Gentle Readers

Special Reports for HR Professionals 2000

Collection of email reports.

GENTLE READERS:
Special Reports for HR Professionals - 2000

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

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Gentle Readers,

Happy New Year to each of you! And, thank you to all who have sent in comments, suggestions, gripes and compliments about our newsletter and Special Reports for HR Professionals. It is always nice to get feedback. We appreciate the time you take to do so. This year seems like it is off to a roaring start. May it be a good one for you in every way.

Bill Truesdell
Editor

IN THIS REPORT (Report #118, 1/7/2000)
---------- (Sent to over 1,500 subscribers)

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1. CALIFORNIA COURT UPHOLDS ERGONOMIC STANDARD

Two safety-related events will impact employers in the new year whether or not that employment happens to be in California. The first, occurred on October 29, 1999, when the 3rd District Court of Appeals upheld the Cal/OSHA Ergonomics or Repetitive Motion Injuries Standard. Employers had generally been critical of the California standard because it plowed new regulatory ground in the country. At the same time, the court expanded coverage of the new standard by rejecting the "nine or fewer employees exemption" originally written into the regulations. Labor organizations had demanded the standard apply to every employer. Now they do.

Each California employer with one or more workers on the payroll must have a written Injury and Illness Prevention Program that includes provisions for meeting the new ergonomics standard as well as workplace violence prevention requirements.

Just about a month later, on November 22, 1999, the federal OSHA organization released its proposal for its own Repetitive Stress Injury (RSI) standard. Whether the federal group got courage for its actions from the California court ruling is unclear. What is clear is the increased emphasis being placed on eliminating RSIs in the American workplace.

If you still need to create your Injury and Illness Prevention Program (IIPP), we have just the product for you. In one binder you will find a model IIPP on both paper and disk, all the forms you will need to

implement your plan and maintain proper documentation, and the history behind the California requirements that cause employers to abide by these rules. The package includes both ergonomics and workplace violence provisions as well as other required IIPP content.

You can order your copy by calling our toll-free order line at 1-888-671-0404. Ask for your copy today. Cost is $99.95 + $7 S/H.

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2. OFCCP BACKS UP ON DEFINITION OF APPLICANT (OR NOT)

Could it really be happening? Is the Office of Federal Contract Compliance Programs (OFCCP) really modifying its position on the definition of "applicant?" Don't hold your breath, but the answer is "maybe."

For years, Shirley Wilcher, Deputy Assistant Secretary of Labor for OFCCP, has publicly stated that her agency would hold federal contractors to an extremely broad definition of applicant. The agency formally published its definition in its proposal for an EEO Survey which it sent to the Office of Management and Budget (OMB) last October. In that version of the EEO Survey, applicant was said to mean "any person who has indicated an interest in being considered for hiring, promotion or other employment opportunities." They expanded their definition with some examples: "a person who answers an employment ad in the newspaper or over the Internet; a person who sends in a solicited or unsolicited resume or application and is interviewed for a position by your company or by an external source such as an employment agency (whether or not that person was hired); a solicited OR unsolicited resume or application that is either (1) screened by your company or an external source such as an employment agency and accepted for further consideration or (2) screened and rejected."

That definition drew hostile fire from individual employers and employer groups alike. Employers proclaimed that the OFCCP clearly had no understanding of real-world employment operations. One group even suggested that the proposed applicant definition would capture state employment offices and employment agencies within the jurisdiction of OFCCP under Executive Order 11246.

Apparently, before the ink was dry on the OFCCP's submission to OMB, a new version of the EEO Survey was actually printed for distribution to 700 employers with a request for "voluntary" participation in the trial program. Some of these employers have reacted skeptically at the "voluntary" nature of the request in light of OFCCP's prior declaration that it would send out its next batch of 7,000 EEO Surveys to federal contractors who have been "flagged" as potentially out-of-compliance. Some companies in the initial group of 700 are left wondering about their "flagged" status.

In the new version, not given to OMB, a different definition of applicant was used. That definition was much less broad than the original. It says: "The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion or other employment opportunity. This interest might be expressed by completing an application form, or might be expressed orally, depending

upon the employer's practice." There was no mention of Internet or resumes.

Where will this lead? Is it official? Does Ms. Wilcher know about the change? Does the OMB recognize that the document it has been using to collect public comments is not the same one the OFCCP began using in its field test?

Stay tuned.

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3. DISABLED WORKERS WON'T HAVE TO GIVE UP HEALTH COVERAGE

Two weeks ago, on December 17, 1999, President Clinton signed into law the Ticket to Work and Work Incentives Improvement Act of 1999. It is intended to allow disabled workers to obtain employment without having to give up their Medicare or Medicaid coverage for health benefits.

Two key provisions of the legislation are:

1) An option for states to allow Medicaid programs to extend coverage to workers with disabilities. It includes a $250 million demonstration program to allow people with potentially disabling diseases or conditions (e.g., HIV) to receive health care coverage.

2) Extension of Medicare coverage for an additional 4.5 years. That means Social Security Disability Insurance beneficiaries who go to work will have their Medicare coverage for a total of 8.5 years.

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4. DOL'S HERMAN BACKS DOWN ON OSHA HOME SAFETY OPINION

If you have read a newspaper this week you have seen the subject of home safety inspections in the headlines. Way back in 1993, The Occupational Safety & Health Administration (OSHA), an agency within the U.S. Department of Labor (DOL), published a letter that addressed the "flexi-place" work location issue for the first time. In it OSHA acknowledged the growing trend toward home-based work that has evolved into what we now think of as "telecommuting."

About employer responsibility for safety in an employee's home, OSHA said at that time: "Assurance of safe and healthful working conditions for the employee should be a precondition for any home based work assignment. This includes materials, equipment and methods provided or required by the employer. We reserve judgment at this time as to the extent of OSHA coverage for other conditions found in the home workplace. We note, however, that the home workplace may create special hazards for others who dwell with the worker, especially children. As the number of employees using flexi-place expands, scheduled inspections become increasingly less practical as the primary OSHA enforcement approach for the protection of these employees." (10/7/93 - Effect of flexi-place on mission and jurisdiction of OSHA - www.osha-slc.gov/OshDoc/Interp_data/I19931007.html)

This week's upset was due to a similar letter sent in November 1999 to CSC Credit Services. That letter is no longer on the OSHA web site for review. It is widely cited as having said, "ensuring safe and healthful working conditions for the employee should be a precondition for any home-based work assignments." Strong negative reactions came flying from businesses, business groups and even some members of Congress.

The agency said its letter applied only to the one employer and should not be generalized as a change of policy. Ms. Herman said in a news conference on the evening of January 4, 2000, that there are "no rules, no liability" regarding home offices at this time. She did say she felt the matter should be debated publicly in light of this incident. Some criticism focused on the agency's expansion of its enforcement authority without having gone through the formal procedures involved in public comment on proposed rule changes.

The same criticism has been leveled at another branch of the DOL in recent years. The Office of Federal Contract Compliance Programs (OFCCP) has been accused of creating enforcement standards without going through formal standards-setting procedures. Both agencies report to Ms. Alexis Herman, Secretary of Labor.

Gentle Readers,

The legislative wheels never stop turning. Even before Congress reconvenes there is talk about how to spend all the money being generated by the booming economy. I'll just bet that they will find a way.

Bill Truesdell
Editor

IN THIS REPORT (Report #119, 1/14/2000)
---------- (Sent to over 1,500 subscribers)

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1. CALIFORNIA DOMESTIC VIOLENCE & JURY DUTY LEAVE

Of the 900+ bills signed by California Governor Gray Davis in 1999, one slipped under the radar screen. You need to be aware of it if you have employees in the state.

SB 56 is known as the "Domestic Violence And Jury Duty Leave" law. It provides that employees are entitled to use any available vacation time, personal leave, compensatory time or unpaid leave to:

- protect themselves or others from domestic violence
- appear in court (if employee has been the victim of a crime)
- attend jury duty

Employees are required to give "reasonable notice," but that could be very last minute in the real world. Be aware that any request for this type of time off must be granted and excused. It need not be paid unless the employee has accrued paid time off waiting to be used.

Employers that discriminate, retaliate against or terminate a worker for taking such time off will be liable for any lost wages and benefits and will be required to reinstate the employee.

For a complete text of the new law, go to:
http://www.leginfo.ca.gov/pub/bill/sen/sb_0051-0100/sb_56_bill_19990907_chaptered.html

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2. INS HALTS PROCESSING OF H-1B VISAS

According to the Society for Human Resource Management (SHRM) the Immigration & Naturalization Service (INS) has halted all processing of H-1B visa petitions filed after October 25, 1999.

The announcement came as a surprise to the employer community. Hardest hit will be employers who are experiencing difficulty locating domestic talent for highly technical jobs in the computer and biotechnology industries.

The current fiscal year cap on H-1B visas is set by Congress at 115,000 under the "American Competitiveness and Workforce Improvement Act" of 1998. Last year's limit was the same, and was reached in June, three months before the end of that fiscal year. The exact number of visas issued last year is still unknown. The INS reported it suffered a computer malfunction that caused thousands of extra visas to be issued in 1999. Also unknown is when the INS will complete its verification of the overage and whether it will count those visas towards this year's cap.

Four bills are waiting for Congress to return on January 24th to act on increasing the limit of H-1B visas for the current fiscal year. (S 1440, S 1645, HR 2698 and HR 2687) One bill, S 1840, calls for elimination of the cap altogether.

According to SHRM, it is uncertain if Congress will act on any of these bills in the shortened session they will have in the face of this election year.

For now, if you are waiting on approval of H-1B petitions, you might want to consider other alternatives.

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3. WIA KICKS IN ON JULY 1, 2000

The "Workforce Investment Act (WIA)" of 1998 becomes effective on July 1, 2000 and requires all states to consolidate their many federal job training and placement programs into single "one-stop" services. This new requirement will replace the federal "Job Training Partnership Act (JTPA)" that will expire at the end of June.

JTPA has been the long-standing funding for such programs as Private Industry Councils (PIC) in most counties across the nation.

New federal guidelines require that each state submit a 5-year strategic plan to the Department of Labor (DOL) for approval before April 1, 2000. The plans must include provisions for consolidation of all current federally funded plans into a single service delivery system, provisions for evaluating the effectiveness of the new system, and provisions for encouraging business involvement and feedback.

So far, twenty states have submitted plans to DOL for approval, and half of those have been approved. HR professionals will be recruited to serve on local workforce boards to supervise planning, implementation and evaluation of the new program. If you are

interested in participating in such a role, talk with your state's employment services department about its requirements for professional assistance.

Programs that have already been approved include those from: Florida, Indiana, Kentucky, Louisiana, Nevada, New Jersey, Oregon, Pennsylvania, Texas, Utah, Vermont and Wisconsin. Plans have been submitted from the following states and are awaiting approval from DOL: Illinois, Minnesota, Mississippi, North Carolina, Ohio, Oklahoma, Puerto Rico, and Tennessee.

For more information, contact your local employment services department in your state, or the current office of the PIC in your county.

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4. CALIFORNIA GOVERNOR SEEKS TIGHTER CONTROL ON NURSING HOMES

At the end of the 1999 legislative session, California Governor Gray Davis vetoed legislation that would have created greater oversight of nursing homes in the state. Last week, he announced that he is backing new proposals that would do essentially the same thing. In his announcement to the press, Governor Davis said he intends to increase fines for homes providing negligent care, insist on higher pay for workers in nursing homes, and field more state inspectors to monitor complaints of abuse and neglect. The Governor's legislative proposal is called the "Aging with Dignity Act."

According to the state, there are over 1,440 nursing homes in California. Eleven percent of those are in bankruptcy.

Some of the provisions contained in the new legislation are:

- Raise minimum wage of in-home support workers to $8 per hour from the current $6.25
- Raise wages of nursing home workers another 5 percent on top of the 5 percent increase received in the 1999 state budget
- Allocation of $50 million to train nursing home workers, most of which would come from federal sources
- Rewards up to $50,000 to nursing homes that serve the highest number of Medi-Cal patients and maintain the highest level of patient care

One issue the new legislation does not address is the method of payment to nursing homes for its patients. The industry wants reform of the current flat-fee reimbursement procedures so it can be paid for each service it performs. That would allow billing for maintaining an IV or serving special meals.

While the Governor says he doesn't want to get into reform of billing systems at this time, the new proposal is very specific about financial penalties that will be levied against homes found to have violations in their care programs or facilities. Homes found to have negligently caused the death of a patient would be fined $100,000, up from the current $25,000. Minor violations would be treated with fines double the current levels.

It seems clear that nursing home management is going to remain in the political spotlight during the foreseeable future. If you are part of that industry, you can appreciate the need for even higher levels of management skill than has been required in the past. One resource available for your managers is our book, "Nursing Home Leadership." These days, you should consider it an essential part of every manager's training program and resource library. You can get your copy at our Web Store for Professionals(tm). www.management-advantage.com/products/leadership-book.htm.

Gentle Readers,

More government oversight and enforcement in the news this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #120, 1/21/2000)
---------- (Sent to over 1,500 subscribers)

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1. STATE EMPLOYEES NOT PROTECTED BY ADEA

State employees are not protected under the Age Discrimination in Employment Act of 1967 (ADEA) according to the U.S. Supreme Court. The 5-4 decision came on January 11, 2000 in Kimel et al. v. Florida Board of Regents et al. (http://laws.findlaw.com/US/000/98-791.html)

The majority opinion, written by Justice O'Connor, said the ADEA "does contain a clear statement of Congress' intent to abrogate the States' immunity, that abrogation exceeded Congress' authority under Section 5 of the Fourteenth Amendment."

The opinion added, "Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitutional violation. That failure confirms that Congress had no reason to believe that broad prophylactic legislation was necessary in this field."

The Court also pointed out that "Today's decision does not signal the end of the line for employees who find themselves subject to age discrimination at the hands of their state employers. Those employees are protected by state age discrimination statutes, and may recover money damages from their state employers, in almost every State of the Union."

So, if you work for a state government, don't plan on suing your employer in federal court for age discrimination. State government HR professionals may want to chat with their management attorneys about the impact this ruling will have in the short run.

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2. STOCK OPTIONS BOOST OVERTIME RATES?

The Wall Street Journal (1-11-2000) reported that the U.S. Department of Labor recently issued an advisory that employees' profits from exercising stock options must be factored into overtime pay rate calculations. The letter was supposedly sent by the Wage and Hour Division to an inquiring employer. LPA, a Washington advocacy group for large employers, said the advisory could discourage stock options, used by many employers to help boost company performance.

If you offer stock options to your non-exempt employees, it would be a good idea to raise the question of overtime payments and base rates with your management attorney.

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3. NEW AAP REGULATIONS COMING?

Information just reported by the Bureau of National Affairs (BNA) indicates the Office of Federal Contract Compliance Programs (OFCCP) sent a proposal for revising affirmative action regulations to the Office of Management and Budget (OMB) during the week of December 13, 1999.

OMB will have 90 days to conduct an internal review of the proposal after which it will be published in the Federal Register for public comment. OFCCP says that is expected to happen in March.

OFCCP continues to emphasis its interest in reducing the paperwork burden on federal contractors. It has nonetheless created a new annual report called an EEO Survey that is currently in testing. The government estimates it will take 12 hours for each contractor to complete the survey forms each year. Some contractors, involved in the initial test, report it actually took them multiples of that estimate. Key information required in the EEO Survey involves compensation data by EEO category. OFCCP has also implemented its revised scheduling letter for compliance reviews in which it requires contractors to submit summarized compensation data for all employees in the establishment. Ms. Shirley Wilcher, Deputy Assistant Secretary of Labor, and head of the OFCCP, has refused to disclose what the new regulatory proposals contain in the way of paperwork reducing suggestions. And she contends that all of her agency's proposals have been to reduce paperwork for contractors. (Is it possible that OFCCP has a different definition of "paperwork reduction" than other people use?)

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4. TELEMARKETING MANAGEMENT BOOK AVAILABLE

For those of you who may have been looking for a reference book on developing successful telemarketing programs, we are now offering a quick and easy guide to telemarketing management.

"Telemarketing Management for Business" is 120 pages of management essentials for operating a successful telephone sales organization.

Learn about hiring, training, organization, facilities, planning, operations, and much more.

At only $12.95, you will be delighted with the value. It is available ONLY through our Web Store for Professionals(tm). http://www.management-advantage.com Look in the "Sales" section of our products listing.

Gentle Readers,

Congress returned to work on January 24th. It will take a while for them to get back into the swing of things.

Bill Truesdell
Editor

IN THIS REPORT (Report #121, 1/28/2000)
---------- (Sent to over 1,500 subscribers)

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1. ECONOMY GOOD, LAYOFFS CONTINUE

If you take a look at the unemployment figures reflecting the portion of our population that is out of work, you will discover that it is the at the lowest level in twenty years. Jobs at the high end of the skill chain are going empty due to lack of qualified candidates. In Silicon Valley, one high-tech employer is quoted as saying, "If you can turn a computer on, we'll pay you $60,000. The rest we'll teach you." That's amazing to most folks.

Yet, in the midst of all this prosperity and growth, we find some employers are still reducing their workforce. Recently announced cuts include:

- Coca-Cola - 6,000 jobs being cut
- Chevron Corporation - 3,500 jobs
- Seagate Technology - 2,700 jobs
- United Technologies - 15,000 jobs
- Quaker Oats - 600 jobs
- Qualcomm - 1,000 jobs
- Tokyu Department Stores - 700 jobs

This list is not comprehensive and complete. It is simply representative of what is still going on in the market place of employment.

If you are aware of a plant closing, or downsizing at a facility close to you, it may be possible to tap into the laid-off workers to find some talent you need in your organization. If you need to have some skill enhancement for laid-off workers before you can place them in your organization, talk with the people at your state employment service. They are all working with organizations we used to call the

Private Industry Council in our communities. They can train laid-off workers, giving them new skills for your job requirements. Since federal funds are supporting such programs, you enjoy a cost-free source of talent for your jobs. Think about it. Then, make the call.

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2. HIGH TECHNOLOGY COMPANIES AS EMPLOYERS

For some companies, the glitter of the high-tech world has been tarnished by employment policies and management skills. Culture often plays a role in employee disenchantment.

Picture this. You get a job offer from a high technology firm that includes a base salary substantially below what you are accustomed to earning. Yet, the offer also includes stock options that everyone hopes will be enormously valuable when the company is eventually put on the public market through an IPO (Initial Public Offering). You could become an instant millionaire. Of course, the company was formed by people who dropped out of college to pursue their high-tech idea. They have convinced some financial backers that their idea is sound and can eventually make large amounts of money. They say their employees are used to working 60 to 90 hours a week. After all, everyone has a stake in the ultimate success of the business, right? What do you do? Should you take the job?

Some people argue that working employees 60 to 90 hours each week is not a family friendly policy. Yet, the business owners are more interested in moving the organization toward an IPO than they are concerned about employee policies. Management skills may or may not be very strong. If the owners have little or no previous management experience, chances are good that employee issues will fall well down the priority list.

The tarnish seems to be appearing on high-technology luster at the point when employees say, "It has been long enough. I've paid my dues to this organization. When is the IPO going to happen so I can get my money and get out?" Obviously, this point will come at different times for different people. Those who drop out early are sometimes bitter about their experiences and some are even suing their former employers over their experiences.

iVillage and American Online are two well known high technology companies that have recently found themselves in court because of former employee challenges.

Some employees say their former companies never intended to keep them for the time necessary to reach an IPO. They claim the organization was run by people who want only to use up employees as it would use up other expendable resources like printer paper.

Whatever the outcome for these cases, you can be sure that some high technology companies are turning the corner from start-ups to maturing organizations. Part of that process involves getting a good strategic and practical grip on human resource policies and management skills.

Watch your newspaper for further developments. There are sure to be new headlines about additional situations every few days. In the mean time, take heart from your knowledge that solid human resource management policies and procedures will carry your organization a long way into the future. With your guidance, your employer will be able to avoid the pitfalls of "high-tech syndrome" and treat its employees with the respect they both want and deserve.

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3. WEB RESOURCES FOR EMPLOYERS & JOB SEEKERS

Every day, it seems, there are new resources being introduced on the Internet. Keeping up with the pace of that development is sometimes difficult.

For employers who use the Internet as a recruiting tool, it is important that new resources be explored and tested. To that end, we suggest you check out the following job-focused web sites. Maybe one or more of them will fit into your recruiting plans.

- America's Job Bank - U.S. Dept of Labor
  http://www.ajb.dni.us/

- Vault.com - private site rated #4 by PC Week for job search
  http://vault.com

- Hotjobs.com - technology jobs
  http://www.hotjobs.com

- Monster Board - very large job matching service
  http://www.monster.com

- Career Mosaic - very large job matching service
  http://www.careermosaic.com

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4. EEOC/OFCCP BUDGETS ... GOING ... UP

President Clinton has announced that he will request a 13% increase for civil rights enforcement in next budget. Fiscal year 2001 will begin on October 1, 2000.

In the announcement, the President said he would ask Congress to approve a 14% hike in the Equal Employment Opportunity Commission's (EEOC) budget compared to the current year. That would take EEOC spending to $322 million. The President says he wants to reduce the backlog of EEOC private-sector cases.

The Department of Labor's OFCCP (Office of Federal Contract Compliance Programs) would receive $79 million if Mr. Clinton's wishes are met. OFCCP has responsibility for enforcement of federal affirmative action guidelines with contractors providing goods and services directly or indirectly to the federal government.

Gentle Readers,

Anyone involved in federal contracting, and therefore affirmative action, will want to quickly order a copy of our 4th Edition of "Secrets of Affirmative Action Compliance."

Bill Truesdell
Editor

IN THIS REPORT (Report #122, 2/4/2000)
---------- (Sent to over 1,500 subscribers)

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1. FOURTH EDITION OF AFFIRMATIVE ACTION BOOK AVAILABLE

Hundreds of employers across the country have been using the first three editions of "Secrets of Affirmative Action Compliance." We are ever grateful for the wonderful feedback and positive comments users have shared with us over the years.

- "Valuable and well written." Diane R.
- "A handbook for my activities." Dottie M.
- "This book helped me clean up my data so I could be looking at the right information." Kathleen T.
- "Your book is great! Easy to understand, clear examples - it is already dog-eared!" Nancy C.
- "The best reference I've ever seen on affirmative action." Barbara L.
- "This book makes a difficult subject easy to follow." Elizabeth P.

Some companies have purchased multiple copies so everyone in the HR organization having an impact on recruiting can have their own copy to make notes in and use as a daily guide.

Well, now, the latest version is available for your use in implementing a successful affirmative action program. The Fourth Edition is soon to be rolling off the presses, and it's bigger than ever, exceeding 500 pages. (8.5" X 11" perfect bound) It will be shipping before the end of February. You will find updated information about ...

- VETS-100 reporting requirements

- Surveying your employees for their veteran status
- Changes you will see in data as a result of CENSUS 2000
- What multi-racial selections will mean to EEO reports and affirmative action computations
- Political influences in Washington that will shape the future of affirmative action
- and much more.

Of course, you still get all the easy-to-read information you need about requirements of AAP development for Minorities and Women, Disabled, and Veterans. And, you get helpful recommendations for how you can better manage a compliance review when the Department of Labor comes knocking on your door.

For five years we have maintained our initial low price of only $99.95 per copy. And, we have priced this newly updated issue at the same level, even though printing costs have risen significantly since the first issue. Furthermore, for all of our subscribers and current customers, we are offering a special discount. If you order your copy from our web site before February 29, 2000, you will receive a $10.00 instant discount. Your cost will be only $89.95. All orders will be shipped before the end of February, and your credit card will not be charged until your order actually ships. Go to www.management-advantage.com/products/aa-book.htm . Don't forget, if you want the instant discount, the deadline is February 29, 2000. Tell your colleagues. They may want their own copy, and if they save $10.00, they'll thank you for it.

If you have responsibility for recruiting or affirmative action, be sure you order your copy early so you will have the latest resource available to help you do your job. Don't be working with outdated information. Get your current copy today. While you're there, take a quick look at our other fine publications and products. You may easily discover additional tools you can use to make your job easier.

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2. VIDEO RESUMES ENTER RECRUITING WORLD

The old paper resume may not yet be outmoded, but there is a new contender in the marketplace ... video resumes. It is being used by everyone from high school sports stars to business executives. CNN explained in an article (www.cnn.com/US/9712/25/high.school.resumes/) that one athlete used this new approach to attract recruiters that eventually landed him a college scholarship worth $120,000.

In the job market, some executive recruiters are beginning to use video resumes and multi-media presentations to market and screen job candidates. http://corporatewarriers.com is one of the trail blazers, offering executive portfolios on its web site. Another web site,

http://kforce.com, offers video presentations for both job candidates and employer organizations.

Whether or not these new tools will greatly change the job market and how much change they will bring is yet to be determined. Yet, it is an interesting movement using new technology that HR professionals in general and recruiters specifically will want to watch over the coming months.

Resources for on-line recruiting software:

http://www.skillset.com

http://recruitsoft.com

Resources for traditional recruiting:

There are scores of recruiting firms throughout the country. Many of them have web sites describing their services. A quick look using any web search engine on terms like the following can get you an extensive listing of sites. "Executive Search," "Job Search," "Recruiters," "Job Search Firms."

Here are some samples to get you started.

Heidrick & Struggles http://www.heidrick.com/middle.html

A. Herndon & Associates, Inc. http://www.aherndon.com/

Cornerstone Partners http://www.cornerstonepartners.com/

Executive Research Associates http://www.eniera.com/

Korn/Ferry International http://www.kornferry.com/

M. Wood Company http://www.mwoodco.com/

Executive Recruiters - SPANUSA http://www.spanusa.net/

And don't forget about our excellent resources. Our newest book on job hunting is proving to be very popular. Find "The Accelerated Job Search" at http://www.management-advantage.com/products/jobsearch.htm

Special resources for professional technical recruiters are also available from our list of publications. Be sure you review the following:

"The Complete Guide to Technical Recruiting"
http://www.management-advantage.com//products/recruit1.htm

"Internal Recruiter's Guide to Successful Technical Recruiting"
http://www.management-advantage.com//products/recruit2.htm

"Technical Recruiting Success for IT Firms"
http://www.management-advantage.com/recruit-it.htm
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3. RECAP OF FISCAL YEAR 1999 AT EEOC

The federal fiscal year ended September 30, 1999. During the 1999 FY, the Equal Employment Opportunity Commission (EEOC) put some numbers on the results chart. Here are a few of the accomplishments they have published at their web site: http://www.eeoc.gov/accompliahments-99.html

- Current inventory (backlog) of complaints = 40,234
  23% lower than previous year - a new 15 year low.

- 60% of inventory is less than 180 days old. An improvement from 49% in FY 1998.

- Average processing time for resolving charges fell to 265 days from 310 days in FY 1998.

- Number of cause resolutions increased 37% to 6,415.

- Cause resolutions, as a percent of all resolutions, rose from 4.6% in FY 1998 to 6.6% in FY 1999.

Gentle Readers,

Pets, the Internet, and radio waves in the news this week. Will the excitement never stop?

Bill Truesdell
Editor

IN THIS REPORT (Report #123, 2/11/2000)
---------- (Sent to over 1,500 subscribers)

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1. PET SITTING IS NOW A RECRUITING TOOL

Well ... it's come down to this ...

The job offer's no good unless you throw in pet health insurance and pet sitting services.

More and more, we're told, employees are negotiating their way into employer-paid benefits of that very nature. It can even make the difference between winning over a candidate and losing your highest draft choice. Before you rush out to buy pet insurance for your employees, however, be sure to "read the fine print." You will discover a wide range of deductibles and co-payment programs, just as with people insurance. (http://www.cnn.com/US/9811/07/pet.insurance/)

Pet sitting is another matter. When you need to have someone look after your pet parrot, anaconda, or orangutan, it's nice to have a resource handy. One commercial program is web-based. RewardsPlus (http://www.rewardsplus.com) has formed a partnership with a nation-wide veterinary care provider to offer pet sitting, grooming and boarding services as well as medical treatment programs.

If, on the other hand, you simply have a hankering to do some pet sitting for your local felines and canines, check out the web site for Pet Sitters Associates, LLC. You can register as a pet sitter and purchase liability insurance against the perils of your adventures. (http://www.petsitllc.com/)

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2. e-HRWORLD.COM CONFERENCE COMING IN MAY

Are you curious about how e-commerce and life on the Internet will impact HR management in the months and years to come? Would you like

to hear speakers like Peter Drucker, author of "Management Challenges for the 21st Century," Barbara Beck, Senior Vice President of Human Resources at Cisco Systems, and Eliot Masie, editor of TechLearn Trends? If so, the e-HRWorld.com conference & exposition may be just your thing? It will be held from May 8-11, 2000 at the Anaheim Marriott, Anaheim, California.

While we don't normally do commercials for such events, this one sounds like it will deal with some cutting-edge issues in our profession. And, one of our authors, Charlie K. Dawson, will be leading a pre-conference workshop entitled "Keys to Successful Electronic Recruiting." Charlie is the author of our hugely successful books on technical recruiting. (http://www.management-advantage.com/products/)

To give you a flavor for the level of importance some organizations attach to these issues, conference sponsors include: Towers Perrin, Booz-Allen & Hamilton, Raymond Karsan Associates, Harvard Business School Publishing, ASI, Personic, Resumix, and another dozen key players.

If you are interested, you can get more information at http://www.linkageinc.com/ehrworld/

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3. FCC ADOPTS NEW EEO RULES

On January 20, 2000, the Federal Communications Commission (FCC), by a vote of 3 to 2, adopted new equal employment opportunity (EEO) rules affecting broadcasters' affirmative action programs. This action is in response to a D.C. Circuit Court of Appeals ruling in 1998 (Lutheran Church Missouri Synod v. FCC, 76 FEP Cases 857; 10 EDR 498, 517, 4/22/98). The court held that certain aspects of the Commission's previous broadcast EEO outreach requirements were unconstitutional.

The new rules require broadcast licensees to widely disseminate information about job openings to all segments of the community to ensure that all qualified applicants, including minorities and women, have sufficient opportunities to compete for jobs in the broadcast industry. "The new rules do not require broadcasters to hire any particular applicant, nor do they place pressure on such decisions," according to the FCC. At the same time, the Commission amended its EEO rules applicable to cable entities, making them similar to the new EEO rules for broadcasters.

The new EEO rules give broadcasters two supplemental recruitment alternatives: (1) sending job vacancy announcements to recruitment organizations that request them; and, (2) selecting from a menu of non-vacancy specific outreach approaches, such as job fairs, internship programs, and interaction with educational and community groups. If a broadcaster believes it can accomplish broad outreach without these supplemental recruitment measures, it may design its own outreach program and must maintain records concerning the recruitment sources, race, ethnicity and gender of applicants.

Exempted from these new requirements are broadcast stations with fewer than five full-time employees and cable entities with fewer than six

full-time employees. All other broadcasters and cable operators must place an annual EEO report in their public file detailing their outreach efforts and must file a Statement of Compliance every second, fourth and sixth year of the license term, certifying compliance with the new EEO rule.

Additional information is available at the FCC web site.
http://www.fcc.gov/Bureaus/Mass_Media/News_Releases/2000/nrmm0002.html

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Gentle Readers,

The web continues to offer many valuable, and timely, resources for HR professionals. We have plucked some of interest to us and hope you might also find them helpful.

Don't forget ... there is just over a week remaining ... get your special discount on our new 4th Edition of "Secrets of Affirmative Action Compliance." Your order must be in by the 29th of this month. You can conveniently order at: http://www.management-advantage.com/products/aa-book.htm

Bill Truesdell
Editor

IN THIS REPORT (Report #124, 2/18/2000)
-------------- (Sent to over 1,500 subscribers)

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1. NEW CALIFORNIA WAGE ORDERS DRAFTED - ALL EMPLOYERS

The California Industrial Welfare Commission (IWC) is charged by the Legislature with developing a revised set of wage orders in the wake of A.B. 60 which reinstated daily overtime pay for state workers on January 1, 2000.

A draft of those revisions is now available for your review. You will find them at http://www.dir.ca.gov/IWC/redraftcomments.htm. Any California employer with employees in jobs that are not exempt from overtime provisions of the federal Fair Labor Standards Act must abide by the new requirement to pay those workers overtime at 1.5 times the normal hourly rate when they work more than eight hours in any single workday. Salaried workers in non-exempt jobs must be paid overtime at the same time-and-a-half rate. Their hourly rate is computed as 1/40th of the weekly base salary.

When finalized, this notice will be a required posting in the workplace.

Remember, when determining who gets paid overtime and who does not, it is the job content that dictates, not the incumbent or job title.

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2. ALTERNATIVE WORKWEEK SCHEDULES FOR CALIFORNIA

The new rules for employee scheduling in 2000 have many California employers confused about the allowable workweek alternatives. We get many questions about the configurations that are permissible.

Rather than rewrite that explanation we thought we would direct those of you who are interested to the California Chamber of Commerce web site. They have a good explanation and some examples. Look at: http://www.calchamber.com/top_stories/122799/12-27_alt_work_schedule.htm.

Select the article, "How to Implement Alternative Work Week," from the menu.

You don't have to be a CalChamber member to take advantage of this report.

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3. YOU MAY FIND GOVERNMENT STATISTICS YOU NEED ON THE WEB

More than 70 agencies in the United States federal government produce statistics of interest to the public (and business leaders). The Federal Interagency Council on Statistical Policy maintains a web site that provides easy access to a full range of statistics and information produced by these agencies for public use. You will find it at: http://www.fedstats.gov/.

You will find reports from the following agencies:

- Bureau of the Census
- Bureau of Labor Statistics
- Energy Information Administration
- Environmental Protection Agency
- National Agricultural Statistics Service
- National Center for Health Statistics
- National Science Foundation, Division of Science Resource Studies
- Bureau of Justice Statistics
- National Center for Education Statistics

There is also a Documents Center at the University of Michigan web site that allows searching "Federal Government Resources on the Web." http://www.lib.umich.edu/libhome/Documents.center/federal.html They allow access in the following categories:

- Agency Directories and Web Sites
- Bibliographies
- Budget
- Civil Service
- Copyright
- Executive Branch
- Executive Orders
- General Accounting Office
- Grants, Contracts and Auctions
- Historic Documents
- Judicial Branch

- Laws and Constitution
- Legislative Branch
- Office of Management and Budget
- Patents
- President
- Regulations
- Taxes
- White House
- Documents in the News
- Documents Librarianship
- Political Science
- Statistics

If you are interested in a list of the "Top 200 (Federal Government) Contractors in 1999" you will find a complete list at: http://www.govexec.com/top200/99charts/99top200.htm

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4. PRESIDENT ANNOUNCES EQUAL PAY INITIATIVE

During his State of the Union address on January 24, 2000, President Clinton announced a $27 million Equal Pay Initiative he plans to begin in fiscal year 2001 (FY 2001) beginning on October 1, 2000. Part of his plan includes support for passage of the "Paycheck Fairness Act" now before Congress for consideration. He said he feels strongly that this measure should be enacted because women continue to earn "only about $.75 for every $1.00 earned by men." His proposal contains $10 million to support a more aggressive enforcement of the Equal Pay Act by the Equal Employment Opportunity Commission (EEOC) and Department of Labor.

Left unsaid was the content of the Paycheck Fairness Act. It calls for every employer to implement a "comparable worth" compensation system. That means, if passed and signed into law, the legislation would require employers to compensate men and women equally, not for equal work, but for comparable work. It would require comparing secretaries and engineers and custodians to determine what jobs are "comparable" requiring equal compensation. Comparable worth goes well beyond equal pay. (For more information about comparable worth compensation, see our newsletter article in THE ADVANTAGE from July, 1999 http://www.management-advantage.com/newsletr/jul99.html)

For more information about how the EEOC would approach this endorsement for greater enforcement, read http://www.eeoc.gov/press/2-1-00.html.

Gentle Readers,

A new Executive Order from President Clinton addresses use of genetic characteristic information by federal agencies. And, a special "heads up" for employers in the construction industry.

There are only a few days left to get your special February price on "Secrets of Affirmative Action Compliance." The new fourth edition gives you the latest current information about regulatory changes and enforcement efforts. If you haven't ordered your copy yet, now is the time. http://www.management-advantage.com/products/aa-book.htm

Bill Truesdell
Editor

IN THIS REPORT (Report #125, 2/25/2000)
-------------- (Sent to over 1,500 subscribers)

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1. INS SAYS H-1B CAP IS IMMINENT

According to the American Immigration Lawyers Association, the Immigration and Naturalization Service (INS) has said it will announce shortly that the cap on H-1B visas has been reached for the current FY2000 quota of 115,000. INS officials said there would be no 30-day notice. The announcement will just indicate that the limit has been reached. When that announcement is made, cases that have already been received will be handled under the FY2000 cap. Cases filed after the announcement will be adjudicated under the FY2001 cap.

For more information, see Siskind's Immigration Bulletin at http://www.visalaw.com/00feb3/5feb300.html.

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2. CALIFORNIA WAGE ORDER POSTING REQUIREMENTS

California's Industrial Welfare Commission (IWC) is responsible for publishing 15 wage orders reflecting rules in different industries. Each wage order describes how employers are to set work hours, compute and pay overtime. Every California employer must have one of the IWC orders posted for employee reading.

With the changes in overtime rules this year, many employers are confused about the rules in their industry. Here is our effort to clarify the current status of state requirements.

All employers must post "Minimum Wage Order MW-98."

In addition each employer must post the specific industrial wage order that applies to their industry. Wage orders that were issued for industries in 1998 when daily overtime was eliminated will have to be replaced with wage orders used prior to that year. Here is the breakdown of current requirements:

Order No.	Industry
1-89	Manufacturing
2-80	Personal Services
3-80	Canning and Preserving
4-89	Professional, Technical and Clerical (amended in 1993)
5-89	Public Housekeeping (amended in 1993)
6-80	Cleaning, Dyeing and Laundry
7-80	Mercantile Industry
8-80	Post Harvest and Food Processing
9-90	Transportation
10-89	Amusement and Recreation
11-80	Broadcasting
12-80	Motion Picture Industry
13-80	Farm Crops Preparation
14-80	Agriculture Occupations
15-80	Domestic Workers

Free copies of the posters are normally available from the state Department of Industrial Relations. The change has caused a drain on their supply and, so far, they haven't caught up with demand. You can write your request for copies to: Posters, Department of Industrial Relations, Public Information Office, P.O. Box 420603, San Francisco, CA 94142-0603.

Since there is no forgiveness by enforcement officials for not having the proper wage order posted, you can't use the excuse that they are "on order." Rather, we suggest you go to the Department of Industrial Relation's (DIR) web site and download the wage order you need. DIR has said it will not penalize employers who download and print the appropriate wage order from their web site. You should also submit a request for the proper printed version so you will receive your copy when they are available.

The web site for downloading wage orders is:
http://www.dir.ca.gov/IWC/iwc.html.

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3. PRESIDENT SIGNS ORDER BARING USE OF GENETIC DATA IN FEDERAL EMPLOYMENT

On February 8, 2000, President Clinton signed an executive order baring federal agencies from using genetic information in any of their hiring or promotion decisions.

The order 1) Prohibits federal employers from requiring or requesting genetic tests as a condition of being hired or receiving benefits. Employees may not be required to take genetic tests as part of an evaluation of their ability to do their jobs. 2) Employees may not be classified using genetic information in any way that deprives them of advancement opportunities. Promotions or overseas postings may not be denied because of a genetic predisposition for certain illnesses. 3) Obtaining or disclosing any genetic information about federal employees or job applicants is prohibited, except as it is needed to provide medical treatment. Genetic information about any federal employee of job applicant will be subject to all federal and state privacy protections.

Provisions have been made in the order for legitimate use of medical information, including genetic information, if appropriate. Those might include consideration of disability accommodation requests, among other similar actions required by law.

The federal Health Insurance Portability and Accountability Act of 1996 prohibits health insurers from using genetic information to deny individuals health insurance benefits. California has added "genetic characteristics" as a protected category within "Medical Condition." The state's Fair Housing and Employment Act prevents employers in the state from using genetic information in employment decisions.

There is currently consideration in Congress for legislation that would prohibit any employer in the country from using genetic information about employees or job applicants during any phase of the employment process.

For more information about the new executive order, go to the White House Briefing Room at:

http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/2000/2/8/8.text.1

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4. OSHA TARGETS CONSTRUCTION INDUSTRY

Until recently, employers in the construction industry have been treated as any other employer by Federal and state safety officials. That is about to change if the Occupational Safety and Health Administration (OSHA) has its way.

OSHA has put $1 million into its FY2001 budget for developing a survey that will be intended to identify construction contractors with above-average injury rates. The data will actually be collected during FY2002.

It is the industry's high fatality rate that has driven OSHA to this action according to the agency. OSHA says contractors are not included in their current effort at enforcement with high-risk employers because construction firms are very mobile and it is difficult to determine where inspections should be done. In addition, many construction firms are classed as small businesses, meaning there are a great many to consider in any enforcement effort.

Those conditions have driven the government enforcement officials to consider using the survey approach to help identify and flag for inspection those employers who have had problems in the past.

If you are in the construction industry, you will want to watch developments in this arena very carefully over the next two years.

Gentle Readers,

A key resource for diversity management keeps getting better, and we introduce some new products to make your life easier.

Bill Truesdell
Editor

IN THIS REPORT (Report #126, 3/3/2000)
---------- (Sent to over 1,500 subscribers)

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1. PROFILES IN DIVERSITY JOURNAL - CURRENT, CLASSY MAGAZINE

Profiles in Diversity Journal (PDJ) is gaining momentum as a diversity publication of choice because of it's emphasis on the work and experiences of the diversity practitioner. All articles are written by diversity practitioners, making this publication a wonderful benchmarking and networking resource. Articles provide practical information about specific business cases, recruitment and retention, employee communication, global diversity, educational resources and other areas relating to workforce inclusion. Articles come from corporate and not-for-profit business, government, higher education, military, and overseas organizations. Published in Cleveland, Ohio the PDJ provides some excellent insights into the "how to" of workplace diversity-from the perspective of employees and practitioners "in the trenches."

Each issue will add to your library of current and relevant information about diversity management. It may even help you expand your network of contacts.

If you are not already a subscriber to this magazine, you should be. For what you will get, it's a small investment. (Only $99 for 4 issues) The publisher tells us that all orders received by March 17, will receive an extra FREE copy with their paid subscription order. You can subscribe on-line at their web site (http://www.diversityjournal.com) or by calling their toll-free subscription line at 800-573-2867.

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2. NEW SOFTWARE OFFERS TIME & ATTENDANCE CONTROL

No one has time to anything "extra" these days. That's why a new product from Software Techniques Inc. is so appealing. Called SoftTIME, this software runs on your PC and gives you the opportunity to control employee attendance records without wasting time in the process...or losing sticky note reminders.

The software will also provide you with invaluable reports which are the heart of any attendance management system. Having the right information when you want it is imperative if you want to solve problems early and show appreciation to those who deserve it.

What can you track with SoftTIME? Family leave, vacation, sick time, personal time, and even ... days at work. You can evaluate individual records, get departmental reports and even projections for individual "accounts." Want to find Friday/Monday absence patterns? SoftTIME will do it.

Drag and drop icons into an individual calendar to update that employee's attendance record. That's all it takes. Yet, there is substantial provision for customized notations if you need to record more information.

If you want more information, or wish to order this program for only $89.95 + S/H (and CA sales tax for CA destinations), go to http://www.management-advantage.com/products/SoftTime.htm.

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3. HRIS FOR SMALL- & MEDIUM-SIZED EMPLOYERS

Money is always tight in small employer organizations. That is sometimes true for larger employers as well. To address the problem, we've just added a new Human Resource Information System (HRIS) to our product line.

It's called "E-2000, Employee Records for Windows" and is published by Software Technologies, Inc. With it you can track employee addresses, awards, benefits, certifications, dependents, educational background, emergency contacts, evaluations, training, warnings, job information, your own user-defined data and more.

Most importantly, the program has 74 built-in reports that allow you to access the information you need when you need it ... which is often when the boss asks for something at the last minute.

At only $199.95, (plus S/H & CA sales tax for CA destinations) E-2000 may be just right for both your budget and your information management needs. You can find it in our Web Store for Professionals(tm) at www.management-advantage.com in the HR Software Department.

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4. A SURVEY PROGRAM WITH PUNCH

Would it be helpful for you to reduce employee turnover, evaluate your benefit package, improve morale, or determine which new employee programs to implement? Perhaps you would like to increase customer satisfaction, evaluate employee customer service skills, or optimize customer service offerings.

If any of those sound like something you would like to do, take a look at "Survey Select Expert."

One key to a successful survey is asking the right questions. The Designer provides a set of optional templates to help you design your survey. Use these templates, edit and extend them for your needs or create your own questions. Build surveys that handle any type of question: Yes/no, multiple choice, open-ended, ranking, numeric, and more. Build surveys that have the flexibility to skip questions or branch from question to question.

Your audience may be local or global. Administrator provides you the flexibility to most effectively reach your audience, no matter what their technology basis or geographic location. Conduct your survey in one of several ways on the Internet, via e-mail, using your company's Intranet, on a LAN, a Windows-based PC terminal, floppy disks or using pen and paper. Once the respondent completes the survey, the results can be analyzed with Survey Select Expert or the data can be exported to SPSS, Excel, or any ODBC-compliant application.

If you want to learn more, or order the product for only $1495.00 (plus S/H & CA sales tax for CA destinations), visit our Web Store for Professionals(tm) at www.management-advantage.com and look at the HR Software department.

Gentle Readers,

Several varied and interesting topics this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #127, 3/10/2000)
---------- (Sent to over 1,500 subscribers)

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1. LIST OF 100 BEST PLACES TO WORK -- ARE YOU ON IT?

According to Robert Levering, author of "The 100 Best Companies to Work for in America," trust, pride and camaraderie are the three greatest factors in determining which employers are seen as GREAT employers.

Levering has developed a model for analyzing workplaces. In his model, five dimensions can be seen to "play out" in certain ways in the workplace. His dimensions include: Credibility, Respect, Fairness, Pride and Camaraderie. The first three dimensions equate to a measure of trust in the environment according to Levering.

You can see his model at www.greatplacetowork.com/GPTWModel.htm.

Then ask yourself what Container Store, an airline, a brokerage, a software firm, an accounting firm, a pharmaceutical company, a law firm, a clothing outlet, a computer maker, and a pipe manufacturer all have in common. The answer, of course, is that they are all on the 2000 Fortune list of 100 Best Companies to Work For. Container Store led the pack as employer of choice. The others include: Southwest Airlines, Charles Schwab, Microsoft, Deloitte & Touche, Pfizer, Fenwick & West, Men's Wearhouse, Dell Computer, and American Cast Iron Pipe.

If you would like to see the complete list and learn more about each of the companies represented, go to:
www.fortune.com/fortune/bestcompanies/.

Then, you might find interest in reviewing the list of 50 companies judged to be the "Best Companies for Blacks, Asians, & Hispanics." You will find that information at:
www.fortune.com/fortune/diversity/index.html. On this list is information about the number of minorities serving on each organization's board of directors, the percentage of minorities among officers and managers, and a break down of representations for each of

the three ethnic groups. Fortune has also added some notes about the reasons for each employer's achievements.

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2. OFCCP RESULTS FOR FY1999

Fiscal year 1999 ended on September 30th. During that twelve months, the Office of Federal Contract Compliance Programs (OFCCP) conducted 3,833 compliance reviews, 109 more than the year before. Compliance reviews are conducted to assure federal contractor compliance with federal affirmative action regulations. The agency also conducted 1,245 construction company reviews during the year.

The agency recovered a record $41.6 million in financial settlements during FY1999, up over $8 million from the previous period. Much of the increase came in the form of back pay recovery.

There were no debarments of federal contractors during the year.

The agency says it will be making efforts to increase the number of compliance reviews it performs during the current fiscal year. It is also likely to target greater recoveries of back pay and other financial penalties.

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3. PRIVACY RIGHTS VS. HIGHWAY SAFETY IN TRUCKER'S FIGHT

Long-haul truck drivers are subject to the U.S. Department of Transportation regulations governing the number of hours they may drive each day. Records of driving hours must be maintained in the form of logs carried by the driver. Current rules allow truckers to drive for 10 hours. They must then take 8 hours off. Some people claim that the rolling 18-hour schedule causes problems with the human "internal body clock."

The Department of Transportation (DOT) is expected to issue new proposed regulations in the near future that would change the driving/rest cycle to a 24-hour schedule. It is anticipated that some drivers will be allowed to drive up to 12 hours a day, followed by a mandatory 12-hour rest period.

DOT also reports that it will be proposing electronic recorders be used by some categories of drivers to be sure they are taking the required number of rest hours. The intention, the agency says, is to prevent drivers from falling asleep at the wheel.

If it happens as anticipated, this would be the first major change in hours-of-service regulations in more than 60 years. The proposal will likely divide drivers into five categories, with only long-haul drivers who are on the road for three days or more at a time expected to make use of new electronic monitoring devices.

Some truckers have objected to the monitoring plan, claiming it represents an invasion of their workplace privacy rights. A few have indicated that they will fight any such proposal.

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4. DOL'S OSHA RECEIVES NEW DIRECTIVE ON HOME OFFICE

The U.S. Department of Labor has issued the policy statement it promised several weeks ago saying it will not hold employers responsible for the safety of workers' home offices.

In the new directive the government says:

- It will not inspect employees' home offices, expect employers to inspect them or hold companies liable for the offices' safety conditions.

- It may pass complaints received from workers about home office safety on to employers but will do no follow-up.

If at-home work involves activities other than office work, employers may be held responsible for safety problems. That could include things such as manufacturing piecework involving "materials, equipment or work processes which the employer provides or requires to be used in an employee's home." Even these more risky at-home work sites will be inspected only if the government receives complaints.

For more information, see the OSHA (Occupational Safety and Health Administration) web site at http://www.osha.gov/media/oshnews/feb00/national-20000225.html

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Gentle Readers,

Get the latest information about legislation being debated in Washington, DC and Sacramento, CA. Hear about a wonderful new handbook that will help you reduce your turnover and save dollars for your organization. And, get the latest processing and budget information about the EEOC. All right here this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #128, 3/24/2000)
---------- (Sent to over 1,600 subscribers)

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1. EEOC BUDGET CUT HITS MEDIATION PROGRAM HARD

Touted as one of the major reasons the Equal Employment Opportunity Commission (EEOC) has been able to reduce its backlog of cases, the mediation program may no longer be able to assist with that effort.

The reason ... budget. Ida Castro, EEOC Chairwoman, has said that nearly all external contract mediators will be eliminated due to a lack of funding. Congress approved $282 million for the EEOC budget in FY2000. That was an increase of $3 million over the previous year, but Castro told BNA Employment Discrimination Report it amounted to a net loss of $8 million because of cost increases.

That $8 million will be carved out of current FY plans by cutting internal training 75%, eliminating external mediators in all but six district offices and a handful of area offices. Only those locations that relied solely on external mediators to implement the program will continue to use external help. At every office where there were internal staff conducting mediation, the external contractors have been eliminated.

The Commission is said to be testing the waters with the American Bar Association (ABA) to determine if there might be a way for attorneys to provide pro bono mediation services for the EEOC.

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2. NEW RECRUITING AND RETENTION HANDBOOK AVAILABLE

It's hot off the presses. Over 300 pages of essential information, guidelines and management suggestions for anyone interested in recruiting and retaining employees. The labor market continues to be tight, particularly in the high technology industry and others associated with it. One manager in Silicon Valley was recently quoted as saying, "If they're warm and breathing when they walk through the door, we'll hire them." Another high tech manager said of his need for programmers, "All they have to know how is how to turn a computer on, we'll teach them the rest."

Turnover in this environment is extremely expensive. What many managers don't know is that they can have a dramatic impact on the financial "bottom line" by improving the way they manage their workforce. That can reduce turnover, reducing the number of recruits needed in the future.

One independent technical recruiter we heard about recently has so much work she can't keep up with the demand. That has resulted in her fees going up ... and up ... and up. She is now asking for stock options from the organizations wanting her to recruit for them. Recruiting is not going to become a less expensive exercise anytime soon.

That's why you need this new book by Dr. Wayne D. Ford.
"The Recruiting and Retention Handbook" gives you what you need to effectively control both of those serious issues in today's workplace. Best of all, it only costs $49.95. You will find this complete binder full of useful information. The binder format allows you to remove and copy charts and other essential tools for your own use.

To get your personal copy go to:
www.management-advantage.com and visit our department for recruiters. When you discover how much you can save by doing things differently, you will be surprised at the low cost of this new book.

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3. WEB SITE UPDATES

Last week we sent all subscribers their personal copy of our April 2000 edition of THE ADVANTAGE newsletter. If you are new to our subscriber list, or would like to have a copy that is more nicely formatted, please visit our web site at www.management-advantage.com and select "Newsletters" from the main menu in the left-hand column.

Also newly updated are the current legislative reports for both federal and California bills. While it looks like 2000 will produce fewer new laws affecting employers than did 1999, some of them will be of interest to you in any event. These things have a way of impacting business budgets when they cause tax increases or new insurance requirements. It is important to human resource professionals who wish to be strategic players in their organizations.

When you can take a moment, visit our web site at www.management-advantage.com and select "Legislation" from the left-hand main menu.
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4. EEOC BANKS A RECORD $307.3 MILLION FROM DISCRIMINATION COMPLAINTS

During the fiscal year 1999 (FY 1999) the Equal Employment Opportunity Commission (EEOC) collected a record $307.3 million in remedies for discrimination victims. In addition, the Commission has continued to cut its backlog of cases. At the end of FY 1999, that number stood at less than 40,000. It had come down from 52,000 a year earlier.

$210 million of the money recovered came from negotiations prior to cases reaching the EEOC's legal staff. The balance was a result of law suits brought by the Commission on behalf of complainants.

The EEOC's new mediation program brought in $58 million during the fiscal year. The enforcement agency processed over 5,000 mediation cases during the year. No forecast was available for the impact on these recovery efforts due to the recent budget decisions at EEOC.

In all, the EEOC resolved close to 98,000 complaint cases during FY 1999.

Gentle Readers,

The new California Interim Wage Order 2000 is now available for FREE on our web site. If you are an employer using H-1B visas to satisfy your technical recruiting needs, you will want to hear about the latest news from the INS. If you are an affirmative action employer, you will be interested in news from the Office of Management and Budget. Read on.

Bill Truesdell
Editor

IN THIS REPORT (Report #129, 3/31/2000)
---------- (Sent to over 1,600 subscribers)

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1. CALIFORNIA EMPLOYERS MUST REPORT ON INDEPENDENT CONTRACTORS BEGINNING NEXT YEAR

You are all aware of the national employee data base being run by the Department of Labor in cooperation with the various state employment services. All employers must report their new hires to the data base so court-ordered child support can be claimed if appropriate.

Now, California has taken the program one step further. Beginning on January 1, 2001, California employers will have to report all independent contractors to the Employment Development Department. Only those contractors who are paid $600 or more during a calendar year must be reported. (They are also the same people who must be provided a Form 1099 at the end of the year.)

California will require the report to be made within 20 days following the point when the $600 threshold has been reached, or within 20 days of entering into the contract, whichever comes first.

State and local child support agencies will use this data for child support enforcement within the state.

The form to be used in reporting has yet to be specified.

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2. H-1B VISA QUOTA REACHED FOR CURRENT FISCAL YEAR

The Immigration and Naturalization Service (INS), enforcement agency for the Immigration and Nationality Act (INA), has published an announcement in the Federal Register that says the cap on H-1B visas has been reached for the current fiscal year.

You will find the notice at: http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=290981544+0+0+0&WAISaction=retrieve

"This notice inform(s) the public that there are a sufficient number of H-1B petitions pending at the four Service Centers to reach the cap of 115,000 for this fiscal year. The Service (INS) will not accept for adjudication any H-1B petition for new employment containing a request for a work start date prior to October 1, 2000. These petitions will be rejected and returned (along with the filing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). However, such petitioners are free to refile those petitions with a new starting date of October 1, 2000, or later."

"The Service will not reject a pending petition when the Fiscal Year 2000 allotment of 115,000 H-1B numbers has been exhausted. Just as in Fiscal Year 1999, the Service will proceed to adjudicate the petition based on a presumption that the employer will accept October 1, 2000 as the date from which the approved petition is valid and the first date on which the alien beneficiary may begin employment as an H-1B worker."

H-1B visas are issued to nonimmigrants employed in specialty occupations or as fashion models of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States. A great many H-1B visas have been used in the high tech industry for computer specialists.

Congress continues to debate several proposals that would raise the H-1B cap to something approaching 200,000 or more.

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3. CALIFORNIA INTERIM WAGE ORDER AVAILABLE

As we told you earlier, passage of A.B. 60 last year by the California Legislature not only brought back the requirement to pay overtime after 8 hours in a day, but threw the Industrial Welfare Commission into a tailspin. The new law directed the IWC to rewrite and reissue new wage orders that would comply with the daily overtime requirement.

A new IWC Interim Wage Order -- 2000 has been issued and is effective on March 1, 2000. It must be posted by all California employers along side the specific wage order for your industry.

If you are a California employer and need a copy of this new Interim Order, we have made it available for you as a FREE service. You will find it at: http://www.management-advantage.com/products/interimorder.html .

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4. OMB ISSUES GUIDANCE FOR MULTIPLE-RACE AGGREGATION IN CENSUS

The Office of Management and Budget (OMB), part of the White House organizational structure, has issued OMB Bulletin No. 00-02 dated March 9, 2000. In it, OMB describes the data aggregation process to be used by government agencies when dealing with Census 2000 data showing multiple race selections. It refers only to "population" and is silent on the question of handling 700 plus occupational categories in the Census EEO File. Individual occupational category data is used most frequently by federal contractors when computing their Factor 4 and Factor 5 recruiting in the affirmative action availability analysis.

For your own copy of the document go to:
http://www.whitehouse.gov/OMB/bulletins/b00-02.html

The way the government has it laid out, there are thirteen categories contractors must contend with for each computation. Currently contractors are using five categories (White, Black, Hispanic, Asian, American Indian). Contractors will have to wait to see what is to happen with occupational data, but the following should give us a strong indication about the approach that might be taken.

"This method keeps intact the five single race categories, and includes the four double race combinations most frequently reported in recent studies. The method also provides for the collection of information on any multiple race combinations that comprise more than one percent of the population of interest. Based on data from Census 2000, responsible agencies will determine which additional combinations meet the one percent threshold for the relevant jurisdictions.
A balance category is provided to report those individual responses that are not included in (1) one of the five single race categories or four double race combinations or (2) other combinations that represent more than one percent of the population in a jurisdiction.

"The following example illustrates this guidance."

"1 American Indian or Alaska Native
"2 Asian
"3 Black or African American
"4 Native Hawaiian or Other Pacific Islander
"5 White
"6 American Indian or Alaska Native and White
"7 Asian and White
"8 Black or African American and White
"9 American Indian or Alaska Native and Black or
African American
"10 > 1 percent: Fill in if applicable _____
"11 > 1 percent: Fill in if applicable _____
"12 Balance of individuals reporting more than one race
"13 Total

We find it interesting to note that the "Hispanic" ethnic category is conspicuously absent from the list of racial combinations. How the government purports to treat Hispanics in the EEO File has yet to be announced.

Rather than clarifying anything, this announcement offers promises of greater confusion in the future. Could it be that the government (read OMB) has painted itself into a corner on this issue?

Gentle Readers,

Lack of adequate written safety programs gets many California employers in hot water.

Bill Truesdell
Editor

IN THIS REPORT (Report #130, 4/7/2000)
---------- (Sent to over 1,600 subscribers)

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1. IIPP ERRORS BY EMPLOYERS LEAD TO GREATEST NUMBER OF CITATIONS

Cal/OSHA is the state agency responsible for enforcing workplace safety regulations on behalf of both state and federal requirements. When inspections of workplaces are made and violations found, Cal/OSHA inspectors issue citations to the employers. Normally, non-serious violations will result only in a citation requiring the employer to remedy the problem. Serious violations and repeat violations can result in citations that cost as much as $7,000 each.

What is the greatest cause of citations as a result of safety inspections by Cal/OSHA? Perhaps it will surprise you to learn that more violations are cited because employers don't have an adequate safety plan in place than any other cause. It doesn't seem to matter what industry or sector is involved. Lack of a valid safety program gets more employers in trouble than any other reason for citation. In California, every employer must have a written safety program called an Injury and Illness Prevention Program (IIPP).

Current requirements call for specific procedures to be outlined in the IIPP to help employees deal with Fire, Earthquake, Workplace Violence and Ergonomics. Hazard inspections and a written Hazard Communication Program are also requirements of the IIPP. Even office environments are covered by these requirements.

Another requirement of the IIPP is quarterly employee training and documentation of all safety activities. Those include employee training, workplace inspections, hazard reports and repairs among other things.

If you need a safety plan in your California workplace, we invite you to visit our Web Store for Professionals(tm) and purchase a copy of our IIPP Binder. It contains both disk and hard copy versions of an IIPP template that you can easily modify and apply in your office

environment. You will find it at http://www.management-advantage.com/products/ipp-binders.htm .

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2. FY1999 EEOC STATISTICS RELEASED

The Equal Employment Opportunity Commission (EEOC) has issued statistics for the latest fiscal year ending September 30, 1999.

The total number of Title VII charges fell 2.7% from the previous year's level to 77,444 complaints. Race complaints led the reasons for Title VII charges for the tenth year in a row. 37.3% of all EEOC complaints in FY1999 were based on Race issues. Race complaints totaled 28,819 charges. The balance of complaints came as a result of other reasons, as shown in the table below:

Sex	23,907
Disability	17,007
Age	14,141
National Origin	7,108
Religion	1,811
Equal Pay	1,044

These numbers total more than 77,444 because some of the charge categories are not included in Title VII numbers.

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3. COURT HOLDS FORMER EMPLOYEE LIABLE FOR "MERITLESS" CLAIM

BNA Communications reports in its Employment Discrimination Report (Vol. 14, No. 12) that one more court has taken a stand against cases that have no merit, yet cost employers a great deal of money in defending themselves.

In Briskovic v. Our Lady of Mercy Medical Center (S.D.N.Y., No. 96 Civ. 7452, 3/7/00), the U.S. District Court for the Southern District of New York ordered a former hospital employee to reimburse the employer for its attorneys' fees and costs, finding his case unreasonable and groundless, if not frivolous. Those costs amounted to almost $50,000. The court also admonished the plaintiff's attorney, and attorneys in general, that they have an obligation to "desist from representing a client when the indisputable facts demonstrate that the client's cause is totally without merit." Judge John S. Martin Jr. wrote the opinion.

In this case the plaintiff, Joseph Briskovic, was fired by the hospital after he allegedly called another employee a racial epithet and threatened to blow up the hospital. He denied these assertions, but admitted that he raised his voice and banged on a table. The hospital's claim that he was fired for misconduct was sustained by the New York State Unemployment Insurance Board. Although Briskovic "could not cite a single instance reflecting animus against him because of his national origin in the five years pending his discharge," he sued the hospital under Title VII of the 1964 Civil Rights Act. The

hospital sought, and was awarded, summary judgment even though the plaintiff's attorney filed papers opposing that award.

The court cited Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 16 FEP Cases 502 (1978) in ordering the plaintiff to pay his former employer. Quotng from the Christiansburg ruling, the court said, "a prevailing defendant is entitled to recover fees under Title VII upon finding that the plaintiff's claim 'was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.'"

Gentle Readers,

The OFCCP keeps marching on ...

Bill Truesdell
Editor

IN THIS REPORT (Report #131, 4/14/2000)
---------- (Sent to over 1,600 subscribers)

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1. EQUAL OPPORTUNITY SURVEY APPROVED FOR FIRST 7,000 COPIES

Federal contractors should be watching their mail for one of 7,000 copies of the new Equal Opportunity Survey being mailed by the Office of Federal Contract Compliance Programs (OFCCP). This Department of Labor agency received approval from the Office of Management and Budget (OMB) to proceed with its new survey program in spite of strong objections from the employer community. This initial round of mandatory-response inquiries will be sent to contractors that have been "flagged" as being potentially out of compliance with affirmative action requirements. The government has said it will use EEO-1 reports to determine who is potentially out of compliance. Eventually, surveys will be sent to an additional 53,000 contractors who will also be required to participate if OMB approves the program's next phase. OFCCP is asking permission to make the EO Survey an annual requirement for federal contractors.

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2. HOW DID WE GET PICKED FOR AN OFCCP AUDIT?

Most Compliance Evaluations are scheduled by extracting contractor's EEO-1 data from the Equal Employment Data System (EEDS), owned and operated by the Joint Committee on Reporting. The Joint Committee is a partnership between the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP), part of the Labor Department. OFCCP District offices are sent a printout from the EEDS data base showing them the contractor establishments they must audit.

According to OFCCP Order No. ADM 99-2/SEL, "The EEDS List is intended to be the selection source for the majority of compliance evaluations conducted by the OFCCP. However, a compliance evaluation of a Federal contractor establishment may be warranted regardless of its presence or

particular placement on the EEDS List. The District/Area Office shall schedule an establishment for a compliance evaluation in the following circumstances:"

- OFCCP was denied access to the establishment for inspection of materials requested as part of a compliance check conducted during the current or most recently concluded fiscal year.
- OFCCP conducted a compliance check during the most recently concluded fiscal year and OFCCP noted a failure to maintain all requested documentation.
- A class action discrimination complaint filed with OFCCP against this establishment is pending resolution or other closure.
- Progress reports suggest violation of a Conciliation Agreement at this establishment.
- Three or more individual discrimination complaints filed with OFCCP against this establishment are pending resolution or other closure.
- EEOC or state Fair Employment Practices agency investigations at this establishment indicate significant equal employment opportunity problems, such as 3 or more complaints filed with those agencies within a 12 month period, containing a common issue, such as racial or sexual harassment.
- Contractor failed to file EEO-1, VETS-100, or other required reports. This may include a contractor's filing or having filed on its behalf false reports such as when a contractor indicates on the EEO-1 form that it is not a Federal contractor, and it can be proven that it was a Federal contractor at the time of the report filing.
- Contractor received an award of a Federal contract of $10 million or more within the current or last three preceding calendar quarters, and the establishment in question has not had a compliance evaluation other than a compliance check within 24 months prior to the date of the contract award. This means that the date of CRIS status 21 for the prior evaluation is more than 24 calendar months earlier than the date of the contract award.
- The Deputy Assistant Secretary, acting upon a credible report of a violation of a law enforced by OFCCP, determines that a compliance evaluation is warranted.

And, now you know.

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3. EEOC COMMISSIONER SAYS GENETIC DISCRIMINATION IS BANNED UNDER ADA TITLE I

While some states, including California, have moved to add "genetic characteristics" to their list of categories protected from employment discrimination, the federal government has no specific protection for that category. Yet, Equal Employment Opportunity Commission (EEOC) Commissioner Miller has announced that he believes Title I of the Americans With Disabilities Act prohibits genetic discrimination, even though the law does not specifically mention it.

Miller's comments were made to a March 24, 2000 meeting of the American Bar Association.

He said he believes genetic characteristics are covered under the ADA's "regarded as disabled" provision. He pointed out that the EEOC actually adopted this position in 1995 as part of its policy guidance. He did admit that EEOC's guidance is not binding on any court and that there has yet to be a published court decision directly addressing the issue.

For now, check your state law to be sure you are meeting its requirements.

Gentle Readers,

Congress is still struggling to make new rules on immigration, PRI Associates helps employers live with OFCCP enforcement of non-existent laws and regulations, and the California Labor Commissioner offers interpretations on the new overtime law. Whew, what a week.

Bill Truesdell
Editor

IN THIS REPORT (Report #132, 4/21/2000)
---------- (Sent to over 1,600 subscribers)

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1. H1-B VISA BILL GETS PAST HOUSE IMMIGRATION SUBCOMMITTEE

Five years ago no one cared about immigration work visas. Today, high technology has become more dependent on their use because of the shortage of qualified technical experts in the U.S. employment market.

This past week, the House of Representatives passed through its House Immigration Subcommittee a bill by Rep. Lamar Smith. You might be interested to know that Rep. Smith chairs that committee. This bill, H.R. 3814, contains many provisions found to be objectionable by business and academic leaders. Some of the key provisions of Smith's bill include:

- Requires workers to possess academic degrees and ends the practice of allowing workers without degrees to show equivalent work experience.
- Requires that a foreign degree be approved by the State Department.
- Would move oversight and management of the H-1B visa program from the Immigration Department to the State Department.
- Imposes a $100 fee on each new H-1B petition and all applications to change employers. The fee would support anti-fraud programs.
- Reduces gross asset requirements of employers from $5 million to $250,000 but adds substantial record keeping and reporting requirements.
- Requires employers to file W-2 forms with the Department of Labor for each H-1B employee.
- Requires college professors hired with H-1B visas to be fluent in the English language.

There is a competing bill authored by Lofgren-Dreier which is seen as a bipartisan effort. It has failed to come up for a vote. The Smith bill failed to achieve any Democratic support in the subcommittee

action and Republicans claimed they supported it only to get something out of Smith's subcommittee. The Smith proposal will now be heard in the House Judiciary Committee.

The immigration saga of H-1B visas continues.

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2. PRI ASSOCIATES SEMINAR ON AAP COMP ANALYSIS IS A HIT

Last week I was privileged to attend the Arlington, Virginia session of PRI Associates' seminar on affirmative action compensation analysis. The program was led by Ellen Shong Bergman, president of Ellen Shong & Associates and by David W. Peterson, Ph.D., president of PRI Associates, Inc.

Ms. Bergman was national director of the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor from 1981 to 1983. She brings to the program experiences that span the time from when affirmative action began to the present. She represents many major clients in negotiations with the OFCCP.

Dr. Peterson is a pioneer in the use of statistics in Equal Employment Opportunity litigation. He has consulted nationally on that subject and has taught at Northwestern University and Duke University for more than 25 years.

These two presenters keep participants on the edge of their seats with examples of government errors in the system currently used for compensation analysis and data collection. (Only HR professionals could get excited about such things.)

Program materials were excellent, the presenters couldn't have been better, and the value of the day exceeded my expectations. It was well worth the 13 hour round trip through three airports.

There is currently one more session scheduled and I recommend you plan to attend if you are responsible for affirmative action in your organization. That session will be held on May 24th in Dallas, Texas. It could save you from accepting some bogus OFCCP demands in the future.

For more information, call PRI Associates at 919-544-7575.

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3. CALIFORNIA LABOR COMMISSIONER ISSUES INTERPRETATIONS

In the field of labor law, things are not always as easy as they are intended to be. Moving California employers back to a requirement that they pay overtime beyond eight hours in any workday has left may unanswered questions.

You may have been struggling with some of these issues yourself since the first of January this year when the new law went into effect.

o Will the Labor Commissioner hold a payroll clerk liable for

incorrect overtime pay or will liability be handed to the employer? (Answer: The employer, and possibly the managers, will be presented with any citations.)

- Can an employer unilaterally terminate an alternative workweek without holding a repeal election among employees? (Answer: Yes, as long as the employer provides reasonable advance notice to employees.)

- Since A.B. 60 has no provision for on-duty meal periods, what can employers do if they are necessary? (Answer: The Labor Commissioner has declared that on-duty meal periods may be used if all prerequisites in the Industrial Welfare Commission orders are met.)

- If an employee works extra hours as "make-up time" for an absence expected to happen later, but does not in fact take time off later as planned, is the employer liable for overtime? (Answer: Yes, if the total hours for the week exceed 40. There is no daily overtime requirement as long as the "make-up" time doesn't cause the employee to go over 11 hours in any one day.)

If you are a California employer trying to understand all of these new rules, we suggest you take a look at the Labor Commissioner's memo on implementation of AB60. It contains interpretations that will be important to you as you manage your organization through these types of future questions. You will find the memo at http://www.dir.ca.gov/DLSE/AB60update .

Gentle Readers,

Affirmative Action employers who are not on the initial list of 7,000 contractors to receive the OFCCP's EO Survey may want to study it anyway to know what they are likely to face later this year. You will find it on our web site, FREE for downloading in PDF format.

Bill Truesdell
Editor

IN THIS REPORT (Report #133, 4/28/2000)
---------- (Sent to over 1,600 subscribers)

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1. LABOR DEPARTMENT EO SURVEY FILE AVAILABLE

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is moving forward with its mailing of 7,000 copies of its new Equal Opportunity Survey. If you receive one during April or early May it means you have been "flagged" as potentially out of compliance with affirmative action regulations. More specifically, the OFCCP is searching for illegal discrimination in pay treatment of women and minorities.

The business (employer) community has generally been critical of the agency's data request and the manner in which they have formulated their survey document.

If you have not yet seen the EO Survey form, we offer it to you on our web site as a PDF file download. You will find it listed in the "What's New" section of our home page. Go to www.management-advantage.com .

You might be interested in how the government is defining both "applicant" and "promotion" in this document.

While you are there, we invite you to look over our new "AAP Development Service" section. You will find it listed on the main menu (left side of the page) under "Services."

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2. EMAIL POLICIES QUESTIONED BY NLRB

Many employers have established policies governing worker use of company computers and the email that is sent through them. Courts have

generally supported employers when policies said that personal employee use of email should be limited or prohibited on company machines.

Then, according to the Wall Street Journal (4-25-2000), some cases arose that pulled a veil of uncertainty over the issue. The National Labor Relations Board (NLRB) is at the heart of the controversy. Some NLRB administrative law judge (ALJ) decisions have supported rights of employees to use company email systems to criticize employer actions when those communications are deemed to be supportive of "union" organizing efforts. Working terms and conditions are at the core of the matter.

A key case, Waldron v. Pratt & Whitney, has resulted in that company taking action to modify its policy on employee use of company email. From baring personal use of email on company computers, it has restated its policy to allow worker discussion of terms and conditions of employment.

You can expect this issue to grow in importance over the coming months. If you have a situation develop in your organization that represents a conflict between employees and your policy on the question of personal use of email, we suggest you discuss it with your management attorney before taking any action. These things have a way of evolving quickly, and your management attorney can give you the latest legal information you will need so you can decide on a course of action. Watch closely, though, because it may come to pass that employers will be best advised to change their email policies from "prohibition of personal use" to something less restrictive.

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3. DOES "CHILDFREE" MEAN PET FRIENDLY?

If you read the professional journals you are aware of the current discussions on fairness of "family friendly policies." Parents are often given time off work to attend their childrens' school activities, for example. Employers make additional financial contributions to benefit programs in some cases where dependent family health coverage is needed.

All this has led to some concern about the "equality of treatment" for childless employees. Often, when parents are absent from work because of something related to their parental status, it is the childless employees who "take up the slack" in production. If that extra work burden continues for a long period of time, non-parent employees can begin to feel they are being treated differently just because they have no children. While not illegal discrimination, it is a problem for morale.

Some employers are trying to re-balance the scales by creating pet-friendly policies and allowing well behaved pets in the workplace. Apple Computer, for example, allows dogs at work as long as they don't disrupt other employees' work. While you may not want to rush into such a policy, it might be worth discussion at your next policy meeting.

The Seattle Times ran an article recently with advice for pet owners who want to take their pets to work. You will find it at: http://www.seattletimes.com/news/lifestyles/html98/tips_081098.html

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Gentle Readers,

The OFCCP Director wants to implement changes in the regulations before she leaves office at the end of this year. And Congress is moving slowly toward a remedy for the H-1B visa and FLSA stock option problems.

Bill Truesdell
Editor

IN THIS REPORT (Report #134, 5/5/2000)
---------- (Sent to over 1,600 subscribers)

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1. OFCCP SAYS NEW 60-2 REGULATIONS TO BE PUBLISHED

It has been six years since Shirley Wilcher assumed the office of national director of the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor. One thing is certain about her tenure ... no one is likely to forget her anytime soon. She claims she will be leaving office at the end of this year following the Presidential elections. Of course, her position is one of the scores of administrative jobs in Washington, DC that is filled by political appointment.

Before the end of her term, Ms. Wilcher says she wants to issue revisions to regulations governing content of affirmative action plans. (41 CFR 60-2) She recently told the annual conference of the American Association of Affirmative Action that she plans to release the draft of those new regulations within a month.

Perhaps she will. While we have heard for the past several years that the OFCCP would soon publish change proposals for "60-2," internal agency agreement on specifics for those changes never seemed to materialize.

Ms. Wilcher says the upcoming proposals will include:

- a streamlined workforce analysis procedure
- reduction to two factors in Availability Analysis
- solidify the Equal Opportunity Survey as an annual reporting requirement for all federal contractors

Once again, Ms. Wilcher emphasized the agency's focus on equal pay discrimination. She did not discuss charges that the agency's methods require employers to pay comparable, but unequal jobs, the same amount of money.

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2. CENSUS 2000 EEO FILE CONTENT STILL A MYSTERY

And the beat goes on ...

For nearly two years, several government agencies have been meeting with employer representatives such as the Society for Human Resource Management (SHRM) and civil rights organizations to make some determination about comparative data to be published from Census 2000.

So far, there has been no progress in determining what the EEO File will look like. The problem continues to focus on how to summarize multi-racial and multi-racial/ethnic identifications made by people in the 2000 Census. Without agreement on how to summarize that data, employers in general and federal contractors in particular will be hard pressed to know how they should re-configure their own employee data for proper comparison.

The OFCCP has primary responsibility for overseeing federal contractors. Until the OFCCP takes an official position on how they will expect contractors to make data comparisons, there will be little preparation work possible for employers.

The uncertainty is deafening.

Most authorities agree, however, that even if agreement on file configuration were to be reached today, the Bureau of the Census would not be able to produce an occupational data file (EEO File) until 2003 at the earliest.

For now, contractors are advised to "sit tight." We need to know what the government will establish as the standard for data comparison before we can wisely expend resources to meet those new requirements.

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3. CONGRESS MOVING TOWARD SOLUTIONS ON TWO MAJOR PROBLEMS

The U.S. Senate has passed legislation that would amend the Fair Labor Standards Act to exclude stock option earnings from overtime pay calculations. It's called the Worker Economic Opportunity Act and the vote was 95-0. The action was deemed necessary after a Department of Labor advisory letter said stock option profits must be included in base pay calculations for overtime-eligible workers. If left un-repaired according to some experts, the action would cause overtime eligible (non-exempt) workers to be excluded from stock option plans. The measure has now gone to the House of Representatives for consideration.

In the House ... the Judiciary Subcommittee on Immigration and Claims voted to eliminate the cap on H-1B visas for fiscal years 2000, 2001 and 2002. Unfortunately, the plan has many critics. They say there are too many conditions attached to the measure which would require employers to pay visa holders a minimum of $40,000 per year, prove they

hired more American workers and file annual reports with the government. The House is still considering the matter.

Gentle Readers,

This is a special mid-week issue to alert you to the news that the Department of Labor has issued its proposals for changing regulations governing the development and implementation of Affirmative Action Plans for Minorities and Women.

Bill Truesdell
Editor

IN THIS REPORT (Report #135, 5/8/2000)
---------- (Sent to over 1,600 subscribers)

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1. OFCCP ISSUES PROPOSAL FOR CHANGING AAP REGS

After many years of waiting, it has finally happened. The Office of Federal Contract Compliance Programs (OFCCP) has published its proposals for regulatory changes to 41 CFR 60-2. We encourage all affirmative action employers to review them. To make it easier we have posted them on our web site.

You will find two files, one in text format and the other in Adobe PDF format at: http://www.management-advantage.com/60-2.html

All comments are due on July 3, 2000.

We will have more to share with you about these proposals in the next few weeks.

Gentle Readers,

OFCCP keeps its promise to release new regulations. There are also new innovations in the job market, a story of awful management judgment leading to jailing of a successful business owner, and a new Supreme Court ruling that impacts public sector employers.

Bill Truesdell
Editor

IN THIS REPORT (Report #136, 5/12/2000)
---------- (Sent to over 1,600 subscribers)

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1. OFCCP ISSUES PROPOSAL FOR CHANGING AAP REGS

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2. SPECIAL REPORT ARCHIVES NOW AVAILABLE

We often receive requests for back issues of "Special Report for HR Professionals," frequently from newer subscribers who want to have a copy of past issues.

In honor of you, our subscribers, we have titled the archive, "Gentle Readers." Now, you can put the past three years of "Special Reports" in your library. 1997, 1998 and 1999 are each contained in its own calendar-year binder. You will find a complete Table of Contents for

each year, and more importantly, a thoroughly detailed index in each binder. You will be able to access just the subject information you seek quickly and easily.

Best of all, you can add the entire three year archive to your library for less than $55.

Take a look for yourself. We're sure you'll want to order.

http://www.management-advantage.com/newsletr/Gentle.htm

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3. PUBLIC SECTOR COMP TIME RULING FROM SUPREME COURT

On May 1, 2000, the U.S. Supreme Court issued its ruling in Christensen et al. v. Harris County et al. (98-1167)

The Fair Labor Standards Act (FLSA) permits States and their political subdivisions to compensate their employees for overtime work by granting them compensatory time in lieu of cash payment. If the employees do not use their accumulated compensatory time, the employer must pay them a cash equivalent of its value.

Fearing the consequences of having to pay for accrued compensatory time, Harris County, Texas adopted a policy requiring its employee to schedule time off in order to reduce the amount of accrued time. County deputy sheriffs sued claiming that the FLSA does not permit an employer to compel an employee to use compensatory time in the absence of an agreement permitting the employer to do so.

The Court held that "Nothing in the FLSA or its implementing regulations prohibits a public employer from compelling the use of compensatory time." The Court also said, "the best reading of the FLSA is that it ensures liquidation of compensatory time; it says nothing about restricting an employer's efforts to 'require' employees to use the time."

Justice Thomas prepared the opinion for the majority. Justices Stevens, Ginsburg and Breyer dissented.

It is now clear that public employers may manage compensatory time programs to require employees to take the time off. It is expected that this case will have no impact on the private sector.

For the complete opinion text go to:
http://laws.findlaw.com/us/000/98-1167.html

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4. RESUMES ON LINE SOMETIMES CONTAIN WORKER EVALUATIONS

Brought to light by a Wall Street Journal article on May 2nd, it is now clear that some Internet resume services are offering more than stale, out-of-date resume content.

SkillsVillage.com in Santa Clara, California lets prospective employers look at contractor resumes that are updated weekly by the contractor. The same resumes are updated by the current employer to add job performance ratings to the mix. Detailed work history is also included, along with employer ratings.

Contractors claim this level of detail reduces the number of calls they get asking for additional information. Employers claim to prefer the opportunity to see performance rating information along side the job assignment description.

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5. SAFETY VIOLATOR SENTENCED TO 17 YEARS IN JAIL

For the first time in Idaho, an employer has been convicted in criminal court for a worker's injuries.

Allan Elias was a successful, well educated owner of two businesses, one in real estate investment and the other in chemical processing. He developed and patented a process for extracting silver from phosphorous tailings. He raised three children who all became successful professionals in their own right. Now, at age 61, Mr. Elias looks forward to the next 17 years of his life behind bars.

During the trial, testimony indicated that Mr. Elias assigned one of his employees, 20-year-old Mr. Dominguez, to clean the inside of a 25,000-gallon storage tank that once held cyanide and phosphoric acid. Clad only in jeans and T-shirts, Dominguez and another worker began scouring the tank, releasing cyanide fumes. Combined with water, the cyanide fumes produced hydrogen cyanide gas. Mr. Dominguez' co-worker escaped through the tank's small opening, 22 inches in diameter. But Mr. Dominguez collapsed and breathed the deadly fumes for nearly an hour before rescue workers could cut a large enough hole in the tank to pull him out.

Doctors treating Mr. Dominguez suspected cyanide poisoning, but Mr. Elias denied the chemical had been in the tank at first, and then claimed he forgot the tank had stored cyanide years ago after Dominguez responded to a cyanide antidote.

Mr. Elias was prosecuted on "Willful" and "Knowing" endangerment of workers based on his denial. Mr. Dominguez suffered severe, irreversible brain damage.

For more information about this case, go to:
http://dailynews.yahoo.com/h/ao/20000501/cr/20000501003.html

Gentle Readers,

Learn about last week's national video conference on equal pay hosted by the U.S. Department of Labor. We also offer you the latest on the H-1B visa debate. Finally, another state checks in with a legal position on the issue of personal supervisor liability in discrimination cases.

Bill Truesdell
Editor

IN THIS REPORT (Report #137, 5/19/2000)
---------- (Sent to over 1,600 subscribers)

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1. DOL VIDEO CONFERENCE ON EQUAL PAY FALLS FLAT

People gathered at dozens of sites around the country on Friday, May 12, 2000 to hear experts from the U.S. Department of Labor speak on the subject of Equal Pay Matters. The meeting was billed as an "interactive" conference. If for no other reason than to see the technology and hear news announcements from the government about this subject, we attended the conference as part of the San Francisco audience.

Few details had been included with the meeting announcement. There was uncertainty about what we should expect to see and hear. Mixed with the uncertainty were some high expectations for new information releases about government initiatives.

Dr. Bernard Anderson, Assistant Secretary of Labor for the Employment Standards Administration, happened to be in San Francisco that day and was scheduled to play a part in the meeting from that end.

If you would like to hear what happened, we invite you to get your own copy of our report on the conference. It is available for download in Adobe PDF format (14 KB) in the "What's New" section of our web site front page. Simply visit http://www.management-advantage.com and scan down the list in our "What's New" section.

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2. PRESIDENT PROPOSES DOUBLING H-1B VISA QUOTAS

President Clinton put forward his proposal for doubling the number of H-1B visa authorizations each year to 200,000. For employers using

highly skilled technical professionals, it was a bitter-sweet piece of news.

Sweet was the prospect of greater access to technical talent outside the U.S. Bitter was the suggestion that processing fees be quadrupled.

Government quotas are often confusing because they are based on the federal government's fiscal year of October to September. We often think in terms of calendar year, so the three month difference causes frequent misunderstanding. Last year, Congress raised the annual quota to 107,000 visas. H-1B visas are for employees from outside the U.S. who have at least a Bachelor's degree and special technical skills needed by the employer. Employers must be able to demonstrate that they have attempted to locate the talent they need by recruiting in this country. Today's tight job market in the high technology industry has made imported talent a high commodity.

The President's proposal would keep quota levels at the 200,000 mark for three years. By the year 2003, 50% of all H-1B visas would be allocated to individuals with at least a master's degree.

The proposed fee for processing an H-1B application will be $2,000 for most employers according to the President's proposal.

Congress is listening. Employers are talking with their Congressional representatives and making the point that H-1B visas provide an opportunity for the U.S. to maintain its economic pace through continued technology innovation and production.

We will let you know as there are additional developments.

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3. MAINE SAYS SUPERVISORS CAN BE PERSONALLY LIABLE

For a long time, there has been disagreement among various state and federal courts about the issue of individual liability for supervisors who are involved in employment discrimination cases.

The State of Maine has weighed in on the side of those believing that supervisors should be held personally liable for employment discrimination. The ruling was made by the Maine Supreme Judicial Court, interpreting the Maine Human Rights Act. The case was Gordan v. Cummings, (Maine, No. Cum-99-254, 4/19/00).

In the majority opinion, Justice Rudman wrote, "The purpose of the statute is to discourage discrimination, and the best way to achieve that purpose is to hold the actual wrongdoer liable for his or her discriminatory actions." In its opinion, the majority said federal appellate courts incorrectly interpreted Title VII of the Civil Rights Act of 1964 when they excluded individual liability for supervisors.

Clearly, the debate is not over. Whether or not your supervisors are personally liable for their discriminatory behavior will depend on the court hearing the complaint as much or more than any other factor at this point.

As always with such legal issues, we encourage you to have regular conversations with your management attorney so you can be sure of your policies and positions in the states where you operate.

Gentle Readers,

Happy Memorial Day to all our U.S. colleagues and friends. What will happen when SHRM sues the Department of Labor? It's sure not your old personnel department any more! And, the U.S. Department of Labor has not gone to sleep. New requests for additional surveys have been sent to the Office of Management and Budget.

Bill Truesdell
Editor

IN THIS REPORT (Report #138, 5/26/2000)
---------- (Sent to over 1,600 subscribers)

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1. HAPPY MEMORIAL DAY

Sometimes it seems we just assume our holidays are on the calendar so we can have another day off from the old work grind. Heaven knows everyone seems to be doing more with less and could use some extra time off.

I was thinking about Memorial Day the other day. One day each year we set aside a time to honor the people who did what was necessary to assure our freedom. For those of us who have never had to make such sacrifices it is difficult to understand. We take for granted the alarm going off each workday, and the commute to work. We usually gripe about them, too. We often take for granted the rights we have to make our own choices in life ... where we want to live, who we choose to work with.

We expect that our lives will always be this way. That we will always have the freedom to choose our own destiny. And, to complain when we don't like the way things are going.

What if we had to wake up each morning under a different form of government? Perhaps we would not have a choice about where we went to work, or how much education our children could receive. Is it possible our way of life might not have become as good as it is for most Americans?

Freedom is easily lost. Inattention causes erosion in this basic concept we take for granted. And, from time to time, others try to

deprive us of our freedom and we have to fight a war to defend our way of life.

Memorial Day, this next Monday, gives us a chance to remember those men and women who gave their lives so we can enjoy our lives. We wish you a wonderful day, filled with joy for your families and friends, and a moment or two of reflection for the blessings we have in our country and those who helped us maintain our freedom.

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2. NEW AFFILIATE PROGRAM CAN MAKE YOU MONEY

We have just introduced a new Affiliate Program designed to help increase traffic to our Web Store for Professionals(tm) and make money for our affiliate partners who send buyers our way.

If you have a web site and would like to participate in this new program, you can earn a percentage of every sale made to someone who came from your web site.

Our program is monitored and managed by Commission Junction the most respected affiliate program company in the market. You will receive your commission checks from them because they track all the traffic and sales that result. You can trust the program because you have the assurance of all the experienced folks at Commission Junction.

Joining couldn't be more simple. Visit our affiliate information page at http://www.management-advantage.com/affiliate.html and click through to our registration page at Commission Junction. Then you pick one of our affiliate banners to place on your web site. That's all there is to it. You're ready to start collecting commission checks.

Our affiliate program pays commissions on all product sales from our Web Store for Professionals(tm). Why don't you sign up today and make some money while you sleep?

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3. SHRM SUES DEPARTMENT OF LABOR

The Society for Human Resource Management (SHRM), representing 130,000 human resource professionals across the country, has announced it is joining forces with the Labor Policy Association (LPA) and filing suit against the U.S. Department of Labor (DOL). The suit is focused on the government's new Unemployment and Family and Medical Leave Act (UI/FMLA) regulations that allow states to tap UI funds to pay for FMLA worker leave.

DOL changed the regulations recently to allow paid leave if an employee took FMLA time for the birth or adoption of a child. The regulations will give states the ability to provide other forms of paid leave, as well. "Some states have already expressed some interest in this idea," said a SHRM spokesperson. "The Vermont Senate voted (two weeks ago) to provide such a paid leave, and only removed the provision from the pending bill when the state employment security agency pointed out the costs associated with the proposal."

The SHRM Board of Directors also agreed with the U.S. Chamber of Commerce to participate in the Chamber's law suit against DOL's proposed ergonomics regulations.

SHRM said, "We believe we have a responsibility to our members to represent the viewpoint of employers in these issues." The government's proposals will place higher financial liability on employers all around the country, according to SHRM.

We will keep you updated as new developments occur.

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4. DOL SEEKS OMB APPROVAL FOR TWO NEW SURVEYS

On May 8, 2000, the Department of Labor (DOL) published a notice in the Federal Register (Volume 65, Number 89, Pages 26635-26636) that it intends to survey both employers and employees about their experiences with FMLA leaves. The Family and Medical Leave Act (FMLA) gives eligible employees the right to take up to 12 weeks of unpaid leave in any 12-month period because of illness or to take care of newly born or ill family members.

These new surveys will be conducted by Westat Inc. as a follow up to similar surveys done in 1995. DOL says it intends to compare results of the two surveys and, therefore, contents of the survey instruments will be nearly the same as those used in 1995.

DOL will target 12,406 households to determine employee views on need for family leave and their experiences when taking family leave. The agency will also seek responses from 5,400 employer establishments to determine the impact FMLA leaves have had on the employers. Selections of those to be sent employer surveys will be made by using Dun's Market Identifiers (DMI) published by Dun & Bradstreet. Employees selected to receive surveys will be those who have taken family or medical leave or who need it. The Labor Department has not said how it will be able to determine who has taken family or medical leave or has needed it.

You can download an Adobe PDF file with the Federal Register notice by going to our web site at http://www.management-advantage.com and looking in the "What's New" section. The file size is 122 KB.

Copies of the surveys can be obtained from Ira Mills, DOL Departmental Clearance officer, 212-219-5095, Extension 129. Written comments should be sent to: Office of Information and Regulatory Affairs, OMB Desk Officer for Departmental Management, U.S. Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503.

Written comments are due before the requested approval date of June 23. This is an "emergency approval request" from the Department of Labor. DOL plans to begin sending out its surveys on July 5th.

Gentle Readers,

Does an employer have to pay workers for time they spend riding to a job site in company transportation? In California, the answer will often be "yes" from now on.

Is illegal employment discrimination bad? Ask a Michigan staffing agency that in the cross-hairs of EEOC legal action.

Bill Truesdell
Editor

IN THIS REPORT (Report #139, 6/2/2000)
-------------- (Sent to over 1,600 subscribers)

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1. CALIFORNIA EXPANDS DEFINITION OF "HOURS WORKED"

The California Supreme Court has expanded the definition of "hours worked" in its ruling on Morillion v. Royal Packing. And, although the case deals specifically with farm workers, legal experts are suggesting this ruling will apply to most California employers.

To begin, we must understand what the California Industrial Welfare Commission Wage Orders require. These orders all contain nearly identical definitions of "hours worked." They say, "hours worked" are the hours "during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

In the Royal Packing case, workers were required to meet at certain parking lots each day. The company then transported the workers to the fields where they would perform their jobs with agricultural crops. At the end of the work day, the company bus took workers back to their cars at the various morning gathering points.
Employees were prohibited from driving their own vehicles to the fields. If they missed the bus or drove their own cars to the fields, they were subject to disciplinary action.

Workers sued the company seeking pay for the time spent riding to the job site in the company bus. The company said employees were not under company control during the required bus ride because they could read on the bus or perform other personal activities. The Court said,

permitting employees to engage in limited activities such as reading or sleeping does not allow them to use the time effectively for their own purposes. The Court said employers may provide optional free transportation to employees without having to pay them for their travel time, as long as employers do not require employees to use the transportation.

The Court also pointed out that employers are not required to pay for normal travel time to and from work, as opposed to time an employee must spend on an employer-provided vehicle. So, while Royal must pay its workers for the time they spent on company buses as "hours worked," it did not have to pay for the time workers spent commuting from home to the bus departure points.

Federal courts have generally held that none of the "travel time" is to be considered "hours worked."

California employers who have "on-call" employees, "stand-by" time categories, "live-in" employees or others that are under the control of the employer, should be sure to talk with their management attorney about this latest development. Conducting a review of your specific situation can save you a great deal of money in penalties if a claim is filed at some later time.

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2. ILLEGAL JOB SCREENING CAUSES BIG PROBLEMS

A Detroit, Michigan staffing company has become the target of the Equal Employment Opportunity Commission (EEOC). The agency has won a preliminary injunction against Advantage Staffing, Inc. requiring it to end its applicant screening based on race, sex, ethnic origin, religion and disability.

The EEOC action was founded on its allegations that the company filled job orders from client employers who specified "no females," "no employees with accents," among other inappropriate and illegal qualifiers.

The Bureau of National Affairs (BNA) reports that EEOC Regional Attorney Adele Rapport said the agency will also be looking at the clients of Advantage Staffing to determine if it will pursue commissioner's charges against them.

The preliminary injunction against Advantage requires the company to place applicants in jobs without regard to sex, race, ethnic origin, religion, or disability status. It also requires Advantage to provide a statement to all client organizations where workers have been placed in the last two years stating that it will not place applicants based on any discriminatory standards.

(EEOC v. Advantage, E.D. Mich., No. 00-71547, consent order 3/30/00)

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3. EEOC ISSUES COMPLIANCE MANUAL SECTION ON QUALIFYING COMPLAINTS

When is a discrimination complaint a discrimination complaint? How does the Equal Employment Opportunity Commission (EEOC) determine if it should accept a complaint of illegal employment discrimination? Surely, not all complaints are worth pursuing through investigation.

If those thoughts have ever entered your mind, you are not alone. Just recently, the EEOC provided answers to such questions with the release of a new section for its Compliance Manual. It is referred to as the "Threshold Issues" section.

Threshold issues to the EEOC are those hurdles a complaint must get over before being accepted for further processing. They are the criteria that the agency will use from now on to screen its incoming complaints.

EEOC requirements now include:

THRESHOLD ISSUES

- Cognizable claims:
  Does the charge allege discrimination pertaining to a covered basis and a covered issue?
- Covered bases:
  Does the charge allege discrimination based on an individual's protected status?
- Covered issues:
  Is the issue in the charge covered by the EEO statutes?
- Covered parties:
  Does the charge allege that a covered individual was subjected to discrimination by a covered entity?
- Covered individuals:
  Does the individual allege discrimination against an individual protected by the EEO statutes?
- Covered entities:
  Was the alleged discrimination engaged in by a covered entity?
- Additional threshold requirements:
  - Timeliness: Is the charge timely?
  - Standing: Does the charging party have standing to file a charge?
  - Preclusion: Is the charge precluded by a prior state or federal court decision?

For a complete copy of the new Compliance Manual Section go to the EEOC web page at: http://www.eeoc.gov/docs/threshold.html

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Gentle Readers,

People's thoughts have definitely turned to beaches, mountains, and other vacation venues. Summer's less-frenetic pace seems to have come upon us once again.

Bill Truesdell
Editor

IN THIS REPORT (Report #140, 6/9/2000)
---------- (Sent to over 1,600 subscribers)

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1. HOUSE ATTEMPTS TO SCUTTLE OSHA ERGONOMICS RULES

The House Appropriations Committee indicated its opposition to OSHA's proposed ergonomics rules by eliminating funding for enforcing the regulations from the safety agency's budget.

The new rules, slated to become effective later this year, are expected to impact small businesses the hardest. The rules will govern control of repetitive motion injuries. California has had such a safety requirement applying to all employers for the past two years. This new national effort would extend such protections to the balance of the country's employers.

OSHA estimates the ergonomics standard will cost employers $4.2 billion per year. Business groups have countered, saying the estimate should be ten times higher to establish a realistic picture of OSHA's latest impact on the workplace.

The House Committee action is largely political rather than practical. Even if the full House and then the Senate were to agree and pass the measure along to the White House, President Clinton has said he will veto it strait away.

More information about OSHA's proposals are available at:
http://www.dol.gov and http://www.nfib.com .

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2. UPDATE ON EFFORT TO FIX FCRA

Congress continues its slow but steady march toward resolving problems with the Fair Credit Reporting Act (FCRA). Ever since a Federal Trade Commission opinion letter stated employers must disclose the content of

any sexual harassment investigation performed by outside counsel, employers have been held in limbo, caught between their responsibilities to FCRA and the obligation to thoroughly investigate and remedy sexual harassment in the workplace.

On May 5, 2000, the House Subcommittee on Financial Institutions and Consumer Credit held a hearing. During that proceeding, eleven witnesses testified that the "unintended consequences" of existing law must be fixed with some action by Congress.

H.R. 3408 is the bill being considered at the moment. It is designed to exempt employers from disclosure requirements when investigations are related to alleged employee illegal activities.

Among those testifying were Michael J. Lotito, Chairman of the Society for Human Resource Management (SHRM), Ida L. Castro, Chairwoman, U.S. Equal Employment Opportunity Commission, Debra Valentine, General Counsel, Federal Trade Commission, and Stephen A. Bokat, General Counsel, U.S. Chamber of Commerce.

Among the witnesses there was general agreement that there is an urgent need to repair the FCRA so employers can get on with their responsibilities of providing a discrimination-free workplace.

Many experts expect that this legislation will become law before the end of this session.

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3. EQUAL PAY / COMPARABLE WORTH UPDATE

The U.S. Department of Labor focused on May 12th as "Equal Pay Day." They said May 12th is the day on which women would have caught up to the earnings of their male counterparts, males having worked from 1-1-1999 through 12-31-1999 and the women having worked from 1-1-1999 through 5-12-2000.

A search of the Congressional web site reveals no fewer than 15 pieces of active legislation containing the phrase "equal pay." The one bill most people think about when they consider equal pay is S.74, called the "Paycheck Fairness Act."

One of the things government is good at is developing labels for things. That's why ballot measures are often confusing to voters. The name of the measure doesn't always describe what it will do if passed by the electorate. Often, the title and the content are at odds with one another. Such is the case with the "Paycheck Fairness Act."

S.74 would amend the Fair Labor Standards Act of 1938 (FLSA) and the Equal Pay Act. It adds a non-retaliation requirement and increases penalties for such violations, including compensatory and punitive damages.

It also directs the Secretary of Labor to "(1) develop guidelines for employer evaluations of job categories based on objective criteria, to be used voluntarily by employers to compare wages for different jobs to determine if pay scales adequately and fairly reflect each job's

educational and skill requirements, independence, working conditions, and responsibility, in order to eliminate unfair pay disparities between occupations traditionally dominated by men or women; and (2) establish a program to recognize employers who use such guidelines to ensure that women are paid fairly in comparison to men without lowering men's wages."

So far, the bill has been making progress through the committee structure and it has identical proposals being considered in the House.

This is a major issue. If this bill passes, the government will be forced to create a system for job evaluation that compares different jobs to determine if they should be paid the same. Current requirement is equal pay based on people doing the same job under the same conditions in the same location. The proposal could introduce a completely new social philosophy for employee pay, offering to compare the value of disparate jobs such as fishing boat crew and restaurant server. Comparisons would be undertaken simply because one job is staffed more by men and the other job is staffed more by women.

This bill isn't dead yet. Many Congress watchers are predicting it will settle onto the shelf without further action. Others are predicting that it will go to a vote in both houses of Congress because of the Clinton Administration's increasing political pressure to make the proposal into law. With the coming election, we may see Congress take a conservative approach and postpone any further action.

This is one proposal all employers should keep an eye on and consider talking with their Congressional representative about. It can clearly be seen to ultimately take away from employers any control over their compensation programs.

Gentle Readers,

Federal agencies will be glad to learn that the EEOC has issued new guidelines on handling discrimination complaints filed by federal employees. All federal contractors will want to have a copy of the OFCCP's discrimination complaint form, which we are offering FREE on our web site.

Bill Truesdell
Editor

IN THIS REPORT (Report #141, 6/16/2000)
---------- (Sent to over 1,600 subscribers)

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1. EEOC GUIDANCE ON FEDERAL COMPLAINTS

The Equal Employment Opportunity Commission (EEOC) has released a new chapter in its Management Directive 110. In it, the Commission outlines authority for settlement of discrimination complaints filed by federal employees.

These new rules for handling federal complaints implement the final rules published on July 12, 1999 that revised the federal sector complaint process. (13 EDR 39, 79, 7/14/99)

These new guidelines explain that federal agencies have authority to apply the full range of remedies a court could order if the cases were to be tried. They also permit agencies to reach complaint settlements without a finding of discrimination or an admission of wrongdoing.

You can find the new chapter in its entirety at:
http://www.eeoc.gov/federal/md110.html

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2. OFCCP DISCRIMINATION COMPLAINT FORM AVAILABLE

Any federal contractor should know that the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is authorized to accept complaints of illegal employment discrimination from employees of contractor organizations.

With the recently signed agreement between OFCCP and the Equal Employment Opportunity Commission (EEOC), the process for handling such complaints has been strengthened. OFCCP has made it clear that it is

shifting its focus away from detailed assessment of affirmative action plans toward investigation and resolution of discrimination issues. Its main interest is in the area of equal pay discrimination involving minority or female victims.

For your benefit, however, we have made the OFCCP discrimination complaint form available on our web site in PDF format. You can download it quickly if you have a free copy of Adobe's PDF Reader. You will find the file listed in our "What's New" section. Go to http://www.management-advantage.com .

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3. MANAGING AN OFCCP COMPLIANCE AUDIT

The Office of Federal Contractor Compliance Programs (OFCCP) is still actively scheduling federal contractors for compliance evaluations on their affirmative action programs. Even though the agency has proposed revisions to its regulations on how to prepare a written affirmative action plan, those regulations have yet to be approved, and if they are, will not be implemented for a while after that.

In the mean time, contractors are finding that OFCCP Compliance Officers are becoming more aggressive in their demand for employee data, including detailed compensation information. Frequently, the agency demands contractors provide data that it is not entitled to have, or in formats that contractors are not required to construct. More and more frequently contractors are observing enforcement officials acting in ways that are not appropriate.

If you are a federal contractor and want to deal with these issues yourself, you need to know as much or more than the Compliance Officer about OFCCP authorized actions. The only way to be sure is to go back to the regulations for the authorities.

We offer you a complete reference guide for affirmative action managers. It has been heralded by contractors across the country as being the BEST AAP REFERENCE AVAILABLE. It has also been praised because it is the LEAST EXPENSIVE ON THE MARKET. Don't go into a compliance audit without having this book by your side. We have often heard that HR managers take the book with them when they move to new jobs. Their successors ultimately order another copy.

You can get your personal copy of this invaluable book right now. Go to http://www.management-advantage.com/products/aa-book.htm . Look for "Secrets of Affirmative Action Compliance (4th Edition). When you know you are on firm ground, you can negotiate your way to a reasonable solution with the OFCCP.

Gentle Readers,

We wish you a safe and happy July 4th Holiday!

Bill Truesdell
Editor

IN THIS REPORT (Report #142, 6/30/2000)
---------- (Sent to over 1,600 subscribers)

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1. WEIGHT LATEST PROTECTED CATEGORY

The City and County of San Francisco, California has joined the cities of Santa Cruz, California, Washington, D.C. and the state of Michigan in barring employers from considering a person's weight when making employment decisions.

The ordinance, put forth by Tom Ammiano, president of the Board of Supervisors, protects people of all shapes and sizes, including the tall, short and thin from being denied housing or employment or accommodations based on weight. The new ordinance was unanimously approved by the 11-member board.

This action was inspired by a billboard advertisement for 24-Hour Fitness, a company based in Pleasanton, California, that said when aliens invade earth, "they will eat the fat ones first." The company said it did not intend to offend anyone with its humorous quotation. Nonetheless, it pulled the ad and apologized to activist groups for the overweight after protests and pickets brought media attention to the ad. The National Association to Advance Fat Acceptance led the campaign to get the company to take down its billboard display.

The ordinance will impact only employers in the City and County of San Francisco. Yet, it seems the movement on this issue is gaining momentum. Be sure to keep a close eye on the developments in your work locations.

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2. FAMILY VIOLENCE

Although it's been a year since the information was first published, it still offers food for thought. The data comes from 1997, so it is not

up-to-the-minute, but very likely reflects continuing trends. This particular data set comes from the Canadian Centre for Justice Statistics (CCJS) and is available on the web at http://www.statcan.ca/Daily/English/990611/d990611a.htm .

Here are some of the study findings:

- All segments of the family are affected by family violence. Parents assaulted children, both men and women assaulted their spouses and even the elderly were victims of their children.

- Women accounted for 88% of spousal violence victims.

- Children under the age of 18 were victims in 23% of all assaults reported to the police. In about one-quarter of these cases, family members committed the offence.

- Spouses account for 18% of all victims of solved homicides and nearly half (48%) of family-related incidents.

If you would like additional information about the study or its results, visit the web site shown above or call Information and Client Services, Canadian Centre for Justice Statistics at 613-951-9023 or 1-800-387-2231.

A library list of Studies on Spousal Abuse is located at http://www.canadian.net/fact/fact/library.htm .

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3. EMPLOYERS' GROUPS ASK FOR MORE TIME TO COMMENT ON OFCCP PROPOSALS

The Equal Employment Advisory Council (EEAC) and Organization Resources Counselors, Inc. (ORC) have appealed to the U.S. Department of Labor to extend its July 3, 2000 deadline for comments on proposed changes to affirmative action regulations.

EEAC and ORC each represent large employers and they argued that many employers faced with having to complete the new Equal Opportunity Survey for the Office of Federal Contract Compliance Programs (OFCCP) simply did not have time to thoroughly analyze the agency's regulatory proposals in time to meet the deadline for comments.

In addition to codifying the Equal Opportunity Survey with all its compensation reporting requirements, the regulations will revamp content of affirmative action plans contractors must prepare each year.

As of this writing, we do not know if OFCCP will agree to an extension as requested. If you haven't submitted your comments, you still have until this coming Monday.

Our comments regarding the OFCCP proposed regulations are available for review on our web site. You will find them in the "What's New" section

at http://www.management-advantage.com . We urge all federal contractors to share their opinions about these serious and consequential changes with the Department of Labor.

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4. DOL ISSUES FINAL RULE ON UI PAYMENTS FOR FMLA LEAVE

The U.S. Department of Labor (DOL) has issued its final rule on June 13, 2000. It is located at 20 CFR Part 604. You can find the full text at http://www.doleta.gov/wd/finalregbaa.htm .

In it, the government has set its final procedures for allowing states to establish programs that pay employees on Family and Medical Leave (FMLA). Payment will be made from Unemployment Insurance funds, which of course, are supported by employer payroll taxes. This will be the first time in the history of the unemployment insurance program that authorization has been given to spend UI funds on other than UI claims.

The Society for Human Resource Management (SHRM), representing over 130,000 members nation wide, has voiced its position that using Unemployment Insurance funds for other than UI claims is not permitted by federal law. It has joined with the U.S. Chamber of Commerce in a law suit to stop the government's program.

As things now stand, the new rule is scheduled to become effective on August 14, 2000.

Gentle Readers,

Employment policies, telecommuting and executive health are this week's stories for HR professionals. We look forward to your feedback and appreciate the time you invest in sharing your thoughts with us.

Bill Truesdell
Editor

IN THIS REPORT (Report #143, 7/7/2000)
---------- (Sent to over 1,600 subscribers)

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1. STOP WORRYING ... LOVE YOUR TELECOMMUTERS

Entrepreneurs love it! Organization managers often do not. What is it about telecommuting that makes managers hesitate? What problems can develop with telecommuting employees? For the answers we turn to Phil Albinus. He is the author of an article in the current issue of Small Business Computing magazine (July 2000) titled, "No Place Like Home."

He lists the top seven worries about telecommuting and explains why they don't have to cost you sleep each night.

- Worry #1: My janitor will want to work at home. Some jobs aren't destined to be done from the employee's home. Machinists, repair techs, and other hands-on jobs aren't likely to be candidates for telecommuting. Accountants, business managers, graphic artists, editors, technical writers, public relations experts, computer programmers, and sales professionals can all do their work from home.

- Worry #2: I'll have to spend a fortune on equipment. Don't you already spend money for equipment employees use in your office? What's the difference? Consider replacing desk-top computers with notebooks that can be used at the office, at home or on the road.

- Worry #3: Our telecommuters will be out of the loop. Many business operations today rely on email communications among employees. So, what will be different if some of the employees telecommute?

- Worry #4: If I let employees telecommute two days a week,

they'll want five. True, perhaps. Yet, if you don't let employees telecommute those two days, you may discover you will be looking for replacement workers because your turnover problems continue.

- Worry #5: I'm in for a gigantic technology headache. These can be minimized if all software packages used by office staff and telecommuters are the same. You should plan to standardize your software usage. Pick one Office Suite, for example, and make sure everyone in the company is using the same one.

- Worry #6: They'll be watching TV instead of working. This is a tough one for micro-managers. They will have to learn a different style. Telecommuters should be measured based on their output, the same as other office workers. You will need systems of measurement that are fair and allow clear understanding of accomplishments.

- Worry #7: My clients won't work with someone who works from home. This is a non-issue of you insist workers have a designated space at home where they can work and close the door. Don't plan to allow employees to work on their kitchen table. (It's alright to go there to make a sandwich, though.) Email, voice mail and call forwarding have made it possible for employees to work nearly anywhere without raising the issue of where they are located.

For more information, see Mr. Albinus' article. The July issue of Small Business Computing is on your news stand today.

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2. EMPLOYERS MAY CHANGE POLICIES ... WITH NOTICE

California employers have been given a state Supreme Court ruling that reinforces the logical conclusion of reasonable people. That is, it is alright to change employment policies as long as employees are given a fair amount of notice before the changes go into effect.

The case was Asmus v. Pacific Bell. The ruling: A policy may be terminated or changed so long as the employer makes the change after the original policy has been in effect for a reasonable time, gives employees reasonable notice, and does not interfere with employee's vested benefits.

There has never been a better time to review your employee handbooks for policies that are out-of-date or need modifications. One continuing concern for employers is that their policies are complying with both state and federal laws. To address that concern we suggest you have your policy statements reviewed by a competent management attorney before implementing them.

If you want to revise and reissue your employee handbook, a quick way to do so is by using KnowledgePoint's PC-based software called "Policies Now!" The Q & A approach to writing policies takes into

account legal requirements in your state, and the way you do business. It's a nice way to be sure you are in compliance. You will find more information about this software program at our Web Store for Professionals(tm) at http://www.management-advantage.com . Look for "HR Software" in the main menu on the left of the page.

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3. EXECUTIVE HEALTH DEPENDS ON PHYSICAL EXAMS

Jean Mann, Corporate Wellness

Although they may seem invincible, sometimes even top executives become seriously ill. Unfortunately, many of these diseases are unavoidable. Although executive physical examinations cannot prevent serious illness, a well designed and *well-utilized* executive exam program can detect serious illness at earlier and more treatable stages. Despite this fact, new executive examination programs are not at the top of the priority list for many companies today. And, when they are proposed, sometimes coordinating them in the managed care environment raises so many problems that the programs are back-burnered.

One point to consider is that executive physical examinations may give company executives a better understanding of your company's managed care plans. After all, executives are the group least likely to use managed care appropriately. Yet, they are often your first line of communication with employees about the company's benefits plans and managed care choices. *Getting these executives to buy into your managed care plans through an executive physical exam program may be a key element to containing escalating health care cost. By using your managed care providers, an executive exam program can be easy to administer and inexpensive.*

There are several models in use for these new hybrid executive exam programs – programs that effectively utilize managed care providers to periodic examinations. Corporate Wellness, Inc. developed a program for a major reinsurance where all company officers are sent birthday cards advising them: "It is time for your physical." When officers call Corporate Wellness to schedule the examination, they are given the option of seeing their managed care primary care provider, a traditional executive physical facility physician or a personal physician of choice.
Corporate Wellness schedules the exam and handles all of the billing. Officers are encouraged to see the primary care providers, especially if the provider was selected from a provider directory at enrollment and the officer has not yet seen the doctor. Since the exam is often covered by the managed care plan, Corporate Wellness only pays for the co-pay. If the officers choose another executive exam provider, they are encouraged to have Corporate Wellness arrange for their reports to be sent to the primary care provider when Corporate Wellness pays the exam bill.

Another model includes similar reminders for periodic examinations for all employees, following the guidelines for coverage in the managed care plan. All employees, not just executives, senior management or the highly compensated, are prompted to schedule periodic exams through their primary care providers. This model directly addresses criticism that senior management is no more important to an organization than the

people, who handle customer service calls, communicate with clients, provide actual services or keep everyone on payroll.

It is paramount that executive exam programs and periodic exam programs include components that are appropriate for your employee population. For example, if your executives are all under fifty, including prostate cancer screenings or colorectal cancer screenings are going to be less meaningful to them, and therefore, probably not utilized by these executives. Measuring body fat content might be a better choice. Cholesterol profiles will be important to everyone.

Setting minimum exam components and maximum exam reimbursements works for many organizations. Consulting with your managed care plan SPD should be a starting point.

Executives who effectively utilize managed care personally are far more likely to promote effective use of managed care throughout your organization. An executive physical exam program may be an inexpensive and simple means toward achieving this goal.

(Jean Mann can be reached by email at: jmann@corporatewellness.com)

Gentle Readers,

The government wants more control over your compensation program. A state government gives back some control over executive exemption from overtime requirements. And, some employers should take more control of their own conduct regarding employees. See it all here.

Bill Truesdell
Editor

IN THIS REPORT (Report #144, 7/14/2000)
---------- (Sent to over 1,600 subscribers)

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1. GOVERNMENT WANTS TO CONTROL PRIVATE SECTOR SALARIES

The U.S. Department of Labor (DOL), under the leadership of Secretary Alexis Herman and Deputy Assistant Secretary Shirley Wilcher, are convinced that the U.S. Government can do a better job of managing employee compensation in the private sector than employers are able to do. They claim that private sector employers generally pay women less for the same type of work than male employees are paid. And, to reinforce their views, the U.S. Department of Labor is supporting legislation now in Congress that would require many new and questionable employment practices.

Two major pieces of legislation are currently undergoing debate on Capital Hill. The "Paycheck Fairness Act" (S. 74 and H.R. 2341) have been authored by Senator Tom Daschle (D-SD) and Representative Rosa DeLauro (D-CT). The "Fair Pay Act" (S. 702 and H.R. 1271) have been authored by Senator Tom Harkin (D-IA) and Delegate Eleanor Holmes Norton (D-DC). Here are some of the new provisions employers must prepare to implement if these laws are passed:

- Implement rules to be developed by the DOL to compare "wages paid for different jobs." After more than 30 years of trying, no system for comparing compensation of "different but similar jobs" has ever been created. Our country's academic experts and employment compensation experts have been unable to develop such an analysis tool. Yet, the DOL has implemented its own compensation analysis tools that require employers to pay dissimilar jobs equal amounts of money. And, they have said that any employer who doesn't comply will be punished. The proposed laws would solidify what DOL has been doing for the past few years without the force of law.
- Eliminates the defense against claims of unequal pay now

allowed by the Equal Pay Act of 1963 if pay differences are due to "a bona fide factor, other than sex."
- Eliminates the need to compare pay treatment within a single market or geography. Will allow a female engineer in Salt Lake City, Utah to sue for equal pay compared with a male engineer in Los Angeles, California or New York City, New York.
- Allows employees unlimited punitive and compensatory damages and lowers barriers to class action law suits against employers.
- Prohibits employee discipline for revealing their own or another employee's compensation information.
- Requires annual reporting of all compensation information that will then become public information when published by the government. Reporting will include wages paid to each position or salary/wage group as well as the sex, race, and national origin of employees at each salary level in each position.
- Eliminates employer consideration of market conditions or individual compensation history from salary treatment decisions.
- Allows employers to adjust compensation of men downward, or to adjust compensation of women upward. Directs DOL to create a recognition program for employers who avoid reducing salaries in an adjustment.

If you feel that these issues deserve your attention, you should contact your Congressional representatives and tell them what you think about these proposals.

You can find more information about the issue of comparable worth compensation programs and their effects by going to: http://www.management-advantage.com/newsletr/jul99.html

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2. CALIFORNIA LOOSENS MANAGEMENT EXEMPTION FROM OVERTIME

On June 30, 2000, the California Industrial Welfare Commission (IWC) voted 3-2 in favor of updated versions of the California Wage Orders' occupational definitions that govern overtime exemptions.

The IWC in its action loosened the requirements for employees to be slotted into managerial exemptions. Under the new definition, the job requirements must include duties involving "...the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof." Additionally, an executive employee eligible for overtime exemption must "...customarily and regularly exercise discretionary powers." This is a change from current California requirements for exercising discretion and independent judgment.

Union leaders across the state were outraged at the IWC actions. And, they are looking to California's Governor Gray Davis to fix this latest labor problem for them. "As a candidate, Gray Davis met with many groups of workers to assure them their daily overtime protection would not be taken away," said Art Pulaski, treasurer of the California Labor

Federation, AFL-CIO at one of the IWC hearings. He added, the change "violates our understanding of our commitment by our governor; it violates AB 60, our new law; it violates our sensibilities as workers; and it violates our trust."

State Assembly Member Knox who authored AB 60, returning daily overtime requirements to the state after a two-year absence, said he agreed. His law, he said, had clearly been intended to use the definition that calls for managers to be "primarily engaged" in management.

The new rule considerably broadens that definition by adding an "occasional standard" of duties that employers deem part of the "realistic requirements of the job," even if they include such mundane tasks as briefly working the cash register or handling clerical duties.

Unions contest that business managers will use this new definition to reclassify countless workers with minimal management roles resulting in a loss of overtime pay for those workers.

For more information, the IWC can be reached at 916-322-0167. There has been no word on when new IWC posters will be available to employers.

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3. SMALL LIES, BIG VERDICTS

By: Timothy S. Bland

Sometimes employers are tempted to tell employees "little white lies" about the reason for firing them, to soften the blow. For example, an employer may discharge an employee who is incompetent or who cannot get along with co-workers. Rather than embarrassing the employee with the truth, the employer will attribute the termination to company down-sizing. It's not a good idea. Under the latest Supreme Court ruling, little lies can lead to exposure to big jury awards. On June 12, 2000, the U.S. Supreme Court decided Reeves v. Sanderson Plumbing Products, Inc. Sanderson discharged 57-year-old Reeves, citing his failure to maintain proper time records. Reeves convinced a jury that the real reason was age discrimination. The issue before the Supreme Court concerned the type of proof which an employee asserting discrimination must present in order to get before a jury. The Court held that in many, but not all cases, the employee need only establish his basic claim and then show the employer gave a false explanation for the discharge. The Court held that a jury may be allowed to infer that the employer was covering up a discriminatory purpose. But the Court did note there are instances where no rational jury could find discrimination, and in such cases summary judgment (i.e., a judgment without necessity of a trial) for the employer is required.

The Court gave two examples of cases where the employer should be granted summary judgment. First, the record shows that while the employer's stated reason was untrue, there is conclusive proof that the employer's real reason was not discriminatory. Second, the employee only presents weak evidence that the employer's stated reason was untrue, and there is clear proof that no discrimination had occurred. In neither instance should the case be given to a jury. As has always been the case, the employee still bears the ultimate burden of proving

that the employer intentionally discriminated against him/her. Mere suspicion of discrimination, unsupported by actual evidence, whether direct or circumstantial, will not suffice.

The following five steps should help keep employers out of court, or help them win any cases that do end up in court:

1.) Give Truthful Reason For Discharging Employees
Reeves makes clear that if an employee can prove that the employer's explanation is false, then a bias claim can go to the jury. Employers therefore should not hide the real reasons when telling employees why they are being discharged. The full truth may sometimes be painful, but it's far better than the alternative. Otherwise, employers subject themselves to the possibility of large jury verdicts.

2.) Document Performance Problems
The absence of documentation in an individual's personnel file makes it much harder to defend a termination decision based on performance or misconduct grounds. Under the Reeves decision, employers may have to do just that - defend their decisions. Proper documentation helps.

3.) Follow And Check Your Policies
Every employer should follow their policies -- both rules and disciplinary procedures -- and do their homework to ensure that employees are being treated consistently. The rules or policies should be reasonable and necessary for the safe and efficient operations of that employer's business. The rules should state that they are not exhaustive and that an employee may be disciplined or discharged for other misconduct not specifically enumerated in the rules.

4.) Use Progressive Discipline
One of the fundamental things a jury looks at in determining whether an employee was unlawfully discharged is whether the company treated the employee fairly. Except for especially egregious situations, it usually appears more fair for an employer to utilize a system of progressive discipline before firing an employee.

Additionally, be careful about firing an employee during certain "sensitive" periods, such as within a few months after the employee has complained of harassment, filed an EEOC charge, requested FMLA leave, or filed a claim for workers' compensation benefits. Employees fired during such periods will likely claim that the "true" reason their employer fired them was retaliation for exercising their legal rights. Juries are especially leery of discharges occurring during such periods. Therefore, before discharging an employee during such a period, investigate and consult with legal counsel to make sure you have your ducks in a row.

5.) Get a Second Opinion
    By using in-house counsel, outside employment counsel,
    or the HR department as a sounding board, you can often
    get an objective, new perspective on a termination decision.
    This important step or "lifeline" can enhance confidence
    in your decision, or expose weaknesses that you have an
    opportunity to correct.

(Timothy S. Bland, a management attorney with the Memphis, Tennessee
office of Ford & Harrison LLP, can be reached at
tbland@fordharrison.com).

Gentle Readers,

A new EEOC resource has been released and is now available on the web. We share some advice from a practitioner about how you should conduct in-house complaint investigations. And, finally, we offer some information about new products you will need as you improve your professional skills.

Bill Truesdell
Editor

IN THIS REPORT (Report #145, 7/21/2000)
---------- (Sent to over 1,600 subscribers)

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1. NEW SCHEDULING SOFTWARE MAKES SHIFT ASSIGNMENTS EASY

Schedule Soft Corporation has released its latest edition of ScheduleSoft, a uniquely powerful employee scheduling program. It has been hailed by Kaiser Permanente's facility in Stockton, California, the Ossining Police Department in New York, the St. Lawrence & District Ambulance Service in Ontario, and Indianapolis Power & Light as the solution for their scheduling problems.

Supervisors used to pencil their shift assignments on a scheduling form. Not any more. ScheduleSoft handles the most complex shift assignments using rules you must consider when making those assignments. Union requirements, compliance requirements for time-off between shifts, and employee preferences make scheduling shifts a nightmare for most 24-hour operations.

ScheduleSoft can solve your shift schedule nightmares for as little as $395. If you have less than 100 employees, that's all you'll have to spend to eliminate the paper and pencil mess that takes so long every week.

If you would like to see more about ScheduleSoft, or download a slide-show-demo of the program, please visit our Web Store for Professionals(tm) and select "HR Software" from the main product menu. You will find us at www.management-advantage.com .

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2. EEOC UPDATES COMPLIANCE MANUAL ON THRESHOLD (INTAKE) ISSUES

The Equal Employment Opportunity Commission (EEOC) has issued an updated section for its compliance manual. This section deals with what the Commission calls "threshold" issues. Those are things that EEOC intake personnel will consider when first looking at an individual's complaint. EEOC will reject complaints that do not meet the proper threshold standards.

Among the threshold issues addressed in the revised section are:

- Does the charge allege an adverse employment action?
- Who can file a charge of discrimination?
- Was the allegedly discriminatory action taken by a covered employer, union, or employment agency?
- Is the charge timely?
- What is covered by the civil rights laws?
- Is the charge barred by a prior state or federal court decision?

If you would like to see a complete copy of the new manual section, look on the web at: http://www.eeoc.gov/docs/threshold.html

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3. THE DEFENSE RESTS EASY: THREE CRITICAL BEHAVIORS IN MANAGING WORKPLACE INVESTIGATIONS

by E. L. Zimmerman

No matter how you found yourself in the middle of the Briar Patch, you're going to need to find a way out.

Employee complaints are an ever-increasing reality in corporate America. With workplace violence and even subtle intimidation on the rise, company investigators (typically HR managers and generalists) have to effectively juggle the rights of the accused, the possible victim, and the company itself without fumbling either time or budget.

With this in mind, here are three key rules to keep in mind, should you find yourself facing a complaint investigation:

Rule #1. When in doubt, document.

Everything you do to resolve the dispute should be committed to paper and placed in an investigation file. Just like Hansel and Gretel dropping bread crumbs on their journey into the nasty forest, so should you. Even the incidental decisions you make as you move in the direction of an effective conclusion should be documented. If you request a behavioral adjustment from the alleged harasser, your best practice would be to document your recommendations in a memo format. This can underscore the value of confidentiality and the importance of clarity with any interviewee.

Remember, computer files are increasingly viewed by the courts as potentially 'compromised' or even 'public' material. While I would strongly advise you against computer files and/or emails, anything you save to hard disk or floppy should be password protected.

Rule #2. Keep an open mind.

Just as it's important to concentrate on investigating behaviors with open-ended questions, don't underestimate the value of a simple 'yes or no' question. The surprised candor of the interviewee may be particularly enlightening, especially if you find your alleged harasser or victim making situational 'course adjustments' to the already-established facts of the dispute. Have you been told the truth, or have you been subtly misled? Only by keeping an open mind, supported by watchful eyes making keen observations, might you ever know.

Remember, you are not in a court of law. What you can and cannot prove may not, ultimately, be as relevant as the sum of the parts you assemble along the way. Without bias, work towards establishing a single version of the truth, and allow that truth to help set the course for you.

Rule #3. Reach your conclusion ASAP.

A prolonged investigation is corrosive to any company's morale. Not only might it impact the enterprise as a whole, but also the participants will behave with a natural wariness from the moment the dispute resolution begins. Obviously, the longer an investigation continues the greater the likelihood that more associates are going to get wind of it. In the protracted interim, one of your participants might breach confidential matters. Gather your facts and determine your conclusion shortly thereafter. Don't belabor the process with a guessing game.

Remember, as you are not in a court of law, don't play the role of the prosecutor and spend the bulk of your investigative time writing your legal opinion of the inquiry into your notes. Likewise, don't get wrapped up in the role of the jury and continue to deliberate just who might be guilty of what within a reasonable doubt. Instead, keep your mind and activity focused on gathering relevant information that will put you on the path toward a successful resolution.

Following these three simple behaviors has allowed me to successfully assess some very ugly incidents. Follow these rules, and you should experience success with your investigations ... and hopefully keep your company from paying large penalties.

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Ed Zimmerman has consulted with management since 1988. Presently, he provides HR consulting services to a global wireless organization, maintaining his territory in Arizona, New Mexico, & West Texas. He can be reached at 480-857-7663.

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4. NEW PRODUCTS ADDED TO WEB STORE FOR PROFESSIONALS(tm)

We are continually adding new publications and products to our Web Store for Professionals(tm) so you have more resources at your disposal.

Those of you involved in recruiting non-U.S. workers will be interested in the book "The Immigration Handbook" by Henry G. Liebman. Henry is an attorney specializing in immigration law and helping employers with their Immigration and Naturalization Service (INS) paperwork. In the book he explains a variety of visas available to employers and their recruits. At only $9.95, you will want to add this to your professional library.

"Get Hired!" is written by Paul C. Green, Ph.D. who authored "More Than a Gut Feeling," America's top interview training video. He offers readers winning strategies to ace the interview. If you are looking for a job, that's valuable. If you are interviewing candidates, that is critical. You don't want to be manipulated by people you interview. Get your personal copy for only $14.95.

Where? At the Web Store for Professionals(tm), naturally. Go to http://www.management-advantage.com and select the "HR Books & Manuals" department.

Gentle Readers,

The Clinton Administration has announced its intention to revise the Federal Acquisition Regulations (FAR) it implemented last year. Many have called it the "Blacklisting Regulation." If you are a federal contractor, or represent federal contractors, it is in your best interest to understand this proposal and to respond with your opinion before August 29, 2000.

Bill Truesdell
Editor

IN THIS REPORT (Report #146, 7/28/2000)
---------- (Sent to over 1,600 subscribers)

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1. FEDERAL CONTRACTOR BLACKLIST ALERT - ACTION REQUIRED

You will recall that in our Special Report for HR Professionals #97 (7/16/1999) we told you about "Contractor Responsibility" regulations being proposed by President Clinton and Vice President Gore. (See www.management-advantage.com/newsletr/Gentle.htm) Three years ago, Gore said to an AFL-CIO conference, "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."

Out of that objective has come a new rule that will alter existing Federal Acquisition Regulations (FAR) contained in 48 CFR Parts 9 and 31. The way it was written, individual contracting officers will be able to "blacklist" ANY federal contractor for virtually any reason. "No. That can't possibly be the case," you say. Well, we're here to report that it is.

The Society for Human Resource Management (SHRM) has asked its members to write responses to the current federal register publication of this rule. It has taken a strong position against approval of the rule because of the negative impact it will have on the process of federal contract approvals.

The current comment period has been opened because the rule has been revised by the Administration. Last year's original announcement brought 1,500 comments from contractors.

Any apparent "violation" of federal law or federal regulation during the previous three year period will be sufficient for a contracting officer to blacklist the contractor. There is no appeal of such a decision. Contractors will not be given a hearing before the action is taken. WOW!

Under the revised rule, contractors must certify that they have not had any adverse actions involving federal labor and employment, tax, environmental, anti-trust, or consumer protection laws within the past three years.

The rule is written to allow accusations, not patterns of conviction or violation, to be used as cause for blacklisting. The Administration is going to be reviewing contractor history in:

- Union relations & compliance
- Employee discrimination complaints & EEO compliance
- Income tax filings and payments
- Payroll tax filings and payments
- Environmental compliance
- Anti-trust compliance
- Consumer protection compliance
- Safety (OSHA) compliance

If any hint of a problem arises in any one of these areas, the contracting officer will be justified in blacklisting the contractor under the rule. Hints could include accusations from union officials that the employer was not bargaining in good faith, or settlement agreements with the Internal Revenue Service (IRS) to remedy a dispute about tax payments, or a few employee discrimination complaints regardless of their merit. The rule allows proclamation of guilt by accusation, reminiscent of the 16th century witch trials.

We have sent a response to the government's proposal. You can get a copy in Adobe PDF format from our web site. Go to www.management-advantage.com and look in the "What's New?" section.

We urge all federal contractors to review this proposal and prepare a response that will be received by August 29, 2000. Responses should be sent to:

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

Reference "FAR Case 1999-010."

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2. NEGLIGENT INVESTIGATION TORT IGNORED IN TEXAS

HR Professionals in Texas will be happy to hear that a state court, and then the Texas Court of Appeals, ignored a claim of negligent investigation against Wall-Mart. (Wall-Mart Stores v. Lane)

T. J. Lane began his career with Wall-Mart as a sales clerk. He moved up quickly, attending a company management training program after being promoted to a lower-management position. At the training program, Lane met Suzanne Sparks, another Wall-Mart employee. They subsequently worked together, and on at least one occasion were sequestered in their store's cash room. Later, Sparks accused Lane of making sexual advances toward her, discussing his sexual fantasies, and actually touching her in sexual ways. Lane denied the allegations and claimed that someone was spreading rumors about him. The store personnel manager explained to Lane that Sparks had engaged in the same conduct with other managers in the past. Lane was also told the cash room security camera was broken so their encounter had not been recorded.

Eventually, Lane was terminated by Wall-Mart. He then sued the company for negligent investigation, retaliatory discharge, slander, and violations of Texas state law. The jury awarded Lane actual damages of $2.3 million and punitive damages of $800,000.

The Court of Appeals noted that employers have no duty at all to conduct investigations for the protection of at-will employees accused of sexual harassment and are free to simply discharge such employees instead.

For the complete case summary, visit
http://www.hrcomply.com/wallmart.html .

While Texas may have reduced employer liability for negligent investigation, HR professionals in other states still have to be careful to avoid negligence. Whenever you are involved in an investigation of alleged discrimination, it is a good idea to consult with your management attorney from the onset.

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3. NEW PENALTY AHEAD FOR CALIFORNIA EMPLOYERS THAT FAIL TO PROVIDE MEAL & REST PERIODS

California employers should review their obligations to give employees meal and rest periods. Failure to do so will begin to cost money beginning October 1, 2000.

When employees are not able to get away from their work and must eat their meal while working, the employer must pay for that period as work time.

According to Dale Louton, Labor Law Advisor for the California Chamber of Commerce, "The state labor commissioner has stated that AB 60 does not prohibit on-duty meal periods, but that an on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when both employer and employee agree in writing to an on-duty meal period."

Mr. Louton goes on to say, "Even though the employee is required to work during the on-duty meal period, the employee must be given the opportunity, while working if necessary, to eat his/her meal. This opportunity to eat cannot be waived and of course the employee must be paid for the on-duty meal period."

"Employers also need to be aware of all requirements for meal periods and rest periods. The meal period regulation is in Labor Code Section 512 and Section 9 of the Interim Wage Order that went into effect on March 1. Rules governing rest periods appear in the appropriate industry or occupational wage order."

"Once an employer has reviewed its responsibility for meal periods and rest periods, it is more critical than ever that the employer follow these requirements. Employers face a new penalty beginning October 1."

"The Industrial Welfare Commission on June 30 approved a penalty for failure to provide meal or rest periods. The penalty is that an employer shall pay the employee an additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided."

"Therefore, if for some reason an employee is not provided a required rest period or meal period, the penalty is an extra hour of pay."

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Thanks to Mr. Louton for permission to quote from his article in the July 14, 2000 issue of Alert. He can be reached at the California Chamber of Commerce at helpline@calchamber.com . He offers employer support on labor law questions to members of the California Chamber. The Chamber's web site address is http://www.calchamber.com .

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4. 24-PAGE COLOR CATALOG AVAILABLE

We know some folks prefer holding a catalog in their hands when shopping. In answer to that desire, we have prepared a 24-page color catalog that you can now download from our web site. It is in PDF format, so you can print it or simply review it on your monitor. Either way, we hope you will find it helpful as a list of the references available to help you do your job better.

Find the 2000 catalog of "Employer Survival Tools" at www.management-advantage.com . Look in the main menu on the left of each page for "CATALOG." If you don't now have a copy of Adobe's PDF Reader, you will find an easy link from our catalog page to Adobe's web site where you can get a copy for FREE.

We'll see you there.

Gentle Readers,

We have some important information for you this week. Tim Bland explains the EEOC's new guidance on medical exams and questions we may ask employees, a quick status report on employer comments about the EO Survey from OFCCP, and a new thrust into construction firms by the EEOC by using a new Memorandum of Understanding with GSA. It's been a busy week. Why don't you share a copy of this Special Report for HR Professionals with your colleagues? We welcome new subscribers.

Bill Truesdell
Editor

IN THIS REPORT (Report #147, 8/4/2000)
---------- (Sent to over 1,600 subscribers)

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1. EO SURVEY DRAWS FIRE FROM EMPLOYERS IN OFCCP REG PROPOSAL

The Office of Federal Contract Compliance Programs (OFCCP) closed the comment period on its proposed changes to regulations at 41 CFR 60-2 on July 3, 2000. The agency refused requests from large employer organizations to extend the comment period because of the complexity of some changes proposed.

According to the Bureau of National Affairs (BNA), there were 169 letters received during the comment period. 67 came from employers, employer organizations, and employee advocacy groups. The remaining 102 were sent by individuals. Nearly all of the individual letters voiced support for the proposed regulatory changes.

Employer opposition was strongly voiced by the Society for Human Resource Management (SHRM), the Equal Employment Advisory Council (EEAC), and the U.S. Chamber of Commerce. The greatest causes for concern focused on the new Equal Opportunity Survey and the agency's retreat to 1970's insistence on establishments being configured by physical location.

EEAC pointed out that 250 of its members had received one or more Equal Opportunity Surveys during the OFCCP's initial mailing of 7,000. 87% of the 250 reported that completing the survey required much more than the 12 hours estimated by OFCCP. Nearly half (49%) said it took between 20 and 30 hours, 12% said it required between 30 and 45 hours

and 12% reported spending between 65 and 75 hours on the survey. We reported to OFCCP in our comments that contractors we know had spent up to 144 hours completing the survey. Not only was the agency's estimate of time dramatically understated, it said most of the work could be done by clerical people. In fact, contractors report most of their hours were spent by professionals because the survey required them to compile data they did not have in their systems. That imbalance resulted in the cost of survey responses escalating far beyond OFCCP estimates.

There has been no public response from OFCCP to the comments that were submitted. You can expect they will not hold any press conferences on the subject. They can be expected to prepare rebuttals to the comments they don't find helpful, and file a request with the Office of Management and Budget (OMB) for final approval of the regulations. When that will occur is a matter of conjecture. We'll let you know when it does happen.

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2. NEW GIFTS AVAILABLE IN OUR PROFESSIONAL GIFT DEPARTMENT

Those of you looking for just the right gift will find three new choices in our professional gift department. We have recently added:

- Mini Book Lights - They clip on your book to allow personal reading or study without disturbing others.

- Tapestry Briefcase - Elegant, hard working, organizer briefcases.

- 116-piece Ladies Tool Kit - There's nothing lady-like about these tools except their packaging. They'll take on the toughest tasks.

Of course, you will find other fine gifts for professionals as well. Why not take a look today, and get some of your holiday shopping done early. Simply go to: www.management-advantage.com and click on "GIFTS" in the main menu you will find on the left of the page.

We'll look forward to serving you.

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3. OFCCP TARGETS CONSTRUCTION FIRMS THROUGH GSA MOU

Federal construction contractors and subcontractors working on projects worth more than $50 million will find themselves the targets of compliance reviews from the Office of Federal Contract Compliance Programs (OFCCP). This is an intended result of a new Memorandum of Understanding (MOU) between OFCCP and the General Services Administration (GSA) signed July 6th.

This is the first of several MOUs the OFCCP intends to sign with federal agencies involved in federal construction projects. According to Shirley Wilcher, Deputy Assistant Secretary of Labor, and head of OFCCP, contractors and subcontractors on federal projects will be

scheduled for affirmative action compliance reviews more often. Any contractor found to be out of compliance will be required to provide "make whole" remedies that could include hiring applicants who have been rejected in the past, or increasing wages/salaries for women and minorities found to have been victims of discrimination.

GSA will be providing OFCCP with a list of all "mega projects" currently under way or in the planning stage. OFCCP will begin taking an active part in pre-bid and pre-proposal conferences on these large construction projects. OFCCP will hold a post-award meeting with the general/prime contractor to assure contractor compliance with affirmative action regulations.

The agreement also calls for GSA to identify at least four general or prime contractors each year who will participate in voluntary compliance monitoring. For the contractors this will involve establishing a project oversight committee to monitor progress on affirmative action, designating an equal employment opportunity manager to monitor compliance, and developing workforce project monitoring procedures.

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4. EEOC ISSUES NEW GUIDANCE ON MEDICAL EXAMS AND QUESTIONS FOR EMPLOYEES

By: Timothy S. Bland

On July 27, 2000, which was the tenth anniversary of the Americans with Disabilities Act, the EEOC issued its Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA).

The ADA limits an employer's ability to make disability-related inquiries or require medical examinations at three stages of the employment process: pre-offer, post-offer, and during employment. The EEOC's new enforcement guidance focuses on the ADA's limitations on disability-related inquiries and medical examinations during employment.

After employment begins an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity. The new guidance addresses four key questions:

(1) what constitutes a disability-related inquiry,
(2) what constitutes a medical exam,
(3) who is considered an "employee" for purposes of the guidance, and
(4) when are disability-related inquiries "job-related and consistent with business necessity."

1. What is a "disability-related inquiry"?

A disability-related inquiry is a question that is likely to elicit information about a disability. According to the guidance, disability-related inquiries may include: asking an employee whether s/he has a disability, how s/he became disabled, or inquiring about the nature or

severity of an employee's disability; asking an employee to provide medical documentation regarding his/her disability; asking an employee's co-worker, family member, doctor, or another person about an employee's disability; asking about an employee's genetic information; asking about an employee's prior workers' compensation history; and, asking an employee whether s/he currently is taking any prescription drugs or medications, whether s/he has taken any such drugs or medications in the past, or monitoring an employee's taking of such drugs or medications.

Questions that, according to the guidance, are not likely to elicit information about a disability are not disability-related inquiries and, therefore, are not prohibited under the ADA, include: asking generally about an employee's well being (e.g., How are you?), asking an employee who looks tired or ill if s/he is feeling okay, or asking an employee who is sneezing or coughing whether s/he has a cold or allergies; asking an employee about nondisability-related impairments (e.g., How did you break your leg?); asking an employee whether s/he can perform job functions; asking an employee whether s/he has been drinking; asking an employee about his/her current illegal use of drugs, and, asking a pregnant employee how s/he is feeling or when her baby is due.

2. What is a "medical examination"?

According to the guidance, a "medical examination" is a procedure or test that seeks information about an individual's physical or mental impairments or health. Medical examinations include, but are not limited to: vision tests conducted and analyzed by an ophthalmologist or optometrist; blood, urine, and breath analyses to check for alcohol use, blood, urine, saliva, and hair analyses to detect disease or genetic markers (e.g., for conditions such as sickle cell trait or Huntington's disease); blood pressure screening and cholesterol testing; nerve conduction tests (i.e. tests that screen for possible nerve damage and susceptibility to injury such as carpal tunnel syndrome); range-of-motion tests that measure muscle strength and motor function; pulmonary function tests (i.e., tests that measure the capacity of the lungs to hold air and to move air in and out); psychological tests that are designed to identify a mental disorder or impairment; and, diagnostic procedures such as x-rays, CAT scans, and MRI.

On the other hand, there are a number of procedures and tests employers may require that generally are not considered medical examinations, including: tests to determine the current illegal use of drugs; physical agility tests, which measure an employee's ability to perform actual or simulated job tasks, and physical agility tests, as long as these tests do not include examinations that could be considered medical (e.g., measuring heart rate or blood pressure); tests that evaluate an employee's ability to read labels or distinguish objects as part of a demonstration of the ability to perform actual job functions; psychological tests that measure personality traits such as honesty, preferences, and habits; and, polygraph examinations.

3. Who is an "employee?"

The ADA defines the term "employee" as an "individual employed by an employer." As a general rule, according to the EEOC guidance, an individual is an employee if an entity controls the means and manner of his/her work performance. Where more than one entity controls the means and manner of how an individual's work is done, the individual is an employee of each entity.

4. When may a disability-related inquiry or medical examination of an employee be "job-related and consistent with business necessity"?

Once an employee is on the job, his/her actual performance is the best measure of ability to do the job. When a need arises to question the ability of an employee to do the essential functions of his/her job or to question whether the employee can do the job without posing a direct threat due to a medical condition, it may be job-related and consistent with business necessity for an employer to make disability-related inquiries or require a medical examination. Generally, under the guidance, a disability-related inquiry or medical examination of an employee may be "job-related and consistent with business necessity" when an employer has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.

Disability-related inquiries and medical examinations that follow up on a request for a reasonable accommodation when the disability or need for accommodation is not known or obvious also may be job-related and consistent with business necessity. In addition, periodic medical examinations and other monitoring under specific circumstances may be job-related and consistent with business necessity.

As the guidance states, sometimes this standard may be met when an employer knows about a particular employee's medical condition, has observed performance problems, and reasonably can attribute the problems to the medical condition. An employer also may be given reliable information by a credible third party that an employee has a medical condition, or the employer may observe symptoms indicating that an employee may have a medical condition that will impair his/her ability to perform essential job functions or will pose a direct threat. In these situations, it may be job-related and consistent with business necessity for an employer to make disability-related inquiries or require a medical examination.

(Timothy S. Bland is an attorney who exclusively represents management in employment matters. He is with the Memphis office of Ford & Harrison LLP and can be reached at tbland@fordharrison.com).

Gentle Readers,

If you are concerned about potential penalties for accusations that you violated the Equal Pay Act, you will want to register for the August 31st demonstration of "PayStat," a new software program that can help you identify potential problems and defend yourself if necessary. You are invited to attend.

Bill Truesdell
Editor

IN THIS REPORT (Report #148, 8/11/2000)
---------- (Sent to over 1,600 subscribers)

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1. INVITATION TO DEMO OF COMP ANALYSIS SOFTWARE

Big News! PRI Associates, Inc. is introducing its newest product. Called "PayStat," this revolutionary software program is designed to assist federal contractors and other employers with their compensation analysis requirements. As federal contractors have been experiencing greater pressure from the Office of Federal Contract Compliance Programs (OFCCP) to remit penalties for illegal discrimination in pay practices, there has been an increasing need for contractors to have access to software that will help them analyze their own circumstances. That tool is now here.

Employers who are concerned about protecting themselves from EEOC complaints or lawsuits related to pay practices will also be interested in this new program. Lawyers, too, will find this program extremely helpful. Here are some of the features you will discover in "PayStat:"

- Easily import data from your payroll system, HRIS, spreadsheet, or database. Also has direct link with PRI's AAPlanner software.
- Detect instances of disparate treatment, disparate impact, pattern and practice discrimination, and violations of the Equal Pay Act.
- Perform all the major elements of a "DuBray Analysis," the type of analysis frequently used by the OFCCP.
- Produce "Part C" of the OFCCP's new EO Survey, which deals with compensation data of employees.

- Produce compensation summary required by Item #8 in OFCCP's Compliance Evaluation Scheduling Letter.

We will be co-hosting an introductory demonstration of "PayStat" with PRI Associates on August 31st in Pleasanton, California. The program will begin at 9:00 a.m. and end at 3:00 p.m. and will be held at the Four Points Sheraton Hotel, 5115 Hopyard Road, Pleasanton. Lunch will be included. There is no charge for registration in the program, but advance reservations are required. And, space is limited. Reservations will be accepted on a first come, first served basis. PRI has agreed to offer a special discount for any "PayStat" systems ordered by attendees. We will have some of our best selling EEO and affirmative action reference books available at a special discount as well.

Dr. Murray Simpson and Chris Lindholm from PRI Associates, Inc. will be with us. Dr. Simpson is an expert in compensation issues and will be answering your questions about proper analysis techniques.

We will also provide an update on current regulatory proposals issued by the OFCCP and other government agencies that will have a profound impact on all government contractors. This you don't want to miss.

If you are in the San Francisco Bay Area, or plan to be here on August 31st, and would like to see how this new program can help you meet your compensation analysis obligations as a federal contractor (or other concerned employer), please call our office to request a reservation. You can contact Michele at 925-671-0404 or simply leave a message on our voice mail system and we will call you back to get the reservation details.

We hope to see you there. If you can't make it yourself, please pass this invitation along to your colleagues who are involved in compensation analysis and affirmative action compliance. You might suggest that they call quickly so they are assured of a seat in the program since space is limited.

Why not call now for your reservation?

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2. OUR NEW CATALOG IS NOW AVAILABLE ON CD-ROM

We told you a few weeks ago about our new 2000 catalog of books, manuals, software and services. It is now available on our web site for download in full color. We have provided the catalog in Adobe PDF format so anyone can read it and print it easily.

Some people have said they would rather have the file sent to them on CD-ROM than download it on the web. So, we have created a CD-ROM with both the catalog file and a copy of Adobe's FREE Acrobat Reader that allows you to open PDF files from any source.

If you would like a copy of the CD, please call us to provide your mailing information. There is no charge for the CD. It's FREE! There

will be a $4.00 charge for shipping and handling to cover the cost of First Class Priority Mail service. Your credit card is welcome.

Now you have a choice. Get your personal copy of our latest catalog direct from our web site (www.hrwebstore.com) or call us at 925-671-0404 to ask for the catalog on CD-ROM. Either way you will be gaining access to some of the best publications available and the most highly rated software to help HR professionals in their daily work.

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3. OFCCP AUDITS FOLLOW CONTRACTOR RESPONSE TO EO SURVEY

The Office of Federal Contract Compliance Programs (OFCCP) has begun contacting federal contractors to schedule "focused reviews" as a result of the contractor responses on the initial Equal Opportunity Survey questionnaire. If you were among the 7,000 contractors who received the survey, you may find the OFCCP on your doorstep in the near future.

According to the Bureau of National Affairs Employment Discrimination Report (Vol. 15, No. 4), the Office of Management and Budget (OMB) has approved a sample scheduling letter outlining the scope of the new focused reviews and the schedule that compliance officers are to follow. The letter is to be signed by an OFCCP district or area director. If you receive one of these letters you will only have from three to five business days before the compliance officer is in your office. Many contractors object to such short notice, citing the current 30-day period allowed for response to the normal compliance evaluation scheduling letter.

Should you be the target of one of these "focused reviews" you can expect the OFCCP to review the following items:

- VETS-100 Report
- Employment Eligibility Verification Report (I-9)
- The records specified in the notification letter which are the primary subject of the "focused review"
- Any and all records relating to employee management and/or compensation **IF** the compliance officer determines that it is appropriate to EXPAND the "focused review" to resolve any compliance questions that arise during the review.

There has been speculation by some experts in this area that the focused reviews are being conducted now as a way of gathering data to support OFCCP's request to OMB for approval to mail the next 53,000 copies of its EO Survey.

Given the rapidly shifting nature of this area of compliance, if you find yourself the target of a focused review effort, we suggest that you seek support from a qualified consultant or legal expert. Don't ever forget that the OFCCP is primarily interested in identifying and documenting what it deems illegal discrimination. Employers are

writing big checks to "settle" such issues involving compensation and selection.

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4. OFCCP PUBLISHES "SEPARATE FACILITY WAIVERS" FINAL RULE

In some situations, federal contractors operate multiple facilities, only some of which might be involved in providing contract fulfillment to the government. For example, a company that manufactures leather shoes and belts under government contract might also produce leather for automobile seats. If the auto seat covers are made in a separate factory (different facility), and that facility never has any involvement in producing materials used in the government's shoes or belts, it is possible the company can receive a waiver from the requirements of Section 503 of the Rehabilitation Act of 1973 under this new final rule.

Don't count on it, though. The Office of Federal Contract Compliance Programs (OFCCP) has said it will "jealously guard the granting of separate facility waivers."

The new rule lists factors that will be considered when determining whether to grant a waiver request submitted by a contractor. As it turns out, there are two findings the agency must make before granting a waiver.

First, it must determine that the facility for which the waiver is sought "is in all respects separate and distinct from activities related to the performance of a contract."

Second, OFCCP must determine that the waiver request is not "a subterfuge" to avoid the contractor's obligations for providing affirmative action in employment of disabled persons.

If you request a waiver, and it is granted, it will last for only two years. If the facility begins involvement in government contract work before the end of that period, the waiver will end.

You will not likely see many waivers requested or approved.

For a copy of the final rule go to:

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

Place a check mark on "Final Rules and Regulations." Enter the date range as: "07/20/2000" to "07/20/2000." You will be given a choice of HTML, PDF, or Summary information.

Gentle Readers,

Aside from delightful weather, the best thing that can be said about summer at this moment is ... Congress is in recess. The peacefulness will last until September 5th when they return to push to conclude business before the election recess.

Bill Truesdell
Editor

IN THIS REPORT (Report #149, 8/18/2000)
---------- (Sent to over 1,600 subscribers)

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1. LIABILITY FOR UNPAID COMPENSATION (INCLUDING OVERTIME) CAN REACH BACK FOUR YEARS IN CALIFORNIA

It used to be that employers in California only had to worry about the Labor Code in managing compensation issues. No more. Now employers must also pay attention to the Business and Professions Code. The California Supreme Court has recently ruled that failure to pay employees constitutes an unfair business practice under the Business and Professions Code.

There are now broader remedies available to employees who wish to complain about their pay treatment. The case that caused all of this change is known as Cortez v. Purolator Air Filtration Products Co. It was originally filed in 1992 in Sonoma County Superior Court. Rosalba Cortez had waited more than three years following her employer's compensation treatment. Consequently, she was not able to file a complaint with the Commissioner of Labor because the Labor Code limit on action remains at three years following the events involved.

Instead, Cortez filed a law suit against her employer, Purolator, saying she and 175 other employees had not been paid earned overtime. She said that was an unfair or unlawful business practice on the part of the company. Under California's Unfair Competition Laws (UCL), money damages are not available. In this situation, the most Cortez could hope to achieve was payment to her of the earned overtime she said she was due. She also hoped to get earned overtime payments for the other 175 people who were not parties to the law suit. Under the Business and Professions Code employees may seek damages on behalf of an individual and all similarly situated employees without certifying a class for a class action lawsuit.

For those of you who crave such things, here are some citations you might want: UCL action for unpaid wages is a four-year statute of limitations (Section 17208: "Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued."); Labor Code Section 1194 and Code of Civil Procedure Section 338, subdivision (a) allow recovery of unpaid overtime during a three-year period of limitations.

In Cortez, the Court has said it is perfectly appropriate for an employee to seek payment of earned overtime that has not been paid during the previous four years, and there is no need to certify a class in the action. The court is entitled to order restitution to all employees who have not been properly paid overtime during that same four year period.

So, what does all this mean to HR Professionals? It means the amount of liability for unpaid overtime can accrue for four years, rather than three as has generally been accepted to be the California limit. Reset your thinking to the four-year period.

Next, review EVERY ONE of your jobs to be sure they are properly classified as exempt or non-exempt from the Fair Labor Standards Act (FLSA). Classification errors are not a defense against overtime payment liability. We have encountered several business managers recently who have taken the position that they didn't want to pay overtime rates (1.5 or 2 times regular rate). So, they said their policy is to not pay overtime...even if people actually work overtime. Not paying, they say, is their control tool for getting employees to not work overtime. Unfortunately, it only takes one employee complaint to upset that policy cart. Unpaid overtime should be carried on the company financial report as a current liability just as other payroll hours yet to be paid.

When you encounter resistance to the notion of complying with California requirements, the following example may be of use to you in convincing executives that it is a bad idea to deny overtime payments.

One computer programmer, working 45 hours each week (9 hours per day) is entitled to one hour of overtime pay each day at 1.5 times the normal hourly rate. If this schedule continues for 20 weeks, there a total of 100 overtime hours for the single employee. If the employee's normal hourly rate is $25.00, the overtime liability is $3,750.00 ($25.00 X 1.5 X 100). That's an amount most employers would see as manageable. Yet, when you consider there may well be over 100 employees in the same computer programming job each working similar

amounts of overtime, the bill for unpaid overtime can escalate to $375,000. Now that can be serious for many firms.

Think about the four year liability if the organization has not been paying for the overtime actually worked. In our example, the single computer programmer would be entitled to $9,375.00 per year ($25.00 X 1.5 X 5 [days per week] X 50 [weeks per year]) Multiply that times four years, presuming the same programmer had worked 9 hours a day for four years, except for two weeks of vacation each year, and you will find you owe that employee $37,500. If you have another 100 employees similarly situated, the bill can come to $3,750,000.00. That's HEFTY.

Next, if you discover some jobs that have been incorrectly classified as exempt from overtime payment, you will have to calculate the liability exposure for your organization. Then, talk with your Chief Financial Officer about the problem. You may decide to reclassify the positions to correctly reflect their responsibility content and then make retroactive payments to the affected incumbents. Doing so will establish your good faith effort to remedy the problem.

Be sure to give serious consideration to how you will communicate this information to the workforce. Thorough communication is essential to allow those employees not receiving checks to understand they are not being singled out for disparate treatment.

Finally, monitor the classification process for new jobs and for jobs that experience content changes as time move on. Making mistakes here, or knuckling under to the boss without clearly explaining the financial consequences of such incorrect FLSA classifications results in a disservice to the organization and its executives.

For a complete text of the Supreme Court decision on Cortez, go to: http://caselaw.findlaw.com/data2/californiastatecases/S071934.PDF

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2. H-1B VISA LEGISLATION RECEIVES HEAVY OPPOSITION

While Congress is in its summer recess, there has been some substantial opposition building to current proposals for increasing the quota of H-1B visas. Up to this time, there has appeared to be a broad range of bipartisan support in both the House and the Senate. (S. 2045 & H.R. 3814)

According to Siskind's Immigration Bulletin (August 11, 2000) many groups are lobbying with legislators during the recess to urge them to vote against any bill to raise the cap of entry visas used for high technology jobs. The Urban League, the Coalition for Fair Employment in Silicon Valley and representatives of historically black colleges have started an advertising and lobbying campaign against proposals to raise the H-1B cap, arguing that high-tech employers are not interested in hiring minority Americans with high-tech skills.

Other groups are opposing the cap increase as well. These include unions, the Institute of Electrical and Electronics Engineers, and anti-immigration groups.

High-tech companies have responded that training to work in the industry is a long process, and that they cannot wait that long without jeopardizing the current boom they are enjoying. They also point to the well-documented labor shortage in high-tech areas. Unemployment in Silicon Valley is under two percent. Long-term the outlook is not much better - the number of US college graduates with technical degrees is falling each year and the Bureau of Labor Statistics estimates that there will be 1.7 million openings for computer technicians by 2008.

The complete article from Siskind can be found at:
http://www.visalaw.com/00aug2/6aug200.html

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3. NEW OSHA POSTER AVAILABLE FROM WEB

The Occupational Safety and Health Administration (OSHA), an arm of the U.S. Department of Labor, has finalized its new employment poster. All employers must post either this new federal document or the equivalent poster from their state's OSHA organization.

It is available in color from the OSHA web site at no charge. And, it comes in 8.5" X 11" size for your printing convenience. To download the poster in Adobe PDF format, go to:
http://www.osha.gov/oshpubs/poster.html

Color is prettier, but if you can only print in black and white, you may post that as well.

Gentle Readers,

Some interesting court actions highlight this week's Special Report for HR Professionals.

Bill Truesdell
Editor

IN THIS REPORT (Report #150, 8/25/2000)
---------- (Sent to over 1,600 subscribers)

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1. POTTY PRIVILEGE

by Darrel F. Oman

The second half of the twentieth century generated a legion of anti-discrimination laws targeting private-sector employers and carefully framed to balance employer autonomy with the right to equal treatment. The resulting laws generally forbid only the most invidious employment practices, such as intentional discrimination on the basis of race, color, national origin, sex, religion, age, and disability. Other laws prohibit intentional discrimination against employees engaging in discrete categories of protected conduct, such as filing workers' compensation claims and participating in jury duty.

Despite the sheer volume of anti-discrimination laws, judges and legislators alike carefully refrain from unduly interfering in an employer's right to select and discipline its employees as it sees fit. Employers generally are not required to provide special accommodations. The major exception to this rule, the Americans with Disabilities Act, requires employers to "reasonably accommodate" disabled employees who are otherwise qualified to perform their job. (Another exception exists for discrimination on the basis of religion under Title VII of the Civil Rights Act of 1964.) This legislative departure from

traditional employment discrimination laws occurred only after extensive congressional hearings weighing the respective rights of employers and disabled employees alike.

To date, Congress has declined to extend the reasonable accommodation doctrine to claims of sex discrimination. Undissuaded, an employee recently argued to a federal appeals court in Chicago that an employer commits sexual harassment against women when it provides no restroom facilities to either male or female employees. (DeClue v. Central Illinois Light Company, No. 00-1117 [7th Cir. Aug 2, 2000][Slip copy - Decisions of the United States Court of Appeals for the Seventh Circuit bind federal trial courts in Illinois, Indiana, and Wisconsin) Central to her argument was the notion that male employees could more easily illegally urinate in public. While factually accurate, the court dismissed this argument, holding that such a claim does not legally constitute sexual harassment. Thus, as it stands, employers have no legal duty to provide special accommodations to female employees beyond those available to male employees. Nonetheless, it would certainly be wise whenever possible to provide washroom facilities for employees of both sexes.

This apparent victory for both employers and common sense is illusory at best. The court noted in passing that an identical claim could be maintained under another established legal theory. That is, under a "disparate impact" theory which, unlike a sexual harassment theory, does not require a showing of intentional discrimination. Rather, the employee alleges that an ostensibly sex-neutral company policy - such as a requirement that employees weigh more than 180 pounds – affects women more than men. While this observation has no legal effect, the court left open a window of opportunity for female employees to demand accommodations above and beyond those provided to male co-workers in future cases. Such a holding would extend sex discrimination laws beyond their stated goal of establishing equal rights between the sexes by imposing special entitlements for female employees. However, unlike the preferences afforded to disabled employees under the Americans with Disabilities Act, sex-based entitlements would not follow extensive deliberation by an elected, legislative body. On the contrary, such preferences would be wholly a judicial creation imposed by an appellate panel consisting of three appointed judges and contradicting the purpose of sex discrimination laws.

If women are to be afforded greater protection in the workplace than men, the decision should be made only after careful deliberation by elected officials, accountable to their constituents of both sexes.

(Darrel F. Oman is an associate at Wilson, Elser, Moskowitz, Edelman, and Dicker, LLP. He represents management in a variety of employment disputes. The views expressed in this article are his own and not intended to reflect those of his employer, his clients or The Management Advantage, Inc. He can be reached in Chicago at 312-704-0550 or omand@wemed.com)

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2. PRESIDENT ORDERS GOVERNMENT TO HIRE DISABLED

President Clinton signed two new executive orders recently that he hopes will have a positive impact on employment of people with disabilities. On July 28, 2000, he issued Executive Orders 13163 and 13164, requiring all federal agencies to submit their strategies for hiring people with disabilities. Agency reports are due by September 25th.

The Office of Personnel Management (OPM) has been assigned responsibility for tracking the government's progress starting October 1st.

Each agency must send the following information to OPM:

- Specific plans for recruiting and hiring qualified individuals with disabilities
- Number of likely hires
- Occupations and grade levels of expected hires
- Specific plans for training, mentoring and working with new hires on career development strategies.
- Specific strategy to assure reasonable accommodation needs are met.

Government information about federal programs, services and resources can be viewed at http://www.disability.gov .

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3. MICHIGAN SUPREME COURT REJECTS FEDERAL RULINGS

The Michigan State Supreme Court has decided in a 6-1 ruling that it will follow state law requirements rather than bow to the U.S. Supreme Court rulings on issues of sexual harassment.

The U.S. Supreme Court placed a primary burden of proof on employers when it ruled on Faragher v. Boca Raton (524 U.S. 775) and Burlington Industries Inc. v. Ellerth (524 U.S. 742). The Michigan court said in its ruling on Chambers v. Trettco, Inc. (2000 WL 1051838 (Mich.)) that employees carry the "burden to prove that the employer failed to take prompt and adequate remedial action" to address supervisor-caused hostile environment.

The ruling is expected to impact Michigan employers only according to legal experts. Other state courts are not expected to follow.

The case can be found at
http://www.icle.org/michlaw/oview.dfm?caseid=11408511 .

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4. CALIFORNIA APPROVES CESAR CHAVEZ HOLIDAY

California State employees will be getting an extra paid holiday beginning in 2001. It is to be known as Cesar Chavez Day, and it will be celebrated on March 31st. Governor Gray Davis signed the bill on August 18th.

Existing state law authorizes the public schools to close on March 31 for Cesar Chavez Day and authorizes the public schools to include exercises commemorating and directing attention to the history of the farm labor movement in the United States and particularly the role played by Cesar Chavez.

This new legislation will have no direct impact on private sector employers. All state offices will be closed on March 31 from now on, however, in recognition of the new holiday.

If you wish to view the entire bill you will find it at:
http://www.leginfo.ca.gov/pub/bill/sen/sb_0951-1000/sb_984_bill_20000810_enrolled.html

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Gentle Readers,

If you haven't visited our web site lately, you are in for a treat. We have just completed a total site update and you are invited to see all of the many job tools we have available for your use.

Bill Truesdell
Editor

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IN THIS REPORT (Report #151, 9/1/2000)
---------- (Sent to over 1,600 subscribers)

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1. OVER 15 NEW BOOK TITLES AVAILABLE IN HR WEB STORE

We have recently added over 15 new book titles to our HR WEB STORE. You will find them covering subjects of Diversity Management, Employee Motivation, HR Management, Recruiting, and Supervision.

Take a look at your first opportunity. It is very likely one of these tools can help you on your job. We will continue to expand our HR WEB STORE so you will have the latest tools available from the greatest advisors in the business.

We are also very pleased to announce that our web site has been undergoing a complete redesign. It is now finished and ready for your visit. We hope you like the new look and feel. We have done our best to make navigation easier and give you faster loading pages. With all the new products available, we hope you will visit soon and tell your friends and colleagues about us as well. We depend on your referrals for our business success.

You can expect we will continue to add new publications and other products as quickly as we can identify them. If there is something you would particularly like to see in our HR Web Store(tm) please let us know.

For now, these excellent guides and references can make your job easier and your results more clearly effective. Take a look at http://www.hrwebstore.com . We'll see you there.

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2. SECTION 503 REGULATIONS FINALIZED

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has finalized its regulations governing waivers from compliance with affirmative action for the disabled.

The final regulations were published on July 20 in the Federal Register. You can find the complete text at http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=998125179+3+0+0&WAISaction=retrieve

These final regulations places the burden of proving a waiver "is appropriate" and supporting the claim with appropriate documentation.

To grant approval, the OFCCP must find two conditions met: (1) The facility for which the waiver is being requested "is in all respects separate and distinct from activities related to the performance of a [government] contract." There are several factors OFCCP will use in making that determination. (2) The waiver will not "interfere with or impede the effectuation of the act." OFCCP will examine the request to determine if it is a "subterfuge" to avoid the contractor's obligations under the Rehabilitation Act.

All waivers granted by the OFCCP will terminate two years after issuance, or when the facility begins performing government work, whichever occurs first.

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3. OFCCP SCHEDULING LETTER FOR REVIEWS FOLLOWING EO SURVEY

The OFCCP has conducted follow-up reviews of those contractors who failed to submit an EO Survey as requested, or who failed to complete all the documentation it required. These reviews impacted about 10 percent of the 7,000 companies who were initially sent copies of the EO Survey for completion.

Here is the scheduling letter the agency has been using. If you get one, please note that you only have a maximum of five business days in which to allow the government to begin the process.

SCHEDULING LETTER FOR OFCCP REVIEW
FOLLOWING EO SURVEY SUBMISSION

Your establishment located at (Street Address, City, State, Zip Code) has been selected for a compliance evaluation to determine your compliance with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, and

their implementing regulations: 41 CFR Parts 60-1.20(a), 60-250.60(a), and 60-741.60(a). We will limit the scope of our evaluation to the following issues: (Using the data contained in the Equal Opportunity Survey for the contractor establishment in question, identify your particular focus areas. Since the Survey has specific databases, your onsite investigation should be limited in scope, narrowly tailored to focus on those areas indicative of potential substantive violations.)

Pursuant to our phone conversation on (date), (Name of compliance officer(s)), will initiate the compliance evaluation in (provide date at least 3 business days away but no more than 5) with an entrance conference at (provide time). To ensure proper progression of the compliance evaluation, the following (as appropriate, records/interviewees/etc.) should be made available to the compliance officer(s) upon his/her/their arrival.

(As fully as possible, describe the precise records and/or interviewees needed to investigate and determine compliance in the focus area(s) named above.)

In addition, the compliance evaluation will include an examination of your firm's compliance with the Federal Contractor Veteran's Employment Report (VETS-100) requirements (38 U.S.C. 4212(d)) and the Employment Eligibility Verification (I-9) Report requirements of the Immigration Reform and Control Act of 1986. We will need to have available for inspection copies of your I-9s for three years after the date of hire OR one year after the date employment ends, whichever is later. We will also need documentation (e.g., payroll records) sufficient to identify all employees for whom I-9 forms are required. This letter provides you with 3 business days' advance notice of the I-9 inspection, as required by law.

We are hopeful that this focused approach will be sufficient to address the compliance questions that exist at this time. However, you should be advised that the aforementioned regulations permit an expansion of the review, as appropriate, to investigate and resolve any and all compliance questions that arise during the review.

If you have any questions, please feel free to contact (name of compliance officer) or his/her supervisor, (name of supervisor), at (telephone number).

Sincerely,
(Name of District/Area Director)
District/Area Director

Gentle Readers,

While we wait for Congress to reconvene following their summer break, you might want to see what the California Legislature has been up to regarding employment issues. Maybe they could use our new book, "Breakthrough Technical Recruiting," to find employees who could make our laws more consistent rather than more confusing.

Bill Truesdell
Editor

IN THIS REPORT (Report #152, 9/8/2000)
---------- (Sent to over 1,600 subscribers)

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1. BREAKTHROUGH IN RECRUITING RESOURCES

"Breakthrough Technical Recruiting" is a new book published by The Management Advantage, Inc. It has just been released for distribution. Written by Dr. Wayne Ford, this volume combines sage advice with the best of techniques for anyone involved in the technical recruiting field.

People who succeed as technical recruiters are the people best able to implement techniques explained by Dr. Ford. In this book he discusses both internal and external recruiting. He emphasizes the importance of internal marketing for those who are recruiting inside their employer organizations. As an added bonus, Dr. Ford includes a list of hundreds of web site addresses that will make any technical recruiter's job easier and more productive. All of the addresses have been tested and proven to work correctly.

An expert on the employment process, Dr. Ford has spent many years working with executives and others on negotiating their employment agreements. He tells recruiters in this book about that negotiation process and how they can control those activities to the benefit of both employer and recruit.

External recruiters are always struggling to locate new client organizations they can help. "Breakthrough Technical Recruiting" explains how to find and sell new employer clients.

As anyone in the recruiting business today knows, the largest cost associated with employment is turnover. Dr. Ford shows readers how to reduce their turnover rates and extract cost savings from the process of recruiting better qualified job candidates. Improvement in this one area could make heroes of many technical recruiters.

For more information, or to order your copy for immediate delivery, please visit our HR Web Store at www.hrwebstore.com .

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2. HR WEB STORE ADDS SEARCH CAPABILITY

The HR Web Store has been expanding rapidly with the addition of nearly 20 more products in the past two weeks. That rapid growth has led us to the conclusion that visitors need a tool for more quickly finding the product they want.

Consequently, we have added a search feature to the HR Web Store. Now, you simply enter a term or phrase, or book title, or product name. Our search engine will provide you with a list of matches to your search term. The list offers you the opportunity to view each of the products by following a link to that product. As an added convenience, you can also add any product on the search-response list to your shopping cart.

If you haven't visited the HR Web Store in the last month, you will be pleasantly surprised at our clean new look. We have redesigned the entire site to give you quicker access, better menus and faster page loading, not to mention a bunch of new products.

We are sure you will find just what you need on your job. See for yourself at www.hrwebstore.com .

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3. CALIFORNIA LEGISLATURE PASSES EIGHT BILLS ON EMPLOYMENT

The California State Legislature has sent to Governor Gray Davis' desk eight new pieces of legislation that would provide additional employer mandates for state workers.

Workers' Compensation Benefits (SB 996) will increase by $2.5 billion if this bill is signed into law. Benefits will be paid by higher employer insurance premiums.

Unemployment Insurance (SB 546) will increase the maximum weekly unemployment insurance benefit and require the state Unemployment Trust Fund to pay out an additional $3.16 billion over the next four years. Replaces an expected tax increase due in 2003 with a tax increase of $850 million in 2004.

Wage and Hour Penalties (AB 2509) will expand authority of the Labor Commissioner to award liquidated damages, currently awarded by courts. This bill is nearly identical to AB 1652 that was vetoed by Governor Davis in 1999.

Expanded Definition of Disability (AB 2222) will greatly expand the definitions of physical and mental disabilities, moving California away from conformity with federal law. Broadens business liability and imposes restrictions on employers far beyond the Americans with Disabilities Act (ADA).

Dual Bookkeeping Required for Business (AB 1889) would prohibit any recipient of state funds or resources from using those funds to discourage unionization. Business that don't comply will be barred from "directly or indirectly" receiving any state funds for three years. Requires extensive record keeping, including double bookkeeping, for any business receiving state funds from any source. Would also provide for Labor Commissioner intervention, Attorney General litigation and private "bounty hunter" civil actions to force compliance. The same bill (AB 442) was vetoed by Governor Davis in 1999.

Employee Liability for Sexual Harassment (AB 1856) would impose personal liability on co-workers for sexual harassment in the workplace. Imposes significant litigation costs for employers who are legally obligated to indemnify all workers for issues arising out of in the course of their employment.

Mandated Benefit: Prostate Cancer (SB 1839) would increase health care premiums by mandating health care service plans and disability insurers to cover routine costs incurred in a clinical trial for the treatment of prostate cancer.

Cal/OSHA Enforcement: District Attorneys (AB 1599) would authorize the Department of Industrial Relations to use budget dollars to contract with outside agencies, such as district attorneys, to enforce and directly prosecute employers for safety and health violations.

Gentle Readers,

The job of an HR Professional will not be any easier in the future than it is now. In fact, with Congress working on additional protections for employees, along with additional compliance requirements, HR Professionals will be well challenged as we move toward 2001.

Bill Truesdell
Editor

IN THIS REPORT (Report #153, 9/29/2000)
---------- (Sent to over 1,600 subscribers)

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1. HR DIRECTOR INTERVENTION IN LAYOFF SUPPORTED BY COURT

According to the Bureau of National Affairs (BNA) the U.S. Court of Appeals for the Seventh Circuit has ruled that a human resources director was entitled to intervene in layoff plans and that intervention did not constitute a pretext for national origin discrimination. (Employment Discrimination Report, Vol. 15, No. 9)

A finding of pretext, according to the court, requires that the plaintiff show that "the stated reason (quality control) was a fabrication, designed to conceal an unlawful reason."

The case is Kulumani v. Blue Cross Blue Shield Ass'n, 7th Cir., No 99-3001, 8/22/00. When a layoff list was prepared by the supervisor of an accountant for the company, it was forwarded to the Human Resources Department for review. Sam Kulumani, a person of Indian descent, was not on the list. The Human Resources Director for the company removed a female employee's name from the list and replaced it with Mr. Kulumani's name. The woman had 20 years more seniority than Mr. Kulumani and she had higher performance ratings on average than Mr. Kulumani.

Judge Frank H. Easterbrook wrote in the opinion, "A Director of Human Resources who always went along with whatever proposals crossed her desk might as well be a doormat."

Obviously, layoff plans should be reviewed by your management attorney, but human resource professionals have serious responsibility for review in that process.

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2. NOTICE OF ELECTRONIC MONITORING ACT

On September 6th, the U.S. House of Representative's Judiciary Subcommittee on the Constitution held a hearing on H.R. 4908, the "Notice of Electronic Monitoring Act." Unfortunately, the hearing was held without any input from employers or human resource professionals.

The proposed law contains the following federal mandates:

- An employer must give each employee notice in "a manner reasonably calculated to provide actual notice" of any monitoring of wire, oral or electronic communication by the employer.

- An employer would be required to provide annual notice of such monitoring.

- An employer upon making a material change in monitoring would have to provide notice to all employees subject to the change.

- Notice must be clear and conspicuous describing the form of communication or computer usage that will be monitored, the means of the monitoring, the kinds of information being obtained, the frequency of the monitoring and how information obtained will be stored, used or disclosed.

- Violation of the Act would allow for actual damages and punitive damages as well as attorneys' fees not exceeding $500,000.

Plans called for the Subcommittee voting on the bill yesterday, September 14th. We are not yet aware of the action decided upon by the Subcommittee.

The Society for Human Resource Management (SHRM) has strongly opposed passage of this legislation saying, "The bill will lead to increased litigation and the assessment of large damage awards. Currently, there is an employment litigation explosion in this country; H.R. 4908 would only foster the growth of this trend." SHRM called for Congress to reconsider its exclusion of input from business and human resource management experts.

The complete text of this proposed law can be found at http://thomas.loc.gov/ . Once there, enter "hr4908" and select "search."

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3. OMB GUIDELINES ON MULTIPLE-RACE AGGREGATION FOR CENSUS

The Office of Management and Budget (OMB) has published guidelines for government agencies on how to aggregate multiple-race selections for purposes of discrimination analysis. You can find the guidelines at: http://www.whitehouse.gov/OMB/bulletins/b00-02.html .

In part, OMB said the following:

"Census 2000 will provide 63 categories of data on the population by race; these data will be available by April 1, 2001, at the national, state, local, and census tract levels. Data collected by Federal enforcement agencies often are provided by businesses and institutions in aggregate form. To facilitate agency efforts to work with data on race, an aggregation method is presented below. This method keeps intact the five single race categories, and includes the four double race combinations most frequently reported in recent studies. The method also provides for the collection of information on any multiple race combinations that comprise more than one percent of the population of interest. Based on data from Census 2000, responsible agencies will determine which additional combinations meet the one percent threshold for the relevant jurisdictions. A balance category is provided to report those individual responses that are not included in (1) one of the five single race categories or four double race combinations or (2) other combinations that represent more than one percent of the population in a jurisdiction. The following example illustrates this guidance.

1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or Other Pacific Islander
5. White
6. American Indian or Alaska Native and White
7. Asian and White
8. Black or African American and White
9. American Indian or Alaska Native and Black or African American
10. > 1 percent: Fill in if applicable_____
11. > 1 percent: Fill in if applicable_____
12. Balance of individuals reporting more than one race
13. Total

Analysis of workforce for affirmative action purposes will take on a whole new level of time required for federal contractors. Each geographical recruiting area will need analysis for each job group defined in the affirmative action plan (AAP).

Once Census data is available in the EEO File (which is expected to be about 2003), employers will have to resurvey their workforce to determine new race selections by each employee. Without this comparative data, using multiple-race selection availability, it will not be possible to accurately use Census data.

Don't rush into anything at this time. We have a while before the Census data is ready. But, it would be a good idea to begin building plans for your resurvey of all employees. If additional budget will be required, get your request in early.

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4. VOTING TIME POSTER FOR CALIFORNIA EMPLOYERS

California law requires every employer in the state to put up a notice about time off for voting. The notice has become known as the "voting time poster" in some circles.

If you are a California employer, you must have a copy of this notice posted in each work location accessible to every employee at least ten (10) days prior to every state-wide election.

The next state-wide election is scheduled for November 7th, so be sure you have your notice posted by October 27th or earlier.

If you would like a FREE copy of the notice, please go to the HR Web Store and select "FREE Stuff" from the left-hand menu. You can reproduce the notice on your own word processor by cutting and pasting if you wish.

Gentle Readers,

OSHA has announced its targets for inspections. OMB decisions are pending on two major federal contracting regulations. And, federal contractors must submit VETS-100 report by September 30.

Bill Truesdell
Editor

IN THIS REPORT (Report #154, 9/29/2000)
---------- (Sent to over 1,600 subscribers)

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1. OSHA REVISES INSPECTION TARGETS

The Occupational Safety and Health Administration (OSHA), a department within the US Department of Labor, has reissued an update to its directive targeting certain industries for more active inspection activities.

The industries included on the latest list (Site Specific Targeting 2000 (SST-MM) Revised. Information Date: 09/08/2000) include nursing homes, hospitals, department stores, livestock operations and trucking companies. The complete list of targeted industries reads as follows:

SIC	INDUSTRY
20-39	MANUFACTURING
0210	LIVESTOCK, EXC DAIRY AND POULTRY
0240	DAIRY FARMS
0250	POULTRY AND EGGS
0290	GENERAL FARMS
0783	ORNAMENTAL SHRUB AND TREE SERVICES
4210	TRUCKING & COURIER SERVICES, EXCEPT AIR
4220	PUBLIC WAREHOUSING AND STORAGE
4230	TRUCKING TERMINAL FACILITIES
4490	WATER TRANSPORTATION SERVICES
4510	AIR TRANSPORTATION, SCHEDULED

4580 AIRPORTS, FLYING FIELDS, & SERVICES
4783 PACKING AND CRATING
4953 REFUSE SYSTEMS
5010 MOTOR VEHICLES, PARTS, AND SUPPLIES
5030 LUMBER & OTHER CONSTRUCTION MATERIALS
5050 METALS AND MINERALS, EXC. PETROLEUM
5093 SCRAP AND WASTE MATERIALS
5140 GROCERIES AND RELATED PRODUCTS
5180 BEER, WINE, AND DISTILLED BEVERAGES
5210 LUMBER AND OTHER BUILDING MATERIALS
5310 DEPARTMENT STORES
8050 NURSING AND PERSONAL CARE FACILITIES
8060 HOSPITALS

If you are in one of these industries, you can expect to see an OSHA inspector in the near future. While safety is always in the front of all our minds, it might be a good idea to conduct your own internal audit to be sure you are in compliance with OSHA regulations and requirements.

The complete directive can be found at: http://www.osha-slc.gov/OshDoc/Directive_data/CPL_2_2000-5.html
Are you on the list?

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2. BLACKLISTING REGULATIONS UPDATE

You will recall that we have told you about the changes coming in federal contracting with the advent of the "Blacklisting" regulations. Under these new rules, any company with an "unsatisfactory" record of compliance with government regulations could be prevented from bidding on government contracts.

The new rule is expected to go into effect very soon. It is currently sitting in the Office of Management and Budget (OMB) waiting final approval following the required 60-day public comment period.

The rules will allow individual contract officers to disqualify any contractor from any bid if it is determined that the company record of compliance is "unsatisfactory" in the eyes of the contract officer. There are no provisions for appealing such a decision, either administratively or through the courts.

In 1997 Vice President Al Gore announced at an AFL-CIO Executive Council meeting that the administration would introduce these regulation changes. As soon as OMB releases them with an effective date, Mr. Gore's promise will have been kept.

Both Houses of Congress have made multiple attempts to pass legislation that would prohibit funds from being spent to enforce the new regulations. Clearly, there is a strong fight underway between the labor-sponsored regulations and business-sponsored attempts to overturn them or prevent their implementation.

Rep. Bill Goodling (R-PA), chairman of the House Education and the Workforce Committee, said "The revised regulations show what $35-plus

million in campaign cash from organized labor can purchase from this administration."

He continued, "Most troubling is the administration's attempt to bypass the proper legislative role of Congress and amend the penalty provisions of dozens of federal labor and employment laws. Significantly, legislation similar to the proposed changes did not make it through Congress even when Democrats controlled both Houses."

We will keep you informed as soon as OMB takes action to approve implementation. Although it is possible that OMB could disapprove moving forward, that is not likely given the fact that OMB resides in the White House organizational structure.

Along the same lines, we continue to wait for word from OMB on its intentions for the revisions to 41 CFR 60-2 governing federal contractor affirmative action requirements.

Looks like there will be an eleventh hour move on both of these issues, just before the election.

Representative Goodling's comments can be located at:
http://edworkforce.house.gov/press/blacklisting62900.htm

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3. VETS-100 DUE SEPTEMBER 30

The annual filing of VETS-100 reports is due September 30th and all federal contractors must comply with that requirement. Two years ago Congress changed the law regarding how veterans are tracked and reported to the Department of Labor.

The Office of Federal Contract Compliance Programs (OFCCP) has the responsibility to enforce affirmative action programs for veterans along with affirmative action for disabled, women and minorities.

The VETS-100 data required now includes information about "Other Veterans" in addition to "Special Disabled Veterans" and "Vietnam Era Veterans." However, the Department of Labor has yet to issue implementing regulations for the 1998 law and that means reporting data for "Other Veterans" remains optional for employers. The "Other Veterans" category was created to give an opportunity for self-identification to those people who served on active duty during a war or in a campaign or expedition for which a campaign badge was authorized.

Tracking veterans remains a mandatory process for employers with federal contracts. The process of identification relies on self-ID and is voluntary on the part of employees. Therefore, those who are veterans, but do not wish to identify themselves as such are not required to do so. The voluntary nature of the identification process leaves open the likelihood that reported data will be incomplete. For that reason, no statistical analysis on veteran data is required.

Employers who are required to file the report may do so on the web at http://VETS100.cudenver.edu . If you are a first-time filer and have

not been assigned a company number, you must obtain a company number in order to file. You can obtain a company number by sending an email to newcompany@vets100.com or by calling the telephone help line at 703-461-2460.

Gentle Readers,

Congress approves increases to H-1B visa quotas. California governor signs several new laws that will have a major impact on employers in the state. If you're not interested in HR compliance, consider Job Shadow Day instead.

Bill Truesdell
Editor

IN THIS REPORT (Report #155, 10/6/2000)
---------- (Sent to over 1,600 subscribers)

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1. PLAN NOW FOR JOB SHADOW DAY IN FEBRUARY

Every year has brought more interest in the national "Job Shadow Day." If you are in business for the long-term, and are interested in building a recruiting program that does more than react to requisitions, begin thinking strategically about how job shadowing can help you in your efforts.

Beginning February 2, 2001, over one million students will "shadow" career mentors in the workplace. Whether you are a big company or a small employer, you can participate in this program and bring tomorrow's potential job candidates into your workplace today.

The mission of the National Groundhog Job Shadow Day Coalition is to provide young people with a chance to see how the skills they learn in school relate to the modern workplace.

Job Shadowing is an easy way to give young people a close look at the world of work. It allows students to follow a workplace mentor as she or he goes through a normal day on the job. It often gives students the opportunity to discover what it will take to achieve their goals.

National coalition partners include America's Promise, School to Work Opportunities, Junior Achievement and the American Society of Association Executives. National sponsors include Monster.com and News Corporation. For more information about how you can establish a Job Shadow Day program at your location, visit www.jobshadow.org . And, have fun!

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2. CALIFORNIA EMPLOYER ALERT!

This past Saturday, September 30, 2000, was the final day California Governor Gray Davis was able to sign or veto legislation sent to him by the State Legislature. If you are a California employer, you will want to know about the bills he approved. You only have until January 1, 2001 to get ready, because that is when they become effective.

If you do business with the State of California, you will be prohibited from using any revenues from state contracts to discourage unionization. A.B. 1889 is called the "Dual Bookkeeping Requirement for Business." It requires extensive record keeping, including double bookkeeping, for any business receiving state funds from any source. This law will be enforced by the Labor Commissioner, the Attorney General, and by "bounty hunters" to force business compliance. If you now have California state contracts, or plan to seek them, you will need to do some planning with your CFO about these new requirements and how you will meet them.

If you have five or more employees on your California payroll, you are subject to the Fair Employment and Housing Act which prohibits employment discrimination. A.B. 2222 will, on January 1, 2001, expand the definition of disability within that Act. Here is the crux of the Legislature's intention:

EXPANDED DEFINITION OF DISABILITY

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial

limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in Cassista v. Community Foods (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than a "substantial limitation" of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

Workplace safety is being strengthened by a new law (A.B. 1599 - Cal/OSHA Enforcement: District Attorneys) that authorizes the Department of Industrial Relations to use budget dollars to contract with outside agencies, such as district attorneys, to enforce and directly prosecute employers for safety and health violations.

Sexual Harassment is another subject rising to the legislative surface in the state. Governor Davis signed A.B. 1856 that will impose personal liability on non-managerial employees for sexual harassment in the workplace. If an employee is sued for harassment, that employee could take legal action against the employer for inadequate training in the subject. Therein lies the trap for employers. If you haven't trained 100% of your workforce in Sexual Harassment Prevention, you should do so before January 1, 2001. Call us. We can help.

Finally, A.B. 2509 expands authority of the Labor Commissioner to award liquidated damages, currently awarded only by courts. If you have a wage and hour complaint filed against your organization by an employee (or former employee), the Labor Commissioner can decide after January 1, 2001, to award cash settlements without going through a court proceeding. The big worry here is, as always, with proper classification of employees as exempt or non-exempt from overtime requirements. You will remember we told you a few weeks ago that employers in California are liable for back wages, including unpaid overtime, for up to four years. The wise business decision is to properly classify your employees and pay them the overtime they have earned under state provisions. To do otherwise can result in very large settlements at a later date when a complaint has been made. Employers almost always lose these battles. If you need help with your employee or job classification decisions, please give us a call. You have less than 90 days to get ready for these new requirements.

Those are the highlights for California. How are the rest of you doing? Any particularly new and striking legislation that employers must know about in your state? If so, please drop us a line and we will include it in a future "Special Report for HR Professionals."

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3. H-1B VISA - CONGRESSIONAL ACTION NOW WAITING ON PRESIDENT

In the darkness of night (7:13 p.m.) on October 3, 2000, the House of Representatives passed S. 2045, the Senate's version of the H-1B legislation. The move surprised most observers in that the Senate had only passed the measure earlier in the day and Rep. Lamar Smith was thought to have had more support for his proposal. That proposal was seen to be less business-friendly than the one approved.

Now, the bill sits on the President's desk waiting his signature. It is reported that last minute agreements between the White House and the House of Representatives allowed for such speedy processing and approval. President Clinton, however, is unhappy with the $500 worker retraining tax on employers, hoping it would be more. Some Congressional observers have offered speculation that he may get his wish as a rider on one of the last-minute appropriations bills Congress will be approving and sending to the White House. President Clinton has gone on record as favoring a fee of $1,000 per H-1B applicant. Even if he ultimately doesn't get the higher employer tax, the President is expected to sign S. 2045.

Here is the impact it will have on the yearly quotas for visas:

FY2000 80,000 + 115,000 already authorized (This FY is already in the books. The added slots could be used by the Immigration and Naturalization Service [INS] to cover the miscount and overages of approvals processed during the last fiscal year. The legislation also raised the FY1999 visa limit to whatever is necessary to cover the number actually approved by INS.)

FY2001 87,500 + 107,500 already authorized.

FY2002 130,000 + 65,000 already authorized.

You can find more information about H-1B visas at the web site of Siskind, Susser, Haas & Devine (http://www.visalaw.com/h1bpage.html)

A complete copy of the legislation can be found at http://thomas.loc.gov/home/thomas.html . Enter "S2045" (without the quotations) in the search block and you will be taken to the legislation.

Gentle Readers,

Our annual offer of FREE picture wall calendars has been so popular we are happy to once again extend an invitation to you. If you would like your own copy, all you have to do is ask. Read on and you will learn how.

Bill Truesdell
Editor

IN THIS REPORT (Report #156, 10/13/2000)
---------- (Sent to over 1,600 subscribers)

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1. AVOIDING HIRING MISTAKES

Detecting the errors and misrepresentations of job applicants is something every employer is interested in doing these days. One firm that specializes in checking applicant background for employers has just released a report on the number of differences encountered between what applicants claimed and what was actually found in supporting records.

A Matter of Fact, the Silicon Valley based employee backgrounding firm, has published its January through June 2000 "Hit" report. A "Hit" is a discrepancy from the information provided by applicants to the employer. Criminal convictions, active warrants, no record of a college degree that has been claimed by the applicant, and an actual job title that differs substantially from the title claimed are examples of hits. "We wouldn't hire without doing a background check first," said Diane Birch, at W. L. Butler. Other customers of A Matter of Fact had the same reaction after reviewing their statistics.

"The next person you hire could be the one you wished you hadn't," said Glenn Hammer, president and founder of A Matter of Fact. Here are the findings of the company:

Hit Report Showing Information Inaccuracy

County Criminal Record	9%
Education Verification	7%
Employment Verification	26%
Driving Record	35%
National Wants and Warrants	1%
Overall	36%

"Given the business risks and legal liabilities of a bad hire, compared to the low cost and ease of a background check, it is no wonder that most well managed firms background their employees," said Hammer.

Resources for Employers

1. You can reach Glenn Hammer at A Matter of Fact by calling 408-719-6818, or by email at amof@pacbell.net .

2. Adrem Profiles, Inc. offers employee screening, public records search, due diligence research, forensic marketing and can be reached through the HR Web Store at http://www.management-advantage.com/services/services.htm .

3. The Management Advantage, Inc. offers two fine publications on the subject. You will find these in the HR Web Store also.

   How to Spot a Phony Resume (2nd Ed)
   http://www.management-advantage.com/products/resume-book.htm

   How to Spot a Liar in a Job Interview
   http://www.management-advantage.com/products/liar_book.htm

Whatever resource you decide to use, be sure you conduct adequate background checks on your new employees. Even in today's job market, where employers are struggling to find qualified help, background checking is something you can't afford to gloss over.

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2. OFCCP LOSES CASE ON METHOD OF SELECTING CONTRACTOR FOR COMPLIANCE EVALUATION

The Office of Federal Contract Compliance Programs (OFCCP) has responsibility for assuring all federal contractors comply with affirmative action and equal employment opportunity laws and regulations. Part of that responsibility involves establishing a procedure for selecting the contractors who will undergo compliance evaluations. Similar to an IRS tax audit, the OFCCP reviews contractor employment records, and in many cases, visits the contractor's work site and interviews employees.

The case of OFCCP v. Bank of America (Labor Department ALJ, No. 1997-OFC-00016, 8/25/00) evolved from a challenge by then NationsBank that its headquarters establishment was selected for compliance review by a

method that was not neutral. In deciding the case, Administrative Law Judge Richard Huddleston said, "Rather than a neutral selection procedure, OFCCP's means of selecting the bank for a compliance review was arbitrary to the point of being unconstitutionally unreasonable." Since the case began, NationsBank merged with Bank of America and is now known by the Bank of America name, although its headquarters remain in Charlotte, North Carolina.

Approximately 84 percent of the OFCCP's reviews result from a statistical analysis of the racial and gender composition of contractor workforce through their Equal Employment Data System (EEDS) computer program.

OFCCP contended it had the right to select the bank for review because it claimed "banks have notoriously poor affirmative action records." Huddleston said in his decision, "There is no statute, Executive Order or regulation which sets forth 'reasonable legislative or administrative standards' for conducting an ... inspection" of a contractor's business.

In the end, Huddleston said the OFCCP had acted illegally by selecting the bank for review, since it failed to follow its own procedures for how that should be done. It was noted that OFCCP did not conduct reviews on contractors "flagged" by the EEDS system in favor of focusing its efforts on the bank instead. Even in the face of its record in this case, the OFCCP maintained it had used a neutral decision making process based on neutral criteria.

Huddleston said , "The undocumented and unexplained process by which the defendant in this case was selected for compliance review is exactly the type of warrantless discretionary review which the courts have held to be unreasonable and in violation of the Fourth Amendment."

OFCCP has said it will appeal the ALJ decision to the Labor Department's internal Administrative Review Board.

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3. ANNUAL FREE CALENDAR OFFER

Although we're not really sure what happened to three-quarters of this year, it seems we have come to that time when we should be looking forward to turning in our old calendar for a new one.

As we have for the past several years, we wish to offer our clients and friends the first opportunity to receive a free copy of our special picture calendar for 2001. This issue will impress you with its spectacular photos of such places as

- Yellowstone National Park, WY
- Hill Country, TX
- Pictured Rocks National Lakeshore - Miners Castle, MI
- Andover, NH
- Grand Teton National Park, WY
- Southold, Long Island, NY
- Tonto National Forest, AZ
- North Conway, NH

- Blue Ridge Parkway, NC
- Kubota Japanese Gardens - Seattle, WA
- Dog Lake - Kootenay NP, BC, Canada
- Ecola State Park - Clatsop County, OR

We will gladly send a FREE copy to any US address. All you have to do is ask. Here's how ...

Email us the following information and we will get your personal copy of this gorgeous 8.25" X 8.5" wall calendar on its way to you by first class mail.

Name:
Title:
Organization:
Street:
City:
State:
Zip:

We look forward to receiving your request.

Gentle Readers,

California's Governor Gray Davis has signed several new laws that will have profound impact on employers beginning next year. We are also sharing with you some potentially valuable web resources for recruiting people with disabilities. And, then there's the latest update on our H-1B visa situation. Have a good week.

Bill Truesdell
Editor

IN THIS REPORT (Report #157, 10/20/2000)
---------- (Sent to over 1,600 subscribers)

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1. IMMIGRATION UPDATE: H-1B VISA LEGISLATION

At the end of each Congressional session there is always a flurry of activity, some of it with unexpected results. A prime example is the H-1B visa relief legislation that has languished without much attention from Congressional committees for the better part of this year. A couple of weeks ago we explained that both Houses of Congress had approved a substantial increase of authorized H-1B slots (Special Report for HR Professionals #154 - 10/6/2000) to 195,000 for FY 2001 which started on October 1, 2000. This should offer some relief to employers in the high technology industry who have been suffering without access to the trained work force they need.

Yet, all was not certain. President Clinton had said he wanted to increase the H-1B processing fee from $500 to $1,000 along with the increase in authorized visa slots. S. 2045, which increased the authorized entries, did not address the processing fee.

To take care of that oversight, the House passed H.R. 5362 late in the week of October 3rd. On October 10th, the Senate gave its unanimous consent to the measure. Although it has yet to be signed by the

President, that approval is almost certain. With this fee increase, the President has what he requested to go along with the quota increase.

Fee increases will take effect two months following the President's signature and will apply to H-1B applications filed through September 30, 2003.

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2. CALIFORNIA CHANGES HIGH-TECH OVERTIME RULE AND GETS READY FOR NEW LAWS IN 2001

California employers, particularly those in the High Technology Industry, will be pleased to learn that California S.B. 88 has gone into effect eliminating the need for payment of overtime to many computer-related jobs.

The new overtime exemption requires job content to meet four tests:

1. The job is primarily engaged in intellectual or creative work that requires the exercise of discretion and independent judgment;
2. The job requires high skills and proficiency in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering;
3. Incumbents are paid at least $41 per hour (an amount that may be adjusted annually); and
4. The job is primarily engaged in one or more of the following duties:
    a. The application of systems analysis techniques and procedures (including consulting with users) to determine hardware, software or system functional specifications; or
    b. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs (including prototypes) based on and related to, user or system design specifications; or
    c. The documentation, testing, creation or modification of computer programs related to the design of software or hardware for computer operating systems.

In essence, the new law allows highly paid computer-related jobs to avoid overtime payments in excess of the daily and weekly maximum regular-rate hours.

In other California news ...

Governor Gray Davis signed several key employment laws that will become effective on January 1, 2001. He vetoed increases in unemployment insurance and workers' compensation benefits that would have increased employer costs. He also vetoed new provisions for family leave for non-family members.

Among the list of laws he signed ...

1. Wage and Hour Changes: (A.B. 2509) includes new mandatory posting of appellate bonds; considerably expands pay stub reporting mandates on all employers; bars employer's right to recoup costs and attorney fees when court deems citations invalid; establishes new meal and rest period penalties.

2. Dual Bookkeeping Required for Business: (A.B. 1889) Prohibits any private employer who participates in any state program and receives $10,000 or who contracts with the state for goods or services from using those funds in assisting, promoting or deterring unionization. Mandates new, extensive bookkeeping and reporting requirements for all business that contract with the state. Establishes Labor Commissioner intervention, Attorney General litigation and private "bounty hunter" civil actions to force compliance.

3. Conflict with Federal Disability Law: (A.B. 2222) Deletes current definitions of physical and mental disabilities and creates new, expansive definitions of what constitutes discrimination under both Unruh Civil Rights Act and Fair Employment and Housing Act in direct conflict with several recent U.S. Supreme Court decisions.

4. Domestic Violence Leave Act: (A.B. 2357) Known as the "Victims of Domestic Violence Employment Leave Act" it expands employer obligations to allow protected leave on the basis of domestic violence. Places additional mandates on employers with 25 workers or more.

5. Employee Liability for Sexual Harassment: (A.B. 1856) Imposes personal liability on co-workers for sexual harassment in the workplace. Significant litigation costs for employers because employers are legally obligated to indemnify all workers for issues arising out of or in the course of their employment.

6. Cal/OSHA Enforcement: (A.B. 1599) Authorizes the Department of Industrial Relations to redirect previously approved budget dollars to contract with outside agencies, such as District Attorneys, to enforce and directly prosecute employers for safety and health violations.

7. Workers' Compensation Non-Renewal Notices: (A.B. 2297) Eliminates the requirement that workers' compensation insurance carriers issue separate notices associated with premium increases of less than 25 percent.

For more information, talk with your management attorney, or visit one of the following web sites:

California Chamber of Commerce
http://www.calchamber.com

California Legislative Site
http://www.leginfo.ca.gov/bilinfo.html

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3. RECRUITING THE DISABLED

Finding qualified workers these days is a real challenge. If you are an affirmative action employer with responsibilities for recruiting disabled workers as well as others, you might find it helpful to visit one or more of the following web sites for candidates or ideas about how you can advertise your needs.

- Careers & the disABLED
  http://www.eop.com/recruiting-cd.html

- HireAbility.com
  http://www.hireability.com

- National Business and Disability Council
  http://www.business-disability.com/home.asp
  http://www.abletowork.org/

- State Vocational and Rehabilitation Agencies
  http://trfn.clpgh.org/srac/state-vr.html

- Project Hired
  http://www.projecthired.org/

- Job Access
  http://www.jobaccess.org/

- Diversity Services
  http://www.diversity-services.com/

- America's Job Bank (U.S. Department of Labor)
  http://www.ajb.dni.us/

Gentle Readers,

There will be no Special Report for HR Professionals next week because your editor will be on vacation. We plan to catch up on all the latest HR news when we return following the elections. Our absentee ballots have already been submitted. Please, be sure you vote, too.

Bill Truesdell
Editor

IN THIS REPORT (Report #158, 10/27/2000)
---------- (Sent to over 1,600 subscribers)

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1. TRADE SECRET VIOLATIONS: GIVING INSTRUCTIONS TO FUTURE EMPLOYEES

by Ron Garrity

Beware of a fast-growing type of trade secret lawsuit: companies claiming that competitors have unlawfully taken trade secrets by tapping their former employees for information.

"Trade secrets" include not only technical or sophisticated information. Legally, a trade secret normally consists of any information that has potential or actual economic value by virtue of not being generally known to one's competitors, as long as reasonable efforts are undertaken to keep the information a secret. Examples of potential trade secrets in the computer leasing and remarketing industry include customer lists, customer contacts and marketing strategies.

A company does not have to break into a competitor's office and take sensitive information to violate trade secret laws. Companies who elicit competitors' trade secrets from new employees coming from their

competitors, or allow their new employees to use trade secrets of their prior employers may be in violation of trade secret laws. For example, in the case of Surgidev Corp. v. Eye Technology, Inc. (648 F. Supp. 661), a former employer ("Surgidev Corp.") brought a legal action against its competitor ("Eye Technology") and former employees for misappropriation of trade secrets. Former employees of Surgidev Corp. used Surgidev's confidential customer information to the advantage of their new company, Eye Technology, and Eye Technology had knowledge of this fact. The Court ruled in favor of Surgidev Corp., finding that this was an unlawful use of its corporate trade secrets.

In the event of misuse by a company and its new employee, the owner of the trade secret (depending upon the state) may be entitled to an immediate injunction and to damages compensating it for the loss, plus punitive damages and attorney's fees.

What happens if your new employee uses trade secrets he or she learned of at his or her last company without your knowledge? In order to help thwart a lawsuit or defend yourself in litigation, how are you going to prove that your company was not aware of what he or she was doing?

A key defense is to tell potential and current employees clearly that your company will not allow employees to use confidential information acquired from their prior employers. The following instructions given to an employee, in writing, may help prevent a claim. Depending on the situation, these instructions should be given early, such as in the offer letter. Certain instructions also should be reinforced in proprietary information agreements with new and current employees. The instructions cover the time period before the employee leaves your competitor and after he or she starts at your company.

In the following instructions, John Smith is the individual you want to hire; Bad Co. ("BC") is Smith's current employer; and Good Co. ("GC") is your company.

- Smith should not disclose to GC or use for GC's benefit any trade secrets or confidential information belonging to BC. (Smith should be given examples of what could constitute trade secrets or confidential information.)

- Smith should not disclose to GC confidential personnel information regarding other employees of BC, including their salaries, compensation and special skills.

- Smith should review any material (including, but not limited to, papers, files and computer software) that he intends to take upon his departure from BC to purge it of any trade secrets or confidential information.

- Smith should prepare a written inventory of any material that he intends to take upon his departure from BC.

- Smith should request BC to review any material he intends to take upon his departure and approve this removal in writing.

- Smith should take careful notes of any instructions or

directions from BC regarding protection of trade secrets and confidential information or solicitation of employees.

- Before Smith leaves BC, he should not solicit other employees of BC to work for GC. He should refrain from any actions which could be viewed as recruitment. (However, depending upon the relevant facts, Smith may tell co-employees he is leaving.)

- Smith should inform GC of any contractual restrictions he is bound to with BC (e.g., non-solicitation of employee contracts).

In implementing this checklist, your company should educate managers and other personnel interfacing with the new employee about your instructions to him. Managers need to be alert if the new employee violates his instructions. Employees involved in hiring procedures (e.g., human resources) should also be mindful of these instructions.

(Ron Garrity is a senior partner with Simpson, Garrity and Innes, a San Francisco law firm specializing in labor and employment law. This article is reprinted from "Horizons," a publication of the Tri Valley Human Resource Association and is used with permission. Mr. Garrity may be contacted by email at rgarrity@sgilaw.com or by phone at 415-678-2828.)

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2. DIRECT FROM THE DIRECTOR

On October 19, 2000, Deputy Assistant Secretary of Labor Shirley Wilcher (National Director of the Office of Federal Contract Compliance Programs) attended the Industry Liaison Group meeting of the Northern California ILG. With her were Woody Gilliland, newly appointed Regional Director for the Pacific Region (Regions 9 & 10), two District Directors, regional and district staff members.

Ms. Wilcher spoke about many subjects during her presentation to the group, but she declined to discuss the proposed changes to 41 C.F.R. 60-2 regulations now awaiting approval in the Office of Management and Budget (OMB). She announced that Sander Scott Ziegler has been appointed as the new Regional Director in Chicago replacing Halcolm Holliman. A selection decision is still pending for the Regional Director position in Dallas.

Ms. Wilcher began by recalling that her initial intention when she took her job six and a half years ago was to "raise the bar and get back to the basics of systemic discrimination." She pointed out that implementation of glass ceiling-related issues led the agency to investigation of compensation issues. She said she was proud that OFCCP had pursued the affirmative action agenda when affirmative action was not a popular subject.

Tiered reviews for federal contractors have made it easier for the agency to identify employers who have potentially serious compensation

discrimination issues. A greater number of reviews have been possible since implementation of the tiered approach. "Compensation reviews are part of every audit conducted by the OFCCP at this time," she said. Additional regulatory changes have been proposed for Section 503 of the Rehabilitation Act to allow tiered reviews of affirmative action plans for the disabled. The proposal will allow off-site, as well as on-site reviews. (See Story #4 in this Special Report) It will allow contractors to simply mail in their documentation so the Compliance Officer can perform the audit without having to make a site visit to the contractor. On previous occasions, Ms. Wilcher has stated her intention that contractors allow OFCCP representatives to remove detailed employee compensation records from the contractors' work site. When asked if she still intended to protect such records from disclosure under Freedom of Information Act (FOIA) requests, she said, "We're pretty firm that we won't release ... compensation information." (As of this writing, the agency has not identified which of the specific FOIA exemptions will be used to block such requests.)

A new approach is being used by OFCCP as a means for obtaining settlements with contractors accused of discrimination. Called "Global Settlements," these agreements implement back pay and other monetary awards to employees at all contractor work locations around the country. Contractors that agree to such Global Settlements will not undergo additional compliance evaluation activity at their other work locations. She cited the recent Boeing agreement as a model for Global Agreements.
(http://www.dol.gov/dol/opa/public/media/press/opa/opa99334.htm)
Several contractors have entered into Global Agreements with the agency on the issue involving definition of job applicant. Ms. Wilcher did not identify those contractors.

Eighteen months ago, on February 4, 1999, when Ms. Wilcher addressed the same group, she heard complaints that the agency's web site was out of date. She also heard pleas from contractors that the OFCCP use its web site as a means of communicating information to the general public about its filings for regulatory change and other matters of general interest. She promised then that she would "look into it." At that time, she stated adamantly that the OFCCP web site was "current" in its content. It was then at least three months out of date and had never been used to announce agency initiatives or regulatory filings.

In this most recent meeting, contractors again made a request for OFCCP to use its web site more appropriately as a tool for communicating its actions and positions. Again, the employer community explained to Ms. Wilcher that her expectations for information to flow from the National ILG to local ILGs was not being met. She said she thought the OFCCP web site is now current, yet it has no mention of any regulatory filing information during the past year and a half when such activity has been particularly heavy. Neither is the agency's own organizational chart and contact information current.

The agency is required by law to announce its regulatory change proposals in the Federal Register. The presumption is all contractors will be able to learn from that source what changes are being courted by OFCCP.

(Editor's Note: If you have ever tried to track a single subject in the Federal Register over time, you know it is not an easily used source of information. By doing only this minimally required announcement, it appears OFCCP's strategy is to reduce the amount of negative comment it is likely to receive to its proposals. If it really wanted to make a good faith effort at communication with the contractor community, the agency would be actively using its web site for such information dispersal. On that measure of effectiveness, the agency has failed miserably under Ms. Wilcher's reign.)

Ms. Wilcher remained confident that the regulatory changes proposed for 41 C.F.R. 60-2 will be approved. "Obviously, we have to get it done before I go," she said, referring to her plan to resign with the end of the current Clinton administration.

When asked if she could share some of the comments the agency had received to its 60-2 proposal, Ms. Wilcher said the biggest issues were disallowing functional AAP establishments, the proposed definition of applicant, and the setup of compensation in the Equal Opportunity Survey. About that last item she said, "We want to codify the survey, not the format. Formats can change. The women's rights community was VERY supportive of the (EO) survey." (Emphasis was Ms. Wilcher's.)

She said the agency's goal in using the EO Survey is to reduce the overall number of hours contractors have to spend. She did not comment on the strongly negative comment trend from contractors claiming the agency estimates of time required to prepare the EO Survey were severely understated.

As for the future? Ms. Wilcher said, "Clearly equal pay is going to gain in importance for us in the next year." Mr. Gilliland added, "All of our people do a compensation analysis on every review." Ms. Wilcher commented that, "There is a pay gap. As you go up the pay ladder it seems the pay gap widens. We need to close the gap. (Contractors) need to ask why (the gap exists)."

Ms. Wilcher would like to see an expansion of the total dollars recovered from contractors as remedy for OFCCP findings of discrimination. During her term of office, that has averaged $40 million per year. She believes Global Agreements will help increase that amount. She continued to criticize use of H-1B visas to hire workers, saying the American employer isn't doing enough to train people in technical skills. She also said her agency has virtually no involvement in any action that would help increase the number of technically trained American workers.

Mr. Gilliland explained that the OFCCP in his Region is actively participating in the Silicon Valley Partnership with both contractors and community groups. That organization has been created to address the "lack of good faith efforts in recruiting Hispanics and African Americans in the high tech industry."

Although the meeting involved only congenial exchanges between contractors and agency officials, it was clear that there are still large differences of opinion about the direction Ms. Wilcher is taking with her enforcement efforts.

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3. PRESIDENT SIGNS H-1B LEGISLATION

On Tuesday, October 17, 2000, President Clinton signed the American Competitiveness in the Twenty-First Century Act (S. 2045) which boosts the cap of H-1B visas to 195,000 for each of the next three years. He also signed H.R. 5362, raising the fee for H-1B visas from $500 to $1,000 each.

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4. OFCCP PROPOSES MORE CHANGES TO REGULATIONS

On October 12, 2000, the Office of Federal Contract Compliance Programs (OFCCP) filed a notice in the Federal Register that it intends to make new rules to govern its compliance review process for Veteran and Disabled affirmative action programs. (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=00-25774-filed.pdf or you can get a copy from the HR Web Store in the "What's New?" Department by going to www.hrwebstore.com/products/whatsnew .)

The proposal would revise regulations implementing Section 503 of the Rehabilitation Act of 1973. The changes would make regulations for disabled affirmative action consistent with regulations for programs that address minorities, women and veterans. If approved, all three types of AAPs would be subject to compliance evaluations ranging from the full compliance review to compliance checks. Off-site records review and focused reviews would also be permitted.

In addition, the new filing proposes eliminating the need for OFCCP to physically visit a contractor's work site when conducting a compliance check. "...the rule we propose today would allow OFCCP to conduct compliance checks solely for the purpose of examining whether contractors have developed and implemented the affirmative action programs required under the regulations in 41 CFR Part 60-741."

The proposal is open for public comment until December 11, 2000. Comments should be sent to James I. Melvin, Director, Division of Policy, Planning and Program Development, OFCCP, Room C-3325, 200 Constitution Avenue, N.W., Washington, DC 20210. Comments may be FAXed if they are not greater than six pages in length. The FAX number is (202) 693-1304. For further information you may call (202) 693-0102 - voice or (202) 693-1308 - TTY.

(Editor's Note: According to the OFCCP's filing, the proposed rule is also available on the Internet at http://www.dol.gov/dol/esa . Don't bother looking. It isn't there. In fact, none of the OFCCP filings made in the past year are there.)

Gentle Readers,

The minimum wage level is going up in California. We think you will find some helpful information here about workplace violence prevention, and federal contractors need to know about what can happen to those who refuse compliance review participation.

Bill Truesdell
Editor

IN THIS REPORT (Report #159, 11/10/2000)
---------- (Sent to over 1,600 subscribers)

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1. CALIFORNIA MINIMUM WAGE INCREASING IN JANUARY

The California Industrial Welfare Commission (IWC) voted to raise the state's minimum wage to $6.25 per hour effective January 1, 2000 and to add another 50 cents per hour on January 1, 2002 making the minimum wage $6.75. This action was taken at the Commission's regular meeting on Monday, October 23, 2000.

All employers in the state will be bound by the new minimum if they are not subject to an even higher minimum wage by contractual agreement or local regulations. Some county and city requirements call for minimum wages that are higher than the new state floor.

If you employ workers in California, this is the time you should work with your Chief Financial Officer to recast your payroll budget for 2001, knowing that there will be increases mandated by this new minimum limit. And, you will want to get a new poster reflecting the new minimum wage.

We expect the IWC web site will have notice of the new requirement in the near future. You can find that information at: http://www.dir.ca.gov/iwc/iwc.html .

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2. WORKING AGAINST VIOLENCE

As society becomes more violent, so does the workplace. One out of every four workers is likely to be threatened, attacked or assaulted at work each year. While there is no sure way to stop it, there are things you can do to minimize the chance of violence in your workplace through hiring practices, disciplinary procedures, and safety measures.

Preventing workplace violence must be a top priority of management. They must let all workers know that violence will not be tolerated at the worksite. Employers should have written policies and procedures for violence and threat management, counseling, and criteria for reporting incidents. Companies should have action plans and a "crisis team" to handle any incident, including worst case scenarios. Clearly communicate these policies, letting all workers know what behavior is inappropriate and what action will be taken. Employer response to incidents should be predictable and consistent for all workers.

Before hiring, do criminal and reference checks on job applicants. Interviews should include questions about past performance and evaluations. Pre-employment drug screening is also effective. Provide training for employees in nonviolent response to conflict resolution to reduce the risk of volatile situations leading to physical violence.

There are often clues given by those headed for violence in the workplace. Any threatening words or actions, even if said in a joking way, should be treated seriously.

Having one or more of these signs should raise concern. Supervisors and workers should be trained in these early warning signs of trouble and how to respond to them. Be concerned if a worker: has a history of violent behavior; is paranoid or a loner; has an obsession with weapons; carries a concealed weapon; expresses verbal threats of harm; holds a grudge; pushes the limit of normal conduct; has an obsessive involvement with the job; expresses extreme desperation over recent family, financial, or personal problems; has a fascination with other recent incidents of workplace violence; or expresses (Management's) failure to take consistent disciplinary measures.

The chance of workplace violence is greater for certain jobs. They include jobs of contact with the public, working late at night or in early mornings, working with unstable or volatile people, exchanging money, delivering goods or services, high stress jobs, working in high crime areas, and if working alone or in small numbers. Even in these jobs, you can do things to protect worker safety.

Tighten security by installing lighting, alarms or drop safes. Post signs saying there's limited cash on hand. In high crime areas have police regularly check on workers or close the business late at night and in the early morning.

Workplace violence takes a toll on employers and workers. It affects not only those assaulted, but also the witnesses. Employers can't just react to violent incidents; they must try to prevent them. Once threatening information surfaces at a worksite or an incident occurs, employers could be held liable if they fail to act.

(Reprinted by permission of State Compensation Insurance Fund. They may be contacted at www.scif.com .)

Don't forget that we offer a turn-key seminar program, "Workplace Violence Prevention," that you can use to train your workforce in this vital subject. Look it over in our HR Web Store at http://www.hrwebstore.com/products/wpv.htm . We want to help you avoid tragedy. The costs of disaster are too great. Training is much easier and much less costly.

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3. JUDGE ORDERS BEVERLY ENTERPRISES DEBARRED

Federal Judge Ricardo Urbina has ordered Beverly Enterprises, Inc. debarred from future government contracts for refusing to give government investigators access to the premises and to company records. (Beverly Enterprises, Inc. v. Herman, D.D.C., No. 99-2408, 8/23/00)

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) selected Beverly Enterprises for a review of its headquarters establishment in Fort Smith, Arkansas. The review was to have been a corporate management review, otherwise known as a "glass ceiling" review. The company refused to allow OFCCP Compliance Officers to enter their worksite and also refused to provide company records requested by the enforcement agency. It claimed the government was inappropriately and illegally targeting its operations for review in violation of the Fourth Amendment which prohibits illegal search and seizure.

A Department of Labor (DOL) administrative law judge ordered the company to comply with the request for data and a site visit. Beverly's appeal was heard by a three-member administrative review board which upheld the ALJ order. The board found that OFCCP's selection procedures "met the test for reasonableness and its selection of Beverly was accomplished in a neutral manner." The review board ordered that existing contracts "be canceled, terminated or suspended" and that the company be ineligible for further contracts, if it failed to comply within 30 days. Beverly Enterprises manages one of the country's largest chains of nursing homes and is subject to OFCCP regulations because it cares for veterans under a multi-million-dollar contract with the Department of Veterans Affairs.

Beverly's appeal to the federal court was based on its belief it had been subjected to illegal search and seizure due to a flawed OFCCP selection process for contractors it intended to review. Judge Urbina said in his opinion, "Substantial evidence supports the agency's finding that the search was initiated pursuant to a neutral administrative plan" and that the OFCCP then applied those neutral criteria in selecting Beverly for review.

Judge Urbina remanded the case to the administrative review board to determine whether Beverly's subsidiaries should also be sanctioned. The company had challenged OFCCP's right "to punish its subsidiaries for the actions of the parent company." The court said that, although there was "some evidence suggesting a close link" between Beverly and its subsidiaries, it was insufficient to determine whether they should be considered one entity.

(Source: BNA's Employment Discrimination Report, Vol. 15, No. 13, October 4, 2000. www.bna.com/resources)

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4. EEOC DOWN TO THREE COMMISSIONERS - ALL DEMOCRATS

The Equal Employment Opportunity Commission (EEOC) should have a full compliment of five commissioners. Until this September it had four. On October 10, 2000, Commissioner Reginald Jones declined a second appointment to the agency, preferring to enter private law practice.

His absence means the only Commissioners remaining are all in Democratic slots: Chairwoman Ida Castro; Vice Chairman Paul Igasaki; and, Commissioner Paul Steven Miller. In addition to Commissioner Jones' seat, a second Republican seat has been vacant since July 1996.

Gentle Readers,

It's been a very busy week for the government, elections not withstanding. The Administration's bureaus are humming with regulatory activity.

Look at the calendar. You have until December 13, 2000 to get ready for new final regulations on the preparation and implementation of affirmative action programs involving federal contractors. You have until January 14, 2001 to get prepared for new OSHA ergonomics regulations.

We are sad to tell you of the passing of Santiago Rodriguez, one of the nation's greatest business leaders in the management of diversity programs.

Bill Truesdell
Editor

IN THIS REPORT (Report #160, 11/17/2000)
---------- (Sent to over 1,600 subscribers)

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1. NEW EEOC GUIDANCE ON DISCRIMINATION IN EMPLOYEE BENEFITS

By: Timothy S. Bland

The Equal Employment Opportunity Commission (EEOC) recently issued a new section to its Compliance Manual which provides the first comprehensive analysis of important employee benefits issued under the anti-discrimination laws.

The guidance examines the legal standards that apply to claims of discrimination in health and life insurance benefits, and early retirement incentives. It also discusses the limited circumstances in which the law permits employers to provide lower benefits to older employees than to younger workers and the specific requirements of the Americans with Disabilities Act with respect to employee benefits.

AGE DISCRIMINATION IN EMPLOYMENT ACT

The ADEA bars discrimination on the basis of age in connection with employee benefits. In general, older and younger workers must receive equal benefits. To be equal the benefits must include:

- the same payment options (for example, benefits are not equal if 55 year olds can choose between lump-sum pension distributions and annuities but 65 year olds must take pension benefits in an annuity);
- the same type of benefits (for example, benefits are not equal if laid-off 55 year olds get severance pay and job retraining, while laid-off 65 year olds get severance pay and life insurance - - even if the monetary value of the benefits paid to each is the same); and
- the same amount of benefits (for example, life insurance benefits are equal if 50 year olds and 70 year olds both get a death benefit of $50,000, or if 50 year olds and 70 year olds get a death benefit of three times their annual salary).

However, the ADEA permits employers to provide different benefits to older workers than to younger workers in some circumstances. Employers may provide a lesser level or duration of benefits to older workers for certain types of benefits, if the employer is spending the same amount, or incurring the same cost, for the benefit for older and younger workers.

EARLY RETIREMENT INCENTIVES

Under the ADEA, special rules also apply to early retirement incentive programs. In early retirement incentive programs, employers offer employees additional benefits to which they would not otherwise be entitled if they retire before they reach normal retirement age. For example, an employer might offer to eliminate the reduction in pension it would normally make if a person retired early. Under such a program, eligible employees could then get full pensions before normal retirement age.

The ADEA permits employers to offer early retirement incentive programs to their employees as long as participation is voluntary and as long as the plan is otherwise non-discriminatory. However, employers may not force older workers to retire. As long as the early retirement incentive is voluntary, an employer may:

- set a minimum age, or minimum number of years of service, at which eligible employees will be eligible to participate;
- offer early retirement incentives for a limited period of time (for example, only to those employees who retire between January and April 30); and/or

- offer an early retirement incentive only to a subset of a company (for example, only to managers, only to a department, or only to employees at a single facility).

AMERICANS WITH DISABILITIES ACT

Under the ADA, employers may not make disability-based distinctions in employee benefits unless they can show that the distinction is not a subterfuge to evade the purposes of the ADA. A "disability-based distinction" singles out for different treatment: (1) a particular disability (for example, the employer's disability retirement plan covers all physical and mental disorders except depression); (2) a discrete group of disabilities (for example, an employer's health insurance plan caps coverage for treatment of cancer at one million dollars but caps coverage for treatment of all other physical conditions at 20 million dollars); or (3) disability in general (for example, an employer requires employees who are no longer able to work because of a physical or mental disorder to retire on disability retirement, even though they are also eligible to retire under the employer's service retirement plan). According to the guidance, such distinctions are generally unlawful.

TITLE VII/EPA

Discrimination based on sex, race, color, national origin, or religion. Under Title VII, employers may not take sex, race, color, national origin, or religion into account in their benefit programs. Specifically, employees may not consider these characteristics in determining eligibility for amount of, or charges for, employee benefits. The cost of the benefit is not a defense. Thus, for example, even if it costs an employer more to provide benefits to women as a class than to men, the employer may not either charge women more, or provide them lesser benefits to make up the difference.

Retirement Benefits

Although women as a class generally live longer than men, Title VII requires that each woman, and each man, be treated as an individual. As a result, employer's may not use sex-based actuarial tables - - which rely on generalizations about women's and men's life expectancies - - to calculate either the amounts that the employee will pay in benefits to men and women or the amounts that it will charge its male and female employees for those benefits.

Health Insurance Benefits

Like retirement benefits, health insurance benefits must be provided without regard to the race, color, sex, national origin, or religion of the insured. An employer must non-discriminatorily provide to all similarly situated employees the same opportunity to enroll in any health plans it offers. An employer must also ensure that the terms of its health benefits are non-discriminatory.

Discrimination based on pregnancy, childbirth, or related medical conditions. The Pregnancy Discrimination Act requires that women who are affected by pregnancy, childbirth, or related medical conditions be treated the same as any other employee who is similarly able or unable

to work. Where an employer offers benefits of any sort, therefore - - including retirement, health insurance, or disability benefits - - it must cover pregnancy and related medical conditions in the same way that it covers other medical conditions.

Health Insurance Benefits

Health insurance plans offered in connection with employment must cover pregnancy, childbirth, and related medical conditions in the same way, and to the same extent, that they cover other medical conditions. Essentially, this means that:

- an employer's health insurance plan may not exclude coverage for pregnancy or related medical conditions altogether; and
- an employer's health insurance plan must offer the same terms for coverage of pregnancy, childbirth, and related medical conditions as for other medical conditions.

(Timothy S. Bland is an attorney with the Memphis office of Ford & Harrison LLP, a national law firm exclusively representing management in labor and employment matters. He can be reached at tbland@fordharrison.com).

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2. WEB RESOURCE FOR LOCATING MINORITY/WOMEN OWNED BUSINESSES

While employment affirmative action requirements don't demand federal contractors allocate specific portions of their contracts to minority or women owned businesses, some state and local jurisdictions still do. The question then becomes, "Where can we find such companies that will deliver what we need?"

A recently discovered web resource may help with the answer, if you face this problem. It is called Div2000 and bills itself as the "Information Center for Minority/Women Owned Business and Fortune 100 Companies."

If you wish to purchase from such suppliers, you owe it to yourself to investigate this resource. Go to: http://div2000.com .

Of course, if you are a minority or woman owned business, you may wish to become part of their database.

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3. OFCCP ISSUES FINAL RULE ON 41 CFR PARTS 60-1, 60-2

On Monday (November 13, 2000), the Office of Federal Contract Compliance Programs (OFCCP) published in the Federal Register the final rule for its enforcement of affirmative action programs. You can find the new regulations at http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=3181714054+24+0+0&WAISaction=retrieve or you can get a PDF file of the regulations from the HR Web Store in the "What's New" Department at www.hrwebstore.com .

There have been only a few, minor changes since the proposed regulations were published a few months ago. One concession made by the OFCCP is in defining an establishment. They will continue to allow contractors to define affirmative action establishments either geographically or functionally, dropping their ban on functional definitions.

The final rule codifies the Equal Opportunity Survey, requiring detailed compensation data from contractors. The enforcement agency has said it will require contractors to file the EO Survey every other year.

Contractors will also be interested to learn that "applicant" has been officially defined for the first time in over 30 years of affirmative action regulations. Contractors must invite self-identification of race and sex from anyone who even "expresses interest in employment," qualified or not. Complaints from contractors that such a requirement was unreasonable fell on deaf ears at the OFCCP. If you are a contractor using the Internet to recruit employees, you now must determine a means for sending every person who expresses interest in employment a request for voluntary identification of their race and sex. (We suggest that you request that they also identify the specific job title for which they wish to be considered a candidate.)

The Workforce Analysis will be replaced by a new organizational profile (organization chart) that must contain job title, the total number of employees and the number of employees by race/sex for each position on the chart.

The old 8-Factor Analysis has been replaced by a new 2-Factor Availability Analysis. Contractors will be required to compute availability by job title within job groups and use the overall job group availability in determining underutilization. There are other changes as well.

The new regulations will become effective on December 13, 2000, 30 days following their posting in the Federal Register. Like them or not, they will be governing how affirmative action plans are developed and implemented from now on.

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4. HR PROFESSIONALS LOSE A GOOD FRIEND

On November 2, 2000, Dr. Santiago Rodriguez, 56, died of a heart attack in Reston, Virginia after a week in the hospital with pneumonia.

Dr. Rodriguez, a native of Guatemala, most recently served as director of diversity at Microsoft Corporation in Redmond, Washington. Steve Ballmer, President of Microsoft, said of Dr. Rodriguez, "He had an ability to open people's eyes about the uniqueness of each individual and the importance of creating a truly diverse, multicultural workplace."

Prior to his Microsoft assignment, Dr. Rodriguez, who earned his Ph.D. at Stanford, served as Apple Computer's first director of diversity. He also served in government as deputy director of the U.S. Civil

Service Hispanic Employment Program and as special assistant to the Equal Employment Opportunity Commission.

Anyone who has ever had the opportunity to hear Dr. Rodriguez speak knows how his spellbinding delivery easily captured the minds and hearts of those in the audience. His practical approach to managing diversity in today's modern workplace established a model the rest of us can only hope to emulate.

It's not only his friends and close colleagues who will miss him. His loss will be felt for years to come by everyone in the Human Resource Management profession and by those who have never heard his name. He has left a legacy of tolerance, compassion and solid business sense upon which the rest of us can build. The result will be a silent monument to a very powerfully committed and gifted leader. All people of all races will find his passing a great loss.

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5. OSHA PUBLISHES FINAL ERGONOMICS RULE & DRAWS FIRE

On Tuesday, November 14th, The Organizational Safety and Health Administration (OSHA) published its final rule for workplace ergonomics safety in the Federal Register. The regulation is designed to protect workers from repetitive motion and other musculoskeletal disorders. (Copies of the regulatory text, forms and checklists are available at http://www.hrwebstore.com in the "What's New" department. Download one ZIP file and you will receive everything in one package. Then, simply unzip the file.)

This issue has been at the center of contentious argument between employers and regulators ever since it was proposed. Congressional Republicans had tried various legislative approaches to force OSHA to delay implementation of its regulations. Nonetheless, the agency used the recent election recess to bypass Congress and push the regulation's approval through the Office of Management and Budget (OMB), a department within the White House structure.

The Society for Human Resource Management (SHRM) has reacted angrily to OSHA's slight-of-hand actions. It said it would file suit, in conjunction with other business organizations, to block implementation of the rule. (http://www.shrm.org/)

The rule will cover approximately 6 million workplaces and more than 100 million workers.

The agency estimates the new rule will cost employers $4.5 billion annually. Business interests estimate their costs at between $18 billion and $125.6 billion each year. Those numbers represent the largest reason for opposition to OSHA's desired regulation. The new law calls for a 90% federally-mandated wage replacement for employees who can't work due to an injury due to musculoskeletal disorder (MSD). It also calls for 100% replacement of wages for those workers placed on restricted or light duty work. There is no guidance in the regulations that would give employers help reconciling requirements of this new law with state workers' compensation laws or other legally mandated employment benefit programs.

As things now stand, in the absence of court rulings to prevent it, the regulations will become effective 60 days after their publication in the Federal Register. That means they take effect on January 14, 2001, just six days before Inauguration Day. Once implemented, getting them overturned will be very difficult, regardless of who the next President may be.

Gentle Readers,

If we had a trumpet we'd be blowing it to announce the recent "highest rating" possible for our web site from the East Bay Business Times. See why at www.hrwebstore.com .

You may be hearing sour notes from employees who received stock options, experienced a sharp drop in stock value, and face higher income tax bills because of it.

Bill Truesdell
Editor

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IN THIS REPORT (Report #161, 12/1/2000)
---------- (Sent to over 1,600 subscribers)

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1. HR WEB STORE AWARDED HIGHEST WEB SITE RATING

We are very proud to tell you that the East Bay Business Times has honored us with its highest rating ... "@@@@@". That's their equivalent of five stars.

We have been on the web for five years and seen wonderful growth in the number of visitors we serve during each of those years. If you haven't stopped in lately, we invite you to do that. There are many FREE reports available for those of you who like such things. And, you will find some of the finest professional publications available on compliance, employee management and personal development. If you are still looking for a special gift for a colleague or your boss, something from our book department or gift section may be just the thing they need.

While you're there, take a look at the review article from the East Bay Business Times. Five out of five isn't half-bad.

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2. IS HIGH TECH COMPENSATION CHANGING?

Susan Pulliam reports in the November 28, 2000 Wall Street Journal that there are changes happening in how high technology companies compose employee compensation packages.

Stock options were once all the rage among dot-com employees. These days, cash is making a comeback.

It turns out that some Internet employees aren't quite the risk-takers many thought they were: With the collapse of many Internet stocks, both executives and rank-and-file are pressuring more and more Internet companies to increase the amount of compensation they pay out in cash rather than stock options, many of which have become worthless as the shares have plummeted.

The shift is most noticeable among Internet bigwigs, some of whom have landed hefty cash payments lately. In recent months, Amazon.com paid cash bonuses of $1 million each to its CFO and Vice President of Operations. The cash payments are on top of compensation packages that continue to include stock options.

Not long after, Joseph Galli, former president and chief operating officer at Amazon, left to become chief executive of Vertical Net. He received a $4 million signing bonus... paid in cash.

Then, in a Wall Street Journal "Tax Report" on November 29, 2000, the downside of higher taxes in a falling market came to light. Many who exercised incentive stock options now face taxes greater than the value of the stock they still hold. Why? The spread between the option price and the actual stock price when purchased is subject to the alternative minimum tax, even if the stock has since fallen. The only way to make that AMT go away: Sell the stock in the same calendar year. That way, you pay ordinary income tax if the sale price is greater than the exercise cost, or take a short-term capital loss if it is less.

Generally, if the value of the stock falls more than 30% from the day of exercise, the AMT becomes higher than the regular tax.

Watch for the trend to move quickly to non-executive workers. There will be attention paid to total package value, and folks are beginning to realize stock value may not be what it was originally hoped to be. Add to that a potential for higher income tax bills and you may find that your best bet for recruiting and retention isn't stock options, but company-paid financial planning services.

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3. EEOC ISSUES COMPLIANCE MANUAL SECTION ON EMPLOYEE BENEFITS

The Equal Employment Opportunity Commission (EEOC) has seen the need to update its Compliance Manual Section 3 covering bias in employee benefits.

Ida L. Castro, EEOC Chairwoman said, "This guidance makes clear that employers are never allowed to consider employees' race, color, sex, national origin, or religion, nor retaliate against them in connection with their benefits plan." She added, "The section also explains that benefit plan provisions must be carefully scrutinized to ensure they do not run afoul of the law."

In this renewed edition of Section 3 you will find guidance on the Age Discrimination in Employment Act and its prohibition against age discrimination in employee benefit programs. While the age discrimination law permits employers to provide different benefits to older workers than younger workers, a difference in benefits is only permitted if the employer paid an equal amount for those benefits.

The new guidance also tells us that we may not discriminate against individuals with disabilities through differences in fringe benefits that are determined based on the disability.

If you would like a complete copy of the new Compliance Manual Section 3, you will find it at: http://www.eeoc.gov/policy/compliance.html

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Gentle Readers,

Heads up federal contractors. Be on the watch for your very own copy of the new Equal Opportunity Survey from the Department of Labor. Consider it the first stage of an audit.

And, on a happy note, we're pleased to share some ideas for a holiday project if you and your employees have yet to select one.

Bill Truesdell
Editor

IN THIS REPORT (Report #162, 12/8/2000)
---------- (Sent to over 1,600 subscribers)

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1. CALIFORNIA EMPLOYERS MUST SOON REPORT INDEPENDENT CONTRACTORS

Beginning on January 1, 2001, S.B. 542 will require all employers to report use of independent contractors much as employers are now required to report new employees.

This new requirement originates in the effort to identify parents who are delinquent in their child support payments. Since these bills are usually consolidated in Accounts Payable, and the accounting department is usually responsible for filing government financial reports, you might want to discuss this imminent reporting requirement with your accounting manager.

What employers must report? Any business entity that is required to file a Form 1099-MISC for services performed by an independent contractor.

What is an independent contractor? Any individual who is not an employee of the business or government entity and who receives

compensation or executes a contract for services performed in or outside California.

When does report have to be filed? Employers must report information to EDD on Form DE-542 within 20 days of either making payments totaling $600 or more or entering into a contract for $600 or more with an independent contractor in any calendar year, whichever is earlier.

What if one of my independent contractors works in California but the employer's business is in Texas? Is it necessary to report that independent contractor? According to the Employment Development Department (EDD) your report must include all independent contractors deriving trade or business income from sources within California regardless of where your business is located.

Is there anyone who should not be reported? Yes. Corporations, general partnerships, or limited liability companies are exempt from inclusion on the DE-542. In general, businesses are required to report independent contractors that are sole-proprietors.

There is more help available to answer questions, describe the data collection program, outline specific reporting requirements and provide examples. You can access it all at: www.edd.ca.gov/txicr.htm . You can also download a copy of Form DE-542 in PDF format by going to: www.edd.ca.gov/de542.pdf .

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2. HOLIDAY PROJECT

If you are still looking for a project your employees can do during the holiday season, you might want to consider "adopting" one of the organizations that supports assistance animals.

Many types of animals have been used through the years to assist people with disabilities. Yet, dogs remain the most common among them. Ability magazine (www.ABILITYmagazine.com) reports that dogs were first trained to assist the blind in Germany after World War I, but historians have found ancient paintings from such diverse places as Greece and China depicting sightless people being guided by canine companions.

There are five general types of Assistance Dogs: Guide, Hearing, Medical, Mobility, and Psychiatric dogs.

Guide dogs assist the visually impaired, and are the group we think of most often when we think of assistance dogs. They allow blind people to be mobile and conduct daily business in our society.

Hearing dogs assist those with hearing impairments. They can alert their owner to ringing telephones, doorbells, alarm clocks, smoke alarms, or the cry of a baby. They can even be trained to alert people to oven timers so holiday cookies come out perfect every time.

Medical dogs really fall into two categories: Response dogs and Alert dogs. They can help people with seizure disorders, diabetes, anxiety problems and other medical emergencies. Response dogs can prevent

their handlers from falling, place them in a proper position during a medical emergency or help them regain consciousness. Alert dogs signal emergencies before they happen. They predict the onset of a health crisis, providing a coma alert to a person with diabetes, or a seizure alert to someone with epilepsy.

Mobility dogs can help people who have trouble with movement. Those with cerebral palsy, multiple sclerosis, spinal cord trauma or other movement-limiting problems can rely on Mobility dogs to turn on or off light switches, reach or pick up items, and open or close doors.

Psychiatric dogs offer help to people with autism, schizophrenia and bipolar depression in many ways. Often, these dogs can help orient people to time, space and place. And, they have a calming, comforting effect when it is needed.

If you would like to support a program that prepares these special animals for their helping roles, you can contact one of the following organizations to discuss the type of support they desire:

- Assistance Dogs International, Inc. (ADI)
  Dog training and placement programs.
  http://www.assistance-dogs-intl.org
  info@assistance-dogs-intl.org

- Canine Companions for Independence (CCI)
  Provide trained dogs to people with disabilities and care givers.
  http://www.caninecompanions.org
  info@caninecompanions.org

- Canine Support Teams Inc. (CST)
  Raises & trains dogs for people with disabilities other than blindness.
  http://www.caninesupportteams.org

- The Delta Society
  Business programs and visiting animal programs for hospitals, nursing homes and schools.
  http://www.deltasociety.org
  info@deltasociety.org

- Pets and People
  Service dog training programs.
  http://www.petsandpeople.org

- Independence Dogs, Inc.
  Provides and trains Service dogs for people with mobility problems.
  http://www.independencedogs.org
  indi@independencedogs.org

- International Association of Assistance Dog Partners (IAADP)
  Educational organization.
  http://www.iaadp.org

- National Education for Assistance Dogs Services, Inc. (NEADS)

Assistance dog training and education program.
http://www.neads.org
info@neads.org

- Paws With A Cause
  Trains and provides Assistance dogs for people with disabilities.
  http://www.pawswithacause.org

- The Seeing Eye, Inc.
  Serves people with vision impairments.
  http://www.seeingeye.org
  semaster@seeingeye.org

If your organization or employee group would like to make a worthwhile contribution this year, you could find one of these organizations is a good conduit for your generosity and caring support.

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3. 50,000 EO SURVEYS TO BE MAILED BY OFCCP

The Equal Employment Advisory Council (EEAC) (www.eeac.org) has announced that the Office of Management and Budget (OMB) approved release of the new Equal Opportunity Survey to 50,000 additional federal contractors. The mailing is expected to be completed by the end of this year.

OMB had required the Office of Federal Contract Compliance Programs (OFCCP) to submit a report summarizing preliminary findings from the mailing of 7,000 surveys earlier this year. When that report was submitted to OMB as requested, OMB gave its approval for OFCCP to proceed with full implementation of the EO Survey program.

If you are a federal contractor who has not yet received an EO Survey, you now have a 50-50 chance that your name will be on one before the end of the month. Responses are mandatory. And it will require you to spend many hours compiling employee compensation, headcount, and demographic data in order to make that response.

OFCCP plans to use the survey as a means of selecting contractors for Compliance Evaluations (audits). So, if you do not get a survey questionnaire, your chances of avoiding an audit during the coming year are pretty good.

Although we have yet to see the modifications OFCCP has reportedly made to the EO Survey document, we expect they will permit contractors to submit data by job group as an alternate to EEO-1 category in accordance with the new federal regulations on affirmative action plans. (41 CFR 60-2 requirements for AAP content have changed and will become final on December 13, 2000 as we told you in an earlier "Special Report for HR Professionals.")

The focus of OFCCP scrutiny is on employee compensation. They are looking for "Equal Pay" violations for women and minorities. They say the EO Survey will help them identify contractors who illegally discriminate in their pay practices. We might argue with their methods

(and we have), but OFCCP continues to achieve cash settlements and Conciliation Agreements from contractors across the country.

Gentle Readers,

Joni Daniels hits another nail on the head with advice about effectively handling change and transition. We have a new rule from EEOC on the subject of severance payments for laid-off workers. And, the Social Security Administration opens Electronic Services for Business on the Internet.

And, finally, our staff at The Management Advantage, Inc. extends to you and yours a very warm wish for a happy and healthy holiday. We will be back with you again after the first of the year. Enjoy yourself and be safe.

Bill Truesdell
Editor

IN THIS REPORT (Report #163, 12/22/2000)
---------- (Sent to over 1,600 subscribers)

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1. FINDING SOLID GROUND BENEATH SHIFTING SANDS

After a recent keynote presentation on the topic of Change and Transition, a member of the audience approached me. He told me that the future he had envisioned for his career had been altered while he was on his way to it! Changes in technology, demographics and culture had changed the face of his industry and altered his plans. Today he was stuck in a less desirable job than he had envisioned when he set out on his career path. The differences were significant, and he was not happy.

He is not alone. The changes that impacted this man have affected us all to some degree. If putting our feet on solid ground at work helps

us feel confident and competent, how can we maintain stability, let alone take a stride forward as the sands shift?

*** Shifting Sands ***

There are some significant trends that create an impact in every workplace. It's important to recognize and understand the trends in order to use them to your advantage or to avoid letting them derail your career plans.

<Technology> Every magazine, newspaper and television station advertises the encroaching tentacles of the World Wide Web. It certainly seems to be evolving into a dot-com world. Many people are logged on to the Internet, tracking data on their Palm Pilots, speaking into mobile phones, and using new acronyms that sound like alphabet soup.

<Changing Business Landscape> Mergers, acquisitions and start-ups create new companies, morph old companies, and some companies disappear from sight completely, never to be heard from again. Companies tank, rise like a phoenix from the ashes and reinvent themselves on a daily basis, in an effort to stay viable and competitive.

<Career Development> Not so long ago, career development was fostered by the place where you worked. Today you are on your own when it comes to learning and development. The ability to promote yourself as a solution to a company's problem is more critical today than how you will grow and develop with them. The message seems to be, "produce on our time, learn on your own."

*** What You Need ***

As emerging trends shake things up, there are a few key skills that will help you keep your footing and thrive in the changing workplace:

<Lifelong Learning> The ability to obtain and understand new skills is one of the most useful abilities you can have. A demonstration of your willingness to keep up with the evolving world can be in the form of taking a class, keeping current on recent publications, and attending professional meetings and seminars.

<Navigate Your Own Career> Make sure you are able to communicate what you have done, can do, won't do, and want to do. Your ability to handle autonomy can be seen as initiative. The old paradigm of being shepherded through your career is gone. It's replaced by the new reality that says "no one cares about your career as much as you do," so tend to your own development and growth.

<Promote Yourself> Work does not speak for itself. Success is often a combination of what you know, whom you know, who knows you, and who knows about you. Get the word out.

<Flexibility> Your ability to change and to make transitions efficiently is an attractive commodity. Being able to maintain your motivation and prevent paranoia, as things evolve, creates an appealing energy that employers look for.

*** Sure Footing on Slippery Slopes ***

While the workplace has changed, there are still some things that will never change. These sure things should be embraced, adopted and practiced.

- People who possess broad technical knowledge will be well prepared to adopt innovations in their field. You may have to learn a specialized inventory method, computer language or new technology, but if you have a reasonable technical foundation in your area, you will be able to move easily among many specific techniques if needed.

- Core competencies tend to endure. They often form the center around which the organization reconfigures itself to meet changing market demands. Employees who connect with those competencies are more likely to remain productive, come what may.

- Regardless of what changes occur, one thing never will change: the need to manage work. Management skills transcend all professions and are an integral part of every profession. The term "management skills" does not only mean managing the workflow of others efficiently and effectively, but also the ability to organize and manage one's own workload.

- Employees who possess a willingness or motivation to learn are more likely to adapt and learn as their jobs change. They will experience change as a challenge - something to be mastered. People with good learning skills are able to flex and grow to ensure their own success and the success of the company.

Never before have so many changes occurred in such a short time. But if you are armed with the understanding of what the key trends are, how to avoid their pitfalls and how to use them to your advantage, you will quickly increase your confidence and maintain a competitive edge.

Joni Daniels is an accomplished and dynamic speaker with over 20 years experience presenting topics related to personal and professional development. Principal of Daniels & Associates and an instructor in management topics at the Wharton School's SBDC, she can be reached at JDanAssoc@aol.com, 215.635.5359, or www.powertoolsforwomen.com.

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2. EEOC PUBLISHES FINAL RULE ON SEVERANCE PAY SUITS

The Equal Employment Opportunity Commission (EEOC) has published a final regulation stating that, under the Older Workers Benefit Protection Act of 1990, employees cannot be required to tender back the consideration received under a waiver agreement before being permitted to challenge the waiver agreement in court, and addressing related

issues. The regulation protects older workers' rights under the Older Workers Benefit Protection Act.

The new rule was published in the December 11, 2000 Federal Register and becomes effective on January 10, 2001. A complete copy of the filing is available at: http://www.eeoc.gov/regs/tenderback.html .

Business groups have been expecting this new rule for some time, and they have generally been critical of its provisions. Employers have said the rule will encourage former employees to accept severance packages and sue their former employers for such things as workplace discrimination. People who have advocated implementation of this new rule have said it will not create any undue burden on employers, even though some employers have suggested they will no longer consider providing incentive compensation to people subject to force reductions.

The rule is based on the 1998 U.S. Supreme Court decision in Oubre vs. Entergy Operations Inc. (522 U.S. 422 (1998)) which said such separation agreements not to sue and their accompanying severance payment could not be enforced if the agreement didn't meet federal rules protecting older worker benefits. Included in those rules is the requirement that employers give employees 21 days to sign a waiver and a seven-day period to rescind the agreement after signing.

The EEOC also said employers may not evade the Supreme Court ruling by renaming the actions taken with employees. Some employers called their separation packages "covenants" after the Court ruling was published.

As with most programs of this nature, it is important for HR Professionals to have the input of their Employment Attorney when designing a program to compensate workers for layoffs. Rely on your legal counsel to provide you with the latest advice about meeting these changed requirements.

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3. SOCIAL SECURITY ADMINISTRATION'S NEW ELECTRONIC SERVICES WEB SITE

The Social Security Administration (SSA) has announced the opening of a new Electronic Services Internet site for businesses. It will allow employers to transmit wage reports (Forms W-2 and W-3) to SSA via the Internet. Employers can now obtain a PIN (personal identification number) by registering on the site. A password will be mailed to the PIN holder within a few days after registration is completed.

Beginning January 2, 2001 registered users with a PIN and password can use Employer Services Online to transmit wage reports. The SSA says there are advantages to filing electronically. Those include faster service, immediate acknowledgement of receipt, and status information that is available at the end of each transmission.

For more information, or to register your employer, go to: http://www.ssa.gov/employer/esohome.htm . When we tried this site the page came up normally, but links to employer registration and other activities did not work properly. We discussed it with SSA officials

and they said they were working on it. You might find the problems have been repaired.

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4. FEDERAL CONTRACTOR BLACKLISTING REGS FINALIZED

The Federal Acquisition Regulatory Council (FAR Council) published its final rule in the Federal Register on Wednesday, December 20, 2000. Effective date of the new rule will be January 19, 2001, one day before the current administration ends and the new President is sworn in.

Dubbed the "Blacklisting Regulation" by federal contractors, it gives power to contracting officers to determine if companies wanting federal contracts have a "satisfactory record of integrity and business ethics." The regulation goes on to say, "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility." (48 CFR 9.103(b) and 48 CFR 9.103(c))

The Business Round Table (BRT), an association of chief executive officers of leading corporations, has announced it will lead the judicial challenge to the blacklisting rule in the federal courts. A statement from the BRT states the rule "would give federal government contracting officers virtual blank-check authority to deny federal contracts to bidders based on arbitrary decisions."

The revised regulations now say contractors will be barred from contracts if they have evidenced "repeated, pervasive, or significant violations of the law (indicating) an unsatisfactory record of integrity and business ethics. Also, contracting officers should give consideration to any administrative agreements entered into with prospective contractors who take corrective action after disclosure of law violations. These contractors, despite findings of law violations, may continue to be responsible contractors because they have corrected the conditions that led to the misconduct. On the other hand, failure to comply with the terms of an administrative agreement is evidence of a lack of integrity and business ethics."

Contracting officers are directed to consider information based on the following "which are listed in descending order of importance:"

- Convictions of and civil judgments rendered against the prospective contractor for
  - Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract,
  - Violation of Federal or state antitrust statutes relating to the submission of offers,
  - Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property.

- Indictments for the offenses listed above.

- Relative to tax, labor and employment, environment, antitrust, or consumer protection laws:
  - Federal or state felony convictions.
  - Adverse Federal court judgments in civil cases brought by the United States.
  - Federal or state felony indictments.

- Also, contracting officers may consider other relevant information such as civil or administrative complaints or similar actions filed by or on behalf of a federal agency, board or commission, if such action reflects an adjudicated determination by the agency.

A complete copy of the Federal Register filing can be found at the HR Web Store in the "What's New" department. (http://www.hrwebstore.com) Additional comments from the Society for Human Resource Management (SHRM) can be found on their web site at http://www.shrm.org/hrnews/item1.html .

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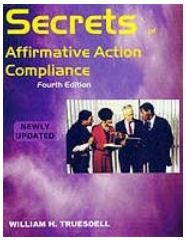

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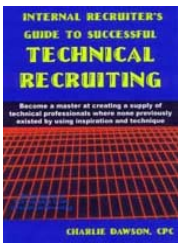

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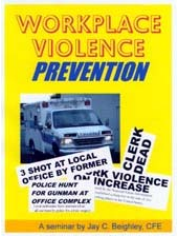

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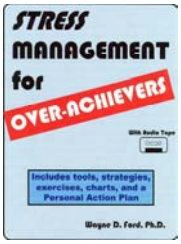

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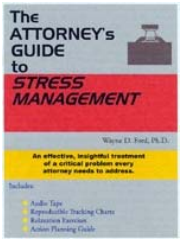

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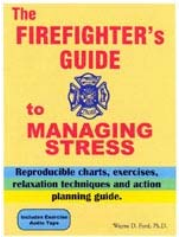

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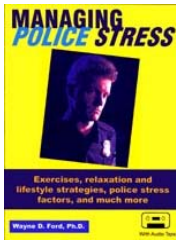

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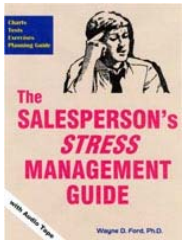

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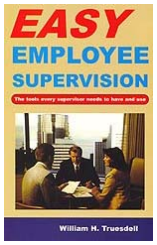

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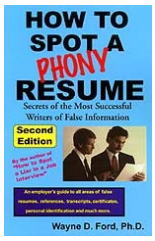

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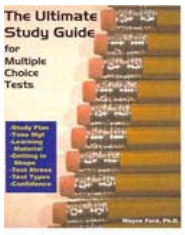

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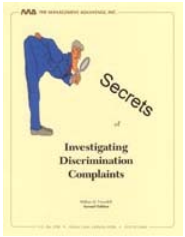

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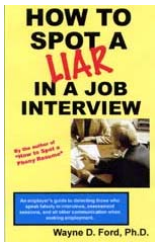

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