates</li> <li>2. President Targets FMLA for Expansion</li> <li>3. Supreme Court Hears ADA/Social Security Dilema</li> </ol>	42
3-26-99	<ol style="list-style-type: none"> <li>1. FREE Diversity Toolkit From Fannie Mae</li> <li>2. Another Diversity Resource</li> <li>3. Two New Products to Make Life Easier</li> </ol>	45
4-9-99	<ol style="list-style-type: none"> <li>1. Check Out “Profiles in Diversity Journal”</li> <li>2. OFCCP Pushing Forward on Request for Compensation Data at Start of Reviews</li> <li>3. An Internet Meeting Place for People with Disabilities</li> <li>4. From the Wall Street Journal ...</li> </ol>	47
4-16-99	<ol style="list-style-type: none"> <li>1. EEOC &amp; OFCCP Finalize MOUs</li> <li>2. Y2K Problems Just the Beginning – Census Data</li> <li>3. H.R. 3751 Would Make Technical Corrections to FMLA</li> </ol>	50
4-23-99	<ol style="list-style-type: none"> <li>1. President Pushes New Parental Protections</li> <li>2. First Aid Kit Now in Gift Section</li> <li>3. Looking for High Tech Engineers?</li> <li>4. Two ADA Cases in Supreme Court Next Week</li> </ol>	54
4-30-99	<ol style="list-style-type: none"> <li>1. Ninth Circuit Rules ADA Title II Does Not Apply to Public Sector Employees</li> <li>2. Minority Executives Feel Underutilized &amp; Leave</li> <li>3. Don’t Make Charity Contributions Mandatory</li> <li>4. Government Action Update</li> </ol>	57
5-7-99	<ol style="list-style-type: none"> <li>1. You Might Want to Audit Your Job Application Form</li> <li>2. Score: Government 2, Federal Contractors 0</li> <li>3. New York Times Reports on New Approaches to Job Burnout</li> <li>4. On May 19<sup>th</sup> Will Your Workforce be With You ... or With Another Force?</li> </ol>	60
5-14-99	<ol style="list-style-type: none"> <li>1. Immigration Forms on Web</li> <li>2. Elaws Advisors May be of Help</li> <li>3. Employee Notification Requirement – California</li> <li>4. New Report for Recruiting People with Disabilities</li> </ol>	64

<b>Report Date</b>	<b>Contents</b>	<b>Page</b>
5-21-99	<ol style="list-style-type: none"> <li>1. Law Firm Offers Web Newsletters</li> <li>2. Microsoft Loses Ruling Over Temporary Workers</li> <li>3. President Calls for Passage of “Paycheck Fairness Act”</li> <li>4. Web Resource for Women</li> </ol>	67
5-28-99	<ol style="list-style-type: none"> <li>1. Profiles in Diversity Journal Better Resource</li> <li>2. Employment Screening Services</li> <li>3. New Affirmative Action Software Release</li> <li>4. Book for Internal Technical Recruiters</li> </ol>	71
6-4-99	<ol style="list-style-type: none"> <li>1. How Much is a Touch Worth?</li> <li>2. Hiring Managers Should be Cautioned</li> <li>3. Cal/OSHA Issues Citations for Ergonomics Violations</li> <li>4. Legislation Update Now Available</li> </ol>	74
6-11-99	<ol style="list-style-type: none"> <li>1. More Employer Restrictions Now in S. 74</li> <li>2. FTC Gives Ridiculous Opinion</li> <li>3. President Wants Employees on FMLA Leave to be Paid</li> </ol>	77
6-25-99	<ol style="list-style-type: none"> <li>1. EEOC Has Power to Grant Compensatory Damages</li> <li>2. EEOC Posts Guidance on Web</li> <li>3. OFCCP to Move Forward Without Approval</li> <li>4. ADA Protections Narrowed by Supreme Court</li> <li>5. California Stops Plan to Sell Personal Data</li> </ol>	80
7-2-99	<ol style="list-style-type: none"> <li>1. Reader Response to S. 74 (Equal Pay Act)</li> <li>2. A Study: Anti-Discrimination Training in the U.S.</li> <li>3. Census Bureau Hiring</li> <li>4. Northwest Native American Human Resource Assn.</li> </ol>	85
7-9-99	<ol style="list-style-type: none"> <li>1. Supreme Court Allows Some Punitive Damages</li> <li>2. New Book for Lawyers</li> <li>3. EEOC Chairwoman Comments on Supreme Court Rulings About ADA</li> </ol>	89
7-9-99	<ol style="list-style-type: none"> <li>1. California Restores 8-Hour Work Day</li> </ol>	92
7-16-99	<ol style="list-style-type: none"> <li>1. President Moves Forward With “Contractor Responsibility” Regulations</li> <li>2. The Management Advantage, Inc. Approved by Better Business Bureau’s Privacy Program</li> <li>3. Unemployment Pay During Family Leave</li> </ol>	94
7-23-99	<ol style="list-style-type: none"> <li>1. Virus Alert</li> <li>2. EEOC Posts Final Rule on Federal Sector Complaint Processing</li> <li>3. Arizona Nurses Fired for Cyber Porn</li> <li>4. A Brief Word on Behalf of Our Business</li> </ol>	98

<b>Report Date</b>	<b>Contents</b>	<b>Page</b>
7-30-99	<ol style="list-style-type: none"> <li>1. Unclaimed Pensions</li> <li>2. New MSAs Established by OMB</li> <li>3. EEOC Issues Guidance on Liability</li> </ol>	101
8-6-99	<ol style="list-style-type: none"> <li>1. Concrete Ceiling Reported by Women of Color</li> <li>2. Kitty Litter Granted Safe Use by California</li> <li>3. United Airlines to Extend Partner Benefits</li> <li>4. CEO's Comment on Diversity</li> <li>5. Wooden Writing Sets Available in Gift Section</li> </ol>	103
8-13-99	<ol style="list-style-type: none"> <li>1. Federal Legislation Update</li> <li>2. New California Laws Affecting Employers</li> <li>3. Management Advantage Author Interviewed by Workforce Magazine</li> <li>4. California Overtime Requirements Beginning 1/1/2000</li> </ol>	106
8-20-99	<ol style="list-style-type: none"> <li>1. EEOC Funding for 2000 to Remain Unchanged</li> <li>2. Canadian Workplace Safety vs. Accommodation</li> <li>3. Glass Ceiling Perceptions</li> <li>4. Diplomacy</li> </ol>	109
8-27-99	<ol style="list-style-type: none"> <li>1. Half of All Employers Have Been Sued</li> <li>2. OFCCP Will Check Other Documents</li> <li>3. New Web Source for African American Professionals</li> <li>4. Workplace Culture Impacts the Bottom Line</li> </ol>	112
9-3-99	<ol style="list-style-type: none"> <li>1. For Job-Seekers with No Time to Waste</li> <li>2. Justice Department Caught with Two Books for Payroll Hours</li> <li>3. California Governor Appoints Panel to Combat "Hate Groups"</li> <li>4. California DFEH Opens New Web Site</li> </ol>	116
9-10-99	<ol style="list-style-type: none"> <li>1. Internet Impact on HR Departments</li> <li>2. Policies on Use of Internet</li> <li>3. State News in Brief</li> </ol>	119
10-1-99	<ol style="list-style-type: none"> <li>1. New California Bloodborne Pathogens Safety Orders on Web</li> <li>2. Calendar Offer</li> <li>3. Retirement Planning – From the Employer's Viewpoint</li> <li>4. OFCCP Pushes Again for Compensation Data</li> </ol>	120

<b>Report Date</b>	<b>Contents</b>	<b>Page</b>
10-8-99	<ol style="list-style-type: none"> <li>1. Front Pay Awards not Capped by CRA '91</li> <li>2. OFCCP Says, "Clean Up Your Mess Before We Have To."</li> <li>3. OFCCP Compliance Checks During the 1998/1999 Fiscal Year</li> <li>4. Florida Protects Employers Against Negligent Hiring</li> </ol>	124
10-15-99	<ol style="list-style-type: none"> <li>1. OFCCP Requesting New Form From Contractors</li> <li>2. OFCCP Makes Another Request for Revisions to Scheduling Letter</li> <li>3. Emerging Issues</li> <li>4. You Can Still Get Your Free 2000 Calendar</li> </ol>	127
10-22-99	<ol style="list-style-type: none"> <li>1. Error In Counting H-1B Visas</li> <li>2. Employment Market Drives Early Hiring</li> <li>3. Tech Recruiting for IT Firms</li> <li>4. Ten Ways to Fight Hate</li> </ol>	131
10-29-99	<ol style="list-style-type: none"> <li>1. Most Relocations at Mid-Level Management</li> <li>2. "Kin Care" Leave Mandated for California Employers</li> <li>3. Cal-OSHA Reform Bill Passed and Signed</li> <li>4. One Week Remains for Comment on Contractor "Blacklisting" Proposal by White House</li> </ol>	135
11-5-99	<ol style="list-style-type: none"> <li>1. Employment Discrimination in California More Costly</li> <li>2. New Web Site Opens for Employment of Disabled Persons</li> <li>3. More Resources for Employers Using H-1B Visas and New Law Expands Physician and Nurse Immigration</li> </ol>	138
11-12-99	<ol style="list-style-type: none"> <li>1. New SHRM Survey Shows Workplace Violence Increasing</li> <li>2. New Federal OSHA Ergonomics Program Rules</li> <li>3. Illegal Workers Entitled to Protection Against Discrimination in the Workplace According to EEOC</li> <li>4. Exiting the Premises</li> <li>5. Some Tips on Leadership</li> <li>6. Supreme Court to Decide on Proof in Age-Bias Case</li> </ol>	141

Report Date	Contents	Page
11-19-99	<ol style="list-style-type: none"> <li>1. OMB Updates Occupational Classification System</li> <li>2. A Business Week Study of Social Responsibility</li> <li>3. The Antis Are Taking Over Ballot Initiatives</li> <li>4. Salvation for Recruiters Comes in New Product</li> <li>5. Air Pot Makes a Great Holiday Gift</li> </ol>	145
11-26-99	<ol style="list-style-type: none"> <li>1. National OSHA Ergonomics Standards Coming</li> <li>2. Pre-Hire Training and Certification is a Growing Job Requirement</li> <li>3. “Exploding” Job Offers</li> <li>4. SHRM Begins New Professional Emphasis Group for High-Tech</li> <li>5. OFCCP Asking Contractors for Data on H-1B Visas</li> </ol>	149
12-3-99	<ol style="list-style-type: none"> <li>1. EEOC Web Site Redesigned with New Information</li> <li>2. DOL Releases Proposed Regulations to Allow States to Pay Unemployment to New Partners on FMLA Leave</li> <li>3. WTO Summit in Seattle Teaches Some Corporate Lessons</li> </ol>	151
12-10-99	<ol style="list-style-type: none"> <li>1. Ticket to Work for Disabled</li> <li>2. Some New State Laws This Year</li> <li>3. Florida Governor Ends Race/Gender Preferences</li> <li>4. What’s the Latest on H-1B Visas?</li> </ol>	153

## *Gentle Readers,*

The world kept turning during the holidays and we have a new stack of information we want to share with you. It will take a couple of weeks because of the volume. Don't miss our latest publication.

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IN THIS REPORT (Report #69, 1/8/99)  
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1. **ATTENTION RECRUITERS! NEW BOOK RELEASED FOR YOU**
2. **H1-B IMMIGRATION FEES RAISED**
3. **REMINDER ABOUT NEW MASTECTOMY NOTICE**
4. **OSHA ISSUES NEW FORKLIFT REGULATIONS**
5. **UPDATE ON DOMESTIC PARTNERS AND SEXUAL ORIENTATION**

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1. **ATTENTION RECRUITERS! NEW BOOK RELEASED FOR YOU**

Any outside recruiter will find our latest book to be invaluable in building a business of technical recruiting. Charlie K. Dawson, a long-successful technical recruiter, has finally consented to reveal his secrets for financial success in the technical recruiting arena. This book is written for technical recruiters by a technical recruiter.

He makes recommendations based on his many years of experience so you can "leap-frog" your competition and go straight to increased earnings. He shows you how to work smarter, not harder. For the same amount of effort you could find your income amazingly higher than it has been in the past.

Charlie tells you how to use the Internet to find more clients and more job candidates. He offers dozens of check lists and forms to help you begin your climb to greater recruiting revenues. You will be able to locate placement opportunities and top-notch job candidates when other recruiters are struggling.

Here's what you will find inside *"The Complete Guide to Technical Recruiting."*

- Types of Recruiting
- How to Identify Recruiting Needs
- Selling Recruiting
- Negotiating Fees
- Qualifying Companies
- Qualifying Opportunities
- Qualifying Exclusivity
- Recruiting
- How to get Candidates "Recruited"

- Effective Interviewing
- References
- Closing
- Managing the Relationship
- Learning your Practice Area

There is even contact information for some of the most important organizations and resources technical recruiters need. All 287 pages are presented in a binder format so you can easily copy the checklists and forms you want to have handy.

The price of this 1999 book is only \$49.95. What a small investment for such great help in your business.

To read more about our latest publication, or to order one for your library, point your web browser to <http://www.management-advantage.com> and look in the "HR Books and Manuals" section. While there, be sure to check out our other books and training programs on supervision, resume screening and workplace violence prevention. Excellent products for the HR Professional.

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2.       **H1-B IMMIGRATION FEES RAISED**

On December 1, 1998, the fee for each initial H-1B visa request was increased by \$500. Any employer who recruits off-shore for talent that can't be found here will understand what this means.

Provisions have been made for waiving the fee increase on a case-by-case basis. And, of course, that requires another form. If you would like to request a waiver of this increase in fees you can download the required Form-129W at the following web address:  
<http://www.ins.usdoj.gov/forms/download/i-129w.htm>

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3.       **REMINDER ABOUT NEW MASTECTOMY NOTICE**

January 1, 1999 is when employers were supposed to have given a notice to each employee whose health plan covers mastectomies. The notice informs employees that their plan must now also cover reconstructive surgery.

If you already furnish this information in your summary plan description or another publication to employees, you are not required to send a separate notice.

New benefit requirements include:

- Reconstruction of the breast on which the mastectomy was performed
- Surgery and reconstruction of the other breast to produce a symmetrical appearance

- Prostheses and treatment of physical complications at all stages of the mastectomy, including lymph edemas

To obtain a copy of the required employee notice, go to <http://www.dol.gov/dol/pwba/public/pubs/newq&a.htm>

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#### 4. OSHA ISSUES NEW FORKLIFT REGULATIONS

It has been ten years since OSHA began the process of working on new standards for "powered industrial trucks." The study period is now over and new regulations have been put to paper.

New requirements include in-class and on-the-job training before workers will be allowed to operate forklift vehicles. OSHA says it expects these new requirements will reduce accident and workers' compensation costs by \$135 million per year. In 1997, OSHA data shows accidents involving forklifts killed 110 workers and injured another 95,000.

Updated OSHA Standards are: 1910, 1915, 1917 and 1918. For more information, look at Standard Number 1910.178. You will find it at: <http://www.osha-slc.gov/OshStd data/1910 0178.html>

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#### 5. UPDATE ON DOMESTIC PARTNERS AND SEXUAL ORIENTATION

In the City of Boston, Massachusetts, Mayor Thomas Menino issued an executive order extending health care insurance benefits to all city workers, including domestic partners and their dependents. Since its issuance on August 4, 1998, 109 city workers have registered a domestic partner, most of whom are of the opposite sex.

There is a legal challenge to Mayor Menino's order. A Superior Court judge has issued a temporary injunction against the executive order. That injunction will not take effect until the case is reviewed by the state's appeals court. Meanwhile, Boston employees are enjoying health care coverage.

In Miami-Dade County, Florida, the County's Commissioners have approved an ordinance prohibiting discrimination in employment based on sexual orientation. Having gone into effect on December 11, 1998, the ordinance prohibits discrimination in both public and private employment, housing, credit and finance and public accommodation.

Other Florida jurisdictions which have added sexual orientation to their list of protected categories include: West Palm Beach, Palm Beach County, Broward County, Monroe County and the City of Miami Beach.

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## *Gentle Readers,*

We're still playing catch up from the holidays. You may have noticed, as some readers did, that our last issue (1/8/99) was incorrectly labeled as "Report #69." It should have been Report #70. Hope you are getting a good start to the new year.

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IN THIS REPORT (Report #71, 1/15/99)  
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1. **SUPREME COURT RULING IMPACTS "AT-WILL" EMPLOYEE STATUS**
2. **STUDY SHOWS DECLINE IN WORKER LOYALTY**
3. **FINAL RULE ON AFFIRMATIVE ACTION FOR VETS**
4. **REQUIRING VACATION DURING PREGNANCY LEAVE**
5. **NEW I-9 FORM STILL NOT AVAILABLE**
6. **NEW SENATE COMMITTEE NAME**

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1. **SUPREME COURT RULING IMPACTS "AT-WILL" EMPLOYEE STATUS**

The date was December 14, 1998. The place was the U.S. Supreme Court, Washington, DC. At issue ... whether or not an employer can dismiss an at-will employee who obeyed a federal grand jury subpoena to testify against the employer in issues of Medicare fraud.

The employee was terminated. The Supreme Court was unanimous in its decision.

The employer argued that the employee had no constitutionally protected interest in continued employment because of his at-will status. The employee argued that his termination had been retaliation for obeying a federal subpoena, and to deter him from testifying at the employer's upcoming trial for fraud.

The District Court dismissed the case saying there was no damage due to the employee's at-will status. The Eleventh Circuit agreed.

The Supreme Court said there had been damage to the employee. Clearly, it said, federal law (42 U.S.C. Sec. 1985(2)) protects people against intimidation or retaliation against witnesses in federal-court proceedings. "...loss of at-will employment can be a compensable injury under tort law, and there is no reason to ignore this tradition here."

If you are interested in the case, you will find it at:  
<http://supct.law.cornell.edu/supct/html/97-1472.ZS.html> (Haddle v. Garrison et al., U.S.97-1472, December 14, 1998)  
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## 2. STUDY SHOWS DECLINE IN WORKER LOYALTY

For the second year, Aon Consulting undertook a study of employee attitudes. Called the *America@Work* study, it asked over 1800 employees how they felt about their employers. The object of this study is to identify issues of employee retention.

### The 1998 Results

Last year's study results indicated that worker commitment had fallen by 2.2 percent to 97.8. (1997 was the first study year and it was used as a comparison of 100 percent.) Employees perceive that they are working longer hours, which they feel is an imposition on their personal and family lives.

### Ten Most Important Benefits

The study revealed that workers want and expect benefits. The ten most important surfacing in 1998's study were:

- Medical benefits
- Pension or retirement plans
- Matched employee savings plans
- Paid vacation time and holidays
- Sick leave and short term disability benefits
- Choice among benefits
- Employer sponsored medical plan for retirees
- Prescription drug card
- Preventative/wellness coverage in medical plans
- Life insurance for both employees and dependents

For a complete download of the study findings, go to <http://www.aon.com>

For a press release summarizing study results, go to [http://www.aon.com/about/news/pr\\_view2.asp?142](http://www.aon.com/about/news/pr_view2.asp?142)

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## 3. FINAL RULE ON AFFIRMATIVE ACTION FOR VETS

The U.S. Department of Labor published a final rule governing its requirements for federal contractors' affirmative action for veterans. Actually, the program continues to be limited to Vietnam-era and special disabled veterans. You can expect to see these rules modified again to include Gulf War veterans as a result of last year's Congressional action on the *Veterans Employment Opportunity Act of 1998* (S 1021). (We told you about that in Special Report #61 on 10/23/98.)

The Office of Federal Contract Compliance Programs (OFCCP) has enforcement authority for the *Vietnam Era Veteran's Readjustment Assistance Act of 1974* (VEVRAA) and Section 503 of the *Rehabilitation Act of 1973*. Federal contractors have had to comply with requirements for Veteran Affirmative Action programs since those laws were passed.

These rules were originally published as proposed rules in September 1996. Their finalization means contractors now have some certainty about their responsibilities toward veterans programs. One particularly nice result of this action is that rules on Veteran's affirmative action now conform with rules on Disability affirmative action.

If you are a federal contractor, be sure you understand all of the formalized changes and that you have a copy of the final regulations.

If you have need for help with your affirmative action program development, updating, or implementation training, please give us a call. We will be pleased to work with you as we have with scores of other federal contractors across the country.

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**4. REQUIRING VACATION DURING PREGNANCY LEAVE**

Of particular interest to California employers is the state's prohibition against requiring employees to take paid vacation leave before using any unpaid leave time. Employees may choose to take vacation or other accrued paid time off during their Pregnancy Disability Leave. The key here is the employee gets to choose.

While disabled due to pregnancy, employees may be eligible for benefits from California's State Disability Insurance (SDI) program. To receive benefits, the employee must process an application through the state's Employment Development Department (EDD).

For more information about SDI benefits, visit the EDD web site at: <http://www.edd.cahwnet.gov> There is also a brochure available on SDI and pregnancy. You may obtain a copy by calling any EDD office. Ask for publication number DE 2514.

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**5. NEW I-9 FORM STILL NOT AVAILABLE**

On September 30, 1997, the Immigration and Naturalization Service (INS) published an interim rule regarding its upcoming changes to Form I-9. This is the document all employers in the country must use to verify employee identify and work authorization. It was expected that the new form would be available by the end of last year. Now the INS expects that it will be issued sometime in the early part of 1999.

For a copy of the Interim Rule go to:  
<http://www.ins.usdoj.gov/employer/iirirawb.htm>

For a copy of documents currently acceptable for employment eligibility verification on the current Form I-9, go to:  
<http://www.ins.usdoj.gov/employer/irullist.html>

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**6. NEW SENATE COMMITTEE NAME**

According to the *Wall Street Journal* (1-12-99), the Senate Labor Committee will be renamed the Committee on Health, Education, Labor and Pensions ... or ... HELP.

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## *Gentle Readers,*

At the beginning of each new year is the opportunity to review policies and procedures. It is also the time to make a new calendar of deadlines for activities required of your organization ... such as posting the OSHA Log 200 form.

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IN THIS REPORT (Report #72, 1/22/99)  
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1. **OFFICIAL ENGLISH LANGUAGE LAWS**
2. **UPDATE ON EMPLOYEE PRIVACY**
3. **DON'T FORGET OSHA LOG 200**
4. **EXPANSION OF CALIFORNIA'S PROP 65 LIST**
5. **GET READY FOR "GROUNDHOG JOB SHADOW DAY"**

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1. **OFFICIAL ENGLISH LANGUAGE LAWS**

We were surprised to learn that 24 states have passed laws specifying English as the official language for state business. The California Attorney General has interpreted California's 1986 "Official English" law as merely requiring that official governmental acts be conducted at least in English. (Letter dated May 20, 1987 from Floyd D. Shimomura, Deputy Attorney General, to Stanley Diamond. 42 U.S.C. Sections 254 b & c; 42 U.S.C. Section 4577(b).)

According to "Mosaics: SHRM Focuses on Workplace Diversity," which indicates its source to be U.S. English, Inc., those states are:

- |                        |                         |
|------------------------|-------------------------|
| o Alabama (1990)       | o Mississippi (1987)    |
| o Arkansas (1987)      | o Missouri (1998)       |
| o California (1986)    | o Montana (1995)        |
| o Colorado (1988)      | o Nebraska (1920)       |
| o Florida (1988)       | o New Hampshire (1995)  |
| o Georgia (1986/1996)  | o North Carolina (1987) |
| o Hawaii (1978)        | o North Dakota (1987)   |
| o Illinois (1969)      | o South Carolina (1987) |
| o Indiana (1984)       | o South Dakota (1995)   |
| o Kentucky (1984)      | o Tennessee (1984)      |
| o Louisiana (1811)     | o Virginia (1981/1996)  |
| o Massachusetts (1975) | o Wyoming (1996)        |

Arizona's 1988 Official English amendment was overturned by the Arizona State Supreme Court in April 1998. On Monday, January 11, 1999, the U.S. Supreme Court refused to revive the Arizona law. The Arizona court said most state "English Only" laws appeared mainly symbolic and did not restrict government use of other languages, as the Arizona measure did.

Regardless of how official state business is conducted, employers need to keep in mind that the Equal Employment Opportunity Commission (EEOC) continues to be critical of English-only rules in the workplace. Unless such rules are a "business necessity," the EEOC's position is that they may violate Title VII of the *Civil Rights Act of 1964*. The EEOC maintains that it is illegal to require employees to speak English at all times. Employers do, however, have the right to require English at times when it is a justified business necessity.

With immigration at precedent setting levels, employers might consider some of the following actions to deal with the issue of employees who's native language is other than English.

- Hire supervisors who speak the language of the non-English speaking workers.
- Offer English classes either at the work-site or through local school districts and community colleges.
- Offer incentives for workers to learn English.
- Develop a policy statement about language in the workplace.

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## 2. UPDATE ON EMPLOYEE PRIVACY

If you are a member of the Society for Human Resource Management (SHRM), and receive "HR Magazine," you will want to take another look at the December 1998 issue. (If you are not a member of SHRM, you will probably find a copy of HR Magazine at your local library.) An article entitled, "You've got their numbers..." beginning on page 3 of the Focus on Technology supplement points out the need for employers to identify employee records in databases by using other than social security numbers.

It cites several cases which are supporting the notion that social security numbers should not be used for identification by employers. It also points out that last "August, the Office of the Comptroller of the Currency - in an effort to ensure greater privacy of financial data - asked banks to stop using SSNs as customer passwords."

Coming soon, the European Union's Data Protection Directive will allow personal information transfer only to those countries that ensure an adequate level of data protection.

It is suggested that employers create their own system for employee identification numbers. Limiting the identifiers to six digits will require fewer key-strokes than a larger number, which will reduce the chance for typographical errors. If you start numbering with "100,000" you will avoid the problem of leading zeros and reduce the likelihood of data transfer problems.

It is also possible to build verification features, such as check-digits, into numbering schemes.

Read the article. You'll find it very helpful.

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**3. DON'T FORGET OSHA LOG 200**

Remember that federal safety regulations (and some state regulations) require employers to post their 1998 log of job-related injuries and illnesses during the month of February.

Now is a good time to double check to be sure you have completed the appropriate log information and are ready to post the document as required. It must remain posted from February 1st through the end of the month each year.

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**4. EXPANSION OF CALIFORNIA'S PROP 65 LIST**

A new list of chemicals subject to Proposition 65 provisions has been published by California's Office of Environmental Health Hazard Assessment. The new list includes eight additional chemicals.

In addition, the same state agency is proposing the inclusion of another sixteen chemicals to the list. Chemicals are included on the list, which requires warnings to employees and building visitors, when they are known to either cause cancer or reproductive toxicity.

All California employers must monitor this list carefully to be sure they are meeting <current> regulatory requirements.

For more information about the "Prop. 65 List," see 22 CCR Sec. 123065, or contact Cynthia Oshita, OEHHA, 301 Capitol Mall, 2nd Floor, Sacramento, CA 95814, (916) 445-6900, FAX: (916) 327-1097.

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**5. GET READY FOR "GROUNDHOG JOB SHADOW DAY"**

In case you haven't yet heard, "Groundhog Job Shadow Day" is just around the corner ... February 2, 1999. There's still time to get ready. You can join hundreds of other private and government employers around the country who will be bringing students to work that day to allow a glimpse of what the work-world is all about.

If you might be interested in such a program, check out the web site at: <http://www.jobshadow.org>

You will even find special events that have been planned in your community or one close to you. You will see what your colleagues are doing to foster links with our student community. Remember, today's student is tomorrow's employee. Why not make a good impression, and perhaps stir a little interest in your organization as a good place to work?

## *Gentle Readers,*

Employment discrimination continues to be a concern to both employees and employers. Certainly, it is worth preventing if for no other reason than the penalties flowing from illegal employment actions. It is always a good idea to check up on how your organization is doing in meeting these legal requirements. Have you talked with your managers and employees lately, informally asking how they feel about the way they are being treated?

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IN THIS REPORT (Report #73, 1/29/99)  
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1. **EEOC COMPLAINT STATISTICS**
2. **HIGHEST LIVING WAGE ORDINANCE IN U.S.**
3. **REMINDER OF NEW REQUIREMENTS**
4. **DOUBLE CHECK YOUR LAYOFF PLANS**

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**1. EEOC COMPLAINT STATISTICS**

The Equal Employment Opportunity Commission (EEOC) has posted its complaint statistics for fiscal year 1998 (FY 1998). Race continues to lead the pack with 36.2 percent of activity in 1998. Charges of sex discrimination took second place with 30.7 percent.

There were a total of 79,591 charges filed with the Commission in the last fiscal year, down 1.3 percent from the 80,680 filed in FY 1997.

If you have an interest in charges filed under any specific federal non-discrimination law, those statistics are also available at the EEOC web site. The address is: <http://www.eeoc.gov/stats/charges.html>

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**2. HIGHEST LIVING WAGE ORDINANCE IN U.S.**

After a long, and sometimes vocal battle, the City Council in San Jose, California passed an ordinance requiring City contractors to pay the highest "living wage" in the United States. Although many other cities have minimum wage requirements for their contractors, San Jose has moved to the top of the list because of the amounts it has established.

Contractors with San Jose must now pay their employees at least \$9.50 per hour if they also offer employee health benefits. If no benefits are offered to employees, the minimum wage has been set at \$10.75 per hour. Those amounts fell \$3.00 per hour under the amounts originally proposed.

These requirements apply to employers that have service contracts with the City amounting to \$20,000 or more. The City Council exempted contracts with the City's Redevelopment Agency and San Jose Airport. The City Manager has estimated that 500 employees of city contractors will receive raises over the next 18 months at a cost to those companies of about \$2 million.

Oakland, California has established a living wage ordinance for its contractors requiring \$8.00 per hour with benefits, or \$9.25 per hour without benefits.

Los Angeles, California has also created a living wage ordinance requiring contractors to pay \$7.25 per hour with benefits or \$8.50 per hour without benefits.

Each ordinance is structured just a bit different from all others, so be sure to check with your local jurisdiction for the requirements in your area.

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### **3. REMINDER OF NEW REQUIREMENTS**

Don't forget that federal law now requires that all employers report specific information on newly hired employees to the state employment department in their state. Reports must be filed within 20 days of hire. There are no exemptions from this requirement. All employers must comply.

California employers also face a new state law requirement that unemployment insurance benefits may be available to employees who leave their job to protect themselves or their children from domestic violence. Any claims would be considered with all other job-related claims to influence employer experience ratings.

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### **4. DOUBLE CHECK YOUR LAYOFF PLANS**

Downsizing, right-sizing, and layoffs have come back to many organizations in recent weeks. There are numerous considerations HR professionals must take into account when designing such programs. One such consideration has to do with impact of downsizing on females in the workforce.

In the early 1980's, the Equal Employment Opportunity Commission (EEOC) challenged a lay-off program of one employer. The case was *EEOC v. Farmer Brothers Coffee*.

The company laid off ten men and eleven women in 1982. No one was hired or recalled during the nine months following the layoff. When the nine-month union contract requirement for recall expired the company began hiring new workers and eventually replaced all the terminated employees. All the new employees were male.

Female employees involved in the lay-off claimed gender discrimination. The court found that the company's reasons for the layoffs were

pretextual. Perhaps more importantly, the court said it was irrelevant that equal numbers of men and women were laid off and that none of the employees who were laid off were recalled.

The company attempted to justify the layoffs by claiming financial difficulties. Facts in the case indicated that at the time of the layoffs, the company experienced its highest financial growth rate. And, during the nine months following layoffs, the company had to increase employee overtime to keep up with increased production demands.

Testimony by employees of the company indicated that the company's president intentionally implemented the plan to replace female production employees.

The 9th Circuit Court of Appeals upheld the lower court's award of \$833,434 in punitive damages and ordered the original complainant to be reinstated.

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## *Gentle Readers,*

Federal contractors ... some things for you ...

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IN THIS REPORT (Report #74, 2/5/99)

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1. **VETS-100 REPORT HELP**
  2. **DIRECT FROM THE OFCCP DIRECTOR (Part 1)**
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### 1. **VETS-100 REPORT HELP**

If your organization has \$10,000 or more in contract revenues with the federal government, you are required to meet requirements for veterans affirmative action.

Part of that obligation involves filing a VETS-100 report each year. In 1998, the reporting date was changed from March 31 to September 30. And, the period covered in the report was shifted to a 12-month period having an end date in July or August. You can expect this year's reporting period and due date will be the same as last year.

A new electronic reporting option is available as of 1998. Reports can be provided on disk or submitted directly from the government's designated web site. Be sure to have your DUNS number and EIN available when you log in to submit your report. Both numbers are now required on every VETS-100 form.

If you would like to learn more, or you plan to seek government contracts this year, you will probably want to visit the following web site: <http://nvti.cudenver.edu/vets/vets100.asp> The web site is an ideal way to submit your VETS-100 report if you have only one or a handful of reports to file.

Should you wish to speak with a Department of Labor representative about your VETS-100 report, you can call their help desk at 703-461-2460. That will allow you to leave a voice mail message containing your name, phone number and your request. A member of the VETS-100 staff will respond to your request. They can also be reached by email at [VETS100@dyniet.com](mailto:VETS100@dyniet.com)

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### 2. **DIRECT FROM THE OFCCP DIRECTOR (Part 1)**

(Editor Note: This is the first of several parts in an article prepared on the subject of OFCCP regulatory change requests and comments from the head of that federal enforcement agency.)

On Thursday, February 4, 1999, Shirley J. Wilcher, Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP) in the

Department of Labor (DOL), visited with contractor representatives in Oakland California. The occasion was arranged by joint efforts of several Industry Liaison Groups (ILG) in Northern California.

Before the formal presentation, a gathering of contractors produced discussion about their experiences with OFCCP compliance evaluations. At one point that discussion focused on the question of how OFCCP Compliance Officers are treating the question of "Who is an applicant?" It turns out that one definition of applicant which may be acceptable in one region of the OFCCP will likely not be accepted in another region by the same agency. As you have likely heard by now, the OFCCP wishes to issue its own definition of applicant. Their definition, according to Shirley Wilcher, would be: An applicant is anyone who evidences any interest in employment with the contractor's organization. Ms. Wilcher has often stated her intention that applicants need not be qualified for a job in order to be considered applicants. The consequence of her definition, of course, is that she wishes to have contractors held accountable for requesting demographic data (sex and ethnic/race identification) for every applicant. In many large organizations this is unthinkable, and unworkable.

In her prepared comments, Ms. Wilcher pointed out President Clinton's State of the Union request for \$14 Million added budget for OFCCP and the Equal Employment Opportunity Commission (EEOC) for Fiscal Year 2000 (FY 2000). She said any such increase would be directed at combating equal pay problems across the country.

ILG members were asked to submit written questions in advance of the meeting so Ms. Wilcher could choose which she would address during the session. At the very end of the session, Ms. Wilcher took three verbal questions from the audience. One of those was aimed at the question, "What is an applicant?" She steadfastly refused to discuss the issue, saying she had already made herself abundantly clear about that.

Ms. Wilcher said her agency has sent letters to federal contractors in the State of Washington reminding them of their obligations to affirmative action requirements under federal regulations. This was in response to the recent passage of a State ban of some affirmative action programs.

The only surprise from Ms. Wilcher came when she said she intends to exempt EVE award winners from further compliance evaluations for THREE YEARS rather than the TWO now specified in regulations. She explained that she wants there to be an incentive for meeting EVE award standards. She quickly added that there would be no exemption, and her agency would quickly return to conduct compliance reviews, on EVE award winners who later experienced complaints or other indications that the organization is having problems.

Pay issues are occupying much of her conversation these days. "Let me make it perfectly clear. We are at the point in time where we must look at pay information," Ms. Wilcher stated emphatically. She said she had investigated the question of how many times her agency had released contractor compensation data under Freedom of Information Act (FOIA) requests. She said they have never made such a release. "Salary information is not disclosable," she said flatly. The issue raised by some people that salary information can not be taken off-site

because of its confidential nature is just a "red herring." She said, "The issue is discrimination and pay parity." Then, quickly correcting herself, she said, "non-discriminatory pay practices." Her comments were intended to ease contractor minds over the recent OFCCP request to Office of Management and Budget (OMB) to modify the compliance evaluation scheduling letter to include a demand for salary information as part of the initial desk audit.

"We are not talking comparable worth here," she added. "We want to work with you." She suggested that any contractor with questions or problems dealing with her agency should call the OFCCP Ombudsman at 888-37-OFCCP.

Contractors we talked with after the session indicated that Ms. Wilcher had not given them any comfort regarding her agency's intended enforcement direction.

(Watch for Part 2 of this report in next week's Special Report for HR Professionals.)

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## *Gentle Readers,*

Part two of the three-part story about OFCCP Director Shirley Wilcher's visit to the Northern California ILG meeting. And, since some folks are curious about locating Internet resources on the subject of business ethics. We'll show you some really good sites.

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IN THIS REPORT (Report #75, 2/12/99)

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1. **DIRECT FROM THE OFCCP DIRECTOR (Part 2)**
  2. **TWO STATES INCREASED MINIMUM WAGE IN JANUARY**
  3. **RESOURCES FOR BUSINESS ETHICS**
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### 1. **DIRECT FROM THE OFCCP DIRECTOR (Part 2)**

(Editor Note: This is the second of three parts in an article prepared on the subject of OFCCP regulatory change requests and comments from the head of that federal enforcement agency.)

On February 4, 1999, Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs (OFCCP) Shirley J. Wilcher spoke to federal contractors at a joint meeting of several Northern California Industry Liaison Groups. She responded to some pre-written questions and a few verbal questions from the group.

On the issue of her agency's request for modifications to the Memorandum of Understanding (MOU) with the Equal Employment Opportunity Commission (EEOC), Ms. Wilcher said they are interested in obtaining authority to levy compensatory and punitive damages against contractors only in cases of egregious behavior. She said, "Contrary to alarmist literature, we are not going for \$300,000 settlements." She said she was as yet unsure if their investigations would involve both formal and informal complaints, but that they would attempt to conciliate settlements every time they discovered a complaint of discrimination had merit. "If we are unable to do that, all non-settlements will be referred to the EEOC for resolution," she added. She said further that the OFCCP needs to be able to punish employers who have egregious conditions, citing examples of KKK graffiti as a reason for such damages.

Clearly, the OFCCP is pushing the construction industry to increase the number of women in its jobs. "The current level is 2% and the goal is 6.9%," said Ms. Wilcher. The agency wants to help companies "attract qualified female applicants for construction jobs."

On the issue of last September's blitz of Compliance Checks across the country, Ms. Wilcher said, "Clearly, companies that didn't pass the Compliance Check can look forward to something else happening." She

said the OFCCP policy about progressive compliance reviews has yet to be put into the form of an agency directive.

Asked why the comment period for the OFCCP proposal to revise its scheduling letter requesting compensation data in the first phase of review was changed from the normal 60 days to 30 days, Ms. Wilcher said, "I'm not clear that the period for comment was changed. I don't think it was. We will follow up with OMB on that."

One major concern voiced by contractors from several industries focused on the agency's demand for release of confidential salary data. The agency claims it has a right to the data, and a right to take that data off-site for analysis. Contractors worry that their sensitive pay information may be released to competitors or others who submit a Freedom of Information Act (FOIA) request. Ms. Wilcher said, they believe they have the right to the data they request, including compensation data. Further, they believe they have the right to conduct their analysis either on the contractor's site or at their own offices. "We have not released a single piece of compensation data as a result of a FOIA request," she said. She promised that they would not in the future release any compensation data under any FOIA request.

When it was suggested that the agency use its web site more effectively to announce new initiatives, the opening of public comment periods on proposals for regulatory changes, and other time sensitive issues, Ms. Wilcher said she would look into it. She also said that she expected information passed from the OFCCP national headquarters to the National ILG to be passed to local ILGs around the country. She said, "Our web site is current," when asked about updating the section on press releases. On February 4, 1999 the OFCCP web site press release section showed December 16, 1998 to be the most recent release posted. (<http://www.dol.gov/dol/esa/public/ofcp org.htm> )

(Watch for the final part of this article in next week's Special Report for HR Professionals. We will tell you what the OFCCP had to say about its employment tester program, the new race identification rules in the Y2K census, and more.)

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## 2. **TWO STATES INCREASED MINIMUM WAGE IN JANUARY**

On January 1, 1999, both New Jersey and Oregon increased their minimum wage rates. In the case of New Jersey, the state law raised its minimum worker payment to match the federal requirement of \$5.15 per hour. The new law also contains provisions for automatically adjusting future state rates to match any increases in the federal minimum.

Oregon now claims the highest minimum wage rate in the country. In January its requirement moved from \$6.00 per hour to \$6.50 per hour. This is the final change of a series of upward adjustments mandated by voters in a 1996 ballot initiative.

Where there is a state rate in effect which is higher than the federal minimum at the time, federal law requires employers pay whichever rate is higher, even if it is the state prescribed rate.

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### 3. **RESOURCES FOR BUSINESS ETHICS**

The subject of business ethics has been with us for a long time. Recently, however, it seems to have gained an intensity unmatched in the past.

In the January/February 1999 issue (Volume 5, No. 1) of "Mosaics: SHRM Focuses on Workplace Diversity" you will find a wealth of information, both about the subject, as well as additional resources for your research and study.

We thought we would add to that list of resources for you by sharing the following Internet sites as good beginnings for your study. These sites are either lists of primary web resources on the subject, or have primary information as well as web links.

- Quality Management and Business Ethics  
<http://www.xs4all.nl/~sillje/index.html>
  - Web Resources for Teaching Ethics  
<http://www.ubalt.edu/www/hoffberger/hcl8webethics.htm>
  - Business Ethics Resources on the WWW (This is an EXCELLENT site. - Ed.)  
<http://www.ethics.ubc.ca/resources/business>
  - Mini-cases from Lockheed Martin Corporation  
<http://www.cwru.edu/affil/wwwethics/martin.html>
  - Ethics on the World Wide Web  
<http://commfaculty.fullerton.edu/lester/ethics/business.html>
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## *Gentle Readers,*

We wrap up our series of articles about Shirley Wilcher's visit with the Northern California ILG. Handling applicant searches can be risky if you don't do it right. We'll point out why. And, finally, some basic rules for on-line resumes.

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IN THIS REPORT (Report #76, 2/19/99)  
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1. **DIRECT FROM THE OFCCP DIRECTOR (Part 3)**
2. **BE CAREFUL HOW YOU SEARCH APPLICANT DATABASES**
3. **BASIC RULES FOR ON-LINE RESUMES**
4. **WATCH FOR CHANGES AT EEOC - SOON**

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1. **DIRECT FROM THE OFCCP DIRECTOR (Part 3)**

(Editor Note: This is the third and final part in an article prepared on the subject of OFCCP regulatory change requests and comments from the head of that federal enforcement agency.)

On February 4, 1999, Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs (OFCCP) Shirley J. Wilcher spoke to federal contractors at a joint meeting of several Northern California Industry Liaison Groups (ILG). She responded to some pre-written questions and a few verbal questions from the group.

Of particular interest to contractors was the OFCCP's program of using employment testers to uncover discrimination. The first such agency effort occurred in Washington, DC nearly two years ago. Ms. Wilcher claimed that program was not targeted at banks but because they were hiring more than other institutions at the time, it turned out most of their efforts involved banks. She showed the group a book titled, "Equal Hiring Opportunity," she said was written and published by the American Bankers' Association as a result of the problems her agency discovered among various bank hiring practices in Washington. She said, "I'm very interested in doing testing for Latinos, disabled and women." She invited any industry representative who is interested to contact her so she can help that industry set up its own employment tester program.

In the year 2000, the Bureau of the Census will conduct its normal count of U.S. population. The Office of Management and Budget (OMB) has already decided to allow multiple race and ethnic categories to be selected by any person during that counting process. While easy to understand in its data-gathering phase, things get a bit complicated when the data is moved to its next phase, compilation and tabulation. The questions facing all government enforcement efforts involving Equal

Employment Opportunity center on how people who select multiple race/ethnic categories will be tallied. After all only one tally can result from one person ... theoretically anyway. Since there are 64 possible combinations of race/ethnic responses for the categories which will be active in the year 2000 census, tracking each of those categories would be impractical. OMB has already rejected the notion of using a category called "other" to tally all cases of multi-race/multi-ethnic selections. This issue threatens to bring many EEO enforcement efforts to a grinding halt. Ms. Wilcher said the OFCCP is in conversations with the OMB and other agencies. So far, no solutions have been discovered. She invited input from the contractor community.

On the issue of compensation analysis and the agency's approach, Ms. Wilcher was asked if the "DuBray" methodology was now standard for its compensation analysis all across the country. She replied that anyone interested in learning about the OFCCP's methods of compensation analysis could find a complete description on the agency's web site. She also admitted that, to date, there have been no legal challenges to OFCCP's method of analyzing compensation systems. "We go far beyond median analysis in looking at compensation," she said. "We look at time in grade, experience, last evaluation and many other things. The analysis turns on what the pay policy is." Then she added, "Bring out the lawyers."

In spite of her apparent challenge, the session ended in polite fashion, both government and contractors showing one another respect. Little new was said, and few if any attitudes were changed. At least the two groups gathered in the same room at the same time. Contractors demonstrated a concentrated politeness in listening to the government's description of current and future enforcement efforts. It was very much a one-way conversation.

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## **2. BE CAREFUL HOW YOU SEARCH APPLICANT DATABASES**

Not too long ago, a friend and client sent us a copy of an advertisement for a college graduate database service. It offered employers access to over 75,000 student resumes gathered from several career fairs.

In the offer was the promise that employers could "search on race, gender, academic background, GPA, school, etc." to find just the right candidates for their job requirements and diversity efforts.

The same ad promised that the programs from which these resumes were collected were "recognized by the OFCCP (Office of Federal Contracts and Compliance Programs) as the type of affirmative action strategies appropriate for employers making good faith efforts in the recruitment of women and minorities under Title VII."

By now, you've already sensed the problem. Conducting a database search using race or gender as a criteria is a direct violation of equal employment opportunity laws. We doubt that the OFCCP would sanction such activity.

When you are striving to expand the diversity of your workforce through recruiting, be sure you focus on qualifications that are job-specific. Targeting your candidate search at schools which have high populations of minorities or women is perfectly appropriate. However, it is not appropriate to select candidates from your candidate pool based on their race or sex.

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### **3. BASIC RULES FOR ON-LINE RESUMES**

The Internet and email are becoming common avenues for those traveling the job search highway. As employers, we can offer some guidance to applicants and others interested in working for our organizations.

Here are some guidelines you might consider placing on your FAQ (frequently asked questions) portion of your web site. You could also print copies for distribution to those requesting such information.

- Create a "Key Word" Paragraph

Processing resumes electronically is quite different from the processes involving personal human screening. And, it should be in today's world where one job posting can bring thousands of responses. Many applicant tracking programs look for key words in the resume which can be used for later database searches. Placing a paragraph of key words at the beginning of a resume allows the computer to quickly absorb those terms the applicant believes to be important. It will assure the resume will be selected if one of those terms should be used in the search criteria.

- Describe Accomplishments, Not Just Job Titles

Often, job titles fail to describe the actual work being done. For that reason, suggest to applicants that they should focus on what they accomplished in those jobs. Quantifying accomplishments is always helpful. For example, a programmer could say she saved 1,500 hours of clerical time annually by implementing modifications to invoice processing. Or, a manager could describe how he lowered operating expenses by \$50,000 through a specific program.

- Avoid Graphics and Special Type

In email resumes, graphics are neither necessary nor helpful. They actually cause problems for some automated readers. Suggest that applicants eliminate any graphics from their resumes. Likewise, underlining, bold type and italics can cause problems for some scanners. Specify clean, plain typeface, preferably 10 to 12 point in size.

- Emphasize Technical and Computer Skills

Most jobs in today's world require some form of technical and computer skills. Where they are required, you'll want to know which candidates come equipped with them. So, suggest to job applicants that they tell you about their capabilities in these areas.

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**4. WATCH FOR CHANGES AT EEOC - SOON**

Ida Castro, the new Chairwoman of the Equal Employment Opportunity Commission (EEOC) met recently with representatives from three employer groups. In that session were the Society for Human Resource Management (SHRM), the National Employer Council and the U.S. Chamber of Commerce. Each made a presentation to the new Chairwoman.

During her Senate confirmation hearings last year, Ms. Castro had promised to listen to concerns of business owners, particularly small and medium sized companies. It appears that the recent meeting with SHRM and the others is a step toward fulfilling that promise.

SHRM has recommended that the EEOC begin collecting data about the size of employer organizations when the EEOC processes discrimination charges. Strong support was also voiced for expanding the EEOC's alternative dispute resolution program. One suggestion would have the EEOC provide a clear and simple guide to handling discrimination charges when complaints are sent to employers.

Ms. Castro responded to the input by saying she would consider the recommendations. She said she intended to form a task force within the EEOC to study each suggestion. She also said she thought they were good ideas that could be implemented quickly.

Look for these changes to be implemented before mid-April 1999.

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## *Gentle Readers,*

Late news from Washington about OFCCP's request for approval of their plan to get contractor's compensation data at the start of a compliance evaluation.

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IN THIS REPORT (Report #77, 2/26/99)  
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1. **OFCCP APPROVAL DELAYED BY OMB**
2. **NEW COBRA REGULATIONS FINALIZED**
3. **TRAVEL ALERT FROM U.S. DEPARTMENT OF STATE**

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1. **OFCCP APPROVAL DELAYED BY OMB**

The Office of Management and Budget (OMB) has decided the Office of Federal Contract Compliance Programs (OFCCP) can do without detailed employee compensation data at the start of each compliance evaluation. Also placed on hold was OFCCP's request to expand data requirements from contractors on what the agency defines as job applicants.

The issue was resolved on Monday of this week when OMB ruled against the OFCCP request to include the demand for compensation data in its compliance review scheduling letter. We confirmed with OMB directly that OFCCP would not be allowed to proceed with its plans, at least for a short while.

Federal contractors across the country had been strongly negative in their reaction to the Department of Labor request for such sensitive and confidential data. Their sensitivity to such a demand was elevated when the OFCCP announced its intention to have contractors send the data to Compliance Officers at their government offices before there was any indication that compensation programs were causing discrimination problems.

Contractors were further irritated by the shortened 30-day comment period allowed for the OFCCP proposal. Key employer organizations went on record opposing the OFCCP request. Those groups included the U.S. Chamber of Commerce, the Society for Human Resource Management (SHRM), the Equal Employment Advisory Council (EEAC), and the National Association of Manufacturers (NAM). In a joint letter opposing OMB approval of the request, three of these organizations estimated the change in procedure would allow OFCCP to "routinely collect individual pay data on approximately 1,132,200 persons year in and year out ... without a specific reason to suspect compensation discrimination at a particular (contractor) facility."

OFCCP Director, Ms. Shirley Wilcher, has proclaimed her agency's right to obtain compensation information, and to remove it from contractor

facilities if they wish to conduct their analysis in government offices.

Under current regulations and directives, OFCCP officials can access contractor pay information and remove it from contractor premises if they wish. Many contractors are attempting to lessen the impact of such action by redacting the reports given to OFCCP. This week's action by the OMB will mean OFCCP must wait until the on-site phase of a compliance review to obtain compensation data.

On the question of who is an applicant, Ms. Wilcher has sought approval of a definition which includes "anyone expressing interest in employment" with the contractor's organization, whether qualified or not. Contractors have objected to the requirement that they collect race and sex data on each of the individuals falling within that OFCCP definition.

It remains unclear whether OMB rejected the OFCCP's request outright, or told the OFCCP it should retract its request before OMB had to issue a ruling of rejection. Either way, OFCCP will not be implementing its proposals right away. What's next? According to one OMB official, OFCCP is entitled to wait 90 days and then resubmit its proposal for reconsideration.

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## **2. NEW COBRA REGULATIONS FINALIZED**

The Internal Revenue Service (IRS) has issued final regulations for health coverage continuation provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). They come twelve years after the proposed regulations were issued in 1987.

If you have 20 or more employees and offer health insurance coverage programs to your workers, you will want to be sure you understand the newly finalized requirements. If you aren't up to studying the regulations yourself, contact your insurance carrier and ask for help.

For those of you interested in seeing the requirements for yourself, they are available in PDF file format at <http://www.fedworld.gov/pub/irs-regs/td8812.pdf>

Officially, the regulations are part of 26 CFR Parts 54 and 602. The changes are effective on February 3, 1999 and apply to qualifying events occurring in plan years beginning on or after January 1, 2000.

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## **3. TRAVEL ALERT FROM U.S. DEPARTMENT OF STATE**

The Y2K problem has again manifested itself, this time in the form of a travel alert from the U.S. Department of State.

Released on January 29, 1999, it warns U.S. travelers that they may encounter serious problems when traveling abroad on or after January 1, 2000. There may be some problems even before that date according to the alert.

Of particular concern to business travelers should be effectiveness of credit cards, ATM machines, international banking transactions, airline service schedules, medical services and even water and sanitation systems.

The notice urges U.S. citizens planning to travel abroad during this time to check with their insurance companies to determine if policies cover Y2K-related problems.

For a complete copy of the notice, go to:  
[http://travel.state.gov/y2k\\_announce.html](http://travel.state.gov/y2k_announce.html)

Thanks to Aura Lee O'Banion for the alert.

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## *Gentle Readers,*

This week we offer a potpourri of information you may find helpful. In the first article you will find that union organizing is focusing on the health care industry. The next big push for union attention will be salaried physicians.

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IN THIS REPORT (Report #78, 3/5/99)

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1. **MAJOR UNION VICTORY**
  2. **RADIO TALK SHOW ABOUT LIFE & DISABILITY**
  3. **1998 JURY VERDICT STUDY RELEASED**
  4. **SHRM RECOGNIZES TWO WEB SITES WITH LINKS**
  5. **EEOC POSTS NEW REASONABLE ACCOMMODATION INFO**
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### 1. **MAJOR UNION VICTORY**

Last week marked the largest union election victory in U.S. history. Some are claiming that it will mark the turning point for the nation's union organizing effort.

A Washington Post article points out that the Service Employees International Union (SEIU) won the right last week to represent 75,000 home care workers in Los Angeles County. A week earlier, 6,000 SEIU represented nursing home employees in Connecticut successfully forced Governor John G. Rowland to find more Medicaid money for their employers after threatening a strike against 50 nursing homes in that state. The Governor agreed to boost Medicaid spending for nursing homes \$68.2 million to \$211 million through fiscal year 2001. Approximately \$180 million of the total was designated for increased staffing and wages at the nursing homes.

SEIU has indicated it is joining with the AFL-CIO to organize a national campaign to sign up doctors who are unhappy with changes in the health care system.

According to the Washington Post, membership in the AFL-CIO today is slightly more than 13 million, not much more than the 12.6 million members the federation had when it was founded in 1955. Last year the AFL-CIO achieved a net gain of 100,000 members. It has to sign up nearly 400,000 new members each year just to stay even. As a percentage of the workforce, unions now represent less than 10 percent of private sector employees.

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## 2. RADIO TALK SHOW ABOUT LIFE & DISABILITY

From the Wall Street Journal comes the report of another American success story. In Yellow Springs, Ohio, Greg Smith, 34 years old, weighing 65 pounds, hosts a weekly radio show targeted at the disabled and their families and friends.

The show is called, "On a Roll: Talk Radio on Life & Disability." One of its first sponsors was Bank of America, looking for a way to introduce its loan programs for the disabled. Because the disabled have become recognized as another identifiable consumer group, Mr. Smith has had little trouble getting and keeping show sponsors. He asks, "Who needs cellular phones more than anybody else?" What group is a perfect market for Goodyear's tires that won't go flat?

Now, 15 banks in 18 states have created loan programs especially for the disabled. According to the WSJ, default rate on those loans is lower than on others.

Mr. Smith has had a form of muscular dystrophy since he was three years old. Since the seventh grade, he has both been confined to a wheelchair and a voice to be listened to. He started as the public address announcer for his junior high school's basketball team. He's never looked back. For five years he was the host of the Arizona Cardinals post-game call-in show at KTAR radio in Phoenix, and the station's research director.

Greg Smith has been on the air every Sunday night for seven years with his "On a Roll" show. He contends that there is a bright future for businesses which recognize there is a partnership to be had within the disabled community.

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## 3. 1998 JURY VERDICT STUDY RELEASED

The law firm of Orrick, Herrington & Sutcliffe in San Francisco has released its latest study of California jury verdicts in employment cases.

Some of the highlights include:

1998 Total Average Jury Awards	\$985,981
(Highest average since 1981) - 1990	\$1,806,034
1998 Average Emotional Distress Awards	\$1,249,424
(Next highest year since 1981) - 1997	\$388,000
1998 Average Punitive Damage Awards	\$2,382,472
(Highest average since 1981) - 1990	\$3,394,321
Percent of cases where Plaintiff won in 1998	47%

Average California Jury Awards in 1998 for termination:

Sexual Harassment	\$463,438
Sex Discrimination (Non-Harassment)	\$320,070
Race Discrimination	\$1,641,673
Age Discrimination	\$801,217

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**4. SHRM RECOGNIZES TWO WEB SITES WITH LINKS**

The Society for Human Resource Management has added two links to its web site which direct people to other valuable resources.

We are proud to say that our FREE electronic newsletter, THE ADVANTAGE, is one of those links. We would like to remind you that you can access our archive of newsletters at any time by going to <http://www.management-advantage.com/newsletr>

At that location you will find a listing of our archived issues and a bulleted list of information contained in each issue. You are welcome to use as many or as few of the issues as you need.

The second web site added by SHRM is the one leading to information about workplace violence prevention. We encourage you to take a look for yourself at this site as well: <http://www.workplace-violence.com> The site is hosted by Critical Incident Associates, led by Larry J. Chavez. (You will find some of Larry's articles in our back issues of THE ADVANTAGE.) He is a 27-year veteran of the Sacramento, California Police Department and the Department's senior hostage negotiator. You should pay attention to what he has to say.

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**5. EEOC POSTS NEW REASONABLE ACCOMMODATION INFO**

On March 1, 1999, the Equal Employment Opportunity Commission (EEOC) posted its long-awaited guidance about reasonable accommodation and undue hardship under the *Americans with Disabilities Act*.

Actually, there are several new publications available on the EEOC site dealing with this subject. One is the 47-page enforcement guidance package. Another is a fact sheet for small employers.

Some questions remain in the minds of employers about the clarity and value of this information. Since these are policy and enforcement guidelines, there is no requirement that the EEOC hold a public comment period before announcing them. Yet, you are welcome to send your comments to us and we will pass them along through the Society for Human Resource Management (SHRM).

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## *Gentle Readers,*

New compensation law would have serious and major impact on private sector employers. This is one issue you will want to follow. Perhaps you will even want to take part in the debate. Then, there are the "soon-to-be-released" OSHA regulations.

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IN THIS REPORT (Report #79, 3/12/99)  
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1. **PAYCHECK FAIRNESS ACT MISTITLED**
2. **OSHA "FLOATS" NEW ERGONOMIC STANDARDS**
3. **WEB SITE FOR THOSE CHALLENGED BY ENGLISH (WHO, ME?)**
4. **WHAT HAPPENS WHEN THE HR MANAGER IS SHOT?**

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1. **PAYCHECK FAIRNESS ACT MISTITLED**

It started last year with the introduction in Congress of the "Pay Equity" act. With the closing of that Congressional session, the effort was "left on the table." Not for long, however. It's back this year with a vengeance.

On January 19, 1999, Senator Thomas A. Daschle introduced a bill (S 74) which would "amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes." On February 3, 1999, Representative Rosa L. DeLauro introduced an identical bill in the House (HR 541). To date, the House Bill has 70 cosponsors and the Senate bill has 20 cosponsors. To read the full proposed text, go to <http://thomas.loc.gov/> and search for S 74 or HR 541.

Advocates of the legislation claim the modification of the Equal Pay Act would "put teeth" into federal law. These proposals would accomplish that by prohibiting pay discrimination on the basis of sex, race, or national origin for work in "equivalent" jobs. They also carry provisions for employees to seek compensatory and punitive damages, something not available under the Equal Pay Act.

So far, eight states have passed comparable worth laws: Connecticut, Iowa, Minnesota, Montana, New York, Oregon, Washington, and Wisconsin. While most comparable worth efforts have been focused on the public sector, this new federal legislation would apply to private sector employers as well.

President Clinton, in his January 19th State of the Union Address to Congress, proposed an increase of \$14 million in the budget of the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL). That money would be earmarked for what he called his "pay

equity initiative." He has endorsed the current proposed legislation and said he will sign it.

Vice President Al Gore has made no secret of the emphasis he intends to place on support for this "pay equity initiative."

Currently, the difference between equal pay for equal work and equal pay for comparable work is important. Federal law requires employers to pay men and women doing the same type of work an equal wage or salary. On the other hand, the comparable worth concept would pay the same to workers with different jobs which require different, but comparable, skill levels. Opponents, including the U.S. Chamber of Commerce and the Society for Human Resource Management (SHRM) contend that the concept is fine, but there is no reasonable or accurate way to measure comparability of different jobs for pay purposes. They ask the question, "How can this be a Paycheck Fairness Act when it is not addressing similar jobs?" One classic case occurred many years ago in the City of San Jose. It involved the attempt to equate skills required of Librarians with skills required of Fire fighters. At the time, Librarian jobs were mostly filled by women and Fire fighter jobs were mostly filled by men. The conclusion was that equating those jobs for the purpose of pay equity was impossible.

You can plan on hearing much more about this issue over the coming months. Stay alert because it will impact nearly every HR professional in the country.

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## **2. OSHA "FLOATS" NEW ERGONOMIC STANDARDS**

According to our sources, a new draft of federal ergonomics standards is nearly ready for release. A preliminary copy has been circulated to a few people for comment, prior to official publication in the Federal Register.

This new federal draft contains no exemption for small business. Additionally, an employer will become subject to the federal standards if there is just one report of a musculo-skeletal disorder (MSD). The controversial Cal/OSHA standards, finally adopted in 1998, allow two reports of a cumulative trauma disorder (CTD) by comparison.

There will be no requirement that the MSD be predominantly caused by the workplace. Rather, the injury need only have occurred in a job the employee "currently performs or recently performed" and workplace conditions or activities are "reasonably likely to cause or contribute to the type of MSD reported or identified."

The six required components for this new ergonomics program are the same as OSHA has typically used:

- Management leadership & employee participation
- Hazard identification & awareness
- Hazard analysis & control
- Training
- Medical management

- Program evaluation

The California Chamber of Commerce has called new paperwork requirements contained in the proposal "onerous." The employer will be required to keep the following records for five years:

- Employee reports & employer responses
- Results of job hazard evaluations
- Plans for controlling job hazards
- Evaluations of hazard controls
- Hazard control program

New requirements call for medical management reports to be retained for the duration of the worker's employment plus five years.

At this time, it is uncertain when OSHA will release its proposals to the Federal Register. Once that happens, there will be a 60-day public comment period during which anyone can submit opinions about the new rules. Since there have been similar drafts "leaked" in previous years, OSHA has been unwilling to commit to a final publication date.

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### **3. WEB SITE FOR THOSE CHALLENGED BY ENGLISH (WHO, ME?)**

If you are like many of us, sometimes it's difficult to know the difference between "its" and "it's," "that" and "which." When should we use the active voice and when is the passive voice more appropriate?

Well, there is help for us, my friends ... on the web.

Alexander Communications, a San Francisco consulting firm has just introduced its web site to the world. On it you will find numerous helpful hints and guidelines to keep you out of linguistic trouble. And, it's all FREE.

If you are anything like me, you will find some items that cause mental embarrassment as well as reminders of things already known.

You may even find some items you would like to share with your employees.

Take a look at: <http://www.alexcommunications.com>

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### **4. WHAT HAPPENS WHEN THE HR MANAGER IS SHOT?**

"The first thing my cousin saw was the red laser dot."

"Tim Kita was sitting in his office just before lunch when he noticed the point of light moving across the floor, along the top of his desk, and up his shirt. It stopped on his chest. That's when he knew. The employee he had threatened to fire that morning was back. Only now he was carrying a .40-caliber semiautomatic pistol and aiming it at my cousin's heart."

"He never felt the bullet, though. Tim (HR Manager for his company) instinctively dropped beneath his desk, hiding as shots exploded in the hall outside his door. He didn't know he'd been hit until he touched his chest and felt the blood pouring out. He'd been struck just below the sternum by a single hollow-point bullet. It had ripped a 2-inch-diameter hole through his torso, snapping two ribs; severely damaging two arteries and tearing a third; nicking his lower left lung; and causing massive injuries to his liver, stomach, pancreas, spleen and diaphragm before exiting only a millimeter from his spine."

This comes from a strong and fascinating story published in the March 1999 issue of Men's Health Magazine. If you have ever wondered about HR's role in workplace violence, this tale will bring it home to you. Get your copy and read the balance of Tim's story. It is written by his cousin Joe Kita...very well, as you can tell. It starts on page 92.

After you've read the balance of this article, please visit our web site and order a copy of our seminar program on Workplace Violence Prevention. It could be the best \$49.95 you will ever spend.  
[http://www.management.advantage.com/products/human\\_res.htm](http://www.management.advantage.com/products/human_res.htm)

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## *Gentle Readers,*

Employer challenges abound these days. Political pressures are being leveled at expansion of the FMLA so it would cover employers with 25 or more workers. And, the U.S. Supreme Court has taken on a case which might help resolve the conflicts between Social Security Disabilities and the ADA.

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IN THIS REPORT (Report #80, 3/19/99)

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1. **NEW WEB SOURCE FOR MINORITY CANDIDATES**
2. **PRESIDENT TARGETS FMLA FOR EXPANSION**
3. **SUPREME COURT HEARS ADA/SOCIAL SECURITY DILEMMA**

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### 1. **NEW WEB SOURCE FOR MINORITY CANDIDATES**

The World Wide Web has grown in importance for employers searching for job candidates. While it may seem that web content is too great for any practical use, there are many sites tailored to the needs of employers who are looking for qualified minority and female job candidates. All it takes is a bit of experimentation to locate them.

Any search engine will deliver page after page of listings if you input such search requests as, "minority job banks," "professional women organizations," "professional engineering organizations," "Black engineering associations," "Hispanic lawyer associations," "professional Asian associations," etc.

Your creativity and willingness to experiment with various search phrases will produce the results you want. Once you have found the combination of search words that deliver a list of web sources you want, write down the words you used so you can use them again in the future.

The one constant about web content is that it constantly changes. A portion of web addresses, like regular mailing addresses, are changed every day as organizations move and expand their operations. Keeping up with the changes is not so important as finding valid addresses when you need them. Revisiting your favorite search engine is an easy way to do that.

While you're thinking about minority recruiting, take a look at one new site that has recently come to our attention. You may find that it can provide you with the perfect job candidate. <http://www.search25.com>

We have also added a new FREE report to our existing list of seven FREE reports. You will find them in the "HR Books & Manuals" section of our Web Store for Professionals. <http://www.management-advantage.com> The

new report focuses on web resources for recruiting minority and women candidates.  
We invite you to take advantage of this FREE information.

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## **2. PRESIDENT TARGETS FMLA FOR EXPANSION**

President Clinton has announced that he will actively support expansion of coverage provided by the Family and Medical Leave Act. As it is currently configured, the law requires most employers with 50 or more workers to provide unpaid leave of absence up to 12 weeks per year to an employee with a serious medical condition or who has a dependent with a serious medical condition.

The law also offers coverage to parents wishing to have time off the job to spend with a new child.

Employers must continue paying for any health care insurance benefits during the time employees are on such a leave of absence.

The President has said he wants to increase coverage for ten million more Americans by lowering the employee headcount threshold to 25 workers. The legislation designed to do just that has already been introduced in Congress. (S. 201 and H.R. 91) Generally speaking, Democrats support the legislation and Republicans are opposed. An identical House bill last year (H.R. 109) was blocked by Republicans. Republicans have indicated their interest in making technical corrections to existing FMLA definitions, tightening the meaning of "serious medical condition."

As proposed, the expanded FMLA would also allow employees to take up to 4 hours of leave in any 30-day period, as long as they don't exceed a total of 24 hours in any year, so they can attend their children's education and extracurricular activities.

Key employer and human resource organizations, including the Society for Human Resource Management and the U.S. Chamber of Commerce, have voiced their opposition to expanding the FMLA program.

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## **3. SUPREME COURT HEARS ADA/SOCIAL SECURITY DILEMMA**

The U.S. Supreme Court has agreed to rule on whether Americans with Disabilities Act (ADA) excludes those who apply for Social Security disability benefits. The argument revolves around the rebuttable presumption that Social Security disability status automatically means the individual is incapable of performing the job. (*Cleveland v. Policy Management Systems Corp.*, U.S. No. 97-1008)

Oral arguments were heard by the high Court on February 24, 1999. Carol Cleveland is asking the Court to reverse a U.S. Court of Appeals (5th Circuit) decision that she is unable to pursue a discrimination claim under the ADA because of her sworn statements to the Social Security Administration that she was disabled and unable to work.

The employee's job at Policy Management Systems involved her performing telephone background checks on job candidates for the company's clients. In early 1994, she had a stroke which left her with difficulty understanding oral communication, and trouble speaking. Her daughter completed an application for Social Security benefits and had Cleveland sign it. Three months later, Cleveland returned to work before she was fully recovered and at the same time informed Social Security officials she did not need benefits. Her employer fired her in July 1994 for what it called poor performance.

After her termination, Cleveland reapplied to Social Security for disability benefits retroactive to the date of her stroke. A week before notice came from the Social Security Administration, she filed an ADA suit against her employer saying she could have continued working if the company had provided her with reasonable accommodation.

The case is focused on the legal standards to be used in Social Security versus those applied in ADA. It is hoped that the eventual Court ruling will help narrow the differences and that employers will receive greater guidance in handling such situations in the future.

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## *Gentle Readers,*

We are officially introducing two fine new products in our line-up of HR Survival Tools. We have just published "How to Spot a Liar in a Job Interview," and have received the first inventory shipment of KnowledgePoint Software's new HRIS for small employers called, "People Manager." You will like them both.

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IN THIS REPORT (Report #81, 3/26/99)

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1. **FREE DIVERSITY TOOLKIT FROM FANNIE MAE**
  2. **ANOTHER DIVERSITY RESOURCE**
  3. **TWO NEW PRODUCTS TO MAKE LIFE EASIER**
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### 1. **FREE DIVERSITY TOOLKIT FROM FANNIE MAE**

One of the many FREE resources available on the Internet comes from Fannie Mae. If you are responsible for the diversity program in your organization, you will want to visit this site and review the resources it offers.

There are two publications you might find helpful: 1) "Diversity Works at Fannie Mae" is a toolkit that contains results of Fannie Mae's experiences with efforts to expand their diversity program. 2) "Diversity Workbook" is a major publication designed to help you and me develop, implement, evaluate, and/or refine our company's diversity efforts.

You can access both documents in PDF file format at:

<http://www.fanniemae.com/company/responsibility/diversity.html>

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### 2. **ANOTHER DIVERSITY RESOURCE**

If you are interested in the business side of diversity, you will want to be sure you put a note on your calendar to pick up three future issues of FORBES magazine. The three issues are: May 3, 1999; September 20, 1999; and, November 1, 1999. Each will contain one part in a 3-part series of articles on diversity management.

The first article will be: "Building a Competitive Workforce." The second: "Strengthening the Business Case." Finally, in November, the third article will be: "Leveraging Diversity in Multiethnic America."

If you would like a preview of these upcoming articles, visit the Diversity, Inc. web site at DiversityInc.com:

[http://www.DiversityInc.com/DiversityProspectus/inside the bottom line.html](http://www.DiversityInc.com/DiversityProspectus/inside%20the%20bottom%20line.html)

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### 3. TWO NEW PRODUCTS TO MAKE LIFE EASIER

We are offering two new products beginning this month. The first is our latest publication ... a book entitled, "How to Spot a Liar in a Job Interview," by Dr. Wayne D. Ford, the same author who brought you "How to Spot a Phony Resume."

With this newest job aid, any interviewer will be able to weed out dishonest applicants, reduce turnover, lower negligent hiring risks, avoid recruiting mistakes, and maintain organizational integrity. In its pages you will find many highly effective screening techniques including:

- o Same question series
- o Body language
- o Personal assessment
- o Technical questions
- o Resume cross checks
- o Application check
- o Reference checks
- o Background checks
- o Focused stress
- o Lie traps
- o Interview tools
- o Planning

Order your copy on-line today in our Web Store for Professionals at: <http://www.management-advantage.com> From the menu in the left column select "HR Books & Manuals." The cost is only \$14.95 plus \$4.00 S/H (and California sales tax for California destinations).

The second new product we are offering this month is a new software release from KnowledgePoint Software called People Manager. It is a program for small employers who don't have an HR Manager or whose HR Department totals one person.

People Manager gives you employee information at your fingertips with its list of nearly 50 built-in reports. You will be able to track personal information, job assignments, benefit selections, performance reviews, attendance and more. There are even numerous crucial forms, letters and checklists to help you process application forms, reference releases, job offers, invention and non-compete agreements.

It is available in our Web Store for Professionals in the "HR Software" category. You can order on-line. <http://www.management-advantage.com> Cost is only \$99.95 for a single station installation. From the folks who brought you PoliciesNow!, PerformanceNow!, and DescriptionsNow!

Each of these fine products will make your life a little easier because they will help you avoid mistakes and simplify your job. Why not take a look at them today.

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## *Gentle Readers,*

All HR Professionals involved in somehow in the management of diversity within their organizations will want to hear about the latest information resource available to them (Item #1). And federal contractors better get ready for another onslaught from the Department of Labor on the "give-us-your compensation-data" front (Item #2).

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IN THIS REPORT (Report #82, 4/9/99)

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1. **CHECK OUT "PROFILES IN DIVERSITY JOURNAL"**
2. **OFCCP PUSHING FORWARD ON REQUEST FOR COMPENSATION DATA AT START OF REVIEWS**
3. **AN INTERNET MEETING PLACE FOR PEOPLE WITH DISABILITIES**
4. **FROM THE WALL STREET JOURNAL ...**

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1. **CHECK OUT "PROFILES IN DIVERSITY JOURNAL"**

There is a new publication on the market which is just ideal for people involved in management of diversity issues in their organizations. The first issue is dated Spring 1999.

Within its covers, you will find articles written by diversity managers, diversity directors, diversity consultants, diversity officers and vice presidents of diversity. These folks share their experiences, outlooks, and opinions in a magazine format that depends solely on subscriptions for its financial success. There is not one piece of advertising in the entire publication!

Articles come from representatives of some of today's most respected organizations including:

- British TeleCommunications
- Xerox Business Services
- Avon Products
- Hallmark Cards
- AlliedSignal
- Nationwide Insurance
- Microsoft Corporation
- America West Airlines
- The Timken Company
- Boeing Commercial Airplane

Government is not left out. There is an article from Michael O'Hara who is Chief, Office of Diversity Programs for the National Security Agency.

If you want to get information straight from your colleagues, this is the best way we have seen to get what you wish. We recommend you "Check it Out."

You can subscribe for \$99.00 per year (a bargain considering some of the "stuff" that is on the market these days). Call 800-573-2867 or write to Profiles in Diversity Journal at [rofiles@diversityjournal.com](mailto:rofiles@diversityjournal.com) You can visit their web site at: <http://www.diversityjournal.com>

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**2. OFCCP PUSHING FORWARD ON REQUEST FOR COMPENSATION DATA AT START OF REVIEWS**

Last month we told you about the Office of Federal Contract Compliance Programs (OFCCP) retracting its request for Office of Management and Budget (OMB) approval on a proposal to change its scheduling letter to federal contractors. The retraction was requested because OFCCP was told by the OMB it would not receive approval on its request.

Contractors across the country were incensed at the enforcement agency's attempt to avoid normal regulatory approval processes and sneak through a "simple paper change."

That simple paper change will require all federal contractors to provide detailed compensation records to Compliance Officers during an initial response to the government's request for data. Historically, OFCCP has not made a request for compensation data until the Compliance Officer comes on-site to conduct interviews and look at sensitive and confidential employer information.

While contractors have objected to sending copies of the compensation data off-site because of its sensitive nature, the government simply replies that it has a right to that data at any time it chooses, and it has a right to that data in any location it wishes. OFCCP Director Shirley Wilcher has repeatedly proclaimed her right to take contractor data off-site at her discretion. Contractors are naturally sensitive about such loss of control over what may be, next to plans for key products, the most competition-sensitive data they have. Employers say they can lose market share and even entire business development programs if their competitors get hands on their compensation data. Ms. Wilcher says contractors should not worry. Compensation data will never be released under the Freedom of Information Act. Employers counter with inquiries about human error in handling their sensitive information. They ask if the government can guarantee their data will never be misplaced, or left out on a desktop for people other than the concerned Compliance Officer to see. Since Ms. Wilcher says she has no responsibility to return the data to its owner, what will happen to it when Ms. Wilcher's staff is done with it? Will it be thrown in the trash?

If you are a federal contractor and this issue concerns you, we suggest you talk with the Society for Human Resource Management (SHRM) or any other employer organization you may have membership in. Or, write to your Congressional representative and express your opinion.

**3. AN INTERNET MEETING PLACE FOR PEOPLE WITH DISABILITIES**

Only a month old, TrailToSuccess.com provides disabled Internet users access to information they might not otherwise be able to get quickly. There are newsletters for the disabled, chat rooms, financial news and weather information. The Internet is a tool for leveling the playing field for people with disabilities and this site is representative of that effort.

It bills itself as a "Can Do" forum for people with disabilities and their supporters. "We attempt to address all aspects of setting, attaining and maintaining a high quality of life."

When you visit you will find government resources, a bookstore, listings of business opportunities, success stories, a free newsletter, and yes, advertisers.

It is well presented and you may feel comfortable suggesting this site to your employees. You will find it at <http://www.TrailToSuccess.com>

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**4. FROM THE WALL STREET JOURNAL ...**

From the Wall Street Journal on Tuesday, April 6, 1999 comes the following:

"A survey of 1,007 Americans by Tupperware Corp., Orlando, Fla., found that 66% take their lunch to work; only 30% of those are in brown bags ...

"Fully 48% of 500 men polled for drug producer Merk & Co. think going bald has a negative effect on business and social relationships."

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## *Gentle Readers,*

The EEOC and OFCCP have officially announced finalization of their joint agreements. And, it's not too early to begin examining your employee data base to see if new Census 2000 data will fit into your current data fields. If you need to make adjustments, you will want to begin as soon as possible.

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IN THIS REPORT (Report #83, 4/16/99)

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1. **EEOC & OFCCP FINALIZE MOUs**
2. **Y2K PROBLEMS JUST THE BEGINNING - CENSUS DATA**
3. **H.R. 3751 WOULD MAKE TECHNICAL CORRECTIONS TO FMLA**

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### 1. **EEOC & OFCCP FINALIZE MOUs**

Compensation discrimination is the focus of two Memoranda of Understanding (MOU) approved on April 7, 1999 by both the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC).

You will recall that we told you about one of these MOUs around the end of last year. That is when the agencies published a proposal for revisions to their original January 23, 1981 MOU (46 FR 7435). The revisions were published with a shortened public comment period, spanning the December holiday season. The government reports that it received 27 responses to its proposals and "the great majority were very positive."

As approved, the first MOU is designed to strengthen enforcement of compensation discrimination cases by providing for cross-training of agency staff on equal pay laws, as well as facilitating the sharing of information on pay discrimination cases.

The second MOU allows the OFCCP to seek monetary damages in the voluntary resolution of discrimination complaints involving federal contractors.

Here is a summary of the new MOU content:

MOU #1: (Revisions to 1981 document)

- Updated charge processing procedures to increase coordination and efficiency and to minimize duplication in the agencies' overlapping EEO enforcement activities.
- Authority for OFCCP to act as EEOC's agent to process and resolve Title VII complaints dual filed with OFCCP.

- EEOC is limited by its own authority as to the authority it can delegate to OFCCP. OFCCP will only be allowed to have EEOC authority for situations involving actual charges of discrimination. It will not be permitted to assume EEOC authority for compliance reviews.
- OFCCP's efforts to obtain relief in Title VII claims "shall be consistent with EEOC's standards for remedies."
- OFCCP will be bound by Title VII requirements for confidentiality of information whenever EEOC provides information to the OFCCP. OFCCP may release information it receives from any source independent of the EEOC. OFCCP will continue to be subject to confidentiality requirements of the *Trade Secrets Act* and the *Privacy Act*.

MOU #2:

- EEOC and Department of Labor's (DOL) Enforcement Standards Administration (ESA) will develop and provide training to assist DOL's Wage and Hour Division (WHD) enforcement staff in recognizing potential compensation discrimination.
- If WHD discovers a potential issue of compensation discrimination, it will notify OFCCP. If the employer is not a federal contractor, OFCCP will send the information to EEOC.
- When OFCCP identifies potential issues of compensation discrimination, it may share that information with the EEOC.

If you wish more information about these new inter-agency agreements, you can find it on the Internet at either agency's home page.

Equal Employment Opportunity Commission (EEOC): <http://www.eeoc.gov/>

Office of Federal Contract Compliance Programs (OFCCP): [http://www.dol.gov/dol/esa/public/ofcp\\_org.htm](http://www.dol.gov/dol/esa/public/ofcp_org.htm)

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**2. Y2K PROBLEMS JUST THE BEGINNING - CENSUS DATA**

Discussions in Washington continue on the subject of how to tabulate and report on race/ethnic selections made during the 2000 Census. There will be changes needed in All the Standard Form 100s (EEO-1, EEO-4, etc.). One major change in procedure will involve asking employees to self-identify in race/ethnic new categories. In the past, EEO form instructions have indicated "eliciting information from the employee via direct inquiry is not encouraged."

Today, race/ethnic codes can be devised with only a single character. And, in fact, many employee data bases allow only one character to identify individual race/ethnic categories. With the coming of Census 2000 there will be up to 64 possible race/ethnic combinations. That will require race/ethnic codes to be revised in all employer data systems. A minimum of two characters will be required to track these new codes. Human Resource Information Systems (HRIS) will need to be modified to accommodate the expanded code.

If you wish to also have your HRIS contain a description of each possible race/ethnic code combination, you will need to provide a data field which is at least 47 characters long. "African-American/Other Pacific Islander" is the longest description for two categories. If someone elects those race categories and is also Hispanic, the combination of all three in a description field will require 47 characters.

HR professionals may want to start now to determine what changes will be required in their HRIS data bases. A big question is how long will it take to implement required software modifications, and what will that cost? If you start now, you can likely get the budget you need before you are required to input the data to fields which will not accommodate them.

Data Tabulation Methods currently being considered by the Office of Management and Budget (OMB), the Department of Labor (DOL) and others include:

- Using a Bridging Method

Assigns an individual who selected more than one race to the largest of the nonwhite groups he/she marked as a viable alternative for EEO purposes. The largest nonwhite group may be ascertained from the racial composition of the population for the relevant geography.

- The Lower and Upper Boundary Method

The lower count will represent those individuals who identify with one race only. The larger count, or upper boundary, adds to the lower boundary those individuals who identify with the given racial category and the one or more other racial categories.

- Collect Micro Data from Employers Method

Employers would be required to provide a microfile containing one record for each employee. The micro record would include the employee's race or races, ethnicity, gender, and occupational category.

Stay tuned. It isn't over yet. As the weeks and months pass between now and implementation of Census 2000, employers will find themselves faced with additional possibilities for data summarization.

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### **3. H.R. 3751 WOULD MAKE TECHNICAL CORRECTIONS TO FMLA**

One major problem plaguing employers trying to manage FMLA benefits has been the overly broad definition of "serious health condition." Another problem has been tracking requirements for employees on intermittent leave...sometimes in amounts as small as six minutes.

Many in Washington and around the country believe Congress never intended for FMLA provisions to be interpreted so loosely. As a matter of fact, Congress specifically stated that FMLA leave should not be "for conditions of short duration" since those would usually be covered

by employer's sick leave policies. The Department of Labor has issued final regulations and opinion letters which have called for such liberal interpretations of the Act.

H.R. 3751 would correct these technical differences and return FMLA to a long-term solution for employee protection. If you wish to be part of this debate, contact your own Congressional representative and offer your opinion. It is often helpful to share your experiences with implementation of current regulations from your view point as an HR professional.

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## *Gentle Readers,*

New federal legislation to be introduced soon will offer employment discrimination protection to parents. After that, you may need a first aid kit. We now offer them in our Web Store for Professionals. Then learn how some companies have developed programs that target recruiting efforts for engineering talent at people in the disabled community.

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IN THIS REPORT (Report #84, 4/23/99)

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1. **PRESIDENT PUSHES NEW PARENTAL PROTECTIONS**
  2. **FIRST AID KIT NOW IN GIFT SECTION**
  3. **LOOKING FOR HIGH TECH ENGINEERS?**
  4. **TWO ADA CASES IN SUPREME COURT NEXT WEEK**
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### 1. **PRESIDENT PUSHES NEW PARENTAL PROTECTIONS**

First mentioned publicly in his 1999 State of the Union address to Congress, President Clinton has made it clear that he is going to push forward on his promise to give parents legal protections against employment discrimination.

The Administration has said it will support a legislation proposal giving parents the same protections as existing employment non-discrimination categories such as race, sex, color, and religion. You can look for the proposal to be introduced in the Senate by Sen. Christopher Dodd of Connecticut before the end of April.

Generally, business groups are opposed to the idea. They argue that it could substantially increase the number of employment-related law suits employers must endure without doing anything significant for the larger work force. They claim there is no evidence to support Administration claims of discrimination against workers based on parental status.

You can expect that the White House will be making the most of anecdotal evidence during the coming debate. Stories of real people play well in both Congress and the press.

This will be sister legislation to the Administration's efforts at revising the *Family and Medical Leave Act* to broaden the number of employers (and thus the number of employees) covered by its leave requirements.

The President's staff has made clear its intentions to push "parental anti discrimination" as a major issue during the 2000 election year. Their approach will be to insist that anyone who is "truly pro-family" will want this proposal enacted into law.

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## **2. FIRST AID KIT NOW IN GIFT SECTION**

Have you ever needed a first aid kit and been unable to locate one? Not a nice experience.

Avoid that problem in the future with our compact 6" X 8" boxed kit that fits either in your glove compartment or behind the door on your office wall. In it are 51 pieces of first aid materials including bandages, a sterile sponge dressing, antiseptic towelettes, sting relief pad, latex gloves, stainless steel scissors, a first aid instruction book and more.

At the low price of only \$12.49 each, you can afford to order several. Give one to someone you love.

You will find this new product offering in our Web Store for Professionals at <http://www.management-advantage.com/> Go to the "Gifts for Professionals" section. You'll be glad you did.

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## **3. LOOKING FOR HIGH TECH ENGINEERS?**

A consistent complaint among high technology companies these days is the difficulty they have finding engineering talent. Although computer and electronic engineers are arguably the rarest of commodities, all engineering disciplines are experiencing high demand.

One source being tapped by some sophisticated companies exists among the population of disabled people. Some of these organizations have found that the talent they need is equally available within the pool of qualified disabled people.

The Spring 1999 issue of "Careers & the DISABLED" magazine highlights the programs for such efforts being made by several top firms, including:

- Bechtel Corporation
- DuPont
- Eastman Kodak
- Microsoft Corporation

To learn more about how these companies are satisfying their needs by recruiting talented disabled individuals get a copy of the magazine. You can do that by contacting the Circulation Department of Equal Opportunity Publications, Inc., 1160 East Jericho Turnpike, Suite 200, Huntington, NY 11743. You can reach them by phone at 516-421-9421.

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#### 4. TWO ADA CASES IN SUPREME COURT NEXT WEEK

Next week, the U.S. Supreme Court is scheduled to hear two cases that will impact private sector employers subject to the *Americans with Disabilities Act (ADA)*. The issues involve disabilities that are correctable. In *Sutton v. United Airlines*, twin sisters sued UAL Corp.'s United Airlines organization after they were rejected for pilot jobs. Their uncorrected vision of 20/100 failed to meet the airline's standard. Each of the women has 20/20 vision when they wear eyeglasses. A lower court ruled that the two were not disabled because their poor vision is correctable with eyeglasses.

The second case, *Murphy v. United Parcel Service*, involves a mechanic with high blood pressure that is corrected with medication.

The issues in both cases question who should be considered disabled under the ADA. Are correctable problems really disabilities? The answer may help employers better understand how to work with employees in such instances.

Watch for the results. They will be important to your future accommodation efforts.

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## *Gentle Readers,*

There are so many things happening in the world of employment it is hard to select a few items to share with you. We've done our best, hoping you will find some value in the information we pass along.

We receive comments from readers from time to time, and want you to know that your comments are always welcome. If you find our publications helpful, please let us know. If you would like to hear more about a given subject, we would like to know that as well. When you have a chance, send us an email message, and let us know how we are doing in your view. We will appreciate both your time and your thoughts.

Bill Truesdell, Editor  
The Management Advantage, Inc.

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IN THIS REPORT (Report #85, 4/30/99)  
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1. **NINTH CIRCUIT RULES ADA TITLE II DOES NOT APPLY TO PUBLIC SECTOR EMPLOYEES**
2. **MINORITY EXECUTIVES FEEL UNDERUTILIZED & LEAVE**
3. **DON'T MAKE CHARITY CONTRIBUTIONS MANDATORY**
4. **GOVERNMENT ACTION UPDATE**

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1. **NINTH CIRCUIT RULES ADA TITLE II DOES NOT APPLY TO PUBLIC SECTOR EMPLOYEES**

In an Oregon case, the 9th Circuit has ruled that Title II of the Americans with Disabilities Act (ADA) does not apply to public employment. The ruling came on March 18, 1999 in a case involving the Oregon Department of Justice. That state organization hired Scott Zimmerman on a trial basis in the job of child support agent. Mr. Zimmerman suffers from an eye condition that has left him visually impaired. After he was hired, Mr. Zimmerman requested an accommodation from the Department. It declined his request and ultimately ended Mr. Zimmerman's employment.

Although other courts have interpreted the ADA to mean it prohibits all forms of discrimination, including employment discrimination, the Ninth Circuit disagreed. It said that discrimination is prohibited by public agencies only for service, programs or activities of the agencies. That does not extend to employment in the court's view.

The ruling also points out that Title I of the ADA is regulated by the EEOC. This is "the agency that administers most federal employment-related statutes." In contrast, Title II, said the court, is administered by the attorney general.

## **2. MINORITY EXECUTIVES FEEL UNDERUTILIZED & LEAVE**

According to results of a Korn/Ferry survey, published in the Wall Street Journal, more than 50% of minority executives surveyed say they are likely to leave their jobs for more challenging positions.

Other interesting discoveries from this survey:

- Minority executives look for a racially diverse cadre of senior executives when evaluating their own chances for success.
- Many talented African-Americans have decided that rather than changing the company, changing their situation is a better way to go long term.

In another survey, by the Center for Women Policy Studies in Washington, DC, 42% of minority women believe they have less chance for promotion than other employees.

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## **3. DON'T MAKE CHARITY CONTRIBUTIONS MANDATORY**

If your organization supports an annual fund raising drive for the United Way (or some other charity), be aware that a heavy handed approach can cause problems. Many companies and other organizations actively support charities such as the United Way through direct contribution, loaned executives, and employee fund raising drives. Far from heavy handed, these organizations encourage voluntary contributions from employees.

According to one former employee of Colonial Bank in Miami, Florida, he was terminated from his job after seven years because he refused to comply with his employer's demand. He was told he must contribute about two percent of his paycheck to the United Way, or be terminated. He is now suing his former employer and is seeking class action certification for his case.

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## **4. GOVERNMENT ACTION UPDATE**

### Immigration & Naturalization Service

I-9 forms may now be supported by a different document selection than in the past. Four documents have been removed from the I-9 List A. List A has been expanded to include "Unexpired Foreign Passport with Form I-94 containing an endorsement of the alien's nonimmigrant status" if the alien is authorized by the INS to work only for a specific employer. Documents in List B and List C were not changed.

For more information and a complete itemization of all documents now acceptable to the INS, visit their web site at:  
<http://www.ins.usdoj.gov/employer/irullist.html>

Equal Employment Opportunity Commission (EEOC)

On April 22, 1999, the EEOC announced the opening of a public comment period on a proposed rule regarding enforcement of the Age Discrimination in Employment Act's (ADEA) provisions on the use of waivers in layoffs and reductions in force. This is in response to the U.S. Supreme Court's 1998 decision in *Oubre v. Entergy Operations, Inc.*

In *Oubre*, the Supreme Court addressed a common practice where employers require employees to waive any legal claims they may have against the company in return for receiving enhanced severance benefits in layoffs. The Court's ruling settled disputes in lower court rulings. The Supreme Court said workers are not required to return or "tender back" severance or other employer benefits given in exchange for a waiver agreement before they can bring a claim under the ADEA. The new EEOC proposed rule provides guidance to employers on the meaning and implications of the *Oubre* decision.

Details can be found at the EEOC's web site:  
<http://www.eeoc.gov/press/4-22-99.html> and  
<http://www.eeoc.gov/regs/tender.html>

Separately, the EEOC held its monthly meeting on April 13 in Philadelphia. It is rare that the EEOC meets outside the nations capital. During that session the Commission heard testimony from individuals on the subject of discrimination in pay. Participants included civil rights advocates, the legal community, economists, policy analysts, and victims of discrimination in payment of wages. The Commission's press release about its Philadelphia session can be found at <http://www.eeoc.gov/press/4-15-99.html>

U.S. Department of Labor (DOL)

The U.S. Department of Labor has developed extensive information about drug testing to help employers who wish to develop and implement drug testing programs. Included are a drug and alcohol workplace kit; substance abuse information database; DOL publications; lists of national and state resources; articles on substance abuse; and, the Department of Transportation's drug-free workplace regulations. You'll find it all at:  
<http://www.dol.gov/dol/asp/public/programs/drugs/workingpartners/main.htm>

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## *Gentle Readers,*

Is your workforce feeling "burned out?" The New York Times has some interesting information about new programs employers are using to deal with that problem. You may find that helpful after you read about the latest Department of Labor actions with federal contractors.

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IN THIS REPORT (Report #86, 5/7/99)  
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1. **YOU MIGHT WANT TO AUDIT YOUR JOB APPLICATION FORM**
2. **SCORE: GOVERNMENT 2, FEDERAL CONTRACTORS 0**
3. **NEW YORK TIMES REPORTS ON NEW APPROACHES TO JOB BURNOUT**
4. **ON MAY 19TH WILL YOUR WORKFORCE BE WITH YOU ... OR WITH ANOTHER FORCE?**

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**1. YOU MIGHT WANT TO AUDIT YOUR JOB APPLICATION FORM**

On March 4, 1999, the Equal Employment Opportunity Commission (EEOC) filed suit against Wal-Mart Corp. alleging the company's pre-employment questionnaire violates the Americans with Disabilities Act (ADA). (EEOC v. Wal-Mart Corp., E.D. Calif., No. Civ. S-99-0414)

As reported in the Bureau of National Affairs (BNA) EEOC Compliance Manual (3/31/99), the suit alleges the employer has used a test, "Matrix of Essential Job Functions," that "seeks disclosure of the applicant's disabilities prior to a conditional offer of employment" in violation of the ADA.

The suit seeks a permanent injunction against Wal-Mart for disability-based employment discrimination. The agency also seeks back pay and other relief, including rightful-place hiring, reinstatement, and front pay where appropriate, relocation, job search, and medical expenses, and punitive damages related to the "Matrix" testing program.

The same complaint also alleges that a Wal-Mart store discriminated against a partially deaf employee by denying him accommodations. At the Red Bluff, Calif. distribution center, the plaintiff had difficulty hearing the checkout scanning device "beep" when a package was successfully scanned, the EEOC said.

Although he sought an accommodation and said he would accept a transfer to a vacant position elsewhere in the facility, he was later fired for failing to meet performance standards, the EEOC said.

This case brings to mind the importance of periodically auditing your pre-employment job application forms and other documents. Be sure you

are not inquiring in any way about an individual's disability prior to offering them a job contingent upon medical examination if you require one. Certainly, if an employee or job applicant requests an accommodation, take the request seriously and examine your capacity to grant the request or offer a reasonable alternative.

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**2. SCORE: GOVERNMENT 2, FEDERAL CONTRACTORS 0**

In two major developments affecting federal contractors the government has gained ground.

The first comes in the form of a ruling from the 4th U.S. Circuit Court of Appeals. (Trinity Industries Inc. v. Herman, 4th Cir., No. 98-2129, 4/12/99) Trinity Industries Inc. has been told it must comply with affirmative action reporting requirements for its Asheville, NC facility even though that plant does not perform any government work.

When the Office of Federal Contract Compliance Programs (OFCCP) in Charlotte, NC notified Trinity in 1996 that the agency would conduct a compliance review of the company's Asheville facility, the company said the government lacked jurisdiction over that facility. There were no activities performed at the plant in Asheville related to any of Trinity's government contracts the company asserted. The OFCCP District office told Trinity it did not have authority to grant waivers for review requirements. The District office told Trinity that the company must submit its request for waiver to the Deputy Assistant Secretary of Labor and provided the appropriate name and address.

The company took no further action to obtain the waiver. After the company still refused to provide affirmative action data for its Asheville plant, the OFCCP filed an administrative complaint in May 1997. The Administrative Law Judge ruled in the government's favor and Trinity contested the Department of Labor's (DOL) Administrative Review Board affirmation in U.S. District Court.

Writing for the appellate court, Judge Diana Gribbon Motz said, "it is irrelevant that the regulations automatically exempt an agency, instrumentality or subdivision of a state or local government if it does not work on government contracts." She pointed out that the Eighth Circuit had already rejected a similar argument from Trinity in a similar case. (Trinity Industries Inc. v. Reich, 33 F.3d 942, 8th Cir. 1994) Federal regulations in effect at the time of Trinity's request for waiver provided that only the OFCCP Director or the Deputy Assistant Secretary of Labor could grant such requests. Since then the regulations have been changed to give the Deputy Assistant Secretary (National Director of the OFCCP) sole authority.

The second development involves the OFCCP's desire for contractors to provide all employee compensation data at the onset of any compliance evaluation.

On March 25th, Solicitor of Labor Henry Solano announced to a meeting of labor lawyers that the agency will move forward with its plans to change its scheduling letter to include the new compensation data

requirement. As DOL's top lawyer, he said he believes that OFCCP is exempt from review of this change by the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995, OMB is designated as the approval authority for any federal agency's request for forms, reports, or data.

Solano reasoned that since the OFCCP already has authority to obtain compensation data, the change only involves "when" that data is required. Therefore, the OMB has no jurisdiction over the question. He plans to present his argument to OMB officials in the near future.

Contractors have generally opposed the OFCCP change request, both for the unconventional way it was first presented last year and for the burden it would create for contractors who have not been shown to have compensation discrimination problems before the data is required.

In this instance, it appears the government will again ignore contractor input. No surprise really. In a "town hall" meeting last year, agency director Shirley Wilcher said she considered her constituents to be advocacy groups, employees and her own workforce. She carefully omitted federal contract employers from that list. This latest agency action has simply strengthened the belief among many of the country's key employers that the era of cooperation between government and themselves ended long ago.

One potentially positive piece of news comes from Solano's announcement. He said in response to contractors' concern over OFCCP release of sensitive compensation data that "we have to be vigilant in protecting its non-disclosure. That's our commitment." While it may be Mr. Solano's commitment, we wonder how much weight he carries with OFCCP leadership, or even individual OFCCP employees around the country. Every so often, the Internal Revenue Service (IRS) admits that it has had to discipline some of its employees for unauthorized access to individual taxpayer records. What makes the OFCCP think its workforce is any less human in its nature than that of the IRS? The impact of compensation data release for an entire employer organization could be staggering. While OFCCP is very cavalier in its down playing any potential problem, we wonder how federal contractors will get the genie back in the bottle after their individual employee compensation data has been released to the general public or competitors, whether an intentional act or not.

Score: Government 2, Federal Contractors 0

If you have facilities that are not involved in government contracts, this would be an excellent time to request a waiver from the Deputy Assistant Secretary of Labor (Ms. Wilcher).

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### **3. NEW YORK TIMES REPORTS ON NEW APPROACHES TO JOB BURNOUT**

In an article dated May 4, 1999, the New York Times addressed the issue of job stress, 70 to 80 hour workweeks, and the impact they have on both morale and productivity. New programs at Hewlett-Packard and

SAS Institute Inc. are cited as examples of ways to help workers balance work and personal lives. It is well worth the time you take to read it.

Thanks to Dr. William A. Buchanan for the alert about this Times article.

You will find it on the web at the following address:

<http://www.nytimes.com/yr/mo/day/news/financial/employee-hours.html>

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**4. ON MAY 19TH WILL YOUR WORKFORCE BE WITH YOU ... OR WITH ANOTHER FORCE?**

Every once in a while an event occurs that captures the interest of so many people that workplaces are disrupted. On May 19th you may see another such event.

Of course we're thinking about the debut of "The Phantom Menace," the new Star Wars film. There has been so much marketing hype that many employees have already asked to have the day off so they can go view the picture. In some organizations it has reached the point that company managers have declared the day a special holiday and plan to close operations.

If you have yet to consider what the reaction of your workforce will be eleven days from now, this might be a good time to check with employees about their plans. Knowing what to expect from your workers will at least give you an opportunity to adjust accordingly.

May the (work)force be with you.

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## *Gentle Readers,*

The Internet continues to grow as a source of both information and resources for employers and HR professionals. This issue, we point you toward web sites offered by the Immigration Service and the Department of Labor. Oh, and California employers need to remember about their obligation to send a notice to all employees who are victims of crime in the workplace.

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IN THIS REPORT (Report #87, 5/14/99)  
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1. **IMMIGRATION FORMS ON WEB**
2. **ELAWS ADVISORS MAY BE OF HELP**
3. **EMPLOYEE NOTIFICATION REQUIREMENT - CALIFORNIA**
4. **NEW REPORT FOR RECRUITING PEOPLE WITH DISABILITIES**

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1. **IMMIGRATION FORMS ON WEB**

Virtually any immigration form you might need is available for download from the U.S. Immigration & Naturalization Service (INS) web site. You will be able to access everything from I-9 Employment Eligibility Verification to I-68 Canadian Border Boat Landing Permit and dozens more.

To use the files the INS makes available you will need a copy of Acrobat Reader from Adobe. Adobe makes this program available free of charge. Simply go to their web site at <http://www.adobe.com/prodindex/acrobat/readstep.html> and download the file. Then you will be able to read any \*.PDF file you might collect along the way in your web travels.

Once you have the Acrobat Reader, you can obtain any of the INS forms from <http://www.ins.usdoj.gov/forms/download/formdown.html>

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2. **ELAWS ADVISORS MAY BE OF HELP**

One resource some folks may be overlooking is offered by the U.S. Department of Labor (DOL) directly from its web site. We suspect that some people might bypass this nice free advice because it is designated as a "small business resource." If you can get past that categorization you may find some worthwhile information, even if you are part of a major corporation.

Resource information is available for such topics as Child Labor; Occupational Safety & Health; Mine Safety & Health; Longshore & Harbor Workers; Minimum Wage & Overtime Pay; Employment Eligibility of

Workers; Whistleblower Protection; Family & Medical Leave; Military Leave; Unions; Lie Detector Tests, and more than a dozen others.

If you are interested look at <http://www.dol.gov/elaws/>

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**3. EMPLOYEE NOTIFICATION REQUIREMENT - CALIFORNIA**

California employers should be reminded that state law requires that they notify employees who are victims of a crime in the workplace that they are eligible for workers' compensation insurance benefits.

Effective January 1, 1998, the state changed its Labor Code Section 3553, requiring employers to notify employees who are crime victims at work that they are eligible for workers' compensation protection for injuries, including psychiatric injuries, that may have resulted from workplace crime. The notice must be provided either personally or by first class mail within one working day of the date the employer should reasonably have known of the crime. The Labor Code does not require employers to change any part of the process they may have in place for processing workers' compensation claims.

If you have not yet prepared such a notice so it is available should you ever need it, you can use the following, or contact your workers' compensation insurance carrier for a copy of the notice they recommend.

Employee Notification Concerning Crime in the Workplace

Effective 1/1/98 under Labor Code Section 3553, your employer has the responsibility to give 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."

Receipt of this note serves as formal notification.

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**4. NEW REPORT FOR RECRUITING PEOPLE WITH DISABILITIES**

For those of you who have affirmative action obligations to recruit people with disabilities, the Internet has some good resources available for your use.

We have just posted a new FREE report on our web site that addresses this topic. You are welcome to visit us and help yourself to the report with its web references.

You will find this report along with our other FREE reports in the "HR Books and Manuals" section of our Web Store for Professionals. From the welcome page, select that product category from the main menu on the left column of your screen.

We are also proud to announce that our web site has been included among the top sites in the country for HR professionals. The rating was made by The Discian Group. You can see their report by visiting their site at: <http://www.compass.discian.com>

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## *Gentle Readers,*

There is danger for employers in the Paycheck Fairness Act. It is not an equal pay law as announced by those who support it. It requires equal pay for comparable jobs. The famous comparison that comes to mind is that from San Jose, California where attempts were made to compare and equalize pay for librarians and fire fighters. You will want to begin learning about this proposal. It is now being given serious attention in Congress.

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IN THIS REPORT (Report #88, 5/21/99)  
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1. **LAW FIRM OFFERS WEB NEWSLETTERS**
2. **MICROSOFT LOSES RULING OVER TEMPORARY WORKERS**
3. **PRESIDENT CALLS FOR PASSAGE OF "PAYCHECK FAIRNESS ACT"**
4. **WEB RESOURCE FOR WOMEN**

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1. **LAW FIRM OFFERS WEB NEWSLETTERS**

As you already know, it is our opinion that the greatest value of the Internet is to be had by tapping into the vast wealth of information available. For HR Professionals that often means looking for reliable sources of legal updates.

One such source you might wish to investigate for yourself is that offered by the law firm of Wilson Sonsini Goodrich and Rosati. Actually, the firm offers a couple of newsletters, or updates, that you may find helpful.

- New Employee Benefits & Compensation Newsletter  
[http://www.wsgr.com/resource/employ\\_b/eb\\_news.htm](http://www.wsgr.com/resource/employ_b/eb_news.htm)
- New Employment Law Update  
[http://www.wsgr.com/resource/employ\\_l/update/apr99.htm](http://www.wsgr.com/resource/employ_l/update/apr99.htm)

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2. **MICROSOFT LOSES RULING OVER TEMPORARY WORKERS**

By now, you have likely heard the news about the federal appeals court ruling against Microsoft Corporation's ongoing denial of benefits to temporary workers.

A three-judge panel of the Ninth Circuit Court of Appeals delivered its decision on May 12th in San Francisco. Microsoft has contended that it is not obligated to offer benefits, including its company stock-purchase plan, to temporary and contract workers. The company was

originally told by a lower court that it must make such benefits available to temporary workers.

The potential pool of affected individuals has been expanded to include temporary workers and free lancers who worked for the company any time after 1986, not just from 1987 to 1990. To be eligible, individuals must have worked at least 20 hours or more a week for at least five months in a given year.

Potentially, this case could cause changes in the way many (or all) employers treat temporary workers on the benefits issue. While temporary workers are generally viewed as an effective solution to bursts of work load due to product cycles or other events, this ruling points out a potential downside risk for employers.

U.S. West, Inc. and Capital Cities/ABC Inc. (now part of the Walt Disney Co.) are reported to have won similar cases involving employee eligibility for 401(k) retirement programs.

Microsoft says it will appeal the ruling to the full Ninth Circuit.

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### **3. PRESIDENT CALLS FOR PASSAGE OF "PAYCHECK FAIRNESS ACT"**

The White House has thrown its total support behind the Paycheck Fairness Act (S. 74 and H.R. 541). In his State of the Union address, the President said he thought passage of the law was critical to the issue of equal pay for women in this country. Since then, Vice President Al Gore has, on many occasions, added his personal support to the passage effort.

On National Equal Pay Day, First Lady Hillary Rodham Clinton threw her support to the bill, urging Congress to pass the law. Secretary of Labor, Alexis Herman told a Roundtable on Equal Pay last April 8th that she had yet to go into a grocery store to pay a dollar for a loaf of bread and have the store clerk say, "Oh, you're a woman. You only have to pay 75 cents," referring to the statistic that claims women only make 75% of what men make for the same work.

While the administration and most, if not all, Democrats in Congress support this legislation, employers are beginning to realize what it might do to their operations if passed.

Far from being an "equal pay" act, it calls for comparable jobs to receive the same pay. So, it has been tagged a "comparable worth" bill by some people. It would apply to all employers in both the private and public sectors, allowing pay discrimination to be punished by unlimited compensatory and punitive damages. But discrimination would not be limited to equal pay violations. Uneven pay for men and women who were doing quite different but "comparable" work would also be punishable by unlimited compensatory and punitive damages.

Some experts dispute the claim that women only make 75 cents for every dollar earned by men. A report entitled "Women's Figures," authored by Diana Furchtgott-Roth of the American Enterprise Institute and Christine Stolba of Emory University, contends that claim is false.

They argue that women have achieved real equality in the business world and in the workplace. Ultimately, they say, it is lifestyle choices that primarily drive earnings, not discrimination.

Their report reflects their findings:

- Among people ages 27 to 33 who have never had a child, women's earnings approach 98 percent of men's earnings.
- Earnings comparisons of men and women with similar experience and life situations show "earnings differentials that are typically quite small."
- In a 1998 Business Week survey of top 25 business schools "men and women in the class of 1998 received the same median starting salaries in consulting, finance and marketing."

The report indicates that women entering what were previously all-male or male-dominated fields of work "have led to remarkable gains for women in the work force."

Employers need to be aware of the provisions of this proposed law and the impact it can have on their operations. HR professionals should help their senior management team by providing a briefing on the bill's content and the enormous impact it can have on both public and private sector employers. Once you have gotten the facts, decide if it is appropriate for your organization to take a position on this legislation.

In coming weeks we will have more information for you about comparable worth, some of the programs that have been implemented in the public sector around the world and the ultimate potential impact on private sector employers as a result of this legislation ... government control over private sector compensation programs for comparable jobs. This legislation is opposed by the Society for Human Resource Management (SHRM), among others.

To read more about "Women's Figures: The Economic Progress of Women in America" go to <http://www.iwf.org/womens-figures.html>

To read the House or Senate Bills, go to <http://thomas.loc.gov/home/thomas.html>

SHRM offers its members a "Legislative Fact Sheet on Wage Discrimination Legislation" at <http://www.shrm.org/government>  
Look under Legislative Fact Sheets.

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#### **4. WEB RESOURCE FOR WOMEN**

Women have a supportive resource available to them on the Internet. It is a collection of services under the umbrella title of "iVillage." There is more than health and beauty information here, although that shows up as well. You will find a free newsletter, work from home information, career help and relationship management information among many other topics.

They do request that you become a member, but there is no cost.

Take a look and see if there might be something of interest to you in the chat areas, bulletin boards, expert help or fun specialty sections. <http://www.ivillage.com> iVillage.com: The Women's Network (Men can join, too.)

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## *Gentle Readers,*

This week we want to tell you about some really neat resources for HR professionals. Since none of us can do everything ourselves, and we need to keep up with the constantly changing nature of our profession, we offer these new products as a way to make your job a bit easier. Hope you find them helpful.

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IN THIS REPORT (Report #89, 5/28/99)

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1. **PROFILES IN DIVERSITY JOURNAL BETTER RESOURCE**
  2. **EMPLOYMENT SCREENING SERVICES**
  3. **NEW AFFIRMATIVE ACTION SOFTWARE RELEASE**
  4. **BOOK FOR INTERNAL TECHNICAL RECRUITERS**
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### 1. **PROFILES IN DIVERSITY JOURNAL BETTER RESOURCE**

If you have any interest in managing diversity within your organization you will find a valuable resource in Jim Rector's "Profiles in Diversity Journal." He has taken on a giant project as both editor and publisher of this national magazine. And, he has been making improvements in the periodical even though its second issue only arrived in mail boxes recently.

The new issue is easy to read, pleasing in its presentation and packed with insights of programs from both public and private sector organizations. Articles are written by the people who manage actual diversity programs, so advice they give comes from experience. If you wish to avoid some of the difficulties others have faced, you must first learn about what those problems can be. You will find it all described inside the 28 pages of this remarkable magazine.

You won't, however, find advertisements of any kind. There is only content you can use. And the authors come from some very impressive organizations themselves, like The Oneida Indian Nation, Los Alamos National Laboratory, Goodyear, Boeing, The Prudential Insurance Company, and many more.

As you can tell, we are impressed. You will be, too. If you aren't a subscriber, you should be. Why not call Jim Rector directly. He'd love to hear from you, and will be happy to take your subscription himself. (Now that's personal service.)

You can reach Jim at [profiles@diversityjournal.com](mailto:profiles@diversityjournal.com) or by calling 800-573-2867. You will enjoy your conversation and opportunity to learn from him.

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## 2. **EMPLOYMENT SCREENING SERVICES**

There is so much exaggeration in resumes and applications these days that employers are being pressed to expand their screening efforts to avoid the very real dangers of hiring the wrong people. Not only is it possible to have a mismatch between job requirements and individual skills, but increasingly employers are facing negligent hiring legal troubles because of insufficient background checks on job candidates.

We have found a service that we think you ought to know about. Since employee theft causes 3 out of every 10 business failures and embezzlement accounts for property loss averaging over \$125,000 per incident, it is cost effective to spend a few dollars initially to be sure the person you want to hire has given you all the information you need about their background. Workplace violence costs employers an estimated \$4.2 billion each year in the U.S.

Few employers have the expertise, or the time, to conduct thorough background investigations on those individuals they wish to hire. Yet they need to have the information those investigations can offer. How can you find out personal history that could reveal information that would cause you to reject a job applicant?

ADREM Profiles, Inc. specializes in providing employers with this type of information. They can often save you the financial liability and personal heartache involved in problems of workplace violence, drunk driving, or sexual harassment by providing you with detailed information about your job candidates.

You wouldn't drive your car without insurance. Why hire employees without taking proper steps to assure yourself that what they tell you is the honest truth? To find out more about ADREM Profiles, Inc. and the services they offer, visit our web site at <http://www.management-advantage.com//products/adrem.htm> You may be very grateful later that you decided to learn more.

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## 3. **NEW AFFIRMATIVE ACTION SOFTWARE RELEASE**

For many years, we have recommended PRI Associates, Inc. software as the best value on the market if you want to prepare your own affirmative action plans. Now, that value has gotten even better.

PRI Associates, Inc. has just released **AAPlanner5** the new 32-bit version of its famous statistical report preparation package. This new release combines the two software programs known as "Work Force / Job Group Analyst" and "AAPlanner." Because the programs are now combined, there is no need to export data from one program to the other. You save time and reduce hassle.

In the new release you will find everything displayed in one easy-to-use file tab format. You can jump from one area of your AAP statistics to another with the click of a tab on the display. If you need help with the process, a "What's Next" screen gives you guidance as you progress through your plan. There is even built-in error checking.

A full demo of the new program is available on CD-ROM at no cost. It contains sample data that allows you to actually use every feature of the program so you can see for yourself how powerful and easy the PRI folks have made your AAP preparation. If you are considering purchase of AAP software, call our toll-free order line at 1-888-671-0404 and ask for your copy of the CD.

If you would like to order the software, it is available in our "Web Store for Professionals(TM)" at <http://www.management-advantage.com> Look in the "HR Software" section.

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#### **4. BOOK FOR INTERNAL TECHNICAL RECRUITERS**

The ultimate book for internal technical recruiters is hot off the press. Written by Charlie K. Dawson, CPC, the same author who prepared "The Complete Guide to Technical Recruiting" for external recruiters, this is one book you will want in your library.

Charlie tells you exactly how to develop an internal process, build relationships with your hiring managers, help other departments understand your duties and the recruiting process. Just as importantly, he tells you how to use important resources of the Internet and even your competitors to find the talent your internal clients are demanding.

Technical recruiting is one of the most difficult of all human resource functions today because the talent supply is so limited. Even so, your internal clients expect you to get what they need. Charlie can help you do it.

"Internal Recruiter's Guide to Successful Technical Recruiting" is available now. And, we have held the price at the original level in spite of rising costs. We are making this new book available at only \$49.95, plus \$7.00 S/H (and 8.25% sales tax for California destinations). It comes in a 3-ring binder so you can copy the forms and checklists you will want. To place your order all you need to do is visit our "Web Store for Professionals(TM)" at <http://www.management-advantage.com> Look in the "HR Books & Manuals" section.

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## *Gentle Readers,*

If you are interested in the types of added expense and administrative reporting you will have to do as a result of potential Congressional action, you will want to read our latest special report on legislative activities. We invite your visit.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #90, 6/4/99)  
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1. **HOW MUCH IS A TOUCH WORTH?**
2. **HIRING MANAGERS SHOULD BE CAUTIONED**
3. **Cal/OSHA ISSUES CITATIONS FOR ERGONOMICS VIOLATIONS**
4. **LEGISLATION UPDATE NOW AVAILABLE**

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1. **HOW MUCH IS A TOUCH WORTH?**

Go for a massage at your local gym and you'll have to spend a few bucks, but the result can be wonderful.

Go for a quick grope in the workplace and you'll have to spend a lot of bucks, and the result can be awful.

For years managers have been amazed by the awards given by juries to employees who describe their experiences with sexual harassment on the job. Since every case involves different circumstances and different behavior, there has always been a wonder at how courts and juries are able to place a value on the errant behavior when compensating victims. Is fondling worth more than bumping or verbal harassment? Is a case of multiple incidents worth more than single incident situations?

What difference is there between groping by an executive and the same experience with a first level manager or supervisor? Well, it turns out that the difference is about \$100,000.

You may recall last year's case involving Astra USA Inc. The company paid almost \$10 million in settlement of Equal Employment Opportunity Commission (EEOC) charges that its senior executives had harassed dozens of sales representatives at allegedly drunken parties the company called sales meetings.

To divide the "pot" among all the affected employees (and former employees), a special master was appointed as mediator to determine how much each individual would receive from the settlement money. She had to develop a way to make those decisions, and finally categorized 120

claimants into 11 different groups. Awards for each group's members varied from \$12,000 to \$300,000.

In the end the special master had created a chart of values for sexually harassing behavior. She stressed to the Wall Street Journal that it should not be interpreted as the value of behavior in every workplace. She said it should be thought of as a scale of value within one group of people in one complaint situation. Nonetheless, it is interesting to note that women claiming they were continually touched by lower-level supervisors were awarded \$150,000, while those claiming they were continually touched by senior executives received \$250,000.

It's probably better all around to stick with the massage at your gym.

("A Case Puts a Value on Touching and Fondling," The Wall Street Journal, May 25, 1999)

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## **2. HIRING MANAGERS SHOULD BE CAUTIONED**

This might be a good time to remind all your hiring managers that making enticing promises to prospective employees can be very costly if those promises are not kept. This is even more true if those involved are offered key positions in the organization.

In California, the state labor code contains prohibitions against influencing someone to relocate for a job which is misrepresented (Section 970). Section 972 provides *double damages* for violations of Section 970. It seems the tight labor market is causing some strange behavior among hiring managers... and costing them a great deal of money.

Earlier this year the U.S. District Court in San Jose awarded \$2.64 million based on employment fraud. (*Behne v. MicroTouch Systems, Inc.*) Ms. Behne asserted that the president of MicroTouch enticed her away from her job with EloTouch, a primary competitor of MicroTouch. She claims she was offered the position of sales director. Based on the job offer, she moved from Massachusetts to California. When she arrived she discovered that the current sales director was still in place and that she was going to share the job with him. When she complained about the arrangement she says she was transferred to a job she knew nothing about. That, she claims, was in an effort to force her resignation. She says she believes MicroTouch never intended to give her the sales director job, but only wanted to get her away from EloTouch to damage the competitor.

She was awarded \$535,000 in actual damages (out-of-pocket costs) plus \$55,000 in emotional distress damages and \$2 million in punitive damages.

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## **3. Cal/OSHA ISSUES CITATIONS FOR ERGONOMICS VIOLATIONS**

California's standard for workplace ergonomics and repetitive motion injury (RMI) (8CCR Section 5110) has existed since July 1, 1997. Yet

it is only recently that enforcement has begun. Since the federal government is working hard to produce an ergonomics standard for federal OSHA, it seems the California authorities decided it was time to begin enforcing those the state already has. This is happening in spite of ongoing court challenges to the state's standard.

The first RMI citations were issued at San Francisco Airport to both the Airport and its parking contractor. It seems AMPCO System Airport Parking, the contractor, had eight out of 100 cashiers experiencing RMIs. The citation alleges failure to control exposures. The parking company was also cited for failure to train employees on RMI hazards as required in the regulations.

In the southern half of the state, Cal/OSHA gave citations to the Harbor UCLA Medical Center because it had not implemented engineering or administrative controls to prevent injury to data entry workers.

While the Cal/OSHA citations don't carry a great financial penalty, it can represent the beginning of much greater penalty exposure from other arenas. For example, citations can result in extra expense for engineering or administrative controls. Perhaps more costly, though, are potential serious and willful workers' compensation claims by workers with RMIs and a Cal/OSHA citation as support for their claims.

Remember, California employers must address RMIs in their Injury and Illness Prevention Program and must begin the process of mitigating job problems when two cases of RMI occur in the same job.

Talk with your workers' compensation insurance carrier to determine what materials or programs they can offer you for employee training. Often, that can go a long way toward reducing or eliminating injury problems.

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#### **4. LEGISLATION UPDATE NOW AVAILABLE**

Congress is considering many pieces of legislation that will have a profound impact on employers, both large and small. State legislatures are involved in their own activities of the same nature.

As a service to our clients and friends, we have prepared a summary of legislative activities currently under way in Congress and the California legislature. If you are interested in the impact these bills will have on employers we invite you to visit our web site and look at the reports.

You can find these reports by going to <http://www.management-advantage.com> and selecting "Legislation" from the main menu on the left side of each page.

As always, we invite your comments.

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## *Gentle Readers,*

The government continues to think of ways to spend employer's money. The FTC has come up with a new one... preventing employers from using outside experts to conduct sexual harassment complaint investigations unless they turn over any resulting report to the accused person.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #91, 6/11/99)  
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1. **MORE EMPLOYER RESTRICTIONS NOW IN S.74**
2. **FTC GIVES RIDICULOUS OPINION**
3. **PRESIDENT WANTS EMPLOYEES ON FMLA LEAVE TO BE PAID**

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1. **MORE EMPLOYER RESTRICTIONS NOW IN S.74**

Senator Daschle, author of S.74 which is known as the *Paycheck Fairness Act*, has revised his proposed legislation with three important changes:

- Public release of confidential pay data  
This change would require the Equal Employment Opportunity Commission (EEOC) to issue regulations governing its collection of pay data and release of that data to the public.
- Elimination of market rates as affirmative defense  
The Equal Pay Act allows employers to rely on prior experience, profitability and shift differentials as reasons for legitimate pay differences. This change would eliminate use of those reasons as a defense if an employer were challenged.
- Work location differentials eliminated  
Would eliminate restriction comparing employees within the same establishment. Already, experts are saying this means employers would be required to pay a woman in Fargo, South Dakota the same as a man in New York City if they perform the same job.

This legislation continues to gather momentum in the legislative process. President Clinton and Vice President Gore have both stated their support.

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2. **FTC GIVES RIDICULOUS OPINION**

The Federal Trade Commission (FTC) has given a written opinion that sexual harassment complaint investigations are subject to all the

provisions of the *Fair Credit Reporting Act* if the investigations are conducted by an outside person who is paid for that service. WOW!

On April 5, 1999, FTC Attorney Christopher W. Keller wrote to Judi A. Vail, Esq responding to two questions Ms. Vail posed to the FTC. In her first question, Ms. Vail asked, "Would investigatory information compiled solely from employees and documents within the workplace be defined as a consumer report or investigative consumer report?" The FTC answer ... YES. Consequently, says the FTC attorney, the full report must be disclosed to the employee who is the subject of the report. (A copy of the FTC letter is available on the SHRM web site. Look under "Regulatory Developments." <http://www.shrm.org> )

Ms. Vail's second question, "When a consumer or investigative report is released...by the employer or consumer reporting agency, to what degree may the information be redacted?" The FTC answer ... "Information cannot be redacted..."

Consultants and attorneys who work on behalf of employers to conduct sexual harassment complaint investigations are now in the position of having to make their reports available to the accused individual.

This ruling flies in the face of the requirements placed on employers by privacy laws to maintain investigation files as confidential information. It further hampers employers who are expected to conduct investigations into every complaint of sexual harassment (and one presumes any other type of discrimination complaint). Many employers do not have professional human resource experts on staff who are equipped to conduct "internal" investigations. Those who do not must turn to outside attorneys or consultants for that professional help. Now they are to be forced to disclose the investigation report simply because they do not have an in-house expert available to do the investigation.

We think the FTC has made a bureaucratic determination that not only is unreasonable but flies in the face of logic and practical application. With a stroke of his pen, Mr. Keller has put thousands of employers across the country in a no-win position. The wisest position at this point is to discuss any such investigation requirement with your labor attorney before hiring a consultant or outside counsel to conduct the investigation.

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### **3. PRESIDENT WANTS EMPLOYEES ON FMLA LEAVE TO BE PAID**

President Clinton issued an executive memorandum on May 24, 1999 that outlines his plans to make family and medical leave more affordable to U.S. workers.

Part of his memorandum includes a request that the U.S. Department of Labor (DOL) issue a rule that will allow states to amend their unemployment compensation laws to make new parents eligible to receive unemployment compensation while on family and medical leave. He also requested the DOL to develop a model law that will guide states in passing such legislation.

So far this year, four states have considered legislation that would give unemployment compensation to new parents eligible for leave under the *Family and Medical Leave Act (FMLA)*. Those states are: Maryland, Massachusetts, Vermont and Washington. California considered similar legislation in 1998 and rejected it.

Presuming that this would be seen as a desirable benefit by employees, one can anticipate that it will result in higher unemployment insurance taxes for employers who are offering FMLA leave to their workers. This is another opportunity for you to alert your CEO and CFO if you think you might be affected in your organization.

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## *Gentle Readers,*

There are some new powers confirmed for the EEOC by the U.S. Supreme Court. The OFCCP just keeps creating its own powers.

ADA application is essentially reigned in by the U.S. Supreme Court. These cases are going to be important to every HR Professional.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #92, 6/25/99)  
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1. **EEOC HAS POWER TO GRANT COMPENSATORY DAMAGES**
2. **EEOC POSTS GUIDANCE ON WEB**
3. **OFCCP TO MOVE FORWARD WITHOUT APPROVAL**
4. **ADA PROTECTIONS NARROWED BY SUPREME COURT**
5. **CALIFORNIA STOPS PLAN TO SELL PERSONAL DATA**

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1. **EEOC HAS POWER TO GRANT COMPENSATORY DAMAGES**

A split decision by the U.S. Supreme Court has given the Equal Employment Opportunity Commission (EEOC) power to levy compensatory damages against federal agencies when they discriminate against federal employees in violation of Title VII of the *Civil Rights Act of 1964*.

The decision was made on a 5-4 vote of the Justices. Up to this time there had been disagreement among Circuit Courts of Appeal on the question of EEOC's authority. Voting for the majority were Justices Stevens, O'Connor, Souter, Ginsburg and Breyer.

(*West, Secretary of Veterans Affairs v. Gibson*, No. 98-238, June 14, 1999)

<http://caselaw.findlaw.com/scripts/getcase.pl?navby=search&linkurl=<%LINKURL%>&graphurl=<%GRAPHURL%>&court=US&case=/us/000/98%2D238.html>

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2. **EEOC POSTS GUIDANCE ON WEB**

On June 21, 1999, the EEOC posted on its web site (<http://www.eeoc.gov/>) new policy guidance it says will help explain the circumstances under which employers can be held liable for unlawful harassment by supervisors. Its guidance analyzes Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth* and *Faragher v.*

*City of Boca Raton*. The Commission lays out steps employers should take to prevent and correct problems of harassment.

In addition, the EEOC posted older documents not seen on its web site before. They also relate to the subject of sexual harassment.

The new documents are:

- Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors
- Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors

The older documents, newly available are:

- Policy Guidance on Current Issues of Sexual Harassment
- Policy Guidance on Employer Liability Under Title VII for Sexual Favoritism
- Enforcement Guidance on *Harris v. Forklift Sys., Inc.*

There was no mention of the Federal Trade Commission's (FTC) recent opinion letter that suggests any investigation of sexual harassment complaints by an outside attorney or consultant must be released to the accused employee to satisfy requirements of the *Fair Credit Reporting Act*. Employers who have no internal staff trained to conduct complaint investigations normally turn to outside experts for such help. The EEOC guidelines suggest investigation is required. On the other hand, the FTC opinion would require total disclosure of anything discovered in the course of that investigation if it is conducted by someone outside the employer organization.

We continue to believe you must discuss each complaint with your legal counsel to determine how it should be handled.

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### **3. OFCCP TO MOVE FORWARD WITHOUT APPROVAL**

The Office of Federal Contract Compliance Programs (OFCCP) has announced that it does not need to rework its current definition of "applicant." On April 14, 1999, Joe Kennedy the agency's second in command, told the American Association for Affirmative Action that the current agency definition is just fine. He claimed that federal contractors are required to maintain records of their applicants' race and gender makeup. Those who do not are subject to findings of technical violation during a compliance audit.

This represents a change in the agency's position. Late last December, the OFCCP requested approval from the Office of Management and Budget (OMB) for changes in its audit scheduling letter which it sends contractors. Those change requests included a new definition of job applicant. There was widespread criticism of the agency's tactics in making the request. It was unwilling to invite public comment on its

proposals, denying that its request involved regulation-making changes. Employers particularly gave the OFCCP strong negative reaction.

This latest announcement by Mr. Kennedy signals OFCCP has given up its attempt to seek approval for a change in the definition. It says it will simply interpret the current definition to mean what the changed definition would have said. Essentially, that means employers will be held accountable for having race and gender data for everyone who makes any type of contact on the subject of employment.

This type of approach is not new to the OFCCP. It has been operating without formal approval of its compensation analysis program for several years. Officially, the agency says it has no compensation analysis system. Unofficially, it has told all of its compliance staff to attend training sessions on what has become known as the "DuBray" approach. Joseph J. DuBray is Director of the agency's Region III organization and author of the analysis system. As a means of statistical analysis, the "DuBray" system does not offer any validity according to mathematical experts who have looked at it.

Specific criticisms and suggestions were offered to OFCCP Director Shirley Wilcher by a collection of experts including the Society of Human Resource Management (SHRM), the Equal Employment Advisory Council (EEAC), the National Association of Manufacturers, and the U.S. Chamber of Commerce among others. Those suggestions can be found on the SHRM web site. Although you must be a member of SHRM to access the letter, you will find details of great interest if you do. Go to <http://www.shrm.org/government/regulatory/599ofccp.asp>

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#### **4. ADA PROTECTIONS NARROWED BY SUPREME COURT**

Three U.S. Supreme Court cases announced on Tuesday this week have placed some narrower interpretation on who is disabled and what accommodations employers must be expected to make. Basically, the Court has said that people with physical impairments who can function normally when they wear their glasses or take their medicine generally cannot be considered disabled and therefore do not come within the law's protections against employment discrimination.

The first case involved two sisters, both pilots and both nearsighted. Each of the women flew as pilots for regional airlines, and met federal vision standards for airline pilots. And, they were turned down by United because they did not meet the company's standard for uncorrected vision of 20/40. In her decision for the majority, Justice O'Connor wrote that people with remediable conditions were not disabled. Justice Stevens said in his dissenting opinion "in order to be faithful to the remedial purpose of the act, we should give it a generous, rather than a miserly, construction." *Sutton et al. v. United Air Lines, Inc.* (No. 97-1943, June 22, 1999)  
<http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=97-1943>

The second case involved a mechanic who had been fired because his job required him to drive trucks and his high blood pressure prevented him

from obtaining a Department of Transportation health certification. Justice O'Connor said in her opinion of this case that the ADA provision which protects people who are "regarded as" being disabled is designed to protect against general prejudice, rather than specific job standards. It appears employers can continue to control job content and design. *Murphy vs. United Parcel Service, Inc.* (No. 97-1992, June 22, 1999) <http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=97-1992>

In the third case, the employer hired a commercial truck driver who was subject to Department of Transportation (DOT) regulations on vision standards. The employee has amblyopia, an uncorrectable condition that leaves him effectively with monocular vision. In 1990 the employee was erroneously certified to meet DOT standards. In 1992 the employee's vision was re-evaluated and correctly determined not to meet DOT standards. In 1992, DOT began a waiver program and the employee applied for and received a waiver. The company terminated him, however, because he failed to meet the basic DOT standards. He objected saying that the company violated the ADA. Justice Souter, in his majority opinion said an employer who sets a requirement that employees in a particular job must meet applicable federal safety regulations may not be forced to make exceptions based on individual case waivers. *Albertsons Inc. vs. Kirkingburg*, (No. 98-591, June 22, 1999) <http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=98-591>

All three cases received a 7-2 vote from the Justices. In the opinion of Justice O'Connor, who wrote two of the three majority opinions, a physical or mental impairment that "substantially limits one or more of the major life activities" would not include a person whose problem is correctable.

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## 5. CALIFORNIA STOPS PLAN TO SELL PERSONAL DATA

Last year, California's Legislature passed a bill that would allow the state to sell data about its citizens. Specifically envisioned was the Employment Development Department (EDD) disclosing confidential salary information about citizens to banks and other financial institutions. The idea was that such information could facilitate the process of securing home mortgages and other such transactions. Then, someone suggested that employers might be interested in purchasing such confidential data to verify income history of job applicants. Governor Gray Davis halted the plans to implement the new program and has asked the Legislature to revoke the law allowing EDD to disclose the data.

According to one source, the company which would have run the California program (San Diego-based Verification of Income and Employment) runs similar programs in Iowa, Minnesota, Pennsylvania, Texas and North Carolina.

*Gentle Readers,*

This is just a quick bulletin to let you know about a new unsolicited review that has been prepared about our web site by BestBuysOnTheNet.com. Our week has gotten off to a great start as a result. We hope yours is also beginning well.

You can access their review directly from their home page if you visit today. If you wait until after today the review will be available by searching their archives.

We are very proud of the evaluation (earning three stars) prepared by Staff Writer Lynette Johnson. Among the many nice things she had to say ...

"If you are still a little skeptical in regards to how much The Management Advantage, Inc. can help your business, take a peek at some of the names on their on-site current client list, which includes worldwide government concerns, cities, and major corporations. After all, if they trust their human resources concerns to The Management Advantage, Inc., don't you owe it to yourself and your business to explore the possibilities?"

You can see the entire review at: <http://www.bestbuysonthenet.com>

Bill Truesdell  
Editor  
June 28, 1999

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## *Gentle Readers,*

As we have said many times, we welcome your feedback. In this issue, we share with you feedback from one of our readers about the current Congressional debate over the proposal to require comparable worth compensation programs in both public and private sectors.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #94, 7/2/99)  
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1. **READER RESPONSE TO S.74 (EQUAL PAY ACT)**
2. **A STUDY: ANTI-DISCRIMINATION TRAINING IN THE U.S.**
3. **CENSUS BUREAU HIRING**
4. **NORTHWEST NATIVE AMERICAN HUMAN RESOURCE ASSN**

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1. **READER RESPONSE TO S.74 (EQUAL PAY ACT)**

"I sense a certain passivity by the HR people about influencing this legislation. I, for one, see a real monster here, and it will be if business doesn't voice its concerns and input, social policy merits aside. What are the likely exemptions? Under 50 employees, 0 federal contracts, etc.???" Thx, Dave Kelly (CPA)

(Editor's Note: This bill is a monster for business in general and HR in particular. It will virtually require every business with 20 or more workers to scrap their current compensation program and implement a comparable worth system. It also provides for compensatory and punitive damages on violations. And, it has a great deal of support in both Congress and the Administration. We encourage all HR people to talk with their CEOs about this legislation and determine if your business should go on record with a position about the impact this bill will have to its operations. This is one example of how HR people can play a strategic role in their organizations.)

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2. **A STUDY: ANTI-DISCRIMINATION TRAINING IN THE U.S.**

Equal Employment Opportunity and Affirmative Action training have evolved from a simple explanation of laws into a "*strategic tool for human resource management.*" That, according to an "Evaluation of Anti-Discrimination Training in the United States" published by the International Labour Office, Geneva (ISBN 92-2-111470-8).

This 115 page report chronicles changes in the diversity of our American workforce, reflecting on data from the U.S. Census from 1995. Among its discoveries:

- An opinion shared virtually universally in the anti-discrimination community is that training should be part of a broader process addressing discrimination rather than an isolated initiative.
- 86.9% of survey respondents characterized adoption by the client organization of formal policies against discrimination as a very important reinforcement to training.
- Most training programs still focus on "awareness" rather than "behavior." Many training providers stated that a priority in improving their training programs is to strengthen their practical behavioral content.

The study concludes that there are eight benchmark requirements associated with effective anti-discrimination training. They are:

1. Anti-discrimination initiatives enjoy strong, visible, consistent support from the employer's top management.
2. Training is closely tailored to the specific circumstances in the employer's organization.
3. Training is motivated by the employer's important operational goals.
4. Trainers have qualifications in management or organizational development.
5. Training focuses on discrimination as a general process rather than unique issues of special interest groups.
6. Training is designed to change trainees' behavior rather than attitudes alone.
7. Training is complemented by improvements in the employer's human resource management practices. (These might include review and correction of any problems embedded in systems and procedures beyond the individuals' control, such as the criteria and procedures used in employee recruitment, hiring, assignment, compensation, training, evaluation, promotion, and dismissal.)
8. Training is part of broad efforts at organizational development. (One such set of indicators, for example, might include participation of top managers in training, the sequencing of training -- whether managers are trained before non-supervisory employees, so that the managers are prepared to reinforce the training -- and whether it is voluntary or mandatory.)

There were also some indications that strong relationships exist between anti-discrimination training and other organizational activities. In response to the following question, the study found:

To what extent is each of these a very important activity by the employer for reinforcing anti-discrimination training?

- |  |       |
|--|-------|
| ▪ Adopting formal policies against discrimination or in favor of diversity | 86.9% |
| ▪ Improving specific human resource management practices                   | 82.2% |
| ▪ Disciplining or firing employees who discriminate                        | 68.6% |
| ▪ Making equal opportunity part of managers' performance evaluations       | 64.4% |
| ▪ Providing an accessible discrimination complaint process                 | 57.9% |
| ▪ Celebrating diversity in company publications                            | 39.8% |
| ▪ Establishing a diversity advisory committee                              | 39.0% |
| ▪ Establishing numerical goals for employing protected groups              | 34.3% |
| ▪ Employing full-time diversity staff                                      | 33.0% |

For more information please contact The International Labour Office, Publications Bureau, CH-1211 Geneva 22, Switzerland.

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### **3. CENSUS BUREAU HIRING**

The U.S. Bureau of the Census began early this year to recruit workers for its 2000 Census operations. The first step involves verifying addresses in every community across the country. Then, individuals will be needed to actually conduct census interviews when the data gathering begins. Recruiting for Crew Leaders and Enumerators is scheduled to begin after October, 1999. While compensation will vary by geography around the country, Pat Hartwell, Regional Recruiter for the Los Angeles Regional Census Center says Crew Leaders in her Region will earn up to \$16.00 per hour. Enumerators will be paid up to \$14.00 per hour.

There will be 41 local Census Bureau offices around the nation when fully staffed. Eleven of those offices are open now. A total of 2400 people will be needed to staff these offices. Regional Census Centers will require additional staffing.

Requirements for the Enumerator job include passing a basic skill test, background check, and possession of a valid driver's license and social security card.

Preference in hiring will be given to U.S. veterans and U.S. citizens. For more information, or to determine the local contact in your area, call 1-888-325-7733.

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### **4. NORTHWEST NATIVE AMERICAN HUMAN RESOURCE ASSN**

Native Americans are an active professional group within the Human Resource Management community. Native American organizations are growing rapidly as employers all across the country. Part of that

growth has been fueled by the continuing development of casino enterprises.

Pulling it together for HR Professionals is Simon L. Sampson, President of the Northwest Native American Human Resource Association. Like all other HR Professionals today, Simon is up to his ears in work load. Nonetheless, he is willing to help any other HR Professional who needs it, and will gratefully accept any help others may be able to give the association. He says their membership of HR Professionals from commercial employers is growing quickly as well.

Simon can be reached at 509-865-5121 X 388 or by email at [simon@yakama.com](mailto:simon@yakama.com).

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## *Gentle Readers,*

The EEOC reacts to recent U.S. Supreme Court rulings on ADA, and the Court gives us some more guidance about punitive damages. For our legal friends, we are offering a new book that will help them improve both their personal and professional lives. What a week.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #95, 7/9/99)  
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1. **SUPREME COURT ALLOWS SOME PUNITIVE DAMAGES**
2. **NEW BOOK FOR LAWYERS**
3. **EEOC CHAIRWOMAN COMMENTS ON SUPREME COURT RULINGS ABOUT ADA**

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1. **SUPREME COURT ALLOWS SOME PUNITIVE DAMAGES**

In one of its end-of-session rulings, the U.S. Supreme Court has determined that an employer's conduct does not have to be egregious for an employee to collect punitive damages under the *Civil Rights Act of 1991*. On the contrary, the court said, "a plaintiff may use the employer's egregious behavior as evidence it acted with 'malice' or 'reckless indifference' to the employee's federally protected rights against job discrimination.

The case was *Kolstad v. American Dental Ass'n*. (U.S. No. 98-208, 6/22/99) Justice O'Connor said employers cannot be held indirectly liable for punitive damages based on discriminatory decisions by managers that fly in the face of the employer's good-faith efforts to comply with Title VII of the *Civil Rights Act of 1964*.

Justice O'Connor wrote that "the terms 'malice' and 'reckless' ultimately focus on the actor's state of mind." She went on to say that the *Civil Rights Act of 1991* "does not require a showing of egregious or outrageous discrimination independent of the employer's state of mind."

She went on to say that "the proper legal standard for imputing liability to an employer for punitive damages is intimately bound up with the evidentiary showing required to qualify for punitive damages. Common law agency principles limit vicarious liability for punitive awards, and Congress has directed federal courts to interpret Title VII based on agency principles."

Agency principles are generally accepted to mean a management person acting within his or her capacity as a manager (within the scope of employment) can create liability for the employer if he or she commits a legal wrong.

Justice O'Connor concluded on behalf of the majority that "an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's 'good faith efforts to comply with Title VII.'"

This should be seen as good news for employers who have made substantial efforts to implement solid non-discrimination programs. While this gives some guidance to federal courts about how to deal with the issue, we must remember that the *Civil Rights Act of 1991* already contained caps on punitive damages for employment discrimination. Employers must continue to be watchful, however, because many state laws do not have limitations on punitive damages for these types of cases. It remains a good strategy for plaintiff's attorneys to file their cases in state court in many situations.

For more information about this case you can find the ruling at:  
<http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=98-208>

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## **2. NEW BOOK FOR LAWYERS**

When we learned from author Larry Schreiter of Kent Washington that he had published a new book we were naturally interested to learn more. It turns out that Larry's book is filled with simple and powerful advice to his legal colleagues that can help them increase their free time and their income simultaneously.

He finds through his own experience that there are certain "truths" about managing a legal practice. One of them is that each lawyer has certain aspirations and values. Those have to be synchronized with the values of the law practice for things to work out well. Larry explains how attorneys can achieve satisfaction by choosing the right clients, developing a niche and dominating a market.

If you are a lawyer, or have a friend who is, this book is for you. Titled *The Happy Lawyer*, it is over 200 pages packed with specific helpful hints and checklists. We are featuring it as our special product for July in our Web Store for Professionals (TM). You can find it at: <http://www.management-advantage.com> in the "Lawyers" section. Peace of mind and professional success must be worth the price of \$39.95.

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## **3. EEOC CHAIRWOMAN COMMENTS ON SUPREME COURT RULINGS ABOUT ADA**

Ida L. Castro, Chairwoman of the U.S. Equal Employment Opportunity Commission (EEOC), spoke to the Plaintiffs Bar in New Orleans on July 1, 1999. In her comments she said that the U.S. Supreme Court rulings on the *Americans With Disabilities Act (ADA)* provide the Commission with favorable law, as well as significant challenges.

We told you in an earlier issue of our Special Report for HR Professionals (Report #92, 6/25/99) about these cases. Three of them

were *Sutton v. United Airlines*, *Murphy v. United Parcel Service*, and *Albertsons v. Kirkingburg*. In *Sutton* and *Murphy*, the Court ruled that impairments should be evaluated in their corrected or "mitigated" state to determine whether they are disabilities under Title I of the ADA.

Ms. Castro said that while the rulings "appear to significantly narrow the scope of those covered under the ADA, the Court affirmed EEOC's standard of an individualized approach to the assessment of coverage under the ADA. In other words, the determination of whether an individual can bring a claim under the ADA should be assessed on a case-by-case basis."

She also commented on another Court ruling, that being *Cleveland v. Policy Management Systems* in which the Justices "unanimously agreed with the long-held view of the EEOC that people who seek or obtain disability benefits are not necessarily precluded from bringing claims under the ADA. In plain language, people who have applied for or are receiving disability benefits are not prohibited from pursuing their ADA rights."

As a result of these Supreme Court rulings, Ms. Castro has directed the EEOC staff to take several steps:

- Begin drafting instructions for EEOC investigators to assist them in the investigation and resolution of ADA-related charges;
- Plan for a public Commission meeting in which a forum will be convened to conduct a focused discussion on the ADA in the wake of these Supreme Court rulings;
- Reach out and consult with all stakeholders who are involved in both interpreting and enforcing the ADA to bring greater clarity to ADA enforcement;
- Coordinate with other federal agencies responsible for enforcing the nation's civil rights laws;
- Identify those portions of Commission documents that may need to be revised and updated in light of the Court's decisions; and
- Develop and implement a strategy to provide outreach, education, and training to EEOC staff, the business community, private bar, civil rights groups, unions, and other employee groups to promote effective enforcement of the ADA.

You can view the full news release about Ms. Castro's comments at <http://www.eeoc.gov/press/7-1-99.html>

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## *Gentle Readers,*

No sooner had we completed our email distribution of this week's Special Report for HR Professionals, than the California legislature took action on AB60, the 8-hour work day bill.

We thought you would want to know about it.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #96, 7/9/99)  
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### **1. CALIFORNIA RESTORES 8-HOUR WORK DAY**

The California State Legislature passed A.B.60, the long-debated bill to restore the state's requirement for overtime pay after eight hours of work in a single day. The debate has raged since the Industrial Welfare Commission (IWC) voted on April 11, 1997 to amend five of the state's fifteen industrial wage orders and eliminate the need for overtime payment after eight hours in any single workday. That change was effective on January 1, 1998.

Governor Gray Davis promised during his campaign last year that he would support efforts to return to the 8-hour day. Since his election he has reiterated his support for A.B.60. With both houses of the legislature controlled by Democrats, passage was never really in question. Rather, the questions had to do with what requirements the new law would contain. Governor Davis is expected to sign the bill into law in the near future. It will become effective on January 1, 2000.

Here are some highlights of its content:

- Nullifies IWC orders that eliminated 8-hour overtime pay rules.
- Permits employees voluntarily electing a 4-day, 10-hour work schedule.
- Exempts work caring for animals, crops or agricultural lands, train movement and collective bargaining agreements.
- Alternative work schedules may be approved by a vote of 2/3 of affected employees.
- Permits employees in health care industry to retain until July 1, 2000, alternative workweek schedule with up to 12-hour workdays without overtime provided such schedules were approved by employee elections under Wage Orders 4 or 5 in effect prior to 1998.

- Wage Orders affected include:
    - #1 Manufacturing Industry
    - #4 Professional, Technical, Clerical, Mechanical and Similar Occupations
    - #5 Public Housekeeping Industry
    - #7 Mercantile Industry
    - #9 Transportation Industry
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## *Gentle Readers,*

Federal contractors are going to be interested in the latest proposal from the Clinton Administration. Read it carefully and decide if your organization should take a position during the current public comment period.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #97, 7/16/99)  
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1. **PRESIDENT MOVES FORWARD WITH "CONTRACTOR RESPONSIBILITY" REGULATIONS**
2. **THE MANAGEMENT ADVANTAGE, INC. APPROVED BY BETTER BUSINESS BUREAU'S PRIVACY PROGRAM**
3. **UNEMPLOYMENT PAY DURING FAMILY LEAVE**

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1. **PRESIDENT MOVES FORWARD WITH "CONTRACTOR RESPONSIBILITY" REGULATIONS**

On July 9, 1999, the Administration published in the Federal Register its proposal to monitor "Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings." We told you about the prospects in our July 1999 issue of THE ADVANTAGE NEWSLETTER (Vol. 12, No. 1).

Vice President Al Gore first announced the administration's intention to develop these rules two years ago when he spoke to an AFL-CIO conference. He said, "If you want to do business with the federal government, you had better maintain a safe workplace and respect for civil, human and union rights." According to a Wall Street Journal article on July 12, 1999 by Jeanne Cummings, the US Chamber of Commerce says, "The regulation is so broad it would allow the government to blacklist companies as directed by the unions."

Randy Johnson, the US Chamber of Commerce's vice president for labor and employee benefits also heads the National Alliance Against Blacklisting, a coalition of 1,000 businesses dedicated to killing or gutting the new regulations.

The new regulations will change the Federal Acquisition Regulation (FAR) contained in 48 CFR Parts 9 and 31. Publication in the Federal Register was sponsored by the Department of Defense (DOD), the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA). It carries the designation: FAR Case 99-010 and is open for public comment for 120 days from last Friday, July 9, 1999.

A summary of the proposed rule reads:

"Both the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify coverage and give examples of suitable contractor responsibility considerations, as well as to make unallowable the costs of attempting to influence employee decisions regarding unionization, and make unallowable those legal expenses related to defense of judicial or administrative proceedings brought by the Federal Government when a contractor is found to have violated a law or regulation, or the proceeding is settled by consent or compromise, except to the extent specifically provided as part of the settlement agreement."

The full text of the proposal can be found at:

<http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=1112520522+2+2+0&WAISaction=retrieve>

Essentially, the new regulations would allow federal contracting officers to make pre-award responsibility determinations about contractors and potential contractors, denying them contract participation if they believe the contractor has not meet its responsibility. What does that mean?

The proposed rules say, "a prospective contractor's failure to comply with applicable tax laws may be considered by the contracting officer in making a responsibility determination. Similarly, the proposed rule attempts to clarify the fact that an established record of employment discrimination would be a relevant part of the contracting officer's responsibility determination because such a record or pattern is a strong indication of a contractor's overall willingness or capability to comply with applicable laws." It goes on to say, "Normally, the contracting officer should base adverse responsibility determinations involving violations of law or regulation upon a final determination by a competent authority... However, in some circumstances, it may be appropriate for the contracting officer to base an adverse responsibility determination upon persuasive evidence of substantial noncompliance with a law or regulation."

The proposal would also disallow any costs related to attempts by the contractor to influence employee decisions regarding unionization to be passed along in any contract cost. Any legal costs involved in proceedings where the contractor is found to have violated a law or regulation would also be unallowable. "Taxpayers should not have to pay the legal defense costs associated with adverse decisions against contractors, especially where the proceeding is brought by an agency of the Federal Government."

Interesting to us is the provision for contracts to be withheld or financial penalties to be imposed by administration contracting officers without any hearing or other due process where a contractor could defend its position.

If you have comments, we encourage you to submit them in writing to:

General Services Administration  
FAR Secretariat (MVR)  
1800 F Street, NW, Room 4035  
ATTN: Laurie Duarte  
Washington, DC 20405

Remember to cite FAR case 99-010 in all of your correspondence. All comments must be received before November 5, 1999.

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**2. THE MANAGEMENT ADVANTAGE, INC. APPROVED BY BETTER BUSINESS BUREAU'S PRIVACY PROGRAM**

For over two years, The Management Advantage, Inc. has offered its products and publications for sale on its web site through secured server transactions. It has always been our policy that our customer and subscriber lists are private and confidential. We do not rent them, sell them, or give them away to others.

It is our pleasure to announce that we have been approved for membership in the Better Business Bureau's Privacy Program. A long time member of the Better Business Bureau (BBB), our company has participated in the BBBOnline program for over a year. The Privacy Program is a new level of commitment and we are pleased to say we have been accepted.

"The Management Advantage has shown the strongest dedication to protecting its customer's privacy by participating in the BBBOnline Privacy Program and posting the BBBOnline Privacy Seal. We commend them for making a commitment to good privacy policies," said Russ Bodoff, Senior VP and COO of BBBOnline.

We are honored to join a very select group of business organizations on the web that have met these strict standards. It is a privilege to be in the company of businesses such as Dell Computer, Eastman Kodak Company, Equifax, Nestle USA and the New York Times on the Web, among others.

"We participate in these BBB programs because we believe our clients and customers deserve the assurance that they will be treated with respect and that their private information will be protected from circulation to others," said William H. Truesdell, president of The Management Advantage, Inc. "We want our customers to be confident of their privacy when they shop with us at our Web Store for Professionals(TM)."

If you would like more information about BBBOnline or its Privacy Program and the standards involved, please visit <http://www.bbbonline.org>

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### **3. UNEMPLOYMENT PAY DURING FAMILY LEAVE**

According to the Wall Street Journal, lobbying by the National Partnership for Women & Families, with AFL-CIO backing, is largely behind pending legislation in Massachusetts, Vermont, Maryland and Washington state to let anyone taking unpaid family leave get unemployment insurance. Additional lobbying efforts are taking place in California, Iowa and New York.

The US Department of Labor (DOL) has told states they may not pay unemployment for family leave, but President Clinton has told the DOL to change that rule as it is applied to new parents.

You can recompute your adjustment for unemployment compensation taxes by adding to your normal unemployment-eligible claimants the number of employees who are likely to receive unemployment pay for family leave. The result is the financial impact of this change for your organization. If it is a big difference, you will likely want to have discussions with your CEO and CFO to let them know of the budget impact.

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## *Gentle Readers,*

Revised rules for processing federal employee discrimination complaints have been published. There is a new BAD virus on the loose, and off-the-job freedom of speech becomes an issue in Arizona.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #98, 7/23/99)  
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1. **VIRUS ALERT**
2. **EEOC POSTS FINAL RULE ON FEDERAL SECTOR COMPLAINT PROCESSING**
3. **ARIZONA NURSES FIRED FOR CYBER PORN**
4. **A BRIEF WORD ON BEHALF OF OUR BUSINESS**

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1. **VIRUS ALERT**

As it turned out, this alert was bogus.

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2. **EEOC POSTS FINAL RULE ON FEDERAL SECTOR COMPLAINT PROCESSING**

On July 12, 1999, the Equal Employment Opportunity Commission (EEOC) published its final rule for processing federal sector complaints of discrimination. (Federal Register, July 12, 1999, Volume 64, Number 132, <http://www.eeoc.gov/federal/1614-new.html>)

The rule revises procedures throughout the complaint process, addressing the continuing perception of unfairness and inefficiency in the process. The Commission is requiring that agencies make available alternative dispute resolution programs, and is revising the counseling process, the bases for dismissal of complaints and the procedures for requesting a hearing. The EEOC is providing administrative judges with authority to dismiss complaints and issue decisions on complaints. Agencies will have the opportunity to issue a final order stating whether they will implement the administrative judge's decision. The Commission is also revising the class complaint procedures, the appeals procedures, and the attorney's fees provisions.

The new rule becomes effective on November 9, 1999.

For further information contact Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, Office of Legal Counsel, 202-663-4669 (voice), 202-663-7026 (TDD).

(Ed Note: The EEOC has recently redesigned its web site. The objective was to make Internet access to the Commission's information more user friendly. Take a look and see what you think. <http://www.eeoc.gov> )

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### **3. ARIZONA NURSES FIRED FOR CYBER PORN**

Can you lose your job over what you do on-line -- on your own time? According to officials at one Arizona hospital, the answer is yes.

Free speech is not always absolute. George and Tracy Miller, a husband and wife who are nurses in Scottsdale, Arizona, said that they were fired from an Arizona hospital for running a pornographic website on their own time -- and on their own computer.

The website shows explicit pictures of Tracy Miller (who uses the name Dakota Rae) and provides viewers with the opportunity to subscribe to the site for more graphic pictures.

The couple said they started the site to raise money for their kids' college education.

The Arizona chapter of the American Civil Liberties Union (ACLU) said it is investigating the case. As at-will employees private sector workers are sometimes subject to this type of disciplinary action. The ACLU said it is concerned about employers intruding into the private lives of their employees.

Before you take action against an employee for off-duty behavior be sure to discuss the specifics with your employment attorney so you are sure of your actions and the requirements in your jurisdiction.

(Source: ZDTV News, Luke Reiter, July 19, 1999, <http://www.zdnet.com/zdtv/cybercrime/news/story/0,3700,2296828,00.html> )

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### **4. A BRIEF WORD ON BEHALF OF OUR BUSINESS**

This copy of our Special Report for HR Professionals #98 is being sent to nearly 1300 subscribers in 20 countries. Many of the Fortune 100 companies are included on our subscriber list along with representatives of 14 state governments and 34 major colleges and universities. There are also many federal government agencies and departments among our valued subscribers. These folks read our publications because they believe they get valuable information from us.

We encourage you to invite your friends and colleagues to register as FREE subscribers also. If you find you gain value from our email newsletter and special reports, why not share that information with other professionals you know who could use it. You will be doing them a favor. Ask them to sign up at our web site: <http://www.management-advantage.com>

And, don't forget to give us a call when you need help with your affirmative action plans. Just this month we have accepted two new clients who were faced with "Show Cause" notices from the government. We can help you, too. We specialize in AAP statistical reports.

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## *Gentle Readers,*

Some new help from the government in the arenas of sexual harassment, census data and finding people who have yet to claim their rightful pensions.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #100, 7/30/99)  
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1.       **UNCLAIMED PENSIONS**
2.       **NEW MSAs ESTABLISHED BY OMB**
3.       **EEOC ISSUES GUIDANCE ON LIABILITY**

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1.       **UNCLAIMED PENSIONS**

Back in 1994, under the *Retirement Protection Act*, the government set up the Pension Search Program to locate people who are owed benefits from fully funded pension plans that have ended. It is estimated that nearly 10,000 workers are currently owed approximately \$19 million in pension benefits.

President Clinton has submitted proposed legislation to Congress that would expand the program to include defined contribution plans such as 401(k) plans and multiemployer defined benefit plans.

The program now has a web site that can be used to search its data base for possible matches between unclaimed pensions and individuals. (It's rather like a treasure hunt.)

If you know someone who might be eligible for a pension from a fund that has ended, but who has not begun collecting those benefits, you might suggest they visit the Pension Benefit Guarantee Corp. web site at <http://search.pbgc.gov>

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2.       **NEW MSAs ESTABLISHED BY OMB**

On June 30, 1999, the Office of Management and Budget (OMB) in the White House organization, announced establishment of two new Metropolitan Statistical Areas (MSAs). OMB defines metropolitan areas for use in federal statistical activities. One of those activities involves federal contractor preparation of computed availability for their affirmative action plans. The new MSAs will have no immediate impact on federal contractors, but will be available in compilation of Census 2000 data for contractor use in determining availability numbers for their job groups.

The new MSAs are Auburn-Opelika, Alabama and Corvallis, Oregon. Auburn-Opelika MSA comprises Lee County, Alabama with central cities Auburn, Alabama and Opelika, Alabama. The Corvallis MSA comprises Benton County, Oregon and its central city is Corvallis, Oregon.

Both are classified as Level D MSAs. That is they have populations of less than 100,000 as of 1990.

For more information about these new jurisdictions, visit the OMB web site and look for OMB Bulletin No. 99-04.

<http://www.whitehouse.gov/WH/EOP/omb/inforeg/msa-bull99-04.html>

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### **3. EEOC ISSUES GUIDANCE ON LIABILITY**

The Equal Employment Opportunity Commission (EEOC) has issued guidance to employers regarding liability for illegal sexual harassment by supervisors.

This new set of standards conforms to the recent U.S. Supreme Court decisions in *Burlington Industries Inc. v. Ellerth* and *Faragher v. City of Boca Raton*. These cases determined that employers could be held vicariously liable for sexual harassment by supervisors in certain situations.

To avoid liability, the EEOC says an employer must "prove that it exercised reasonable care in preventing and correcting the harassment *and* that the employee unreasonably failed to avoid all of the harm." Liability most always accrues to the employer when a negative employment action is taken against someone who is the victim of sexual harassment.

To avoid liability, employers must have an effective anti-harassment policy and complaint handling procedure that has in it the following provisions:

- A clear explanation of prohibited conduct
- Assurance that employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation
- A clearly described complaint process that provides accessible avenues of complaint
- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible
- A complaint process that provides a prompt, thorough, and impartial investigation
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

For a complete copy of the "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors" go to

<http://www.eeoc.gov/docs/harassment.html>

## *Gentle Readers,*

Things are looking up in the world. More CEOs are coming to the public forum proclaiming their support of diversity programs, a major employer extends some benefits to domestic partners of its employees and kitty litter is safe for now. There is more work to be done in the American workplace on advancement of professional and managerial women-of-color, however.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #101, 8/6/99)  
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1. **CONCRETE CEILING REPORTED BY WOMEN OF COLOR**
2. **KITTY LITTER GRANTED SAFE USE BY CALIFORNIA**
3. **UNITED AIRLINES TO EXTEND PARTNER BENEFITS**
4. **CEO's COMMENT ON DIVERSITY**
5. **WOODEN WRITING SETS AVAILABLE IN GIFT SECTION**

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1. **CONCRETE CEILING REPORTED BY WOMEN OF COLOR**

A new study by Catalyst in New York City indicates that women-of-color in managerial or professional positions experience serious barriers to their advancement. The study entitled, "Women of Color in Corporate Management: Opportunities and Barriers" finds that 47 percent of over 1,700 women-of-color survey respondents from 30 leading US companies cite as barriers the difficulty of not having an influential mentor or sponsor. 40 percent cite the lack of informal networking with influential colleagues. 29 percent note the lack of company role models who are members of their racial/ethnic group. And, 28 percent speak of the lack of high visibility assignments.

The study was conducted over the course of three years and involved individual survey input as well as focus groups.

For more information see

[www.catalystwomen.org/press/mediakit/release071399woc.html](http://www.catalystwomen.org/press/mediakit/release071399woc.html)

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2. **KITTY LITTER GRANTED SAFE USE BY CALIFORNIA**

"Kitty litter" (packaged sorpitive mineral-based pet litter) was faced with the very real prospect of posting a warning on product labeling that the contents were carcinogenic. Such labeling would have been

required under California's Proposition 65 provisions that require label warnings on everything from chemicals to buildings.

Kitty is spared, however. The product contains crystalline silica, which is a chemical known to the state to cause cancer, and therefore subject to Proposition 65. The small exposure to this chemical occurs during replenishment and use by consumers. In fact, crystalline silica is one of the most common substances on the planet. It is found in everything from construction materials to beach sand.

On June 4, 1999 (according to "California Regwatch" from the California Chamber of Commerce) the Office of Environmental Health Hazard Assessment (OEHHA) issued a Safe Use Determination to the Sorpitive Minerals Institute (SMI) which represents manufacturers of "kitty litter."

In its analysis, OEHHA determined that the worst case exposure to crystalline silica during use of kitty litter every day over a lifetime is 0.06 micrograms/cubic meter, which is nine times less than the Proposition 65 definition of "no significant risk level (NSRL)." Once the NSRL is reached, a warning label would be required.

Kitty litter is safe for now. It's official.

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### **3. UNITED AIRLINES TO EXTEND PARTNER BENEFITS**

On Monday of this week (August 2, 1999), the Wall Street Journal reported that United Airlines would not only comply with the San Francisco, California city ordinance requiring domestic partner benefit offerings, but would expand those offerings throughout the US.

The company anticipates that the biggest beneficiaries of the changes, which go into effect next May, will be same-sex partners of United employees and retirees nationwide. Eligible individuals will gain access to medical and dental coverage, dependent life insurance, pension survivor benefits, bereavement leave, travel passes and other perquisites. The changes, however, are still subject to approval by United's unions.

United told the Wall Street Journal that it chose to add the benefits because it values diversity, because other employers are doing the same and because the benefits will make recruitment and retention of workers easier. There was no estimate released for the anticipated cost of these benefits. The company did indicate that it intends to take the benefits worldwide at a later time.

In 1997, San Francisco created an ordinance that requires all contractors doing business with the City to offer domestic partner benefits to its workers. The Air Transport Association, an airline trade group, has been challenging the ordinance on behalf of its airline members. A federal court supported the airlines' contention that a local government cannot regulate a national industry. Most of the ordinance was ruled to be invalid as it relates to airlines.

Last Friday, an appeals court ruling rejected the airlines' request for a temporary exemption and ordered carriers doing business at San Francisco International Airport to grant limited benefits to employees' domestic partners regardless of gender.

United told the Wall Street Journal that it would continue to pursue its case at the appellate level, opposing local municipalities attempting to legislate employee benefits in companies doing business nationwide.

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**4. CEO's COMMENT ON DIVERSITY**

Diversity, Inc. has created a "CEO Center" at its website. It showcases eight companies and what their CEOs describe as their corporate commitment to diversity management.

Of prominent note is Peter Bijur, CEO of Texaco. The company recently received The Corporate Recognition Award from A Better Chance, an organization that places gifted young people of color in top college prep programs. Bijur is personally committed to continuing the programs that he says have positively affected his company.

Other company CEOs represented include those from Dun & Bradstreet, GTE, Pricewaterhouse Coopers, Simmons Associates, Inc., Pope & Associates, Hubbard & Hubbard, Inc., and the Tulin Diversity Associates.

You know when the CEO is committed to a program the organization will soon follow. It is very interesting to hear how CEOs view the business necessity of diversity in today's marketplace and workplace. You might want to spend a few minutes to read for yourself. There is some good material here you can use in support of your own diversity business plan development.

<http://diversityinc.com/CEOCenter/ceocenter.html>

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**5. WOODEN WRITING SETS AVAILABLE IN GIFT SECTION**

We are pleased to let you know that we have added two different 3-piece wooden writing sets in our "Gifts for Professionals" section of the Web Store for Professionals(tm). One set is finished in natural blond color, the other is finished in a lustrous maple tone. Each set has a pen and mechanical pencil finished in the same wood tone as the solid wood case they rest in. Perfect for a presentation or award. On the other hand, you may just want one of these for yourself. At only \$14.95 per set you will be very pleased with the value.

Find these new gift items at [www.management-advantage.com](http://www.management-advantage.com)

## *Gentle Readers,*

This week we offer you a status report on recently enacted legislation for both federal and California jurisdictions. We are also announcing a new FREE resource for California employers interested in planning for next year's overtime pay requirements. And we want you to know about the interview of one of our authors by Workforce Magazine.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #102, 8/13/99)  
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1. **FEDERAL LEGISLATION UPDATE**
2. **NEW CALIFORNIA LAWS AFFECTING EMPLOYERS**
3. **MANAGEMENT ADVANTAGE AUTHOR INTERVIEWED BY WORKFORCE MAGAZINE**
4. **CALIFORNIA OVERTIME REQUIREMENTS BEGINNING 1/1/2000**

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1. **FEDERAL LEGISLATION UPDATE**

There were two major developments in Congress before it began its summer recess this past Monday. (Recess lasts from August 9th through September 6th)

The first was in the area of health care. The Senate rejected Senator Kennedy's version of a Patient's Bill of Rights Act (S. 6) by a vote of 53-47. It would have included employer liability for wrongful death and personal injury. At virtually the same time, the Senate approved a Patient's Bill of Rights Act sponsored by Senators Trent and Lott (S. 1344) that includes appeals and grievance procedures, plan information disclosure, greater emergency room access, gag clause prohibition, and direct access to OB/GYN and pediatricians. President Clinton has said he will veto S. 1344 if it passes the House.

The second action was taken in the area of training and education. Section 127 of the Internal Revenue Code was extended as part of a tax relief bill passed by both the House and Senate. It would extend a tax exclusion for employer-provided tuition assistance to employees taking undergraduate courses. That extension would last through the year 2003. Graduate level assistance was dropped from the final version before joint house agreement. President Clinton has promised to veto this legislation because he says it will cut taxes too deeply.

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## **2. NEW CALIFORNIA LAWS AFFECTING EMPLOYERS**

In Family Care and Medical Leave ... AB 109 was passed by both houses of the state legislature and signed by the Governor on August 5th. It will become effective on January 1, 2000. AB 109 requires employers who grant sick leave to allow employees to use up to half of that leave for care of a spouse, child or parent.

In the area of Age Discrimination ... SB 26 was passed by both houses and signed by the Governor on August 5th. It, too, will become effective on January 1, 2000. SB 26 amends the state's Fair Employment and Housing Act to prohibit employer use of salary as a criteria for employment termination decisions if the result would disparately impact workers over the age of 40.

For a current status on California and Federal legislative activities, go to [www.management-advantage.com](http://www.management-advantage.com) and select "Legislative Update" from the main menu on the left side of the page.

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## **3. MANAGEMENT ADVANTAGE AUTHOR INTERVIEWED BY WORKFORCE MAGAZINE**

Should companies promote from within? That was the question posed to Charlie K. Dawson, author of two recruiting books published by The Management Advantage, Inc. It is also the title of the resulting article written by Scott Hays, department editor for Workforce magazine and workforce online.

Charlie's suggestions for HR managers who are thinking about recruiting from within ...

1. Determine whether promoting the right person is going to cause damage to the rest of the organization. For example, if your top-producing salesperson gets promoted to sales manager, you may find you've just lost your top salesperson and gained a lousy manager. Ask yourself three questions before promoting from within: Is the skill replaceable. Is the skill transferable. And, is there an overall advantage to the organization by promoting this person?
2. Check and double-check the "chemistry" between the internal candidate and the hiring manager. Even if the candidate possesses the skill level to become a great manager, efficiency and productivity may not follow if there's a "personality conflict." The interview time between the internal candidate and the hiring manager needs to focus on whether the two can work together.
3. Determine that the new position and the compensation and benefits plan meet the internal candidate's long-term career goals. For example, a junior-level accountant might someday want to become controller, but the promotion you're considering would put her on the path to becoming an actuary. Maybe you need to rethink your decision -- for her sake and the company's.

4. Never be afraid to stop and start again. The most critical mistake any company makes when it promotes from within is to get its heart set on a specific individual, instead of looking through the entire organization for the person who might actually be the best fit.

You can read the entire article at

<http://www.workforceonline.com/archive/article/000/35/01.xci>

To learn more about Charlie Dawson's books on technical recruiting, visit our Web Store for Professionals(tm) and the "HR Books and Manuals" section. <http://www.management-advantage.com>

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#### **4. CALIFORNIA OVERTIME REQUIREMENTS BEGINNING 1/1/2000**

We told you already about the passage of AB 60, the Repeal of the 40-hour Work Week. Governor Gray Davis signed that bill into law and it becomes effective on January 1, 2000.

It is NOT just a simple return to paying overtime for all hours in excess of eight in a day. There are some substantial expansions of coverage, modifications of exemption categories, and new provisions for "make-up" time.

We have assembled a summary of those new requirements in a FREE Report titled, "California Overtime Requirements Beginning January 1, 2000." If you have employees in the State of California, or plan to after January 1st of next year, you will need this information to plan and budget for a different way of scheduling employees.

To get your own copy of this FREE Report, visit "HR Books & Manuals" as a main menu selection at our Web Store for Professionals(tm). You will find it at <http://www.management-advantage.com> .

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## *Gentle Readers,*

It's summertime. Congress is on vacation. Yet, before they left the Capitol, they gave some attention to appropriations for the coming Fiscal Year (FY).

Bill Truesdell  
Editor

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IN THIS REPORT (Report #103, 8/20/99)

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1. **EEOC FUNDING FOR 2000 TO REMAIN UNCHANGED**
  2. **CANADIAN WORKPLACE SAFETY VS. ACCOMMODATION**
  3. **GLASS CEILING PERCEPTIONS**
  4. **DIPLOMACY**
- 

1. **EEOC FUNDING FOR 2000 TO REMAIN UNCHANGED**

Congress has come to within reach of agreeing on a funding package for the Equal Employment Opportunity Commission (EEOC) for FY2000. On August 5th, the House passed an appropriations bill (HR 2670) that contained provisions for the EEOC to receive \$279 million, an amount identical to its current year allocation. That amount is also identical to the provisions of S 1217 which was passed earlier by the Senate. Since both houses of Congress have already agreed on the budget allocation for the Commission, it remains for details to be worked out by representatives of both houses during compromise talks. That is expected to happen without incident, but the appropriation will almost certainly not change since there is already agreement on that amount.

Ida Castro, Chairwoman of the EEOC, has been quoted as characterizing the appropriations for her agency as representing "a 4.5% cut because of cost increases." The Clinton administration had requested \$312 million for the EEOC in the coming FY.

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2. **CANADIAN WORKPLACE SAFETY VS. ACCOMMODATION**

When it comes to religious accommodation, the Supreme Court of Canada has said that safety issues can be used to justify "undue hardship" in agreeing to an accommodation request. Yet, the Court has said that employers have to demonstrate more than a minor inconvenience to justify an "undue hardship." (Ontario Human Rights Commission and O'Malley vs. Simpson Sears Ltd., 23 D.L.R. 4th 321, S.C.C., 1986)

This past May, the British Columbia Tribunal decided that a citizen could be exempted from the province requirement for wearing a safety helmet while riding a motorcycle. The exemption was based on religious accommodation. The citizen, Avtar Singh Dhillon, was a practicing Sikh. He wore a turban as part of his religious practice, and refused to wear a safety helmet to take his motor vehicle examination on the motorcycle. The safety risk, said the Tribunal, must be weighed against the need to accommodate religious beliefs. (Avtar Singh Dhillon and Her Majesty in Right of the Province of British Columbia - Ministry of Transportation and Highways, Motor Vehicle Branch, May 11, 1999, unreported)

So, how does that impact accommodation in the workplace? The same principles apply. Who bears the safety risk? Does it all fall on the employee's shoulders or does the employer hold liability as well? What would an accident do to the employer's operations, reputation, finances?

Clearly, the Canadian interpretation of "undue hardship" requires employers to go several steps further in their analysis of a request for accommodation than they might initially have gone. Individual rights have won the argument so far in Canada when it comes to this issue.

If you are a Canadian employer and receive a request for accommodation, as always, we suggest you counsel with your management attorney before taking any employment action.

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### 3. GLASS CEILING PERCEPTIONS

The way people perceive the issue of glass ceiling depends upon who they are according to a study by the Society for Human Resource Management (SHRM). Called the Barriers to Achievement survey, 89% of respondents believe that women face barriers in the workplace and 74% believe the problem exists for minorities.

Other interesting perceptions coming from the study include:

- 92% of females said there are obstacles to women advancing in their careers.
- 78% of males said women face difficulties advancing.
- 77% of females and 91% of minorities believe that minorities face workplace barriers to advancement.
- 66% of males and 71% of whites see that minorities face barriers to advancement.

(Source: SHRM [www.shrm.org](http://www.shrm.org) )

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**4. DIPLOMACY**

A quote for the summertime vacation days ...

"Diplomacy is the art of saying 'Nice doggie' until you can find a rock."

- Will Rogers

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## *Gentle Readers,*

All Affirmative Action employers should be aware that they will be expected to produce documents other than AAP-related papers if the government ever selects them for a compliance audit. Be sure you do your own internal check before the government arrives to avoid any unpleasant citations.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #104, 8/27/99)  
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1.       **HALF OF ALL EMPLOYERS HAVE BEEN SUED**
2.       **OFCCP WILL CHECK OTHER DOCUMENTS**
3.       **NEW WEB SOURCE FOR AFRICAN AMERICAN PROFESSIONALS**
4.       **WORKPLACE CULTURE IMPACTS THE BOTTOM LINE**

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1.       **HALF OF ALL EMPLOYERS HAVE BEEN SUED**

Fifty-three percent of human resource professionals surveyed by the Society for Human Resource Management (SHRM) and the law firm of Jackson Lewis indicated their organizations have been named as defendants in at least one employment-related lawsuit. The study is titled "1999 Employment Practices Liability Survey."

Of those who had been sued, 91 percent said the action was taken by former employees. 37 percent said it came from current employees, and 8 percent were sued by unsuccessful employment candidates.

To deal with the problem, 55 percent of the HR professionals responding said they offer training on employment-related litigation matters to both managers and supervisors. A few more organizations offer training, but only to one of the groups.

The number of firms carrying employment liability insurance has grown from 22 percent to 29 percent in the two years since 1997. An additional 8 percent indicate they are considering such coverage.

353 HR professionals responded to the survey request.

If you would like a copy of the complete survey, it is available (for \$39.95 for SHRM members and \$49.95 for nonmembers) by calling 1-800-444-5006.

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## **2. OFCCP WILL CHECK OTHER DOCUMENTS**

If you are ever scheduled for a compliance review by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) you can expect the Compliance Officer to ask for other federally required documents beyond those associated with Affirmative Action.

According to the "Federal Contract Compliance Manual," section 2-66h, "...all onsite visits (other than a compliance check) should include an inspection of the I-9 forms, a check for FMLA [Family and Medical Leave Act] compliance in accordance with established procedures, and collection of the VETS-100 report. Also if additional problem areas are identified through interviews or records review, the CO/DD [Compliance Officer / District Director] may decide that a complete onsite review is necessary."

So, federal contractors, be prepared for a potential compliance review by conducting your own internal audit of your I-9 files, VETS-100 file and FMLA records. If you are satisfied that you have everything in order, you will be confident in providing access to the OFCCP Compliance Officer if that should be necessary.

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## **3. NEW WEB SOURCE FOR AFRICAN AMERICAN PROFESSIONALS**

We have just become aware, thanks to one of our subscribers, of a new web source for African American professional job candidates. Already there are some impressive organizations associating their logos with this meeting place for employers and job seekers.

To find out more, why not make a quick visit to [www.employus.com](http://www.employus.com)? You may find that you want to add this site to your list of regular web resources to be used in your recruiting efforts.

We have added this new resource to our FREE report on recruiting entitled, "Finding Qualified Minorities and Women on the Web." If you haven't seen all of the FREE reports we have made available to our clients and friends, we invite you to stop in and look over the list. You will find them at [www.management-advantage.com](http://www.management-advantage.com). Just click on "HR Books & Manuals" in the main menu on the left side of any of our pages. And, we welcome your feedback about anything you find helpful or lacking about the resources we are offering on our site. Hope to see you there soon.

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## **4. WORKPLACE CULTURE IMPACTS THE BOTTOM LINE**

According to a recent study conducted by the Boston College Center for Work & Family, the importance of workplace culture is too often taken for granted by many corporations. The study indicates that workplace culture has the power to "make or break" the success of all business initiatives, particularly work/life projects.

Workplace culture, as defined by Boston College are those values and expectations that create rules and guidelines for behavior in the workplace. How employees interact with one another will determine whether or not the enterprise is able to reach its stated goals.

Find more about the study at  
[www.diversityinc.com/Recruitment/WorkLife/worklife.html](http://www.diversityinc.com/Recruitment/WorkLife/worklife.html) .

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## *Gentle Readers,*

We have added some new books to our HR Books & Manuals section in the Web Store for Professionals(tm). Anyone who faces the task of finding a new job will want to have a copy of our upcoming publication, "The Accelerated Job Search." Learn more about it below.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #105, 9/3/99)  
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1.       **FOR JOB-SEEKERS WITH NO TIME TO WASTE**
2.       **JUSTICE DEPARTMENT CAUGHT WITH TWO BOOKS FOR PAYROLL HOURS**
3.       **CALIFORNIA GOVERNOR APPOINTS PANEL TO COMBAT "HATE GROUPS"**
4.       **CALIFORNIA DFEH OPENS NEW WEB SITE**

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1.       **FOR JOB-SEEKERS WITH NO TIME TO WASTE**

We are pleased to announce that we have a new publication on the way. "The Accelerated Job Search" is a book by Wayne D. Ford, Ph.D. that offers a clear, concise, and practical approach to finding a job you can find quickly and enjoy.

This 275-page book will be shipping by the end of October. Between now and September 30, 1999, we are offering a 27% DISCOUNT as a PRE-PUBLICATION SPECIAL. The normal list price will be \$14.95. If you order before the end of September, you will receive this action planning guide for only \$10.95 per copy.

It is a great reference for any HR Professional, but more importantly, it should be given to every employee who becomes subject to layoff or downsizing. Even if you provide outplacement assistance to your employees in those circumstances, you should also give them a copy of this book. They will thank you for it.

Here are some of the subjects you will discover within its covers ...

- Why this Job System Works
- Job Hunting with an Attitude
- Career Directions
- Job Search Lead Sources
- Resumes & Cover Letters
- References
- Networking
- Creating a Job

- Battling Discrimination & Abuse
- Interviewing Concepts
- 50 Frequently Asked Questions
- Questions You Should Ask
- The Offer - Negotiating Terms
- Keeping the Job
- and much, MUCH MORE!

To receive this PRE-PUBLICATION PRICE, you MUST order from our Web Store for Professionals(tm) at [www.management-advantage.com](http://www.management-advantage.com) . You will find "The Accelerated Job Search" in the HR Books & Manuals section of the store. It is also our Featured Product for September. Telephone, mail and FAX orders will NOT be accepted for the Pre-Publication Special. All orders will ship before the end of October, 1999. Your credit card will not be charged until your order is ready for shipping.

While you're visiting, check out our other new offerings ...

- "Managing Change in the Workplace: A 12-Step Program for Success"
- "Work Transformation: Planning and Implementing the New Workplace"

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## **2. JUSTICE DEPARTMENT CAUGHT WITH TWO BOOKS FOR PAYROLL HOURS**

The New York Times' David Johnston broke the story last week in his newspaper and on MSNBC. The U.S. Department of Justice has been caught with its hand in the cookie jar. Lawyers in the Department accuse their bosses of juggling the books to cheat them out of overtime pay in violation of the law and then lying about it to conceal the illegality.

The case has been filed in the U.S. Court of Federal Claims. On August 24, 1999, a Federal judge said the court would ask 12,400 current and former Justice Department lawyers if they wanted to join the class-action lawsuit filed on behalf of 200 lawyers at the government agency.

According to the New York Times, candid internal Department documents show that Department officials knew they were in violation of the 1945 Federal Employees Pay Act, and kept two different sets of records to cover up the fact. One set, on which paychecks were based, required lawyers to state that they worked 40 hours a week, no matter how much time they actually put in.

The other set of records, detailed computerized time sheets, clocked overtime hours. The records were allegedly used by supervisors to measure their lawyers' effort, to ask Congress for bigger budgets and even to bill legal fees to losing adversaries.

Federal law requires all executive branch agencies to pay all employees for overtime or to give them compensatory time off.

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**3. CALIFORNIA GOVERNOR APPOINTS PANEL TO COMBAT "HATE GROUPS"**

California Governor Gray Davis announced last Thursday, August 26, 1999, that he had asked former U.S. Secretary of State Warren Christopher and former California Governor George Deukmejian to head a blue ribbon committee that will conduct a comprehensive study of current and potential laws relating to combating "hate groups" and paramilitary organizations operating within California.

"Hate groups that preach intolerance and transform their venom into violence are a threat to civilized society," Governor Davis said. "The proliferation of these groups, especially those with paramilitary intentions, strikes at the heart of this state's ideals. I am asking Secretary Christopher and Governor Deukmejian to suggest ways the state can lawfully curtail the unlawful acts of these dangerous bigots."

In the past several months, California has seen several major criminal attacks against individuals and institutions based on hate for religious or racial groups.

Stanford University Law School Dean Kathleen Sullivan, a renowned constitutional scholar, has also agreed to serve on the committee. Other committee members will be named in coming weeks. No deadline for a committee report was announced.

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**4. CALIFORNIA DFEH OPENS NEW WEB SITE**

California's Department of Fair Employment and Housing (DFEH), the largest of all state enforcement agencies for employment discrimination issues, has announced its new web site.

Effective on August 26, 1999, the new web site offers visitors information about the laws enforced by DFEH, the complaint process, office locations, how to file a complaint, pre-complaint questionnaires, DFEH's most frequently asked questions, procedures for obtaining DFEH publications and employment opportunity bulletins.

You will find the new site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov) . The agency's information and complaint staff can be reached at 800-884-1684.

## *Gentle Readers,*

This week we first look at some Internet issues, then take a quick turn around the country for a look at some individual state developments you may find of interest.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #106, 9/10/99)  
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1.       **INTERNET IMPACT ON HR DEPARTMENTS**
2.       **POLICIES ON USE OF INTERNET**
3.       **STATE NEWS IN BRIEF**

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1.       **INTERNET IMPACT ON HR DEPARTMENTS**

The August 31, 1999 edition of the Wall Street Journal pointed out that working in human resources has been changing as HR Professionals use the Internet to stay in closer touch with employee needs.

They learn which health-care benefits employees prefer, or even plug workers directly into their 401(k) balances. Web services ranging from online employee handbooks to company forms, such as expense reimbursements, were operating or were in the works at 61% of 156 companies surveyed late last year by management consultant Watson Wyatt Worldwide, Bethesda, MD.

HR managers are using analysis of most commonly asked employee questions to identify the subjects and services they should be providing on web-access technology. By removing the most common questions from those handled by the HR staff, professionals in Human Resource departments are able to spend their time more effectively on issues with greater complexity.

Simple employee transactions are also being converted to Internet/Intranet formats for direct employee access. Changing beneficiaries on insurance coverages, updating personal information in the employee data base, and posting job bids are just some of the ways electronic access is making life easier for HR departments.

According to Barbara Northcutt, benefits manager of the New York-based Bridge Information Systems, Inc., Intranet efficiency has helped them reduce their HR department headcount. "The old-school rule was one HR person for every 100 employees," she said. "Now we have one for every 500 to 600."

## 2. POLICIES ON USE OF INTERNET

The Associated Press reports that more companies are establishing formal policies about using the Internet during work hours.

How do they know? A study was conducted by Management Recruiters International, an employee search firm. (<http://mrinet.com>) The study surveyed more than 4,000 executives, and nearly two-thirds said their companies have a policy in place. Nearly one-third said their firms have software that blocks employees from entering certain sites, such as adult-oriented Web pages. And some companies also keep workers out of shopping and personal finance sites.

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## 3. STATE NEWS IN BRIEF

Some interesting bits of news from around the country ...

- Nevada -- Gov. Kenny Guinn (R) signed into law legislation (A.B. 311) that makes sexual orientation a protected status in the state's employment discrimination law. It will apply to both private and public employers with 15 or more workers. It goes into effect on October 1, 1999. Exempted from the new employment provision are groups such as the Boy Scouts, federal agencies, Indian tribes and religious organizations. The Nevada Equal Rights Commission will handle complaints of employment discrimination based on sexual orientation under this new law.
  - New Jersey -- Public employers can be sued for punitive damages under the New Jersey Law Against Discrimination, according to the state's Supreme Court in a 4-3 decision. (Cavuoti v. New Jersey Transit Corp., N.J., No. A-17/18-98, 8/10/99) The high standard that must be met to justify an award of punitive damages - the participation or "willful indifference" of upper management, and "especially egregious" conduct - satisfies any policy concerns of allowing punitive damages to be awarded against public entities, according to the court.
  - West Virginia -- Punitive damages may be awarded under the West Virginia Human Rights Act, said the state's Supreme Court. (Haynes v. Rhone-Poulenc Inc., W.Va., No. 25366, 7/14/99)
  - California -- The California appellate court has agreed with a lower court that pre-dispute arbitration agreements that cause financial hardship for employees may not be valid. A fired computer software developer is not required to arbitrate his age and race discrimination claims under the terms of a pre-dispute arbitration agreement because it would be too costly for him. The appellate court said the agreement was "unconscionable." (Maciejewski v. Alpha Systems Lab Inc., Cal. Ct. App., No. G021588, 8/5/99)
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## *Gentle Readers,*

OSHA regulations are updated in California, demographics of the aging workforce are examined, and we extend our annual FREE calendar offer. Plus, you'll be delighted to hear about the latest suggestion from the OFCCP that contractors complete a survey, including compensation data. It's all in this issue.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #107, 10/1/99)  
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1. **NEW CALIFORNIA BLOODBORNE PATHOGENS SAFETY ORDERS ON WEB**
2. **CALENDAR OFFER**
3. **RETIREMENT PLANNING - FROM THE EMPLOYER'S VIEWPOINT**
4. **OFCCP PUSHES AGAIN FOR COMPENSATION DATA**

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1. **NEW CALIFORNIA BLOODBORNE PATHOGENS SAFETY ORDERS ON WEB**

The Cal/OSHA Standards Board adopted a final rule for revisions to Title 8 Section 5193 of the California Code of Regulations. The rules were approved by the Office of Administrative Law on July 30, 1999 and took effect on that same day. This action eliminates the emergency regulation which has been in effect since January of this year.

Cal/OSHA has posted the new regulation and information about its consultation program on its web site. You can find it at:  
<http://www.dir.ca.gov/DOSH/DOSHBloodBorne.html> A copy of the final rule can be found at <http://www.dir.ca.gov/OSHSB/appbloodborne.html> .

Any employer involved in using medical equipment such as needles must be conversant with this new set of requirements. The new regulations were created in response to a high number of needle-stick and other sharps injuries in health care establishments.

As they say, necessity is the mother of invention. In this case, several new "systems" of automatic needle covers and needleless syringes have been invented to address the problem. (Editor's Note: We have used the new syringe systems recently and they are truly amazing. If you are in the health care business, you will want to try them, too.) These new sharps devices are equipped with "engineered sharps injury protection," or e.s.i.p.

Because of demand for the new systems, suppliers have had difficulty meeting production requirements. Cal/OSHA has adopted the position that it will "soften" its enforcement efforts until that supply problem can be corrected.

Major elements of the new revisions include:

- New requirements for use of needleless systems and sharps devices with e.s.i.p.
- New requirements for a program to evaluate and select needleless systems and sharps devices with e.s.i.p. appropriate for procedures conducted, with active involvement of front line health care providers.
- Maintenance of a Sharps Injury Log.
- Addition of hepatitis C as a specifically named bloodborne pathogen.
- Reorganization of existing requirements for greater clarity, and a number of other changes.

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## 2. CALENDAR OFFER

As hard as it is for some of us to admit, we are in the final quarter of another year. That means it is time for us here at The Management Advantage, Inc. to extend to you our yearly offer of a FREE pictorial calendar for the Year 2000.

This 8.25" X 8.75" wall calendar contains some magnificent photographs from around the United States and Canada.

- Included are:
- Emerald Bay State Park
- Yosemite National Park
- Yellowstone National Park
- Babcock State Park, WV
- Moraine Lake & Ten Peaks, Alberta, Canada
- Harrisonburg, VA
- Mount Vernon, WA
- Magens Bay, St. Thomas, VI
- Great Smoky Mountains National Park, TN
- many more

You will find comfort in the beauty of these scenes and wisdom in the written reflections offered each month.

We have a limited supply and will mail them FREE (within the US only) to the first 200 subscribers who request them. (One copy per subscriber please.) If you would like your own "Year 2000 Collector's Edition Wall Calendar" please send us the following information via email ...

Your email request must include:

- o Your name
- o Your title
- o Your organization name
- o Your street address in the U.S.
- o Your city, state and zip code
- o Your email address

We will be shipping copies as requests are received. Once the supply is gone, the offer ends. Get your request in early so you don't miss out.

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### **3. RETIREMENT PLANNING - FROM THE EMPLOYER'S VIEWPOINT**

Alison Stein Wellner, in a Training magazine article (August 1999) entitled "Retirement Boom or Bust," offers a list of seven factors influencing how and when baby boomers will retire.

1. Medicare and Social Security - Health insurance is the biggest factor in retirement. If Congress raises the eligibility age for Medicare over 65, many boomers will not be able to retire.
2. Finances - Life expectancy has increased, but most people haven't thought through the implications of a longer life; they have more years to fund. Just 20% of all working Americans are confident they will have enough money for a comfortable retirement.
3. Age and Discrimination - Much attention has focused lately on how to manage the younger generation, Generation X. Yet the fastest growing portion of the population is the older group, which may turn out to work longer than "normal" retirement age. If companies go overboard trying to make themselves Gen X friendly, they could be throwing the baby boomer out with the bath water.
4. Care-Giving - The group of people over age 85 is growing faster than any other group. Most elder care is not provided by institutions, but by families. Most people expect that today's social structure will place the greatest burden for this care on women.
5. (& 6) Disability (and Downsizing) - Chronic illness and disability increase with age. Surveys indicate that two-fifths of retirees retired before they wanted to because of ill health, disability and downsizing.
7. Technology - One group of experts suggests the pace of technology will leave boomers behind. If technology becomes user-friendly to the point of becoming invisible, its impact will change dramatically.

How will these factors impact your benefit programs? Will there be any impact on how you recruit or design retention programs? What about employee training programs? If the demographics of our workforce are undergoing a shift and becoming increasingly older, how can employer policies and programs reconcile the differences (some say polarization) between younger workers and older workers?

If you have some thoughts about these issues, we'd love to hear them. Please send your comments to [feedback@management-advantage.com](mailto:feedback@management-advantage.com) and tell us if you have begun addressing these issues in your employment policies or planning. We will consolidate the feedback and share it with everyone in a future Special Report or newsletter.

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**4. OFCCP PUSHES AGAIN FOR COMPENSATION DATA**

According to BNA's Employment Discrimination Report, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has "floated" an alternative to the proposal it withdrew earlier this year under heavy opposition from employers across the country. This time it is suggesting a "survey" asking for number of applicants, incumbents, hires, promotions and terminations by job (EEO-1) category and ethnic/racial group. Compensation data requested will be reported in groups of minority males, nonminority males, minority females, and nonminority females for each of the nine EEO-1 categories. OFCCP is expected to publish its proposal in the Federal Register for public comment later this year. Look for it. If you have an opinion, or comment about their proposal, make your response by the deadline in the announcement.

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## *Gentle Readers,*

OFCCP is in the news again this week. One Circuit Court of Appeals rules that "front pay" awards are not capped by the Civil Rights Act of 1991, and Florida implements a new law to protect employers from negligent hiring lawsuits. Enjoy.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #108, 10/8/99)  
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1. **FRONT PAY AWARDS NOT CAPPED BY CRA '91**
2. **OFCCP SAYS, "CLEAN UP YOUR MESS BEFORE WE HAVE TO."**
3. **OFCCP COMPLIANCE CHECKS DURING THE 1998/1999 FISCAL YEAR**
4. **FLORIDA PROTECTS EMPLOYERS AGAINST NEGLIGENT HIRING**

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1. **FRONT PAY AWARDS NOT CAPPED BY CRA '91**

According to the U.S. Court of Appeals for the Ninth Circuit, the damages limit written into the Civil Rights Act of 1991 applies only to compensatory and punitive damages and does not apply to actual damages (equitable relief), including front pay awards.

Front pay reimbursement is the amount of money a plaintiff would have earned between the time he or she was injured by the discrimination and the time a new job has been located. Front pay is intended to fill in that financial gap and is generally thought of in the same category as other actual damages such as out-of-pocket costs, medical bills, attorney fees, back pay, and so forth.

In this particular case, the court affirmed the district court's decision, including a front pay award of \$603,928. (Gotthardt v. Nat'l R.R. Passenger Corp. d/b/a/ Amtrak, 9th Cir., No. 98-15072, 9/14/99)

While this may be interesting news, in actual practice, plaintiff attorneys generally go where there is a greater reward potential. Many state laws allow unlimited damage recovery in cases of employment discrimination. Where that is the case, we generally see cases filed in state court. It is in those states which do not offer such an unlimited potential that this news will be most important.

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2. **OFCCP SAYS, "CLEAN UP YOUR MESS BEFORE WE HAVE TO."**

The highest priority for the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) during the coming year (October

1999 through September 2000) is compensation analysis to reveal contractor's who are discriminating against women and minorities based on pay differences. This was the announcement by Deputy Assistant Secretary Shirley Wilcher at August's national Industry Liaison Group (ILG) meeting in Seattle, Washington. Her second priority, according to Wilcher, is to reduce the number of jobs being filled by people from other nations in the high tech industry. She told the conference that qualified employees are "right here" and the OFCCP intends to "work with that industry" to be sure contractors hire people in this country before looking off shore for talent.

Ms. Wilcher continued her criticism of Internet recruiting because she believes it has been used to illegally discriminate against hiring minorities and women.

Generally, agency executives who spoke at the conference stressed the need for federal contractors to conduct self audits of their compensation programs and hiring procedures. Joe Kennedy, deputy director at the OFCCP, told contractors that they should "fix the problems" they discover when doing self audits. It's better, he added, to "clean up your mess before we have to."

It seems pretty clear that the enforcement group will be focusing on high technology contractors. Silicon Valley in California was specifically mentioned. That shouldn't cause high technology companies in other parts of the country to feel more at ease, however. Look for the instances of compliance evaluations to increase among high technology companies ... visitations from national political leaders and political candidates notwithstanding.

The agency said it has three purposes for its equal pay initiative:

1. Ending pay discrimination;
2. Enhancing opportunities for women and minorities in nontraditional employment; and,
3. Promoting pension equity.

Having laid out its objectives, no one at the agency would provide any definitive answer to the question about when guidelines would be released for the compensation review system the agency intends to use for its analysis of contractor pay practices. It remains business as usual at the OFCCP with their "unofficial" compensation review program continuing to expand across the country, and no opportunity for public comment on the enforcement process. Don't look for things to change in the near future.

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### **3. OFCCP COMPLIANCE CHECKS DURING THE 1998/1999 FISCAL YEAR**

Compliance Checks are one of the enforcement reviews available to the Office of Federal Contract Compliance Programs (OFCCP) since changes were made in regulations at 41 CFR 60-1 during 1997.

You may remember that in the final two weeks of the last fiscal year, from mid- to end-September 1998, the Agency conducted about 1,900

Compliance Checks. That nearly doubled the number of total Compliance Evaluations it conducted all year.

Compliance Checks are intended to be 30-minute on-site reviews which involve the Compliance Officer's review of three items:

1. Report of AAP results from the previous year;
2. Examples of job advertisements and a log of filings for job openings with the state employment service; and,
3. Examples of accommodations made for people with disabilities.

According to the OFCCP, 20% of contractors who have experienced these abbreviated Compliance Checks have been found in non-compliance. That is considered to be a high percentage by the Agency.

Through the end of July 1999, the Agency had conducted 1,260 Compliance Checks in the current fiscal year. It planned to meet the level of last year by performing an additional 700 reviews in the final weeks of this fiscal year.

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#### **4. FLORIDA PROTECTS EMPLOYERS AGAINST NEGLIGENT HIRING**

Effective October 1, 1999, Florida has created protections for employers against the legal claim of negligent hiring. Under the new law, employers who use the following five methods to check applicants will be protected from liability in negligent hiring lawsuits.

1. Criminal background checks through Florida Department of Law enforcement.
2. Reasonable efforts to contact references and former employers.
3. Employment applications that ask for specific information about criminal convictions.
4. Motor vehicle checks.
5. Applicant interviews.

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## *Gentle Readers,*

Federal contractors will be interested in this week's news about OFCCP requests for permission to obtain more information from them each year. The agency is moving forward with its plans to gather compensation and head count data on an annual report. And, there are a few calendars remaining for those who would like a FREE copy.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #109, 10/15/99)  
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1. **OFCCP REQUESTING NEW FORM FROM CONTRACTORS**
2. **OFCCP MAKES ANOTHER REQUEST FOR REVISIONS TO SCHEDULING LETTER**
3. **EMERGING ISSUES**
4. **YOU CAN STILL GET YOUR FREE 2000 CALENDAR**

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1. **OFCCP REQUESTING NEW FORM FROM CONTRACTORS**

On October 5, 1999, the Office of Federal Contract Compliance Programs (OFCCP) published a notice in the Federal Register that it intends to move forward with its annual data collection form. Some who have seen it say it appears to be similar to the Standard Form 100 (EEO-1, EEO-4, etc.) with compensation data added. The interesting thing about OFCCP's announcement is that the proposed form was omitted from the Federal Register posting. They are requesting public comments be submitted prior to December 6, 1999, but if you want the form to review before preparing your comments you have to make a special request to Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S-3201, Washington, DC 20210, telephone 202-693-0339, fax 202-693-1451. (Editor's Note: We tried to send our request by FAX over a five-day period. The FAX line was always busy. The DOL office is reported in the midst of remodeling their facility and "the FAX does not always work as a result." Our request was accepted when we talked with Ms. Forkel personally on the voice line number.) No email address was given. Ms. Forkel is also the person to whom you should address your comments, making sure they arrive prior to December 6th.

Here is some of what the OFCCP has said about its new data collection process, which they are calling a "survey" ...

"At this time OFCCP intends to send the survey to contractor establishments that are 'flagged' by OFCCP's Equal Employment Data System (EEDS) as being potentially out of compliance with Executive Order 11246. An initial mailing of the survey will be made to respondents selected from those establishments that were flagged in 1999. Approximately 7,000 of the flagged establishments will be

surveyed in April 2000. This number was chosen to provide a sufficient sample to test the data intake and processing procedures. Flagged establishments will be selected for the survey based on geographic location and size.

"The survey data from the initial mailing will be processed and analyzed and the results used to identify establishments for compliance evaluations. The analytical model will result in a ranking of contractors based on the nature and number of adverse indicators. Compliance evaluations will be scheduled beginning with those establishments with the highest rankings on the indicator scale. As part of the compliance evaluation process, survey responses will be validated for a sample of establishments to assure that accurate data are being submitted. Establishments where compliance evaluations are not initiated may be notified of areas that require additional self-analysis.

"The second mailing will be sent to the flagged establishments that were not previously surveyed in the first mailing (i.e., about 53,000 establishments). These surveys will be mailed in late FY 2000, and will be used to select establishments for compliance evaluations during FY 2001. Thereafter OFCCP intends to survey contractors on an annual basis."

"Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

"Total Respondents: 60,000

"Frequency: Annually

"Total Responses: 60,000

"Estimated Time Per Response: 12 hours."

Since there are about 60,000 federal contractors in the country it is fairly easy to discern that EVERY federal contractor will have to file an annual report that will then be used to select compliance audit candidates ... much the same as the IRS uses tax returns. Although this approach is consistent with other policy decisions in the six-year-long reign of Shirley Wilcher as National Director of OFCCP, it is counter to the notion of self-regulation and critical self-examination promulgated by every former administration since President Johnson.

For the complete posting, go to <http://www.nara.gov/fedreg/> and request October 5, 1999, pages 54056-54057.

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**2. OFCCP MAKES ANOTHER REQUEST FOR REVISIONS TO SCHEDULING LETTER**

Nearly a year ago, in December 1998, the Office of Federal Contract Compliance Programs (OFCCP) filed a request with the Office of Management and Budget (OMB) for permission to add a paragraph to its scheduling letter. That paragraph would have required federal contractors to submit detailed compensation data at the desk audit phase of a compliance evaluation. The request for comments and approval was only open for a brief time, including the holiday period, and drew wide spread outrage from the contractor community because of the tactics. OFCCP withdrew its request before receiving an official response from OMB.

Now, the agency has again submitted a request for OMB review involving revision to the scheduling letter. Again, the comment period is only 30-days long. And, the specific document changes were not published along with the Federal Register notice.

To obtain a copy of the proposed changes to the scheduling letter you must call the Department of Labor, Departmental Clearance Officer, Ira Mills at 202-219-5096 ext. 143. She may also be reached by email at [Mills-Ira@dol.gov](mailto:Mills-Ira@dol.gov).

The comment period will close on November 5, 1999.

According to the Federal Register notice, the OMB is particularly interested in comments which:

"<bullet>Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;  
"<bullet>Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;  
"<bullet>Enhance the quality, utility, and clarity of the information to be collected; and  
"<bullet>Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses."

You can find the entire Federal Register posting at:  
<http://www.nara.gov/fedreg/> for October 5, 1999, page 54056.

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### **3. EMERGING ISSUES**

The Northern California Human Resource Association held its annual conference recently and one of the key note speakers was Wayne Cascio, Ph.D., Professor at the University of Colorado, Denver, Graduate School of Business. He spent some time discussing "Emerging Issues in the Future World of Work."

Here are some of the things he suggests we should expect as we move into the year 2000 and beyond:

- The volume of information and data on the Internet doubles every 100 days.
- A company's "human capital" is defined as the knowledge, skill and capability to develop and apply solutions to problems \*\*\*that customers think are important.\*\*\*
- Tracking mergers and acquisitions provides a good forecast for the future impact of downsizing on work groups. The lag is approximately six to eight months.
- The median time on most jobs is four years.

- Companies only retain loyal customers if they have loyal employees.
- Building loyalty is taking on a new look. Workers are loyal to a clear vision/mission; to supervisors; and, to teams.
- Fixed-term employment contracts with options to negotiate extensions and other terms are developing.
- Workers are defining career success as:
  - > Advancement
  - > Job satisfaction
  - > Skills development
  - > Psychologically -- taking personal pride from accomplishing goals in life. (Editor's note: Sounds like Fred Herzberg all over again!)
- The pendulum will swing back to companies looking for ways to keep older employees. Those companies that have become too "gen-X friendly" will not be able to attract older workers if they don't plan for it.
- Seventy percent of all new jobs will continue to come through personal contacts.

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**4. YOU CAN STILL GET YOUR FREE 2000 CALENDAR**

Response to our offer of FREE year 2000 wall calendars has been very strong. And, we still have some remaining, if you haven't yet requested your personal copy. From one month to another you will be happy each time you look at the remarkable four-color photos from some of the most beautiful spots in the U.S. and Canada.

It is the perfect size, too. Only 8" X 8.5" it fits on nearly any available wall space.

While supplies last, you may have your own copy of this handy calendar for FREE (U.S. mailing addresses only, please). Simply send us an email with the following information:

- Your name
- Your title
- Your organization name
- Your street address in the U.S.
- Your city, state and zip code
- Your email address

That's all there is to it. If you have already sent in your request, your calendar is on its way to you. We thank you all for your interest and hope you enjoy this friendly reminder that life has many beautiful things to offer.

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## *Gentle Readers,*

The employment market continues to capture headlines across the country. Technical recruiting is at the top of everyone's list of "Most Difficult" activities. If you are in that market you will be interested in our latest publication, "Technical Recruiting Success for IT Firms."

Bill Truesdell  
Editor

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IN THIS REPORT (Report #110, 10/22/99)  
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1.      **ERROR IN COUNTING H-1B VISAS**
2.      **EMPLOYMENT MARKET DRIVES EARLY HIRING**
3.      **TECH RECRUITING FOR IT FIRMS**
4.      **TEN WAYS TO FIGHT HATE**

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1.      **ERROR IN COUNTING H-1B VISAS**

According to the Wall Street Journal (10-19-99), a computer-system error is blamed by the Immigration and Naturalization Service (INS) for miscounting H-1B temporary visas for skilled foreign workers. The result? Approving 10,000 to 20,000 more than the annual quota. If the excess were charged to fiscal 2000's quota, the year's limit would be reached as early as January, closing H-1B entry until October, warned Los Angeles immigration attorney Carl Shusterman.

If you rely on H-1B temporary visas to provide some or all of your skilled workforce we suggest you stay in close contact with the INS so you can properly respond the their upcoming decisions.

At the INS web site (<http://www.ins.usdoj.gov/graphics/> ) you will discover that INS has had a limit of 65,000 H-1B visas per year since fiscal year 1997. For the first half of FY 1999, the top 10 countries of origin for H-1B visas are:

India = 46% China = 10% Canada = 4% Philippines = 3%  
Taiwan = 2% Korea = 2% Japan = 2% United Kingdom = 2%  
Pakistan = 2% Russia = 2%

The INS does not currently track the occupations of H-1B visa beneficiaries. It will begin compiling that data in FY 2000 as required by the American Competitiveness and Workforce Improvement Act of 1998.

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## **2. EMPLOYMENT MARKET DRIVES EARLY HIRING**

Retailers are staffing up early and liberally for this year's holiday season according to the Wall Street Journal (10-19-99). Macy's West, a Federated Department Stores Inc. division, began adding support staff October 1st, compared with the usual Thanksgiving starting date. It is also trying to make the work "fun" with aerobics classes and free buffet lunches on sale days, says human-resources vice president Laurie Winthrop. Sears, Roebuck & Co. store managers since late August have distributed job applications at mall-sponsored events.

Dayton Hudson Corp.'s Target division this summer installed job screening and interviewing kiosks in its 914 stores. "We don't want to risk letting them go to work for one of our competitors," a spokesperson said.

Borders Group Inc. is making employees eligible for stock options after one month on the job and merit-pay increases after six months.

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## **3. TECH RECRUITING FOR IT FIRMS**

We have just released our latest book, "Technical Recruiting Success for IT Firms." It offers a comprehensive guide to all phases of the technical recruiting effort within the Information Technology industry.

Perhaps no other single industry is experiencing such a drastic restriction of qualified job candidates as the IT industry. It has been that way for several years now, and forecasts indicate it will continue well into the future. Any IT firm wanting to remain competitive must have the right people on its staff. But, how to get them is the question.

Charlie K. Dawson, author of this new publication, tells you where to look and how you can create a supply of new recruits where none existed before. Readers will learn how to build a better mouse trap and become incredible mouse hunters.

At 298 pages, it is a reference tool with forms you can copy and use in your every day recruiting efforts. There are check lists and reminders you will find invaluable. And it is in a convenient 3-ring binder so you don't have to destroy the book to make copies of those job aids.

If you are a recruiter in an IT firm, or you know someone who is, this new book is something you will want to have handy at all times. Your friends will thank you when they realize you cared enough to give them a tool that will help them rise above their competition in the technical recruiting world.

Find out what your competitors are learning ... how to grab the best technical candidates in the market place. Don't miss out. Your company depends on you.

Order your copy today from our Web Store for Professionals(tm) at <http://www.management-advantage.com> . Look for this new publication in the "HR Books and Manuals" section. See you there.

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**4. TEN WAYS TO FIGHT HATE**

The Southern Poverty Law Center (SPLC) has released its second edition of "Ten Ways to Fight Hate." It was written as a guide for communities wanting to improve the way people deal with one another.

"The guide sets out ten principles for fighting hate along with a collection of inspiring stories of people who acted, often alone at first, to push hate out of their communities. Their efforts usually made smaller headlines than the acts of the haters, but they made a difference. Even in the wake of some of the most horrific hate crimes of the last century, seeds of promise sprouted."

We found this to be an insightful and practical outline of steps anyone can follow to improve the world around them. If you would like to learn more, or want your own copy of this material, you can get it for FREE on the web. Go to <http://www.splcenter.org/> and look for "Intelligence Project" on the main menu. There, you will find "Ten Ways."

The publication is offered as a series of Adobe PDF files you can download without cost. Even the Adobe PDF Reader is available for FREE as a download is you need it.

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## *Gentle Readers,*

Lots doin' this week. California employers will be particularly interested in the new "Kin Care" leave requirements coming up in January. The time between now and then can be used to adjust policies as required. And, when you have a chance, you might want to take a look at our redesigned web site welcome page. If you have some feedback for us, we would welcome it. <http://www.management-advantage.com>

Bill Truesdell  
Editor

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IN THIS REPORT (Report #111, 10/29/99)  
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1. **MOST RELOCATIONS AT MID-LEVEL MANAGEMENT**
2. **"KIN CARE" LEAVE MANDATED FOR CALIFORNIA EMPLOYERS**
3. **CAL-OSHA REFORM BILL PASSED AND SIGNED**
4. **ONE WEEK REMAINS FOR COMMENT ON CONTRACTOR "BLACKLISTING" PROPOSAL BY WHITE HOUSE**

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1. **MOST RELOCATIONS AT MID-LEVEL MANAGEMENT**

According to a recent survey by Runzheimer International, Inc. American employers relocate mid-level managers more frequently than any other group of workers, including executives.

"The Survey & Analysis of Employee Relocation Policies & Costs" is now in its 7th edition. Conducted biennially, it monitors trends in relocation and transfer of U.S. workers by their employers.

This year's results indicate the average cost of relocation was 42,160, a \$6,520 increase over 1996 data. Moreover, 70% of companies using relocation benchmark their policies and relocation benefits.

Only 30% of relocations during the latest survey period were the result of a promotion. New hires caused 29% of relocation cases and demotions accounted for 5% of the moves. The balance resulted from lateral transfers.

For more information, visit the Runzheimer International web site at <http://www.runzheimer.com/> You will find the report under domestic relocation - publications.

## **2. "KIN CARE" LEAVE MANDATED FOR CALIFORNIA EMPLOYERS**

Governor Gray Davis has signed legislation that will require ALL California employers with sick leave policies to allow use of up to half of that paid time off for family member illness.

Beginning January 1, 2000, A.B. 109 will mandate policy changes for every employer in the state currently offering paid sick leave to employees. It does not require organizations without sick leave benefits to implement such a program. The number of employees in an organization does not matter.

Employees must be allowed to take up to half of their accrued sick leave in any year for the care of a sick family member. Specifically, the law says it can be used to care for a child, parent or spouse. Those categories are defined in the new law.

Employers will be allowed to require medical certification of family member illness if they currently require medical certification of employee illness under their policy.

For more information, see our special FREE report, "California 'Kin Care' Leave New for 2000." You will find it at <http://www.management-advantage.com> in the "HR Books & Manuals" section of the site.

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## **3. CAL-OSHA REFORM BILL PASSED AND SIGNED**

California's Governor Gray Davis has signed into law A.B. 1127, the OSHA reform bill. It will become effective on January 1, 2000.

Here are some of the changes you can expect to see in OSHA inspections and enforcement after the first of next year.

- Extends from 30 days to 6 months the window for filing complaints with Cal-OSHA.
- Requires Cal-OSHA investigation of complaints received by employee's representative such as attorney, health or safety professional, union representative, or representative of a government agency.
- Basic safety violations will be punished by a maximum fine of \$15,000, up from \$5,000 currently.
- Permits civil and administrative penalties against school districts, community college districts, California State University, University of California and other educational entities. (Under current law, they are exempt from penalties.)
- Directs continued development and implementation of ergonomic standards for the workplace.
- Increases fines for corporations and limited liability companies to as much as \$3,500,000 for willful violations of workplace safety requirements.

A complete copy of the bill and its Labor Code provisions can be found at <http://www.leginfo.ca.gov/bilinfo.html> Search for A.B. 1127.

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**4. ONE WEEK REMAINS FOR COMMENT ON CONTRACTOR "BLACKLISTING"  
PROPOSAL BY WHITE HOUSE**

Back on July 16, 1999 in our Special Report for HR Professionals #97, we told you about the White House proposal to change the way federal contracts are reviewed and approved. The Administration is calling the proposal a move toward "contractor responsibility." President Clinton has personally committed implementation of the changes, however the original proposal was first introduced by Vice President Al Gore two and a half years ago. Speaking to an AFL-CIO audience in February 1997, the Vice President told union members, "If you want to do business with the federal government, you had better maintain a safe workplace and respect civil, human and union rights."

We have discovered that many federal contractors are completely unaware of this proposal to revise how contracts are awarded. Some of those still in the dark are major players in the federal contracting arena.

Yet, some employer and industry associations are actively working to overcome the silence on this issue. The U.S. Chamber of Commerce is one. The Electronics Industry Alliance, the Information Technology Association, and the American Electronics Association are also opposed to the changes proposed for Federal Acquisition Regulations.

Even some members of Congress are voicing concerns about the proposed changes. In September, 36 members of Congress signed a letter condemning the proposal. In the letter, they claimed the changes would damage the federal government's ability to "obtain the information technology products and services necessary for modernization while controlling and reducing operating costs."

The Congressional letter also pointed out that the changes offered by the Administration would "withhold due process because allegations need not be proven in court to be grounds for denial (of a contract)."

As suggested, the changes would give to individual contracting officers the authority and responsibility to examine a potential contractor's record related to labor law compliance (discrimination complaints and affirmative action compliance), requirements of the National Labor Relations Act (union organizing activity reaction, arbitrations, administrative law reviews, etc.), workplace safety record, and performance under any other federal regulation. If there is "persuasive evidence" that a contractor (or potential contractor) has done something incorrectly, the contracting officer will have authority to reject that contractor's bid.

There is no requirement in the new provisions for administrative or judicial review of the individual contracting officer's decision. Presumably, competitors, disgruntled employees, or unhappy community activists could offer "persuasive evidence" that would cause a contracting officer to reject any bid.

Lack of due process is the key to everyone's analysis of this proposal. It is our opinion that the suggestion is not well thought out and

poorly constructed. It has potential for enormous abuse, and therefore, huge financial impact on both contractors and government alike. The government may well end up paying much more than it should and contractors can easily be prevented from performing federal jobs for which they are best suited. False accusations can weigh heavily in such a system as is being suggested.

There is still time for federal contractors to submit their comments and reactions to this proposal. If you have a desire to do so, you should send your written response to:

General Services Administration  
FAR Secretariat (MVR)  
1800 F Street, NW, Room 4035  
ATTN: Laurie Duarte  
Washington, DC 20405

Remember to cite FAR case 99-010 in all of your correspondence. All comments must be received before November 8, 1999.

Congressional leaders admitted that they have no direct control over this proposal. It is being handled entirely within the Executive Branch of the federal government. The Office of Management and Budget (OMB) will be reviewing the proposal after close of the comment period. The OMB is located within the White House (where the proposal originated).

You can find the full text of the Administration's proposal at:  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999\\_register&docid=99-17298-filed](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-17298-filed)

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## *Gentle Readers,*

California continues to plow more employment legislation ground with expansion of authority for its Fair Employment and Housing Commission. If you are an affirmative action employer, you will be interested in the new web recruiting resources for people with disabilities. And, recruiting talent offshore, primarily in the Hi-Tech world, has led to interest in receiving more information about the prospects for H-1B visas during the current fiscal year.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #112, 11/5/99)  
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1.       **EMPLOYMENT DISCRIMINATION IN CALIFORNIA MORE COSTLY**
2.       **NEW WEB SITE OPENS FOR EMPLOYMENT OF DISABLED PERSONS**
3.       **MORE RESOURCES FOR EMPLOYERS USING H-1B VISAS AND NEW LAW  
          EXPANDS PHYSICIAN AND NURSE IMMIGRATION**

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1.       **EMPLOYMENT DISCRIMINATION IN CALIFORNIA MORE COSTLY**

Another bill signed recently by California Governor Gray Davis (A.B. 1670) will make it more costly for employers found to have engaged in employment discrimination.

Beginning January 1, 2000, the state's Department of Fair Employment and Housing (DFEH) will have the authority to levy administrative fines of up to \$150,000 per complaint per employer. That is a three-fold increase over current limits. Those fines will be deposited in the state's general fund.

Computation of the fines can include any or all of the following: actual damages, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

In addition, there may be an additional assessment of up to \$25,000 awarded to an employee found to be the victim of employment discrimination.

And, there is still the possibility for employees to seek remedy of their discrimination complaint by filing suit in state court where there are unlimited damages available.

Employment discrimination has just gotten more expensive, at least in California.

You can find a copy of A.B. 1670 by visiting  
<http://www.leginfo.ca.gov/bilinfo.html> Search for A.B. 1670.

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## **2. NEW WEB SITE OPENS FOR EMPLOYMENT OF DISABLED PERSONS**

On October 21, 1999, CareerMosaic announced the opening of the first large-scale Internet site dedicated to the employment of people with disabilities. The address is: [www.jobaccess.org](http://www.jobaccess.org)

Under a multi-year agreement, ABILITY Magazine will help develop the creative content for the co-branded web page. CareerMosaic will host and maintain the site, provide the creative input and actively promote the site as the premier place on the Internet for people with disabilities and companies looking to hire from this untapped labor pool.

Employers are able to browse for qualified job candidates and enter detailed search criteria with specific skill sets. Companies can post job descriptions, and contact information, and search the online resume bank.

As part of the agreement, CareerMosaic is contributing a percentage of revenues paid by employers to ABILITY House, a partnership between the nonprofit ABILITY Awareness and Habitat for Humanity International. ABILITY Houses are accessible homes built for low-income people with disabilities by volunteers with disabilities. There is no charge for job seekers to use the JobAccess site.

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## **3. MORE RESOURCES FOR EMPLOYERS USING H-1B VISAS AND NEW LAW EXPANDS PHYSICIAN AND NURSE IMMIGRATION**

The September 12, 1999 issue of Access Magazine offered some additional resources for employers concerned about H-1B visas and the potential limitation that will be placed on their issuance during the current fiscal year.

The Immigration and Naturalization Service (INS) is one of those sources, of course. "Its Web site is a great first stop for prospective immigrants. You'll find laws and regulations, official reports and studies, plus downloadable forms and fee charts. A new, especially helpful feature is a naturalization eligibility worksheet that helps determine the likelihood that an applicant will become a U.S. citizen." <http://www.ins.usdoj.gov>

The National Visa Office On-Line (<http://www.nationalvisaoffice.org>) explains requirements of the "Green Card Lottery" and allows hopeful residents to apply for green cards online.

VisaLaw is a site hosted by Siskind, Susser, Haas & Devine, a law firm specializing in immigration and naturalization issues. You can subscribe to a monthly newsletter containing updates about immigration laws. There are also many forms, government documents and "Green Card Lottery" information pieces. <http://www.visalaw.com>

The American Immigration Lawyers Association (AILA) has more than 5,000 member attorneys who practice and teach immigration law. You can visit the "About Immigration" section of the site to find valuable information about some misconceptions people have about immigration.  
<http://aila.org>

If you are interested in Access Magazine itself, they too, have an active Web site. Look at <http://www.accessmagazine.com>

(Our thanks to Linda McGough at AMR Corp. for her helpful input of information about these good resources.)

Late breaking news! Congress has passed H.R. 441, by voice vote and the President is expected to sign it into law in the next day or two. This new legislation will allow physicians working in medically underserved areas to qualify for permanent residency on the grounds that their work is in the national interest. The bill also contains two other immigration provisions: 1) It creates a new visa category (H-1C) for nurses working in medically underserved areas. 2) It allows international consulting organizations eligibility for use of L-1 visas to fill consulting positions.

For information about the detailed content of this legislation go to <http://thomas.loc.gov/home/thomas.html> and enter "HB441" in your search. The bill is titled: "Nursing Relief for Disadvantaged Areas Act of 1999."

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## *Gentle Readers,*

Regulation issues for employees who are staying on the job ... some tips for exit interviews with those leaving the job ... and some ideas for leadership aimed at those who create jobs.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #113, 11/12/99)  
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1. **NEW SHRM SURVEY SHOWS WORKPLACE VIOLENCE INCREASING**
  2. **NEW FEDERAL OSHA ERGONOMICS PROGRAM RULES**
  3. **ILLEGAL WORKERS ENTITLED TO PROTECTION AGAINST DISCRIMINATION IN THE WORKPLACE ACCORDING TO EEOC**
  4. **EXITING THE PREMISES**
  5. **SOME TIPS ON LEADERSHIP**
  6. **SUPREME COURT TO DECIDE ON PROOF IN AGE-BIAS CASE**
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1. **NEW SHRM SURVEY SHOWS WORKPLACE VIOLENCE INCREASING**

A newly released study of workplace violence by the Society for Human Resource Management (SHRM) (<http://www.shrm.org>) indicates that incidents of workplace violence continue to increase. As the survey indicates, HR professionals report employers are responding to the increased levels of violence with greater security measures and more preventive training.

57% of HR professionals who responded said a violent incident occurred in their workplaces between January 1996 and July 1999. This compares with 48% of responses during the 1996 SHRM survey.

Contrary to the headlines in our daily newspapers, this year's survey indicates that shootings and stabbings account for only 2% of workplace violence. More frequent were verbal threats (41%) and pushing and shoving (19%). Personality conflicts were blamed for causing 55% of all incidents. Family or marital problems were cited as the cause of 36% of workplace incidents, while work-related stress only accounted for 24% of the reasons for violence.

The number of organizations having written policies on the subject of workplace violence has increased from 1996 to 1999 also, up from 59% to 68%. The number of organizations regulating weapons in the workplace with written policies has also grown from 73% in 1996 to 79% this year.

We strongly recommend you follow the growing number of employers and develop written policies for prevention of workplace violence if you don't already have them. As with anything else, employee training is critical to successfully preventing such incidents. You will find our "Workplace Violence Prevention" seminar program to be easy to use. You can be the instructor. No need to hire outside experts unless you feel that is essential for your circumstances. Won't you please look at our program and how easily it can help you prevent some of these needless tragedies? You'll find it in the "HR Books & Manuals" section of our Web Store for Professionals(tm). <http://www.management-advantage.com>  
We know you will be glad you did.

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## **2. NEW FEDERAL OSHA ERGONOMICS PROGRAM RULES**

The Organizational Safety and Health Administration (OSHA) has announced that it will publish new rules for workplace ergonomics in the Federal Register within the next few days. The goal is to publish a final rule by February 2000.

Ergonomics rules are being developed because of the number of work-related musculoskeletal disorders (WMSDs) reported across the country in recent years. In 1996, U.S. workers experienced more than 647,000 lost workday WMSDs. According to OSHA, "WMSDs now account for 34 percent of all lost workday injuries and illnesses. These injuries cost business \$15 to \$20 billion in workers' compensation costs each year. Indirect costs may run as high as \$45 to \$60 billion."

You can see the draft of proposed ergonomic program standards at OSHA's web site: <http://www.osha-slc.gov/SLTC/ergonomics/index.html>  
California is the only state currently enforcing ergonomic standards in the workplace. That is being done under the state's OSHA program.

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## **3. ILLEGAL WORKERS ENTITLED TO PROTECTION AGAINST DISCRIMINATION IN THE WORKPLACE ACCORDING TO EEOC**

On October 26, 1999, Ida L. Castro, Chairwoman of the Equal Employment Opportunity Commission (EEOC), signed a notice that replaces former Commission guidance on remedies for undocumented workers who have experienced discrimination in the workplace.

"The Commission now concludes that unauthorized workers who are subjected to unlawful employment discrimination are entitled to the same relief as other victims of discrimination, subject to certain narrow exceptions ..."

"The federal discrimination laws protect all employees in the United States, regardless of their citizenship or work eligibility. Employers may no more discriminate against unauthorized workers than they may discriminate against any other employees ... unauthorized workers are protected to the same degree as all other workers."

Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991 cover employers who have 15 or more workers. The Immigration

Reform and Control Act of 1986 prohibits discrimination against workers because of their national origin and applies to employers with four or more workers on the payroll.

The notice is available at: <http://www.eeoc.gov/docs/undoc.html>

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#### **4. EXITING THE PREMISES**

Conducting exit interviews with all employees before they leave their companies can be very helpful for the employers. Even if the employee has been fired, one can learn from the ex-employee. Make it a private affair where you discuss how the employee or employer can improve. This is also another way to say goodbye gracefully and create goodwill before the person leaves your company to go elsewhere.

Inquire about why the employee is leaving, what could have been done better, what problems you should know about, as well as how employees feel about salaries and benefits. Try to get the employees that are leaving voluntarily to put their reasoning into writing for your files.

(Source: Robert McGarvey, Entrepreneur, September 1999  
<http://www.smartbiz.com/sbs/news/prev.html> )

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#### **5. SOME TIPS ON LEADERSHIP**

Humanize. People, not products, bring about success. People invent, produce and distribute products. Don't forget where the chain begins.

Create partnerships. Partnering within and outside of your company will save dollars and headaches. It pays to support your partners and create partners to support you.

Take risks. Leaders must be at the front of the pack. The rewards are worth the risks.

Symbolize. Look for examples of great human determination and passion. Use your own accomplishments as symbols of triumph to inspire your team and yourself.

Motivate. Passion motivates. Excited people are motivated people. If you share your motivation, your passion and yourself, your staff will catch your excitement.

Share your vision. Nothing starts without a vision and nothing lasts without a vision. If you have a strong understanding of your goal, you'll know when to move on or refocus. Without a vision, direction is lost and goals aren't achieved.

(Source: Hop Klopp, co-author of The Adventure of Leadership)

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**6. SUPREME COURT TO DECIDE ON PROOF IN AGE-BIAS CASE**

This week the U.S. Supreme Court announced it will decide how much proof a worker must show to prove illegal age discrimination by an employer. The case being decided is Roger Reeves v. Sanderson Plumbing Products Inc. Reeves was fired by the Mississippi company when he was 57 years old.

Mr. Reeves worked for the company for 40 years. Two months before he was fired, he claims the company's director of manufacturing told him he was "too damn old to do the job."

The company rejected the age bias charge saying Mr. Reeves was terminated for poor work performance, failing to follow company policies, and falsification of attendance records of workers he was supervising. It also pointed out that the company employed one manager who was 68 and another who was 62 at the time Mr. Reeves was fired.

The U.S. District Court in Mississippi found for Mr. Reeves. That decision was overturned, however, by the U.S. Court of Appeals for the Fifth Circuit in New Orleans. The appellate panel said that regardless of both sides' explanations, "we must, as an essential final step, determine whether Mr. Reeves presented sufficient evidence that his age motivated Sanderson's employment decision."

That is the question the U.S. Supreme Court has agreed to take on. How much proof must an employee present before being awarded a judgment for age discrimination by an employer? It will likely be June of next year before we learn more. This will be worth watching because it will impact most employers in the country.

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## *Gentle Readers,*

Some new resources are now available for recruiters in our Web Store for Professionals(tm). We invite you to look at them and to review our "Gifts for Professionals" department as you begin thinking about those holiday gifts you want to find.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #114, 11/19/99)  
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1.       **OMB UPDATES OCCUPATIONAL CLASSIFICATION SYSTEM**
2.       **A BUSINESS WEEK STUDY OF SOCIAL RESPONSIBILITY**
3.       **THE ANTIS ARE TAKING OVER BALLOT INITIATIVES**
4.       **SALVATION FOR RECRUITERS COMES IN NEW PRODUCT**
5.       **AIR POT MAKES A GREAT HOLIDAY GIFT**

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1.       **OMB UPDATES OCCUPATIONAL CLASSIFICATION SYSTEM**

On September 30, 1999, the Office of Management and Budget (OMB), a part of the White House organization, published in the Federal Register information about its new updates to the Standard Occupational Classification System (SOC). As you know, this system is the one used by all federal agencies to classify occupational data.

If you have an interest in such things, and like "working the web," you will find what you want at <http://www.nara.gov/fedreg/> Once you get there, specify the date (September 30, 1999) and enter some search phrases like:

"Standard Occupational Classification" OR "SOC" OR "OMB"

That will pull up several responses and you can select the one you want from the list. You will have a choice of viewing a summary of the posting, a complete text of its content, or you can obtain a PDF file of the formal document.

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2.       **A BUSINESS WEEK STUDY OF SOCIAL RESPONSIBILITY**

Business Week magazine recently published the results of a study conducted by Students for Responsible Business. The study surveyed more than 2,100 students at 50 graduate business programs. Among the results ...

- 79% of MBAs think a company has to take into consideration the impact it has on society -- in terms of the environment, equal opportunity, work and family relationships, community involvement, and other issues.
- 50% said they would accept a lower salary to work for a "very socially responsible" company.
- 43% claim they would not work for a company that isn't socially responsible.

Kind of makes you wonder what the rest of the MBAs are doing to the environment, equal opportunity, work and family relationships, community involvement, and other issues ... doesn't it? That's 441 people among the survey group that apparently believe these things are unimportant. I wonder how many will become CEOs?

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### **3. THE ANTIS ARE TAKING OVER BALLOT INITIATIVES**

There is a web site that tracks ballot initiatives in the states that allow such voter activities. You can find it at [www.ballot.org/states/](http://www.ballot.org/states/). If you go one step further, you will discover a narrative summary of the types of initiatives that will be appearing on ballots around the country in 2000. [www.ballot.org/states/overview.shtml](http://www.ballot.org/states/overview.shtml).

Wonder what you will be faced with in your state when you go to the polls next year (aside from presidential candidates)? When you have a chance, take a peek. You might be surprised to find so many "anti" measures showing up. It seems there are a lot of folks who would rather work against something than for something.

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### **4. SALVATION FOR RECRUITERS COMES IN NEW PRODUCT**

Professional recruiters now have a new resource for products designed to help them achieve their production and earnings goals. It comes in the form of an entirely new department in our Web Store for Professionals(tm). On any page in our web site, click on "Recruiters" in the main left-column menu, or go directly to <http://www.management-advantage.com/products/recruiters.htm>

We have consolidated key products for professional recruiters in this new department. Of special interest will be the latest in job performance tools ... GoldMine Organizer(tm). A beautiful tool it is. The rich leather binding has a zipper closure so you will never lose any of your important documents. The calendar and planning tools alone are worth the investment in this fine product. However, what really sets it apart from any other publication, or organizer, is the special section of marketing materials that help recruiters step-by-step through the process of achieving success in their profession. There are three different editions of GoldMine Organizer(tm). One focuses on Temporary Placement. Another focuses on Contract Placement. And, the third focuses on Permanent Placement. Which ever type of recruiting

you are doing, you will find helpful advice and guidance in this brand new tool.

It has just been introduced in the last few weeks, and already many corporations are purchasing copies for their entire recruiting staffs. Why don't you discover what these folks have learned. GoldMine Organizer(tm) is the one tool professional recruiters can not live without.

You can save over \$19.00 while our special introductory price lasts.

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**5. AIR POT MAKES A GREAT HOLIDAY GIFT**

We have added another new gift product to our Web Store for Professionals(tm). It is a gift you, your staff, and your boss will love. It is the Air Pot. Holding a half-gallon of hot or cold beverage, you will never again run out of refreshments in a meeting.

Who likes coffee that has vulcanized because it sat on a warmer all morning? With Air Pot, you have your coffee kept warm in a thermos, not "cooking" itself to death on an electric burner. Amazingly, it keeps coffee warm for up to 8 hours.

In the summer time, your Air Pot can be used for iced drinks as well. Just push down on the lid and the pump dispenses your beverage into your glass or mug. Get as much as you want, when you want. Fresh every time.

To get your Air Pot, visit our Web Store for Professionals(tm) at <http://www.management-advantage.com> . Select "Gifts for Professionals" from the main menu in the left-hand column.

There is a wonderful array of professional gifts to choose from. You may even decide you want something for yourself.

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## *Gentle Readers,*

Happy Thanksgiving holiday to all our US subscribers. It's a time for reflection and gratefulness for all our blessings. We are thankful for your being part of our subscriber family.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #115, 11/26/99)  
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1. **NATIONAL OSHA ERGONOMICS STANDARDS COMING**
2. **PRE-HIRE TRAINING AND CERTIFICATION IS A GROWING JOB REQUIREMENT**
3. **"EXPLODING" JOB OFFERS**
4. **SHRM BEGINS NEW PROFESSIONAL EMPHASIS GROUP FOR HIGH-TECH**
5. **OFCCP ASKING CONTRACTORS FOR DATA ON H1B VISAS**

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1. **NATIONAL OSHA ERGONOMICS STANDARDS COMING**

The Occupational Safety and Health Administration (OSHA) has finally issued its national standards on workplace ergonomics. The objective is to reduce worker injuries due to repetitive motion injuries (RMIs). You can find them at <http://www.osha-slc.gov/ergonomics-standard/fedregabbrversion.html> In a Wall Street Journal note about the subject, the paper reported (November 16, 1999) that Sequins International, Inc. in Woodside, NY uses adjustable machinery and chairs, as well as automatic spooling devices, to reduce taxing physical effort. Implementation of those job modifications eliminated carpal-tunnel syndrome cases at the company and cut workers' compensation costs to \$800 this year from \$98,000 in 1994. Purdue Farms Inc. slashed its lost-work-day cases per 200,000 work hours by 94% during the last eight years. In three of its poultry plants, using height-adjustable platforms and spring-loaded tools, workers have surpassed two million staff hours with no lost work. However, OSHA reports that fewer than 18% of employers could meet the original draft standard for ergonomics. That's why it was revised before issuance.

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2. **PRE-HIRE TRAINING AND CERTIFICATION IS A GROWING JOB REQUIREMENT**

Employers are reporting that the current employment market is having some strange impact on their hiring and retention procedures. Some companies are having to compete in a market where virtually every worker they seek is currently employed. So, they consider the old standby strategy, returning to "grow your own" programs.

With such a tight labor market in some skill sets, though, it turns out that employees are "shopping themselves" among employers, in essence putting themselves up for auction to the highest bidder. The consequence for employers is they often see their training investments walk out the door on the way to a competitor's payroll.

To counter this problem, a growing number of employers are saying that they have implemented certification requirements for their new hires. That means, workers have to go through training before they are hired, rather than receive it after joining the payroll. Having pre-trained workers come through the employment door saves companies many dollars in the long run, and they don't risk having a large training investment walk away to other employers.

We see this happening in our own functional specialty of human resources. More often today, employers are asking for PHR or SPHR certification from candidates for Human Resource management jobs. The government is eyeing this phenomenon, too. The Department of Labor is operating some "pilot" programs for pre-employment training, one of which is for Bell Atlantic Corp. cable splicers, technicians and other workers. That program will generate 2,000 new workers in the course of a year.

If you are having problems finding (and keeping) qualified, skilled workers, you might consider talking with an organization that could train and certify people for you before you have to hire them. The Private Industry Council in your County, the state employment service, your local vocational-technical school, or university are all places to start. Even if they don't have existing programs, you can often work with them to create one. It could be worth the investment if you can lower your turnover and on-the-job training costs, while creating new pools of job candidates.

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### **3. "EXPLODING" JOB OFFERS**

In years past, we used to think of them as part of the negotiation process ... deadlines and expiration times for offers.

Today the idea is being implemented as an employment strategy by many organizations because they don't want to have good job candidates "shop around" for something better. How long are employers giving candidates to consider job offers? It depends. Some are allowing two weeks, others want an answer within 48 hours.

Timing seems to be the key to how long a period of consideration is allowed. When employers make offers to college seniors months in advance of scheduled campus recruiting dates, the period for consideration appears to be a bit longer than when there is an upcoming opportunity to do some comparison shopping. The entire strategy is to beat the competition to the best job candidates and "lock them in" by getting an acceptance before anyone else is able to even talk with them.

Intern programs are sometimes being used to accomplish similar ends. Companies like Intel Corp. encourage students to participate in their

internship program so both the company and the intern can learn more about one another. Sometimes, high quality employees can result from the relationship. Certainly, such programs tend to build a relationship if designed properly. When a relationship already exists, it is easier to expect acceptance of a job offer when the time comes.

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#### **4. SHRM BEGINS NEW PROFESSIONAL EMPHASIS GROUP FOR HIGH-TECH**

The Society for Human Resource Management (SHRM) has announced the creation of a new Professional Emphasis Group (PEG) for its members. The new group will focus on High-Tech employers and the special issues they face in today's world.

The new group will join a list of existing PEGs in SHRM. For some time there have been groups focusing on Consulting and International HR Management among others.

If you are in the High-Tech industry and wish to network with other HR professionals who share similar problems, contact SHRM by calling 800-283-SHRM, or on the net at [www.shrm.org/technet](http://www.shrm.org/technet) .

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#### **5. OFCCP ASKING CONTRACTORS FOR DATA ON H1B VISAS**

On November 18, 1999, at a local meeting of the Industry Liaison Group (ILG), one District Director in the Office of Federal Contract Compliance Programs (OFCCP) announced that the enforcement agency will be targeting contractors who are likely to use H1B visas to fill job vacancies in their organizations.

There are two questions the OFCCP wants answered in such cases:

- 1) Are holders of H1B visas paid less than other people doing the same work?
- 2) Are contractors rejecting applications from domestic candidates in favor of those holding H1B visas?

Starting now, the OFCCP is requesting data from contractors about their H1B visa activity each time they make initial contact on a compliance evaluation. "The Compliance Officer may or may not make judgments about (H1B issues) during an audit," according to the agency official.

Obviously, contractors in the high technology industry are going to be prime targets for that agency data request. You should be aware that there is no regulatory requirement for contractors to deliver such data to the OFCCP. How you respond when your organization is faced with such a request will depend on many things. You have to actively manage the process, making countless decisions and judgments as you go. Just be aware that there is no foundation for this expanded request for data. Providing it may open you to further investigation and criticism.

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## *Gentle Readers,*

All in all, a slow week. It must have been the four-day weekend in Washington, DC. One alert ... DOL's proposal for allowing states to invent their own programs to divert unemployment compensation funds to pay new parents for time off the job.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #116, 12/3/1999)  
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1. **EEOC WEB SITE REDESIGNED WITH NEW INFORMATION**
2. **DOL RELEASES PROPOSED REGULATIONS TO ALLOW STATES TO PAY UNEMPLOYMENT TO NEW PARENTS ON FMLA LEAVE**
3. **WTO SUMMIT IN SEATTLE TEACHES SOME CORPORATE LESSONS**

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1. **EEOC WEB SITE REDESIGNED WITH NEW INFORMATION**

The recently redesigned web site at the Equal Employment Opportunity Commission (EEOC) offers easy navigation and ready access to its large library of information. One of the newest additions is Management Directive MD-110 for federal agencies.

You will find a summary of federal laws prohibiting job-related discrimination, a primer on how to file a charge of employment discrimination, the new mediation program, and a special section on small business. The Commission's Compliance Manual is also available on line, along with documents outlining enforcement guidance and EEOC regulations.

When you have time, take a look. It is a good reference for any HR professional. <http://www.eeoc.gov/>

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2. **DOL RELEASES PROPOSED REGULATIONS TO ALLOW STATES TO PAY UNEMPLOYMENT TO NEW PARENTS ON FMLA LEAVE**

On November 30, 1999 (Tuesday this week), the Department of Labor published new proposed regulations that will allow State agencies that administer Unemployment Compensation to pay new parents who take time off from work after the birth or adoption of a child.

This proposal is in response to President Clinton's Executive Memorandum of May 24, 1999 that directed the Secretary of Labor to allow states the opportunity to develop innovative ways of using unemployment compensation support when parents need time off from work to care for a new child.

There is a 45-day window during which comments are being requested. Written comments should be sent to Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. The 45-day window closes on January 14, 2000. If you wish to make a comment, it must be in before that date or your comment will not be considered.

Last June, the nonpartisan Congressional Research Service questioned whether the Labor Department has authority to allow states to offer unemployment compensation to applicants who fail to meet the requirement that UI recipients be "able and available for work." The current proposal leaves it up to individual states to determine if they want to participate in the demonstration project. According to the Bureau of National Affairs (BNA), Massachusetts, Vermont, Maryland, and Washington have explored legislative proposals similar to the one coming from DOL.

According to the Society for Human Resource Management (SHRM), even though the current proposal is limited to new parents, if it is "ultimately upheld as valid under federal law, nothing would prevent a state from allowing anyone on leave for any reason to collect (unemployment insurance). In effect, states would be free with no federal impediment to convert their UI program into a parental leave and disability program."

SHRM has created a coalition of employer organizations for the purpose of identifying and recommending technical changes to the Family and Medical Leave Act (FMLA). According to SHRM, using UI funds in this way can only cost employers more money.

You may find that your Chief Financial Officer is interested in learning about this development.

To see the full text of the proposed rule released by DOL, go to [http://www.dol.gov/dol/eta/public/regs/proposed/eta\\_pre\\_published\\_rule.htm](http://www.dol.gov/dol/eta/public/regs/proposed/eta_pre_published_rule.htm)

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### **3. WTO SUMMIT IN SEATTLE TEACHES SOME CORPORATE LESSONS**

This week's events demonstrate that neglect to communicate a commitment to corporate social responsibility can result in serious damage to a company's reputation. As events continue to unfold at the WTO Summit, ResponsibilityInc speaks with top corporate thinkers and reports them in a copyrighted newsletter article on the web. Today's interviews include global leaders Eastman Kodak and AT&T, who share their thoughts and best practices on this critical issue at:

<http://www.responsibilityinc.com/Feature/feature.html>

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## *Gentle Readers,*

Holiday shopping, cold weather, roasted chestnuts, Y2K vigils and wide, believing eyes of the young are sure signs we are approaching the end of this year. We take a quick, summary look at some new laws HR professionals must think about, and then, hasten back to the egg nog pot.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #117, 12/10/1999)  
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1. **TICKET TO WORK FOR DISABLED**
2. **SOME NEW STATE LAWS THIS YEAR**
3. **FLORIDA GOVERNOR ENDS RACE/GENDER PREFERENCES**
4. **WHAT'S THE LATEST ON H-1B VISAS?**

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**1. TICKET TO WORK FOR DISABLED**

Congress passed and sent to President Clinton a bill intended to remove disincentives from job placement for the disabled. Called the Work Incentives Improvement Act (H.R. 1180), it passed from Capitol Hill to the White House on December 6, 1999.

This measure allows those with disabilities to keep their Medicare coverage for an additional four and a half years, for a total of nearly eight years, after returning to work. It also allows people to pay into Medicaid if they earn too much to qualify or their earnings would cause them to lose eligibility because of improved health. There is a third provision in the legislation that creates a demonstration project allowing those in the early stages of serious diseases to get Medicaid coverage.

This new legislation will amend the Social Security Act.

You can find more information about its provisions at <http://thomas.loc.gov/home/thomas.html> Enter "H.R. 1180" in the search box.

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**2. SOME NEW STATE LAWS THIS YEAR**

Just a few interesting state law provisions passed this year:

Arkansas: (S.B. 773) Allows employers to establish drug-free workplace programs on a voluntary basis.

Colorado: (H.B. 1072) Gives employers immunity from civil liability when providing job performance information about a current or former employee to a prospective employer. Affected individual must receive a copy of any reference given in writing to a prospective employer.

Maryland: (H.B. 862 & S.B. 774) Prohibits health insurers from denying coverage to an individual based on that person's genetic information.

Montana: (H.B. 111) Prohibits use of genetic tests when issuing insurance coverage. Prohibits discrimination based on genetic traits for insurers, health service corporations, HMOs and other insurance groups.

North Dakota: (H.B. 1094) Requires people file complaints of retaliation with the state's Department of Labor within 300 days of the alleged retaliation.

(H.B. 1096) Defines drug or alcohol tests as medical tests and requires they be paid for by the employer, if the employee must take the test to obtain or retain employment.

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### **3. FLORIDA GOVERNOR ENDS RACE/GENDER PREFERENCES**

Florida Governor Jeb Bush has signed an executive order that essentially ends race and gender-based preferences in that state's employment and contracting. Some speculation exists that the move was made to avoid a November 2000 ballot initiative calling for an end to that state's affirmative action program.

Executive Order 99-281 directs state agencies to eliminate all "racial and gender set-asides, preferences or quotas in hiring, retention, or promotion of a state employee," in addition to barring their consideration in awarding state contracts to vendors.

The Governor says former preferences will be replaced by a reformed procurement process that is based on other factors. So far, those factors have not been identified.

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### **4. WHAT'S THE LATEST ON H-1B VISAS?**

The good news is ... there is a source for the latest information about the status of H1B visas. The bad news is ... it isn't the Immigration and Naturalization Service (INS).

According to Siskind's Immigration Bulletin (<http://www.visalaw.com/subscribe2.html>), there is growing concern that the H-1B cap will be hit in the very near future. You will recall

that Congress raised the cap from 65,000 to 115,000 for the current fiscal year (October 1, 1999 to September 30, 2000).

"The INS has maintained an unprecedented stance of silence regarding H-1B usage for the current fiscal year. In previous years, the INS would release H-1B numbers on a monthly basis to help the public make appropriate plans." According to the American Immigration Lawyers Association, the only thing the INS will say is that the H-1B situation at the agency is basically "a mess."

Congress pressuring the agency to publicize H-1B usage has had little effect. Because of the INS silence, the American Immigration Lawyers Association is cautioning its members to assume H-1B visa numbers will cease to be available in a matter of weeks.

Because of this situation, Greg Siskind, partner at the law offices of Siskind, Susser, Haas & Devine, and author of Siskind's Immigration Bulletin, has created a web page offering emergency updates on H-1B issues. You will find it at: [www.visalaw.com/h1bpage.html](http://www.visalaw.com/h1bpage.html)

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# Index

"	
"Show Cause" notices .....	100
<b>9</b>	
9th Circuit Court of Appeals.....	21
<b>A</b>	
A.B.60 .....	92
AAPlanner5.....	72
AB 109 .....	107
AB 60 .....	108
AB60.....	92
ABILITY Magazine.....	139
Acrobat Reader .....	64
ADA. 4, 5, 42, 43, 44, 54, 56, 57, 60, 80, 82, 89, 90, 91	
ADEA .....	59
Adobe.....	64, 133
ADREM Profiles.....	72
Affirmative Action.....	3, 5, 85, 112, 113
Age Discrimination in Employment Act .....	59
Air Pot.....	8, 147
<i>Albertsons Inc. vs. Kirkingburg</i> .....	83
Alexander Communications.....	40
American Association for Affirmative Action.....	81
American Electronics Association....	136
American Enterprise Institute .....	68
<i>Americans with Disabilities Act...</i>	37, 43, 56, 57, 60
Aon Consulting.....	13
Applicant..	23, 28, 30, 33, 60, 61, 72, 81, 139
Arizona.....	5, 16, 36, 98, 99
Astra USA.....	74
At-will employment.....	12
<b>B</b>	
BBB.....	96
Bechtel Corporation .....	55
<i>Behne v. MicroTouch Systems</i> .....	75
Benefits .....	6, 13, 67
BestBuysOnTheNet.com .....	84
Better Business Bureau .....	5, 96
Bijur .....	105
Black engineering associations.....	42
Bloodborne Pathogens .....	120
BNA .....	60, 123, 152
Borders Group Inc.....	132
Bridge Information Systems, Inc .....	118
Broward County.....	11
Buchanan.....	63
Bureau of National Affairs.....	60, 152
Bureau of the Census .....	28, 87
<i>Burlington Industries, Inc. v. Ellerth</i> ..	80
Business Ethics .....	3, 27
Business Week magazine.....	145
<b>C</b>	
California Chamber of Commerce.....	40, 104
California's State Disability Insurance	14
Capital Cities/ABC Inc .....	68
Careers & the disABLED .....	55
Castro .....	31, 90, 91, 109, 142
Catalyst .....	103
Center for Women Policy Studies.....	58
Chavez.....	37
Checklists.....	10, 46, 73, 90
City of Boston.....	11
City of Miami Beach.....	11
City of San Jose .....	19
<i>Civil Rights Act of 1964</i> ..	17, 80, 89, 142
<i>Civil Rights Act of 1991</i>	89, 90, 124, 142
Civilian Agency Acquisition Council.	95
<i>Cleveland v. Policy Management Systems Corp.</i> .....	43
Clinton	23, 38, 43, 54, 68, 77, 78, 94, 97, 101, 106, 109, 136, 151, 153
COBRA.....	3, 32, 33
Committee on Health, Education, Labor and Pensions.....	15
Comparable worth.	24, 38, 39, 68, 69, 85
Compensation analysis.....	29, 82, 125
Compensation data	23, 26, 32, 33, 48, 61, 62, 120, 127, 128

Complaint statistics..... 19  
 Compliance Checks ..... 7, 25, 125, 126  
 Compliance evaluations..... 23, 125, 128  
 Compliance Officers..... 23, 32, 48  
 Congressional Research Service..... 152  
 Consolidated Omnibus Budget  
   Reconciliation Act ..... 33  
 Critical Incident Associates ..... 37  
 CTD..... 39  
 Cummings..... 94  
 Cumulative trauma disorder..... 39

**D**

Daschle..... 38, 77  
 Data Tabulation Methods..... 52  
 Davis ..... 83, 92, 108, 117, 135, 138  
 Dawson ..... 9, 73, 107, 108, 132  
 Dayton Hudson Corp ..... 132  
 Defense Acquisition Regulations  
   Council..... 95  
 Definition of applicant..... 23  
 DeLauro ..... 38  
 Department of Fair Employment and  
   Housing..... 117, 138  
 Department of Labor.. 22, 23, 32, 38, 47,  
   51, 52, 53, 60, 61, 64, 97, 113, 123,  
   124, 129, 149, 151, 154  
 Department of Transportation..... 59, 83  
 Deputy Assistant Secretary for the  
   Office of Federal Contract  
   Compliance Programs..... 25  
 DescriptionsNow! ..... 46  
 DFEH ..... 6, 115, 117, 138  
 Diamond..... 16  
 Disability affirmative action ..... 14  
 Discrimination 11, 19, 20, 24, 25, 28, 31,  
   32, 38, 43, 50, 51, 54, 57, 59, 60, 62,  
   68, 69, 78, 82, 86, 87, 89, 90, 95, 98,  
   117, 119, 124, 125, 136, 138, 142,  
   143, 144, 151, 154  
 Diversity, Inc..... 45, 105  
 DiversityInc.com..... 45  
 DOL 8, 23, 38, 51, 52, 59, 61, 62, 64, 78,  
   97, 127, 151, 152  
 Domestic partner benefit..... 104  
 Domestic partners ..... 11, 103, 105  
 Downsizing ..... 20, 115, 122, 129

DuBray ..... 29, 82  
 DuPont ..... 55

**E**

Eastman Kodak ..... 55, 96, 152  
 EDD ..... 14, 83  
 EEDS..... 127  
 EEO-1 ..... 51, 123, 127  
 EEO-4 ..... 51, 127  
 EEOC . 3, 4, 5, 6, 7, 8, 17, 19, 20, 23, 25,  
   28, 31, 35, 37, 38, 50, 51, 57, 59, 60,  
   74, 77, 80, 81, 89, 90, 91, 98, 99, 101,  
   102, 109, 141, 142, 151  
*EEOC v. Farmer Brothers Coffee*..... 20  
*EEOC v. Wal-Mart Corp* ..... 60  
 Electronics Industry Alliance..... 136  
 Eleventh Circuit ..... 12  
 Emory University..... 68  
 Employment and Training  
   Administration ..... 152  
 Employment Development Department  
   ..... 14, 83  
 Employment discrimination..... 19, 138  
 Employment Discrimination Report. 123  
 Employment Screening Services .. 71, 72  
 Employment testers..... 28  
 English ..... 3, 4, 16, 17  
 English as the official language for state  
   business..... 16  
 Entrepreneur..... 143  
 Equal Employment Data System ..... 127  
 Equal Employment Opportunity  
   Commission 17, 19, 20, 23, 25, 31, 37,  
   38, 50, 51, 59, 60, 74, 77, 80, 90, 98,  
   102, 109, 142  
 Equal pay for comparable work..... 39  
 Equal pay for equal work..... 39  
 Ergonomic standards..... 39  
 Ergonomics ..... 39, 75, 142, 148  
 ETA..... 152  
 Ethics..... 27  
 European Union's Data Protection  
   Directive..... 17  
 EVE award..... 23  
 Executive Order 11246 ..... 127  
 Exit interviews ..... 141, 143

## **F**

*Fair Credit Reporting Act*..... 78, 81  
Family and Medical Leave Act.... 43, 54,  
79, 113, 152  
Fannie Mae..... 4, 45  
FAR..... 94, 95, 96, 137  
*Faragher v. City of Boca Raton*.. 81, 102  
Federal Acquisition Regulation .... 94, 95  
Federal Contract Compliance Manual  
..... 113  
Federal Trade Commission..... 77, 81  
Federated Department Stores Inc..... 132  
First aid kit..... 54, 55  
FMLA 4, 5, 8, 42, 43, 50, 52, 53, 77, 78,  
79, 113, 151, 152  
Focus on Technology..... 17  
FOIA..... 23, 26  
FORBES magazine..... 45  
Ford..... 46, 115  
Forkel..... 127  
Forklift..... 11  
Form I-9..... 14  
Form I-94..... 58  
Form-129W..... 10  
Freedom of Information Act... 23, 26, 48  
FTC..... 5, 77, 78, 81  
Furchtgott-Roth..... 68

## **G**

General Services Administration . 94, 96,  
137  
Gifts for Professionals. 55, 105, 145, 147  
Glass ceiling..... 110  
GoldMine Organizer(tm) ..... 146, 147  
Gore..... 39, 68, 77, 94, 136  
*Gotthardt v. Nat'l R.R. Passenger Corp*  
..... 124  
Groundhog Job Shadow Day ..... 3, 18  
GSA..... 94

## **H**

H.R. 1180..... 153  
H.R. 3751..... 4, 50, 52, 53  
H.R. 441..... 140  
H.R. 91..... 43  
H-1B visa..... 10, 131, 155

H1B visas..... 150, 154  
H-1B visas..... 131, 138, 139  
*Haddle v. Garrison et al.*..... 12  
*Harris v. Forklift Sys*..... 81  
Health benefits..... 19  
Herman..... 68  
Hispanic lawyer associations..... 42  
Hostage negotiator..... 37  
How to Spot a Phony Resume..... 46  
HR 541..... 38  
HR Books and Manuals 10, 65, 108, 133  
HR Magazine..... 17  
HRIS..... 45, 51, 52

## **I**

I-9 Form..... 12, 14, 58, 113  
ILG..... 23, 25, 26, 28, 125, 150  
Immigration and Naturalization Service  
..... 14, 131, 139, 154  
Industry Liaison Group..... 125, 150  
Information Technology Association 136  
Injury and Illness Prevention Program 76  
INS.... 14, 58, 59, 64, 131, 139, 154, 155  
Internal Recruiter's Guide to Successful  
Technical Recruiting..... 73  
Internal Revenue Code..... 106  
Internal Revenue Service..... 33, 62  
IRS..... 33, 62, 128  
iVillage..... 69, 70

## **J**

Jury verdicts..... 36

## **K**

Keller..... 78  
Kelly..... 85  
Kennedy..... 81, 106, 125  
Kin Care..... 7, 134, 135  
Kita..... 40, 41  
Kitty litter..... 103, 104  
*Kolstad v. American Dental Ass'n*..... 89  
Korn/Ferry..... 58

## **L**

Layoffs..... 20, 21, 59  
Living Wage Ordinance..... 19  
Lockheed Martin..... 27

Log 200 ..... 3, 16, 18  
Los Angeles County ..... 35  
**Loyalty** ..... 12, 13

## **M**

Management Recruiters ..... 119  
Mastectomies ..... 10  
McGarvey ..... 143  
McGough ..... 140  
Mediation program ..... 151  
Medicaid ..... 35, 153  
Medicare ..... 12, 122, 153  
Memorandum of Understanding ..... 25  
Menino ..... 11  
Men's Health Magazine ..... 41  
Merk & Co ..... 49  
Metropolitan Statistical Areas ..... 101  
Miami-Dade County ..... 11  
Microsoft Corporation ..... 47, 55, 67  
Miller ..... 99  
Minimum wage ..... 19, 26  
Minority job banks ..... 42  
Monroe County ..... 11  
Motz ..... 61  
MOU ..... 25, 50, 51  
MSA ..... 102  
MSD ..... 39  
Murphy v. United Parcel Service.. 56, 91  
*Murphy vs. United Parcel Service, Inc* 83  
Musculo-skeletal disorder ..... 39

## **N**

NASA ..... 94  
National Aeronautics and Space  
Administration ..... 94  
National Labor Relations Act ..... 136  
Negligent hiring ..... 46, 72, 124, 126  
New Jersey ..... 26, 119  
New York Times ..... 4, 62, 96, 116  
Northcutt ..... 118

## **O**

O'Connor ..... 80, 82, 89, 90  
OFCCP3, 4, 5, 6, 7, 8, 13, 22, 23, 24, 25,  
26, 28, 29, 32, 33, 47, 48, 50, 51, 61,  
62, 80, 81, 112, 113, 120, 123, 124,  
125, 126, 127, 128, 148, 150

Office of Federal Contract Compliance  
Programs .... 13, 25, 28, 32, 48, 50, 51,  
61, 81, 113, 123, 124, 125, 127, 128,  
150  
Office of Management and Budget.... 24,  
28, 32, 48, 52, 62, 81, 101, 128, 137,  
145  
OMB .. 3, 6, 8, 24, 26, 28, 32, 33, 48, 52,  
62, 81, 101, 102, 128, 129, 137, 145  
On-line resumes ..... 28, 30  
Ontario Human Rights Commission and  
..... 109  
Oregon..... 26, 38, 57, 102  
Orrick, Herrington & Sutcliffe..... 36  
OSHA. 3, 4, 5, 7, 8, 9, 11, 16, 18, 38, 39,  
40, 74, 75, 76, 120, 134, 135, 141,  
142, 148  
OSHA Standards ..... 11  
Oshita ..... 18

## **P**

Palm Beach County ..... 11  
Paperwork Reduction Act of 1995 ..... 62  
Patient's Bill of Rights Act ..... 106  
Pay Equity Act ..... 38  
Pay equity initiative ..... 39  
Paycheck Fairness Act ... 4, 5, 38, 39, 67,  
68, 77  
PDF ..... 33, 45, 64, 133, 145  
Pension Benefit Guarantee Corp..... 101  
Pension Search Program ..... 101  
People Manager ..... 45, 46  
PerformanceNow! ..... 46  
Pet litter ..... 103  
PoliciesNow! ..... 46  
Policy Management Systems .. 43, 44, 91  
Powered industrial trucks ..... 11  
Pregnancy Disability Leave ..... 14  
PRI Associates ..... 72  
Privacy Program ..... 5, 96  
Professional Asian associations ..... 42  
Professional engineering organizations  
..... 42  
Professional women organizations ..... 42  
Profiles in Diversity Journal . 4, 5, 48, 71  
Proposition 65 ..... 18, 104

## Q

Quality Management..... 27

## R

Race and gender-based preferences .. 154

Race/ethnic codes..... 51

Reconstructive surgery..... 10

Recruiter..... 9, 132

Rector..... 71

Reeves..... 144

*Rehabilitation Act of 1973* ..... 13

Required employee notice..... 11

*Retirement Protection Act*..... 101

Rowland..... 35

Runzheimer International, Inc ..... 134

## S

S 74 ..... 38

S. 1344 ..... 106

S. 201 ..... 43

Sampson..... 88

SB 26..... 107

Schreiter..... 90

SDI..... 14

Sears, Roebuck & Co..... 132

Section 127..... 106

Section 503..... 13

SEIU..... 35

Sequins International, Inc ..... 148

Service Employees International Union

..... 35

Sexual orientation ..... 11, 119

Sharps injuries..... 120

Shimomura..... 16

SHRM 3, 7, 8, 16, 17, 27, 31, 32, 35, 37,

39, 48, 69, 78, 82, 110, 112, 141, 148,

150, 152

Silicon Valley..... 125

Smith..... 36

SOC..... 145

Social Security Administration..... 43, 44

Social Security Disabilities..... 42

Society for Human Resource

Management 17, 31, 32, 37, 39, 43, 48,

69, 110, 112, 141, 150, 152

Solano ..... 61, 62

Southern Poverty Law Center..... 133

SPLC..... 133

Standard Form 100..... 127

Standard Occupational Classification 145

State of Washington..... 23

Stolba..... 68

Supreme Court . 3, 4, 5, 7, 12, 16, 59, 80,

91, 109, 119

*Sutton et al. v. United Air Lines, Inc*... 82

Sutton v. United Airlines ..... 56, 91

## T

Technical Recruiting Success for IT

Firms ..... 131, 132

Texaco..... 105

The Accelerated Job Search..... 115, 116

*The Complete Guide to Technical*

*Recruiting*..... 9, 73

*The Happy Lawyer*..... 90

The Management Advantage, Inc..... 1, 2

Title VII ... 17, 29, 50, 51, 80, 81, 89, 90,

142

TrailToSuccess.com..... 49

Training magazine ..... 122

Trinity Industries Inc. v. Herman..... 61

Trinity Industries Inc. v. Reich ..... 61

Truesdell ..... 2

Tupperware Corp ..... 49

## U

U.S. Chamber of Commerce.. 31, 32, 39,

43, 82, 136

U.S. Department of Labor 13, 59, 64, 78,

127, 152

U.S. Supreme Court ... 12, 16, 42, 43, 56,

59, 80, 82, 89, 90, 102, 144

U.S. West, Inc ..... 68

Unemployment compensation 78, 79, 97,

151, 152

Union..... 20, 35, 94, 135, 136

United Airlines..... 6, 56, 104

US Chamber of Commerce..... 94

## V

Vacation leave..... 14

Vail..... 78

Veteran Affirmative Action ..... 13

*Veterans Employment Opportunity Act of 1998* ..... 13  
 VETS-100 ..... 3, 22, 113  
 VEVRAA ..... 13  
*Vietnam Era Veteran's Readjustment Assistance Act of 1974* ..... 13  
 VisaLaw ..... 139

**W**

*Wall Street Journal* 4, 15, 36, 49, 58, 75, 94, 97, 104, 105, 118, 131, 132, 148  
 Walt Disney Co..... 68  
 Washington Post ..... 35  
 Web Store for Professionals... 42, 46, 54, 55, 65, 73, 90, 96, 105, 108, 115, 116, 133, 142, 145, 146, 147  
 West Palm Beach ..... 11  
*West, Secretary of Veterans Affairs v. Gibson* ..... 80  
 White House..... 7, 54, 68, 101, 136, 137, 145, 153

Wilcher22, 23, 24, 25, 26, 28, 29, 32, 33, 48, 62, 82, 125, 128  
 Winthrop ..... 132  
 Women of Color in Corporate Management..... 103  
 Workers' compensation.. 11, 65, 76, 142, 148  
 Workplace culture..... 114  
 Workplace violence . 10, 37, 41, 72, 141, 142  
 Workplace Violence Prevention . 41, 142

**Y**

**Y2K**..... 4, 26, 33, 34, 50, 51, 153

**Z**

Zimmerman..... 57  
*Zimmerman v. State of Oregon*  
 Department of Justice ..... 58



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