Gentle Readers

Special Reports for HR Professionals 2001

Collection of email reports.

GENTLE READERS:
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Gentle Readers,

Happy New Year to each of you. We wish you continued success in your professional activities.

This week, in light of the Wakefield, Massachusetts tragedy, we highlight the three most asked questions about workplace violence with answers from prevention expert and hostage negotiator, Larry Chavez.

And, to get the new year off to a solid start, there are some new federal regulations you need to know about, in the health arena.

Bill Truesdell
Editor

IN THIS REPORT (Report #164, 1/5/2001)
---------- (Sent to over 1,600 subscribers)

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1. ANSWERS TO 3 MOST-ASKED QUESTIONS ON WORKPLACE VIOLENCE

1. Do people just snap?

No, a violent outburst can be better characterized as a "slow burn" ...the result of an accumulation of unresolved personal problems which may not be readily apparent to co-workers. Some of these problems can go on for years. Examples:

- A failing personal relationship
- Economic hardship characterized by unresolved debts or wage garnishments
- Feelings of personal failure characterized by a lack of progression in status
- Actual or perceived injustice in the workplace
- Unwillingness on the part of the employee, usually a male, to ask for help
  - -- Men outnumber women 98-2 as perpetrators of fatal workplace violence incidents
  - -- It is not part of the "male culture" to ask for assistance
  - -- Men see themselves as problem-solvers as long as it is somebody else's problem they are solving
  - -- Being "forced into" a counseling program does not guarantee participation
- Access to firearms

- Combinations of aforementioned problems

The problem is further complicated by contributing workplace factors:

- A weak or non-existent policy prohibiting violence in the workplace
- Lack of training on the part of managers and supervisors leading to a failure to recognize signs or symptoms of impending violence and to act on them
- Failure on the part of the employer to intervene
- A poor or non-existent reporting system
- Failure to take threats seriously
- Poor physical security

2. Are there warning signs of impending violence?

Yes, most of the cases which resulted in fatal outcomes had clear warning signs. Examples:

- Beware of newly acquired negative traits!
- Sudden changes in personal behavior
- Decrease in productivity
- Inability to concentrate
- Sudden withdrawal from current circle of friends or acquaintances
- Newly acquired poor personal hygiene
- Problems with attendance or tardiness
- Overreaction to stimuli, poor impulse control ("snapping" at co-workers)
- Indicators of suicide (i.e., actual discussion or giving away valued personal property)
- Actual or veiled threats to co-workers
- Sabotage or theft of property of employer or co-workers
- Fear on the part of co-workers which they are unable to articulate. In many cases, the employees observed some traits that caused them to be fearful. At the University of Washington Medical school, it was learned that employees who feared a particular doctor who was failing an internship program actually locked their doors when he was in the area. Within days, the failing doctor killed his professor-mentor and committed suicide.

3. Is workplace violence random?

Cases of internal workplace violence are anything but random. In most cases, people are targeted merely because the perpetrator knows or perceives that they had something to do with his current plight. OR The targeted employees were assigned to positions in the organization that the perpetrator feels are responsible for perceived injustices to him. Examples:

- December 26, 2000, in the Wakefield, Massachusetts incident, there are strong indications that the perpetrator blamed his employer, specifically the accounting section for collaborating with the IRS in a wage garnishment. 7 were killed.
- November 2, 1999, in the Xerox shootings in Honolulu, the perpetrator singled out his own work group perceiving that they were responsible for his impending

termination. 7 were killed.
- April 25, 1995, at the Richmond, California Housing Authority, the perpetrator shot his two female supervisors to death and allowed other employees in the same room to live. 2 were killed
- June 28, 2000, at the University of Washington School of Medicine in Seattle, a medical doctor who was failing an internship program blamed his mentor for his plight. 2 were killed in a murder-suicide

(Editor's note: Denial of such workplace violence possibilities results in tragedy. Prevention is a much better route. Be sure you have trained all of your employees on the issue. If you need materials, look at our Workplace Violence Prevention Seminar in the HR Web Store at www.hrwebstore.com)

Larry J. Chavez, M.P.A., is president of Critical Incident Associates in the Sacramento, California area. He can be reached at (800) 977-0122 toll free or through the company's web site at www.workplace-violence.com .

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2. HIPAA MEDICAL PRIVACY REGULATIONS RELEASED

The Clinton Administration may be recorded in history as the most effective at using federal regulations to achieve its stated goals. To be sure, these actions have drawn heavy fire from many different communities, including the business/employer community. The Society for Human Resource Management (SHRM) is a party to two major legal actions against the Administration's regulatory activities.

As one of its last such actions, the U.S. Department of Health and Human Services (HHS) has published final regulations on medical privacy issues resulting from the 1996 passage of the Health Insurance Portability and Accountability Act (HIPAA). Congress set August 1999 as the deadline it had to meet by establishing national medical record privacy standards.

Unfortunately, Congress failed to meet its own deadline and the task fell to the Department (HHS).

These new regulations apply to health plans, including employer-sponsored and self-insured plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically. Self-insured employers with fewer than 50 participants are exempt under the regulations. The regulations will become effective in February 2003, and will be enforced by the HHS Office of Civil Rights.

The new rules are published in a 1500-page document following review of 52,000 comments HHS received as a result of publishing preliminary regulations in November 1999. One significant change since the initial version: Rules now apply to all medical records including paper, electronic and oral communications.

In addition, the new rules require:

- Providers are required to obtain patient consent for routine disclosures of health-related information in the course of treatment, payment or health care operations, such as internal data gathering by a provider or health care plan.
- Providers and health plans are required to give patients a clear written explanation of how they can use, keep and disclose their health information.
- Patients must be able to see and get copies of their records and request amendments. In addition, a history of most disclosures must be made accessible to patients.
- Providers and health plans must establish written privacy procedures. These must include who has access to protected information, how it will be used within the entity, and when the information would or would not be disclosed to others.
- All covered entities must provide sufficient training so that their employees understand the new privacy protections procedures, and designate an individual to be responsible for ensuring that the procedures are followed.
- All individuals and organizations who are subject to these regulations and violate them are subject to civil liability. Penalties range from $100 per incident up to $25,000 per person, per year, per standard. Federal criminal penalties also exist for health care providers, health plans, and clearinghouses that knowingly and improperly disclose information or obtain information under false pretenses. Penalties range up to $100,000 in fines and five years in prison.
- These new federal regulations will not preempt state law. If state law offers greater protection than that offered by this new federal "floor," state law will prevail.
- Covered entities may disclose to employers protected health information only for the purposes of determining whether an individual has a work-related illness or injury, or in the course of a medical surveillance of the workplace.
- Employers are responsible for reporting to HHS-OCR any suspected wrongdoing on the part of their health care vendors.

For more information about the new regulations, the Department of Health and Human Services, or its Office of Civil Rights, visit this web site: http://www.hhs.gov/ocr/hipaa.html .

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3. "GENTLE READERS - 2000" NOW AVAILABLE

If you are continuing to build your library of reference materials and want a completely cross-indexed set of our Special Reports for HR Professionals, 2000 Volume, it is now available for only $19.95.

The index allows you to quickly put your hands on information you need whenever your boss asks one of those questions you know the answer to, but want to check out anyway before saying so.

Quite simply, it will help you do your job more efficiently.

You can find this latest yearly summary in our HR Web Store at www.hrwebstore.com . Go to the "Newsletter" department, and then to "Gentle Readers."

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4. GET YOUR FREE 2001 REFERENCE PRODUCT CATALOG

It's available now. Our new 2001 catalog of reference products for HR and legal professionals. And, it's FREE.

You can download your copy today (or convenient anytime) by going to the HR Web Store at www.hrwebstore.com . Select "Catalog" from the main left-hand menu.

We have added over a dozen new reference products for your use this year. As the profession becomes more complex, the need for additional references continues to grow. You will find the help you need in our new catalog.

We'll look forward to serving you.

Gentle Readers,

While Washington is in the throws of political transition, we thought we would share with you some thoughts from two HR colleagues.

Bill Truesdell
Editor

IN THIS REPORT (Report #165, 1/12/2001)
---------- (Sent to over 1,600 subscribers)

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1. WHAT'S UNDER THIS HOOD? THE MECHANICS OF LEADERSHIP VERSUS MANAGEMENT (Part 1 of 2 parts)

By E. L. Zimmerman

Believe it or not, there are those rare individuals in the world of work who describe themselves as 'great managers.' Focusing primarily on the enterprise's revenues, this professional tends to be a master at organizing a workforce in meeting or exceeding annual profit projections. Typically, great managers have staked their reputations, if not their careers, on maintaining bottom-line results for the betterment of the organization. While perhaps losing sight of a commonly accepted business truth - it's 'all' the members of any workforce who ultimately make things happen - a great manager more often than not runs the risk of being labeled an 'ogre' by subordinates for an unrelenting dedication to the monthly P&L statements.

Yet, there are others out there who would scoff at the title 'manager,' qualifying themselves as a class of 'good leaders.' Typically, good leaders sacrifice micromanagement of the bottom-line in favor of a macroscopic understanding of the enterprise, its associates, and its strategic direction.

While it has never been conclusively proven that leaders produce lower profits than managers, they do tend to create more inspired, more empowered associates - willing to serve to the ends of the Earth - and leaders are significantly less likely to be deemed a 'workaholic,' 'ogre,' or 'bossmonster' by their associates or colleagues. Despite arguments to the contrary, there are fundamental differences in the philosophical approaches to management versus leadership. While these differences are not as definitive as night and day, they do draw unique

contrast with one another while also complementing related competencies.

From time to time, these differences warrant examination, if for no greater reason than to serve reminder that perhaps a healthy mix of both is what's needed in order to ensure true professional success.

Leadership

(1) Visionary

Articulating a strategic direction for the enterprise in a clear and compelling manner, the leader fosters relationships founded on trust and respect with all stakeholders, not just the shareholders, of the organization. Professionally, a leader dissects business situations with a view to the future while maintaining a firm grasp of the enterprise's current elements (product line, corporate philosophy, workforce, etc.). Remaining true to the core and functional competencies necessary to support the vision, the leader understands the associate's perspective and only endorses action that integrates the associate's needs. With a knack for prophecy, a leader investigates, recommends, and implements activity with appreciation of the enterprise and the associates' interests.

Personally, a leader understands that the present staff is, even today, learning by doing; they are collectively taking steps in the direction of becoming the productive workforce they ultimately will be. A leader sees beyond the immediacy of decisions, exercising the ability to often predict the effects of actions, policy, and even words. In order to maintain status as a prophet, a leader keeps up with current industry research and best practices in hopes of benefiting the enterprise with such knowledge. Additionally, the leader will seek out self-improvement opportunities in order to meet personal career objectives.

(2) Collaborator

The leader sets an example and leads through it. This has been called 'collaborating with the vision.' By doing so, a leader demonstrates a clear understanding of the strategic direction of the enterprise in aligning work and personal behavior with that vision. By doing so, a leader develops an organization and a corporate culture that encourages, supports, and rewards individual and team achievements. And, by doing so, a leader surrenders 'the self to the squad,' collaborating at all times with associates to help them address their business issues, opportunities, and concerns.

Adapting his/her management style to the unique needs of individuals, a leader displays an understanding that truly meritorious effort should be spent on eliminating barriers to superior associate performance. He/she engages willingly in coaching, feedback, recognition, brainstorming, and mentoring in order to maximize the enterprise's results.

Lastly, the successful leader defies limitations. He/she works effectively not only with his/her immediate work group but also those outside the formal line of authority in order to accomplish any of the enterprise's goals.

(3) Salesperson

Demonstrating a charismatic self-assurance of ideas, judgments, and capabilities, a leader tactically influences others within the enterprise through participation in all processes and decision-making. The goal is elementary: a leader seeks an organization that supports individual and team achievement, and therefore he/she works at building and sustaining group cohesion through mutual trust and respect.

Once the enterprise has its professional dynamic, the leader manages to it. To accomplish the challenge of creating unity, a leader will provide his enterprise with the vision, direction, and inspiration necessary for its continued longevity. He/she maintains good rapport with all departments of the enterprise, and he/she gets to know (in great detail) the people and resources that can provide assistance.

Typically, leaders inspire their workforce to produce 'value beyond the salary,' meaning that they motivate their respective teams to show value beyond their compensation package. They actualize people toward greatness, not necessarily goodness.

(4) Negotiator

Ever the focused optimist during tough times as well as the good, the leader espouses one guiding premise: 'change' is the new corporate religion. As someone once said, "The past is only reference, not residence." The leader reacts and adjusts positively to new ways of accomplishing tasks. First and foremost on the leader's mind is making the tough decisions that ensure associate satisfaction and departmental efficiency.

To that end, most leaders willingly serve as self-fueled process improvement 'think tanks' or change agent specialists, developing imaginative solutions to solving problems despite the element of risk. Critical to the leader's perspective is his/her ability to enhance existing processes and procedures that ensure associate satisfaction and departmental efficiency. Setbacks are inevitable and, therefore, embraced rather than shunned, for it is only in failure that we learn. However, because risk persists, the leader will not sacrifice common sense or sound business judgment solely for the sake of change. Serving as a catalyst for positive organizational turbulence, a leader will assist managers and associates in responding effectively to new circumstances in the workplace. Ever resilient, the leader will actively seek assignments, guidance, and feedback that are necessary in order to prepare for handling current or future objectives.

(Part Two describing management characteristics will appear in next week's "Special Report for HR Professionals.")

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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2. IMPORTANCE OF HRM IN THE SERVICE INDUSTRY

By Payal A. Malkani

HRM - Human Resource Management - is important in any industry. However in the service industry, including hotels & restaurants, banks, hospitals, educational institutes and others, this dimension is not only important but also critical. Expectations of service are different for different customer segments.

Service organizations simultaneously have to deliver more than one level of service using more than one delivery method. At every step, humans are involved, whether customers, employees or company management. Service delivery is usually quite complex, making the HRM job more critical.

To tackle this complexity, the HR Manager must first focus on the customer. To do so it is necessary to identify the customer's expectations.

Customer Seeks:

- Quality
- Lower Prices
- Exclusive selection
- Service with good attitude & speed
- Rapid delivery
- Convenient location
- Easy parking
- Pleasant atmosphere

You will observe that most of these expectations are mainly dependant on the skill & behavior of your people … your human resources.

Employer Seeks:

What does the management of a Service Company need?

- Profits
- Retention of its customers & employees
- Business growth

Employee Seeks:

- Good and positive working conditions
- Personal growth
- Challenging work
- Responsibility
- Recognition and rewards
- Respect

HRM is that often-unseen force that binds an effective & efficient link between employee's (the server), management (the employer), and the customer (service seeker). There are three possible relationships that clearly emerge from these three parties:

- the server and the customer.
- the company and the server
- the company and the customer

All these relationships have to be well balanced. Any imbalance will prove to be detrimental to the interest of any service organization. (e.g. If the relationship between a server and the customer dominates the other two relationships, there is a strong possibility that servers may be able to take customers with them if they leave the payroll. Knowing this, an employee may even be tempted to leave. This condition fosters the company's own future competition and results in loss of a good employee. If relationship is very strong between the customer and company, but weak between the company and its employees, employees quickly begin to feel left out and exploited. There are practical ways HRM can help achieve equilibrium in these relationships.

EMPLOYEE SELECTION:

It has been said that the best person you interview, isn't necessarily the best person for the job. One person can regard a job in food services as boring and repetitive, while another can see the same job as offering an endless variety of opportunities to interact with people. My experience has led me to believe successful service industry employees possess the following attributes:

- Flexibility
- Tolerance for ambiguity
- Ability to monitor their work accomplishments
- Ability to change their behavior during the service encounter
- Empathy with customers.

These are more important than age, education, training and other factors. The question becomes, "How can we select people possessing these qualities?" Validated tests and situational interviews can yield reliable results. There is a reasonable amount of data to suggest that people with characteristics required for effective performance gravitate towards these jobs. Most employees in such jobs are self-motivated in providing good customer service. Successful HRM policies can capitalize on these desires.

Always build on strengths and seek to alleviate weaknesses. Attempting to make a chef out of a salesman is folly. Use skills to advantage. Any business stands or falls on the strength of its personnel. Good employees can make a marginal business succeed. Poor or dishonest employees can destroy the best business. I firmly believe in what Frederick Terman said, "If you want a track team to win the high jump, you find one person who can jump seven feet, not seven people who can jump one foot."

DELIGHTING THE EMPLOYEE:

Motivation starts not with compensation but with effective communication. In a service firm, internal communication among employees is more important than visible external communication. This includes clear communication of job expectations, joint goal setting by employees and their supervisors, straightforward measurement and appraisal of results, and follow-up to help people improve through positive reinforcement and personal development. It also requires management folks willing to listen and act on what they hear. In a

service organization, the following methods have been found successful in motivating employees:

- Make it easy to move within the organization
- Delegate authority
- Trust employees
- Give employees full value of compensation
- Ensure that top management meets employees at least once every six months
- MBW -- Management By Wandering. Yes, move out and be a part of the visible management.
- Try EMPLOYEE NEWSLINE
- Conduct annual attitude surveys of all employees
- Maintain an open-door policy

EMPLOYEE TRAINING:

Service employees are constantly interested in personal growth prospects. You have to help them grow within the organization. Develop a growth plan for them. The plan should benefit the employee in his career path and company goals. Leading firms in service industries are known among competitors for the quality of their personnel program including training. Many have spent years building a strategy based on enhanced service, and at times, strong faith among managers has been needed to achieve the initial payoff.

COACHING:

Coaching from HR is a driving force for employees. Organizations need to recognize the power of coaching. It's a tool every manager needs to add to his tool kit. As a coach, an HR Manager has to be the employee's best friend and guide. To succeed, coaches must be good listeners. It's through coaching skills that HR Managers will be able to help employees feel valued and appreciated, resulting in higher retention rates.

Proper selection, motivation, attention to the training needs, and coaching of your people will help individuals contribute in the work team. Together, they exert positive peer pressure and provide positive reinforcement. Don't forget that when you hire a hand - the WHOLE person comes along with it. As the HR Manager, you can … Help your people improve their personal and job performance in any service industry enterprise.

Payal A. Malkani is an HR consultant with Pearl Consultancy. She can be reached at pearlconsult@usa.net.

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3. WEB SITE SUBSCRIPTION LINK WORKING AGAIN

Thanks to all of you who have been so patient with us while our web site subscription link was not working properly. It has been much longer than we would like to admit. And, for quite a while it seemed the problem would never be resolved.

Well, it's fixed. Finally.

We invite you to tell your friends that they can stop by the HR WEB STORE at www.hrwebstore.com and link to our newsletter subscription form from the bottom of any page on the site. Please remember to tell them that the subscription is FREE.

We appreciate your continued support as a subscriber and look forward to continuing to grow our subscriber list now that the problem has been repaired.

Our subscriber list is private. It is not shared with or sold to any other organization. You will never receive SPAM mail from unknown organizations because you are on our subscriber list.

Gentle Readers,

We offer the second half of Ed Zimmerman's article on management and leadership. There is a reminder about upcoming OSHA posting requirements and a glance at the rising concern about workplace stress.

Don't forget to suggest that your colleagues submit their own FREE subscription request through our web site at www.hrwebstore.com .

Bill Truesdell
Editor

IN THIS REPORT (Report #166, 1/19/2001)
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1. WHAT'S UNDER THIS HOOD?
THE MECHANICS OF LEADERSHIP VERSUS MANAGEMENT
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By E. L. Zimmerman

Management

(1) Captain

Displaying energy and initiative, the manager develops and applies personal knowledge of the business, products, systems, and technology to advance the enterprise's agenda. This applied knowledge will not only include industry specifics, but also it will involve applying industry terminology, paper-flow, and structure to problem solving, communication, training, and implementation. Additionally, the successful manager will often interpret the laws, regulations, policies, and procedures that impact (positively or negatively) the associates in order to ensure a productive working environment.

Accepting feedback and criticism professionally and constructively, the manager assumes ownership for work by setting priorities and utilizing department resources. Not only does the manager add economic value through the strategic use of the enterprise's programs and practices, he/she also understands and applies corporate procedures and departmental standards to consistently produce error-free results in a timely manner. He/she ensures that the team is striving to overcome obstacles before seeking support.

Minimally, the manager consistently and reliably produces an acceptable volume of work, organizing and prioritizing processes to achieve these results.

(2) Analyst

Possessing keen analytical skills coupled with a grasp of the enterprise's budget, the successful manager works diligently to gather current and accurate information about situations and technology. Without it, the manager cannot (and will not) make educated decisions on behalf of the organization. Before engaging a course of action, the manager conducts an in-depth analysis of the requirements and specifications in order to determine which course will deliver maximum results. Additionally, he/she uses this information to drive his/her own learning as well as nurturing the business's continued success. After careful review of all the collected data and alternatives, only then will the manager make timely decisions.

Understanding that talent is what will make any department efficient, the manager analyzes, designs, recommends, and administers a fair and equitable reward system to attract, motivate, and retain qualified associates.

(3) Conductor

Focusing on potential business opportunities, the successful manager understands the differences and similarities between individual, departmental, and enterprise goals. Like a workhorse, the manager endeavors to accomplish all of them, applying knowledge and training to support whatever the need. His/her emphasis will remain on the client: understanding their needs, the manager will take actions necessary to either integrate or balance them with the enterprise's products and strategic direction. At all times, the manager will use whatever resources are appropriate to identify issues, plan work, eliminate concerns, resolve problems, and make the necessary adjustments to reach optimum performance.

In determining key personnel to fill out a results-driven team, a manager analyzes departmental needs, selects the best-qualified candidates, and assigns tasks based on skills and abilities. Reaching outside of the sphere of influence, the manager will also organize, gain the involvement of, and manages diverse work groups and/or task forces to achieve specific project or enterprise goals.

(4) Controller

For the manager, an accurate picture of the enterprise's profitability can only be achieved through careful consideration of all of the details comprising typical business activity. This examination starts with the basics: a review of common elements of success, and it extends all the way to determination of obstacles to performance in the workplace.

By demanding work performed to the best of any associate's ability, a manager's primary objective is simple: meeting or exceeding professional, enterprise, task force, or departmental goals. Through an exhaustive examination of data meant to identify the most critical

components of exemplary performance, the successful manager recognizes trends, inconsistencies, deficiencies, and impact, and he/she never loses focus of monitoring results, controlling resources (including employees), and modifying business activity to better achieve project plan. However, the manager always demonstrates sensitivity to the impact of change on the individuals who are aiding in the achievements.

The exceptional manager identifies client problems and maintains ownership until the issue is fully resolved, providing the client with detailed follow-up. Those issues that fall outside the manager's sphere of influence are appropriately escalated to the proper department's staff.

To Lead Or Not To Lead: Is That The Question?

While management and leadership do have their philosophical differences, they both share the common element of attaining goals.

If the goal becomes the team's destination, then the method (i.e. management versus leadership) is the journey, and there are many roads available to the successful professional in today's competitive world. The strategies and practices that ensure success are limitless as workplace technology continues to evolve faster than at any other time in our history. Clearly, what sets one manager apart from another is whether he/she chooses to lead, to manage, or to combine the best elements of both disciplines most needed for optimum results.

As always, the destination remains unchanged but within one's reach so long as the supervisor commits to a philosophy that works.

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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2. FEBRUARY MEANS OSHA 200 POSTING

Federal regulations require many employers with 11 or more workers to post an annual summary of job-related injury and illness that occurred during the previous calendar year. The summary is compiled on OSHA Form 200 and that document must be posted where other employment posters are normally found. It must remain posted from February 1, 2001 through February 28, 2001. In states where the federal Department of Labor has awarded oversight and enforcement powers to the state agency, rules for annual posting will remain the same. The federal regulations are enforced by the U.S. Occupational Safety and Health Administration (OSHA).

This annual requirement began in 1972. Form 200 is officially designated the "Log and Summary of Occupational Injuries and Illnesses." The right-hand portion of the form includes the incident summary information. It also lists the extent and outcomes of those incidents. Employees are entitled to request access to this

information at any time during the year. It is only during February that employers must actually post the summary, however.

In organizations with no injuries and illnesses during 2000, the form must be posted with zeros on the total line. The person who prepares the annual summary must certify that the totals are correct and sign the form.

Not all employers are required to post the annual summary. Any organization with 10 or fewer employees is exempt. Also exempt are organizations in certain statistically safe industry groups. Those include the following Standard Industrial Classification (SIC) codes:

- Retail Trade
  - 56 Apparel/accessory stores
  - 58 Eating/drinking places
  - 59 Miscellaneous retail

- Finance, Insurance, Real Estate
  - 60 Banking
  - 61 Credit agencies except banks
  - 62 Security, commercial brokers/services
  - 63 Insurance carriers
  - 64 Insurance agents/brokers/services
  - 65 Real estate
  - 66 Combined real estate/insurance
  - 67 Holding/other investment offices

- Services
  - 72 Personal services
  - 73 Business services

- Professional Services
  - 81 Legal services
  - 82 Educational services
  - 83 Social services
  - 84 Museums/art galleries
  - 86 Membership organizations
  - 87 Engineering/accounting/research/management and related services
  - 88 Private households
  - 89 Miscellaneous services

You should check with your state safety department for a list of their requirements and a copy of Form 200. The form can also be obtained from any of the federal OSHA offices around the country. Look in your local telephone directory "government pages." California employers can order a copy using the order form at:
http://www.dir.ca.gov/databases/edtraintest/public3.html

Employers who fail to post Form 200 when required face a regulatory citation and possible civil penalties.

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3. STRESS ISN'T JUST FOR EXECUTIVES ANY MORE

Twice this week, the Wall Street Journal ran lead stories in its Marketplace section on the subject of workplace stress. It's a hot topic because the Journal articles claim workplace stress can get worse with economic uncertainties. Add that to an already overloaded job for many people, and stress becomes a very serious issue.

Most of us have heard of terms like "road rage" where traffic and behavior of other drivers can stimulate emotional outbursts in some people. Lately, there has been talk of "air rage," where airline passengers become unreasonable and unruly, requiring flight crews to subdue and restrain them in their seats.

Now, there's "Desk Rage." According to the Journal, the number of incidents of office behavior explosions is rising, along with their severity. At the extreme end of that spectrum is workplace violence. The most serious situations require medical treatment and even coroners. Lost tempers are probably the most common form of workplace behavior problems related to stress. One survey by The Marlin Co. of North Haven, Conn., showed that 42 percent of office workers said they had jobs in an office where yelling and verbal abuse happened frequently.

If this is something of concern to you because you have seen such behavior in your workplace, check over the following list of "Warning Signs" to see if there might be a more serious problem brewing.

WARNING SIGNS THAT AN EMPLOYEE HAS REACHED THE BREAKING POINT

- Skipping group lunches: A signal someone feels demoralized and not part of their work community.
- Coming to work late: One of the first hints that stress is eating away at motivation.
- Calling in sick frequently: If people feel they aren't getting a break at work, they may start taking them on their own.
- Withdrawing: When someone uncharacteristically retreats from water cooler talk and office banter, it may indicate an unhealthy distancing from colleagues.
- Obsessing: If colleagues focus on seemingly insignificant matters or isolated incidents, it may mean they are angry or can no longer cope with the big picture.

(Sources: Wall Street Journal, 1/16/2001; Mitchell Messer, Director of the Anger Institute in Chicago; R. Brayton Bowen, president of the Howland Group, a management-consulting firm.)

We all have jobs to do. Some of them are pretty big. Sometimes we can't get everything done, and what does get done isn't always up to the level of quality we would like. Yet, there are ways to deal with the sensation that life is compacting us into a smaller and smaller bundle.

You can help yourself and your employees by using specific stress-reducing techniques discussed in our stress management books and audio tape. You will find them in the HR Web Store. Simply go to

www.hrwebstore.com . Learn how to deal with this growing workplace problem.

Gentle Readers,

The high technology industry continues to make news with its financial problems and that drives us to questions about human resource management.

Bill Truesdell
Editor

IN THIS REPORT (Report #167, 1/26/2001)
-------------- (Sent to over 1,600 subscribers)

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1. DOT-COM DIETS

Layoffs continue to increase at dot-coms and other financially-troubled technology companies. And, part of the rethinking has focused on employee percs. At ExciteAtHome.com, employees are now being asked to pay 25 cents each for sodas that once were paid for by the company. At the same company, weekly ice cream parties have been rescheduled for only twice per month.

While some companies are suspending plans to move into new quarters or open offices overseas, others are restructuring policies governing first class air travel, automobile rentals and magazine subscriptions. Hewlett-Packard froze wages for the first quarter this year. Charles Schwab & Co. is cutting salaries for employees at both upper and lower levels of the pay scale.

If you are faced with the need to participate in discussions about cost cutting plans, we suggest you keep in mind the impact each cut will have on your workforce. You can achieve the financial goal without destroying employee motivation if those decisions are made wisely. Cutting employer-sponsored coffee service may produce a small dollar savings, but it can cost a great deal in terms of morale. Greater dollar savings can sometimes be achieved through a review of plans to buy new furniture, renew season tickets for sporting or artistic events, or lease new executive cars. Often, simply delaying such purchases can create substantial savings, allowing new revenue generation plans to catch up with budget plans.

Human Resource Managers have a dual role to play in these matters. They must contribute financial management support while continuing to represent employee interests during executive discussions. It is often a tight-rope walk. Those who are successful usually attribute their achievements to application of common sense.

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2. UPDATE ON HIGH-TECHNOLOGY RECRUITING

The federal government is operating with a higher quota for foreign technology workers placed in this country on H-1B visas thanks to action by Congress and the President last year. Many dot-com companies are failing and turning their employees out into the job market once more.

According to Challenger Gray & Christmas Inc., a Chicago-area outplacement firm, 41,214 people were laid off from dot-coms in the United States during 2000. The company quickly adds that most of those were hired quickly by other technology companies, many of which were large well-known companies wanting to establish or expand their ecommerce departments. Just this week, other companies have announced large lay-offs. The new Time-Warner/AOL organization will separate a few thousand workers from their jobs, and Lucent Technologies will downsize by 16,000. Other employers are gaining media attention this week because of similar announcements.

In Silicon Valley where many of the high-tech lay-offs have occurred, technical recruiters continue to struggle to locate qualified candidates.

California's State Employment Development Department (EDD) is forecasting the following number of new jobs in Santa Clara County alone. (Santa Clara County is the core of "Silicon Valley.") The following figures represent annual growth in jobs:

o General managers, executives	31,000+
o Retail salespeople	30,000+
o Electrical/electronic engineers	29,000+
o Computer engineers	24,000+
o Janitors, cleaners	20,000+
o Cashiers	19,000+
o Computer support specialists	16,000+
o Systems analysts	14,000+

Technical recruiters are likely to be challenged as the future unfolds. If you are a technical recruiter and would like to have more resources at your fingertips, we invite you to visit our HR Web Store. Look in the "Recruiting Resources" department. www.hrwebstore.com .

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3. POTPOURRI - FYI

o Job Shadow Day is just around the corner...February 2nd. If you are interested in making some last-minute arrangements for your local schools to send students to your workplace you can find help on the web. For information about Job Shadow Day contacts in your state, search for what you need at:
http://www.jobshadow.org/get_started/contacts.html

o JANE magazine features our tool kit in the February issue now available on news stands. (Page 72) In honor of St. Valentine's Day, our tool kit was selected because it is pink. You can see this great took kit for yourself in the "Gifts" department of the HR Web Store at www.hrwebstore.com

o The Job Accommodation Network (JAN) now serves Canadian employers as well as US employers. The web site has been growing to encompass many more resources and links. If you have any questions on issues of disability management in the workplace or employee accommodation, this is a good place to start your search for help. You will find: Disability resources, including web sites by specific disabilities; employment resources; information on disability legislation; selected EEOC guidelines; help on independent living programs; Disability and Business Technical Assistance Centers (DBTACs); enforcement contacts; Governors' committees; workers' compensation and much more. Point your browser to: http://janweb.icdi.wvu.edu/

Gentle Readers,

The new year is only four weeks old and we already have a new Secretary of Labor. Elaine L. Chao, appointed by President Bush, was approved in the Senate on Monday, January 29th by a voice vote. That was a day earlier than the expected roll-call vote. If this level of support is any indication, we have only to wait to see what programs Ms. Chao proposes to see where her political support will take labor issues for the next four years.

Bill Truesdell
Editor

IN THIS REPORT (Report #168, 2/2/2001)
---------- (Sent to over 1,600 subscribers)

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1. NEW AAP REGULATIONS - THOUGHTS FROM AN EXPERT

Last week, on January 25, 2001, the Silicon Valley Industry Liaison Group (ILG) met to hear Fred W. Alvarez, head of the employment law section within Wilson Sonsini Goodrich & Rosati discuss recently enacted regulatory changes for affirmative action. Mr. Alvarez is eminently qualified beyond his legal expertise. He has held positions of Commissioner with the U.S. Equal Employment Opportunity Commission (EEOC) and Assistant Secretary of Labor overseeing operations of the Office of Federal Contract Compliance Programs (OFCCP).

During his presentation Mr. Alvarez discussed new requirements in record keeping and definition of applicants, the new alternative to workforce analysis, two-factor availability analysis, placement goals and the EO Survey. Here are a few highlights:

- OFCCP in 2001
  With the new Secretary of Labor as yet unconfirmed by the U.S. Senate, it is still too early to tell what direction the OFCCP may take in its enforcement actions. Under the previous administration of Shirley Wilcher as National Director, the agency focused more on rooting out and settling issues of employment discrimination than on AAP content issues. We will have to wait and see where the new leadership takes us once those individuals are appointed and confirmed. It is quite possible that the Deputy Assistant Secretary of Labor for OFCCP will not be appointed for quite some time to come.

- Record Keeping and "Applicants"
  Regulations now provide that any failure of contractors to preserve records on employment activity (job applications, resumes, payroll changes, interview notes, and the like) will result in the OFCCP making an "adverse inference." Essentially, the agency will not be able to infer that the absence of records, when they should have been maintained, leads to a conclusion of adverse treatment. Record management is something all contractors will need to be more diligent about.

  The definition of "applicant" is not much clearer now than it has been for many years. Mr. Alvarez suggests that contractors should define applicant based on how they actually conduct their business. "There needs to be a determination of where recruiting ends and selection begins," he said. Once selection begins, contractors have found their applicant pool. When asked if he thought the Department of Labor's Solicitor would take on the issue of applicant definition, Mr. Alvarez said he didn't think that would happen.

- The requirement for contractors to maintain "written" AAPs includes "electronic" copies of the document made available to employees on company computer networks.

- The new provision for contractors to use "functional" AAP establishments versus geographical establishments has yet to be clarified by OFCCP. Contractors must obtain "prior approval" from the agency before they may use functional establishments. To date, no guidance has been forthcoming from the OFCCP about how to seek and obtain that approval.

- About the Organizational Display alternative to Workforce Analysis, Mr. Alvarez asked the group how many currently have organization charts that extend coverage to all first line supervisors. Five of the 75 people attending said they did. The rest of the employers in the room said they didn't use organizational charts because they didn't manage their business in traditional structures. They tend to use matrix structures that don't lend themselves well to organization charts.

- On the new two-factor availability analysis, Mr. Alvarez suggested employers be careful to keep records about how their choices of data sources were made. Also important are notations about reasons for excluding data that is not used. All of that is to support new requirements that contractors prove there is "no exclusionary effect" in their computation of availability.

- Placement rate goals must now be set "at least to availability." That leaves open some room for OFCCP to require placement rate goals greater than availability.

- Internal Audit and Reporting Systems are required that result in the Affirmative Action Officer "advising top management of affirmative action plan effectiveness and making recommendations about those results." "We should be careful to include results

at all levels, even executive, in our analysis," said Mr. Alvarez. That may be problematic in that it could create documentation that may turn out to be unfavorable to the employer in some future legal action. He suggested contractors work with their attorneys on the issue.

- Glass Ceiling Audits can now lead to the OFCCP "following a trail" into other establishments if they find issues requiring follow up. It is possible for the agency enforcement process to go on for a long time just moving from one problem indicator to another across establishment lines. The OFCCP is no longer constrained to one establishment when it does its compliance evaluations.

Given all of the unknowns about where the new federal administration will take enforcement efforts, federal contractors should maintain a vigilance and produce any new AAP documents using the new regulations as their guide.

Mr. Alvarez can be reached at his law office. His email address is: falvarez@wsgr.com

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2. WHAT CONSTITUTES A "PERSONNEL FILE?"

(Editor's Note: We frequently receive questions from clients, readers and the general public asking about various aspects of employee management. California's requirements are different from those in other states, and some would say more strict on employers. From time to time, we will be sharing some of those questions and answers with you in our Special Report for HR Professionals.)

I am looking for information on employee files. Specifically if it is allowable for managers to keep a "private" personnel file on members of their staff. It is my understanding that this is allowed so long as 1. the employee is aware that the file exists and 2. that the employee can ask to see the file at any time. Other members of the management staff have other views. What constitutes a “Personnel File?”

Tom N.

Tom: Generally, state laws govern personnel files, their contents and their access. In California, personnel files are owned by the employer. And, State Labor Code governs what constitutes a personnel file and how employees can access it. In summary, here are the California requirements. You will find them in the California Labor Code, Section 1198.5 - Inspection of personnel files.

Any file containing information about an employee can be considered part of the collective "personnel file." There may be a component in the supervisor's desk, another file in the headquarters personnel or HR management office, a separate file with I-9 Forms, a separate file with

investigation records, a separate file with medical records and a separate payroll file. There could be others as well. All together, they are considered "the personnel file." Employees are entitled to make a written request to review their personnel file contents. Employers must make the complete file available to the employee for review with the exception of investigation files, attorney files and medical records. Those do not have to be provided. However, some folks have made the case that an employee should be able to have a medical professional review the contents of their medical file. That's a gray area. Legislative proposals at both the state and federal level would allow employees access to their personal medical records. We'll have to wait to see if those proposals survive the necessary political discussions.

In practical terms, supervisors often keep records on their employees so they may conduct day-to-day business. There is no question that a "supervisor's file" is part of the larger "personnel file." It must be made available as part of the review process. The employer is responsible for assembling all the various pieces of the collective personnel file when a written request for review is submitted by an employee. It is not the employee's responsibility to keep track of all the individual components. In fact, employees will not often even know that some components exist or where they are kept.

During a file review, employers are not required to allow employees to alter any of the contents or delete or add material. And, a management person can stay with them during the time they do their file review. Employees should be allowed to take notes, but since the file is employer property, are not entitled to copies of documents other than those they have signed. Employers may choose to provide copies of unsigned documents if they wish.

Look in the Labor Code for more technical requirements. Or, talk with your management attorney.

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3. EEOC STATISTICS FOR FY2000

The Equal Employment Opportunity Commission (EEOC) has released statistics on its complaint case processing during Fiscal Year (FY) 2000. The agency has reduced its case backlog to only 34,300, the lowest level in its history.

During the year the EEOC took in 79,896 charges of illegal discrimination. Those broke down as follows:

Race	36.2%
Sex	31.5%
National Origin	9.8%
Religion	2.4%
Retaliation	27.1%
Age	20.0%
Disability	19.9%

Equal Pay 1.6%

The total is greater than 100% because some charges cite multiple bases.

During the year the agency filed 325 lawsuits and resolved 427 litigation cases. That marks another reduction in backlog. In all, the EEOC recovered $47,572,302 from litigation of complaints during FY2000. That year ended September 30, 2000.

Gentle Readers,

We are still trying to untangle the legacy of new regulations left at the doorstep as the Clinton Administration walked out of its offices in January. If you have any form of medical records on your employees, you will want to be aware of new requirements for protecting those files. Plan now so you will have systems in place to meet the rules which begin in February 2003.

Bill Truesdell
Editor

IN THIS REPORT (Report #169, 2/16/2001)
---------- (Sent to over 1,600 subscribers)

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1. WHAT WILL HAPPEN AT EEOC?

No word yet on when President Bush will appoint two new Commissioners to the Equal Employment Opportunity Commission (EEOC). Two of the five Commission seats are currently vacant.

The three Commissioners currently serving are all Democrats appointed by President Clinton. They include, Vice Chairman Paul Igasaki, Paul Miller, and Chairwoman Ida Castro.

It was under former Chairman Gilbert Casellas, also a Clinton appointee, that the EEOC began its program of mediation and inventory reduction. The latest numbers on EEOC case inventories show the program, continued by Ms. Castro, has been successful in shortening complaint processing times and lowering the agency backlog of cases.

Up to three of the five Commissioners can be from the same political party under provisions of Title VII of the Civil Rights Act of 1964. None of the current Democrats have indicated they will leave before the completion of their terms. Igasaki's term expires in July 2002, Castro's term expires in July 2003, and Miller's term expires in July 2004.

As things now stand, the Commission has the required quorum to operate in conducting daily business. If one of the current Commissioners were to leave before the appointment and confirmation of one or both new Commissioners, the EEOC would be unable to legally conduct its business.

Given the current circumstances, even if President Bush appointed strong conservatives the current direction of EEOC decisions would likely not change much. The earliest that can happen is July 2002.

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2. CALIFORNIA HAS NEW "MISCELLANEOUS" WAGE ORDER

California employers who believe they have not been covered up to now by one of the existing sixteen wage orders can now turn to the new "Wage Order 17 - Regulating Miscellaneous Employees."

The California Chamber of Commerce describes the new order as a "catchall order covering: a) any industry or occupation not previously covered by the Wage Orders; b) all employees not specifically exempted in the Wage Orders; and c) all employees not otherwise exempted by law."

If you would like a copy of the new order, go to: http://www.dir.ca.gov/iwc/IWCArticle17.htm which is the official site of the California Industrial Welfare Commission and the new Article 17.

California employers should keep their notebooks handy for the other changes that are sure to happen in employment regulations for the state's employers.

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3. NEW MEDICAL PRIVACY REGULATIONS

On its way out the door, the Clinton Administration stamped its approval on dozens of regulatory changes including OSHA's ergonomics standards, affirmative action changes and new rules for protecting employee medical record privacy.

The U.S. Department of Health and Human Services (HHS) is responsible for implementing much of the Health Insurance Portability and Accountability Act (HIPAA) that requires strict standards for collection and handling of personal medical information.

Here's some of what employers will have to be ready to deal with when the new rules go into effect in 2003:

- Obligations for patient consent in both treatment and record release
- Restrictions on scope of information that can be disclosed
- Requirements for employers to have written privacy policies
- Designation of privacy officers and training for employees on privacy procedures
- Requirements for strict vendor oversight
- Limitations on the information exchanged between health plans and their sponsors.

Employers who are found guilty of violating these requirements may be punished with both civil and criminal penalties. The range is from $100 per incident to $250,000 and 10 years in prison, depending on the circumstances and severity of the offense.

All experts in the area of medical record privacy, including those associated with the Society for Human Resource Management (SHRM) are suggesting that the final release in December 2000 went much further than anyone had expected in placing additional burdens on employers.

There has been some suggestion that efforts will be made to re-enter the regulation-making process to change some of the current provisions. Don't hold your breath, however. It takes as much time and effort to change regulations once they are in place as it does to put them there to begin with. Chances are pretty good that employers will have to learn to live with these new requirements.

For a complete copy of the new regulations, published in the Federal Register on December 28, 2000, go to: http://www.hrwebstore.com and go to the "What's New" department. You will find a downloadable file in PDF format that is 401 KB in size. That's all there is to it.

Gentle Readers,

The Clinton Administration is no longer making waves, but its ripples continue to roll onto corporate beaches from one coast to the other. We are still trying to sort out all of the last minute regulations left behind by the previous administration.

Bill Truesdell
Editor

IN THIS REPORT (Report #170, 2/23/2001)
---------- (Sent to over 1,600 subscribers)

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1. DOL SUES CONTRACTOR FOR NOT RETURNING EO SURVEY

As reported recently by the Society for Human Resource Management (SHRM), the Department of Labor recently filed a lawsuit against a contractor for failing to complete and return the Office of Federal Contract Compliance Programs' (OFCCP) "Equal Opportunity Survey" (EO Survey) that was sent out during the fall of last year. (See, OFCCP v. Giant Merchandising, DOL ALJ, docket number unavailable, compliant filed 1/12/01). The EO Survey is mandatory and asks for detailed information on compensation, personnel activities, and general information on the establishment's affirmative action program.

The contractor did not return the survey because of its belief that it did not meet the statutory dollar amount of $500,000 for contracts that would trigger EO and AA requirements. OFCCP responded by saying the threshold dollar amount for government contracts to trigger equal opportunity and affirmative action is $50,000 not $500,000. OFCCP is seeking injunctions to compel the contractor to provide the information solicited by the survey and bar any government contracts with the company for six months.

While this lawsuit is the first of its kind filed by the DOL against a company for not completing the survey, DOL has stated it will pursue others who fail to respond to the survey.

The agency's final rule on affirmative action, which became effective on December 13, 2000, codified the EO Survey so that half of all non-construction contractor establishments will receive the survey every other year. As such, OFCCP sent out approximately 50,000 EO Surveys to federal contractors in January 2001.

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2. RETURN DEADLINE EXTENDED FOR EO SURVEYS

The Equal Employment Advisory Council (EEAC) recently broke the news that the 45-day deadline for returning completed Equal Opportunity Surveys to the Office of Federal Contract Compliance Programs (OFCCP) would be extended to April 23, 2001 for all surveys mailed in January 2001. Approximately 50,000 copies of the EO Survey were distributed at that time. Distribution was being handled by a contractor according to Regional Director Woody Gilliland in San Francisco. Contractors at a recent Industry Liaison Group meeting in the San Francisco area voiced concerns about the distribution process with the following examples of difficulties they had noticed:

- Survey not dated. Cover letter not dated. Only date appears to be on the envelope address label.
- One contractor received over 100 surveys in this mailing. All labels showed January 5, 2001 as the mailing date. The envelopes arrived in California on or after January 20th.
- Contractors asked if they would be allowed extra time to complete and return their surveys because of the delayed delivery. Response from OFCCP's hot line in Washington, DC indicated no extra time would be allowed.

While that meeting was going on in San Francisco on February 15th, the powers that be in Washington, DC were already discussing the extension issue. It was late that same afternoon that the announcement was made by EEAC granting the extra time for contractors to complete and return their surveys.

Each EO Survey represents an extended desk audit of the AAP establishment. Compensation analysis is required with results reported based on EEO-1 categories. The OFCCP has yet to identify its process for using EO Survey input to determine which contractors will receive on-site audits. In its final regulations, OFCCP increased its estimate of time required to complete one EO Survey from 12 to 21 hours. Contractors faced with completing dozens or scores of EO Surveys will be spending a great deal of time on that project in the next few weeks.

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3. FINAL FEDERAL ACQUISITION REGULATIONS LESS ONEROUS

On December 20, 2000, the Clinton Administration published in the Federal Register its final regulations for rules governing federal acquisitions from contractors. During the two-year process of proposals and counter-proposals, its content has been altered remarkably. Many businesses now say the final rule is much more reasonable and acceptable than in any of the previous versions proposed.

The Office of Management and Budget (OMB) in the White House has final authority to approve federal regulations before they are published in he Federal Register. OMB has suggested there are three major changes in this final rule over previous incarnations:

- Clearer guidance to contracting officers.
  Contracting officers are to focus not on a single violation of law, but on a pattern of "repeated, pervasive, and significant" violations. It outlines a hierarchy of violations for consideration by contracting officers:
  - Adjudicated violations of law within the past three years, including felony convictions, adverse civil judgments in cases brought by the United States, and finally to adverse administrative determinations by an administrative law judge, board, or commission.
  - Contracting officers must consider an indication of good faith any contractor's compliance effort with any administrative agreement to correct identified violations.
- Procedural protections for contractors.
  Contracting officers must consult with legal counsel prior to making an adverse determination under this rule. The contractor must be promptly notified of such determination so it can protest if it wishes under the Contract Disputes Act.
- Reduced paperwork burdens.
  Contractors will be required to simply "check the box" when Certifying its compliance record on bid submissions. Only if the company checks the box indicating it has been the subject of a specified conviction, judgment, or adverse decision in the past three years may the contracting officer ask for further information. And, only then, if the contractor in question is likely to be the winning bidder.

While this final rule is less onerous than previous versions, court efforts are still expected by opponents who claim these new rules will result in de facto debarment of contractors for reasons that have no bearing on their ability to perform under the contract requirements. Included in the list of opponents are the U.S. Chamber of Commerce, the National Association of Manufacturers, and an umbrella group called the National Alliance Against Blacklisting, which reportedly includes more than 1,000 companies, trade associations, law firms, and other organizations.

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4. SUPREME COURT SAYS STATE EMPLOYEES NOT FULLY PROTECTED BY ADA

On Wednesday of this week, the U.S. Supreme Court issued its decision in Board of Trustees of the University of Alabama et al. v. Garrett et al. The Court said by a 5 to 4 vote that state employees may not use federal court to recover money damages from their employers even if the employer has violated Title I of the Americans with Disabilities Act (ADA). Recovery is prohibited by the Eleventh Amendment to the Constitution according to the Court's opinion.

Does that mean people who work for state governments are not protected by the ADA?

Probably not, according to some legal experts. Yet, it does mean that state employees should look to state laws and state courts for recovery of money damages in ADA-like cases. While not all states have laws prohibiting illegal employment discrimination based on physical or mental disability, some have laws equally as strong as the federal ADA.

It is those laws employees will have to cite when challenging decisions made by their state government employer. In California, for example, there is a strong state law dealing with equal employment opportunity (Fair Employment and Housing Act) that protects state employees against illegal employment discrimination based on disability. Further, recovery of money damages in state court is not always capped by the $300,000 limit placed on federal cases by the Civil Rights Act of 1991.

If you are interested in seeing a summary of the Court's decision, you will find it at: http://supct.law.cornell.edu/supct/html/99-1240.ZS.html

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Gentle Readers,

If you have ever dreamed of leading an HR strategic planning effort in your organization, we want to introduce to you a tool that will help you do just that. See item number 3.

Bill Truesdell
Editor

IN THIS REPORT (Report #171, 3/2/2001)
-------------- (Sent to over 1,600 subscribers)

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1. IT RECRUITMENT: TUG OF WAR
(Part 1 of 2 parts)

By Payal A. Malkani

Hiring is one of the most important and crucial tasks in any organization. It is plain as a pikestaff that employers spend substantially high amounts of money and time recruiting personnel. The most important competitive weapon for a growing business is having the 'right people.' Therefore, "smart recruiting" has become a corporate buzzword. Hiring the best within the shortest possible time is what distinguishes the premier companies from mediocre ones. Add to this cost effectiveness and you have a winner on your hands.

While competition for successful hiring exists in all fields, it is strongest in the 'high-tech' industry. The labor market for the IT employees has undergone a drastic change. First there were too many people and too few jobs available. Today it is just the reverse. Recruiting and retaining high tech employees continues to be a challenge.

Lets look at one example:

o Amanda (name changed to protect identity) is presently working on contractual basis with a highly reputed USA software firm, say 'A' through a contract company, say 'B'. After about a year, she gets an offer from company 'C', which is one of the 100 Fortune Companies. She wants to quit the present job to join 'C'. Both A and B are not willing to lose her because of her excellent work credentials. To retain her, a higher salary along with other benefits are separately offered by A and B. On the other hand C is pressuring Amanda to join at the earliest.

We have three companies trying to pull one employee. Are we heading for 3:1 the ratio? YES. When it comes to recruiting IT employees, there is a shortage. This shortage can be attributed to the following reasons:

- Rapid technological changes
- Demand for skilled employee's outweighs its supply
- Globalization
- Booming business and competition in IT sector

In these tough competing times organizations cannot afford to make poor hiring decisions. Recruitment is no longer done within national boundaries. It is now global. This means competing not only locally, but internationally as well. Companies have to hire the right personnel within a specific time frame with an eye on cost. Fortunately, for this the www-World Wide Web is the savior.

Hiring high-tech employees can be done in many ways. But before we get into the recruiting war, it is necessary to understand and have a quick look at the demands of the high-tech employees. This is important because the IT employees are aware that their technical skills are the requirement of present times.

Demands of the high-tech employee:

- Effective management
- Training and development opportunities
- Flexible work hours
- Result based high salary
- Access to latest technology
- Challenging job
- Full health benefits
- Access to information which is related to their work

After analyzing and addressing these needs, the employer can target his recruitment modes. In the present day dependence on Internet as a tool for recruitment has increased. Most companies have their web sites posted on the net. You, of course, will not be the only employer using Internet for hiring high-tech employees. So what do you do? How do you make your way through the traffic to get noticed? The answer is to create your 'High-tech friendly web-site.' For this you should do the following:

1. Market your Company thoroughly
2. Create challenging job descriptions
3. There should be clear links to job information section
4. Organize job openings by location and subject
5. Give sufficient information about incentives and benefits attached to the position
6. Describe growth opportunities in the Company

Apart from the Internet, the employer can use the following techniques to hire High-Tech employees:

- Internal Hiring: Instead of searching the workforce from external sources, organizations should do an internal screening of employees.

Most of us forget the vast human resource within our reach, right in our organization. When the need to hire arises, HR department should be capable of tapping the right talent from within the organization. Employees should be encouraged to suggest good references for filling the post. IT employee's have good references and are capable of bringing in the talent you need. This process will save your hiring cost and times, making your employees feel wanted and accepted. This is also a safe approach because the employee knows about the Company's culture and needs little training for the job. Thus the Human Resource department must maintain a separate database of internal candidates, which must be regularly updated.

- Know your LEU: The talent available at the LEU (Local Educational Universities) needs to be exploited. You will get fresh candidates who can be trained as per your company's needs.

- Hiring of women employees and disabled people.

- Hiring skilled foreign workers. The new H1-B visa program permits more skilled workers to work in United States. The statutory limit of H1-B visas has been increased to 195,000 for each fiscal year until 2003.

- Hiring IT workers that can demonstrate successful programming in any language. Put them through a short-term training program in the language of your choice.

- Your employee-benefit scheme: 'Benefits' are the mainstay among high-tech employees. Today employees are not into the jobs to merely earn dollars. They are more interested in the company's medical plans and flexi-time. You, as an employer have to meet the candidate's demands.
  These demands are ever changing. The benefit you offer today may become obsolete tomorrow. So always be on a watch-out. Make full use of the Internet. Check out through the net what your competitors are offering. Talk with your employee's. You will be able to read their minds when they are conversing with you.

Competing for human capital will be on an increase in the future mainly because of rapid change in technology and more customers. Soon poaching will be used as a legal hiring technique. So what comes next is 'retaining your hire.' Watch for Part 2 of this article describing how you can improve your retention rates.

Payal A. Malkani is an HR consultant with Pearl Consultancy. She can be reached at pearlconsult@usa.net

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2. EO SURVEY DEADLINE MOVED OUT ONCE AGAIN

The Office of Federal Contract Compliance Programs (OFCCP) has issued a formal letter to all contractors who were sent an Equal Opportunity Survey at the beginning of this year.

You can find a copy of the letter posted on the agency's web site under the heading of "Equal Opportunity Survey." The web site is at http://www.dol.gov/dol/esa/public/ofcp_org.htm

The OFCCP has officially moved the deadline for returning EO Surveys, again. The new response deadline is May 31, 2001.

The same letter explains that contractors may use the "old" categories and definitions of race and ethnicity that existed prior to this year, or may elect to use the "new" categories and definitions of race and ethnicity announced by the Office of Management and Budget on January 16, 2001. You will find all of these reference materials on the web at www.whitehouse.gov/omb/ .

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3. NEW PRODUCT ELEVATES HR's BUSINESS ROLE

How many times have you heard an HR Manager say, "Human Resources must be represented in strategic planning sessions." Perhaps you've said it yourself from time-to-time.

Often, organizational executives have yet to come to appreciate the value Human Resource Managers can offer to the process of strategic planning. Once they discover how valuable those contributions can be, HR executives will become standing members of strategic planning committees.

Now, there is a new tool that will help you demonstrate to your organization's leaders that Human Resource Management is a critical contributor to the organizational "bottom-line."

It's called "WORKFORCE PLANNER." It is HR's Key to Business Participation.

Today, more than ever, HR must be at the table when critical business decisions are made. "Workforce Planner" can help you achieve visibility and influence so you are seen as a valued member of your business team, rather than someone who just fills out forms.

This effective business tool will guide you to pro actively developing HR strategies and programs. By linking business strategies to your workforce plan, it helps you to lead a value-added dialogue with your clients that will more closely identify their needs. Once you have identified their needs, you can plan the actions necessary to meet those needs.

In short ... "Workforce Planner" helps you keep your clients happy!

Three different types of planning cards are included with the binder of materials. You will receive:

- Human Strategy Cards
- Business Strategy Cards
- Recruiting Variables Cards

The binder also includes resources and worksheets to help you quickly organize your strategic planning efforts. Once you have used this business tool you will wonder how you ever got along without it in the past.

Would you be willing to pay less than $500 to set your HR department into the role of active strategic planning contributor within your organization? Think of the potential for savings if your ideas and management suggestions could be accepted by other executives.

Order your "Workforce Planner" today through the HR Web Store at www.hrwebstore.com . Once there, look in "Recruiter Recourses" for WORKFORCE PLANNER.

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4. GET YOUR NUMBERED AND SIGNED COPY OF NEW AAP BOOK

The first 100 copies ordered through the HR Web Store (www.hrwebstore.com) will be signed by the author and sequentially numbered for no additional cost.

List price of the 5th Edition of "Secrets of Affirmative Action Compliance" remains at $99.95.

If you are a federal contractor, you need this number one selling reference on your desk. The new 5th edition is filled with information about the newly activated federal regulations and changes made effective on December 13, 2000. Rules for how written affirmative action plans for women and minorities are constructed have been altered for the first time in 25 years. Learn what the new regulations are and how you can satisfy them by reading this new edition.

Thousands of employers across the country are using this great reference book. You can, too. Just order from the HR Web Store and you will receive a signed and numbered copy if your order is received among the first 100 placed at the HR Web Store. Don't be disappointed by being late. Order your personal copy today. (www.hrwebstore.com)

Gentle Readers,

While we were sleeping ...

Take a look at the legislative proposals that will potentially impact you in your HR job if passed. You'll find them at www.hrwebstore.com in the "Legislation" department.

Bill Truesdell
Editor

IN THIS REPORT (Report #172, 3/9/2001)
---------- (Sent to over 1,600 subscribers)

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1. AB60 OVERTIME REQUIREMENT OFFENDS SOME NURSES & PHARMACISTS

As we have promised you, from time-to-time we will share inquiries we receive from visitors to our HR Web Store and also share our response to them.

This one comes from a nurse who is surprised to discover that AB 60 reclassified her has a "non-professional." Nurses are no longer exempt from overtime pay requirements in California.

"I am a Registered Nurse and was an Exempt employee until Assembly Bill 60 was passed. I can not believe that you consider an accountant and a school teacher a professional and not a Registered nurse or a pharmacist a professional. I work in an outpatient mental health facility. I am certified in psychiatric nursing. I make independent decisions all day. I feel I am being discriminated against because it is beneficiary to me and my patients to be able to flex my time. The social workers working beside me are able to flex their time. We virtually do the same type of work. Except they have no knowledge of medication, so nurses are more valuable in this setting. This is the first time I have been told I am not a professional and please let me know the credentials of the person who decided who is professional and who is not. I work with other psych nurses and they are also as shocked as I am that we are not considered professionals and want to know why. Please use my e-mail address at work xxxxxxx, when you reply. Thank You, C.B."

And our reply ...

"I quite agree. The folks who made that decision are called politicians.

"It comes from the California State Legislature, currently controlled by Democrats in both Houses. We also have a Democratic governor. Consequently, organized labor carries a great deal of influence in Sacramento. Organized labor lobbied strongly for the result you see in AB 60.

"As management consultants, we try to advise our clients how to deal with the fall-out from such new laws and requirements. I don't believe anyone expected nurses to be offended by the change in classification. I think they expected nurses to be grateful for the additional paid overtime. There you have it.

"You're still a professional in my book. And, on top of it, you must be paid for overtime you work.

"Maybe that's the best of both worlds."

Bill Truesdell
The Management Advantage, Inc.

P.S. At the time of this correspondence, neither of us knew about a new proposal from California State Senator Alarcon that would prohibit employers from requiring registered nurses to work more than 40 hours in one workweek except in the case of a declared state of emergency. This new legislative proposal was introduced on February 23, 2001.

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2. VIEW CURRENT STATE & FEDERAL LEGISLATIVE PROPOSALS

The new legislative year has finally gotten into swing and both state and federal legislatures are gearing up for the discussions that will take them through this year.

We have selected key pieces of legislation in Washington and Sacramento that will impact employers if passed in their current form. In an effort to keep you informed, we have created a report on these proposals in the HR Web Store. You can see what your legislators have in store for you by going to www.hrwebstore.com and selecting "Legislation" from the right-hand column menu.

Be sure you take a look. Some of these potential new laws will have significant impact on employers if passed and signed.

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3. HR WAITS FOR GOVERNMENT APPOINTMENTS

A few weeks ago we told you about the two unfilled openings on the Equal Employment Opportunity Commission (EEOC). The Society for Human Resource Management (SHRM) has pointed out that there are many other vacant government positions that have yet to be filled by the new Administration.

Some of the key vacancies include:

- Employment Standards Administration - Assistant Secretary
- Wage and Hour Division - Administrator
- Occupational Safety and Health Administration - Assistant Secretary
- Pension and Welfare Benefits Administration - Assistant Secretary
- Solicitor of Labor Solicitor of Labor
- Office of Assistant Secretary for Policy - Assistant Secretary
- National Labor Relations Board - Chairperson, general counsel and members
- Department of Justice - Assistant Attorney General for Civil Rights
- Department of Education - Secretary, Assistant Secretary for Vocational and Adult Education

And then there is the Deputy Assistant Secretary of Labor for the Office of Federal Contract Compliance Programs (OFCCP) governing enforcement of affirmative action regulations with federal contractors. Before Shirley J. Wilcher was appointed to that post by President Clinton, it had been vacant for over a year.

Generally speaking, HR professionals would prefer to move forward knowing who has been appointed to fill these vacancies.

Gentle Readers,

This week we offer some Internet addresses for federal government compliance contacts. And, we tell you about a new OSHA compliance opportunity coming next year. There are still nine months left for getting ready. Big news on arbitration policies.

Bill Truesdell
Editor

IN THIS REPORT (Report #173, 3/23/2001)
---------- (Sent to over 1,600 subscribers)

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1. ANOTHER COURT SUPPORTS EARLY-RIGHT-TO-SUE RULE

The U.S. Court of Appeals for the Tenth Circuit has joined the opinion of its colleagues in the Ninth and Eleventh Circuits in concluding that charging parties may go to court sooner than the 180 days provided under Title VII of the Civil Rights Act of 1964. Only one Circuit has taken the opposite view so far. The Tenth Circuit case was Walker v. United Parcel Service, 10th Cir., No. 99-5159, 2/27/01.

In 1999, the U.S. Court of Appeals for the District of Columbia Circuit said that early right-to-sue letters ran contrary to Title VII's requirement that the Equal Employment Opportunity Commission (EEOC) investigate every charge filed. (Martini v. Federal Nat'l Mortgage Assn, 178 F. 3d 1336, 1 FEP Cases 80)

In 1977, the EEOC adopted a regulation that allowed complainants to request a right-to-sue letter "at any time prior to the expiration of 180 days from the date of filing the charge with the commission; provided that [an authorized EEOC official] has determined that it is probable that the commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the charge."

In Walker, the Tenth Circuit said the employee may sue if she/he has taken "all steps necessary for administrative exhaustion." The court id not feel the employee should be held back in seeking a legal remedy because of any problem with "EEOC's performance of its administrative duties."

Where state or local enforcement agencies have reciprocity agreements with the EEOC, only one of the agencies will actually investigate each

complaint. Some state and local agencies allow complainants to file a complaint and request a right-to-sue letter during the same visit. When this happens, an attorney is usually waiting in a car at the curb with the engine running.

With the right-to-sue letter in hand, the complainant can go directly to state court and file a lawsuit. It doesn't always require a lot of effort to "exhaust administrative remedies."

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2. NEW OSHA RECORDKEEPING RULE

Beginning January 1, 2002, employers with 11 or more workers will have to implement major changes in recordkeeping requirements to satisfy the Occupational Safety and Health Administration (OSHA). Employers with 10 or fewer employees are exempt from most requirements of the new rules.

Some highlights from the new rule:

- Forms are changing. OSHA 101 and OSHA 200 will be replaced by OSHA 300 (Log of Work-Related Injuries and Illnesses); OSHA 301 (Injury and Illness Incident Report); and, OSHA 300A (Summary of Work-Related Injuries and Illnesses).

- Eliminates different criteria for recording work-related injuries and work-related illnesses; one set of criteria will be used for both. (The former rule required employers to record all illnesses, regardless of severity).

- Includes new definitions of medical treatment, first aid, and restricted work to simplify recording decisions.

- Requires SIGNIFICANT degree of aggravation before a preexisting injury or illness becomes recordable.

- Clarifies the recording of "light duty" or restricted work cases. Requires employers to record cases when the injured or ill employee is restricted from their "normal duties" which are defined as work activities the employee regularly performs at least once weekly.

- Requires employers to record all needlestick and sharps injuries involving contamination by another person's blood or other bodily fluids.

- Eliminates the term "lost workdays" and focuses on days away or days restricted or transferred. Also includes new rules for counting that rely on calendar days instead of workdays.

- Requires employers to establish a procedure for employees to report injuries and illnesses and tell their employees how to report. Employers are PROHIBITED from discriminating against employees who do report. For the first time, employee representatives will have access to those parts of the OSHA 301 form relevant to the employees they represent.

- Protects employee privacy by (1) prohibiting employers from entering an individual's name on Form 300 for certain types of injuries/illnesses (e.g., sexual assaults, HIV infections, mental illnesses, etc.); (2) providing employers the right not to describe the nature of sensitive injuries where the employee's identity would be known; (3) giving employee representatives access only to the portion of Form 301 which contains no personal identifiers; and (4) requiring employers to remove employees' names before providing the data to persons not provided access rights under the rule.

- Requires the annual summary to be posted for THREE months instead of ONE. Requires certification of the summary by a company executive.

For more information about the new rule, go to the OSHA web site at www.osha.gov .

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3. SOME USEFUL FEDERAL WEB SITES FOR EMPLOYERS

If you have Internet access (and you probably do if you receive this newsletter), you will find a great deal of information helpful to employers. Here are some examples of Federal Government web sites you can use to further your compliance efforts:

- Americans with Disabilities Act
  http://janweb.icdi.wvu.edu/kinder
  http://www.pcepd.gov/business/business.htm

- Code of Federal Regulations
  http://www.access.gpo.gov/nara/cfr/cfr-table-search.html

- Consumer Information Center
  http://www.pueblo.gsa.gov

- Bureau of Labor Statistics - Consumer Price Index
  http://stats.bls.gov

- Equal Employment Opportunity Commission (EEOC)
  http://www.access.gpo.gov/su_docs/gils/gils/html

- Fair Trade Commission (FTC)
  http://www.ftc.gov

- U.S. Immigration and Naturalization Service (INS)
  http://www.usdoj.gov/ins

- U.S. Internal Revenue Service
  http://www.ustreas.gov

- Minority/Women Owned Business Information
  http://www.osmb.dgs.ca.gov

- U.S. Social Security Administration

http://www.ssa.gov

- U.S. Department of Labor
  http://www.dol.gov

These are just a few sites picked to help you get started. There are scores of government sites you can find useful as you search for compliance help. If you are having trouble and want some help, send us a note and we will do our best to locate the site you need. (info@management-advantage.com)

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4. SUPREME COURT SUPPORTS EMPLOYER-REQUIRED ARBITRATION

On Wednesday of this week, the U.S. Supreme Court announced its decision in Circuit City Stores, Inc. v. Adams (No. 99-1379). By a 5-4 vote, the Court said the Federal Arbitration Act requires enforcement of arbitration agreements in all employment categories except for a narrow class of seamen and other transportation workers exempted by the law in 1925.

Circuit Courts had been divided on their rulings about employer-mandated arbitration policies. The 9th U.S. Circuit Court of Appeals was overturned by this ruling. It had sided with the employee, Adams, in ruling that the exception in the arbitration law covered his dispute with the company, ultimately allowing him to file a lawsuit rather than process his complaint through arbitration.

The Society for Human Resource Management (SHRM) had filed a "friend of the court" brief which was used by the Justices in reaching their majority decision in favor of arbitration. The Court specifically referred to this brief in supporting its decision.

Some saw the Circuit City case as a federalism case, testing whether federal arbitration law pre-empted state court remedies. Justices who are normally expected to side with states in federalism disputes apparently took a broader view of federal power in this case.

Justice Anthony Kennedy wrote the majority opinion and said, "The Court has been quite specific in holding that arbitration agreements can be enforced under the Federal Arbitration Act without contravening the policies of congressional enactments giving employees specific protection against discrimination prohibited by federal law..."

To see the entire Court opinion go to:
http://a257.g.akamaitech.net/7/257/2422/21mar20011130/www.supremecourtus.gov/opinions/00pdf/99-1379.pdf

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Gentle Readers,

This week we focus on California employers. If you use interns you may be interested in our first report. We invite all California employers to participate in our quick survey concerning policy changes as a result of power problems in the state.

Bill Truesdell
Editor

IN THIS REPORT (Report #174, 3/30/2001)
---------- (Sent to over 1,600 subscribers)

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1. UNPAID INTERNS - LEGAL IN CALIFORNIA?

One of our colleagues and faithful readers wanted to get some clarification about unpaid interns in California. She wondered about the legality of bringing in college students or transition employees who intern for a period of time without pay or benefits.

There is always a starting point in such discussions. In this case, "unpaid interns," the starting point is in Labor Code Section 1197 which says simply ... payment of less than minimum wage is unlawful.

From there, we move to exceptions authorized by the State Legislature or Industrial Welfare Commission. Here are the exceptions we were able to uncover:

- Learners & Apprentices:
  May be paid for fixed time under special license issued by the Industrial Welfare Commission. Under all wage orders, learners age 18 and over may be paid 85% of minimum wage for the first 160 hours of employment.

- Handicapped (Disabled) Workers:
  Special one-year license may be issued to the individual. Special license may be issued to non-profit organizations to pay lower rates without individual licenses.

- Students:
  Organized camp employees and camp or program counselors must be paid at least 85% of minimum wage for a 40-hour week, even if working more than 40 hours. If working fewer than 40 hours, must be paid 85% of hourly rate for hours worked.

- Minors:
  Minors may be paid less than minimum wage under wage orders. Minors who have graduated from high school or equivalent must be paid at the adult rate, unless variations are based on seniority, length of service, ability, skill, duties, shift or time of day worked, or hours worked. Minors may be paid 85% of minimum wage (rounded to the nearest nickel), provided that no more than 25% of employees are minors (except during school vacations). Minors ages 16 and 17 enrolled in approved work experience programs who work between 10:00 p.m. and 12:30 a.m. must be paid adult minimum wage (except under Wage Order 15-86, covering household occupations), and under wage orders 8-80 and 13-80 (covering agricultural workers), minors working more than 40 hours in a week must be paid adult minimum wage for all hours worked that week. Under wage order 14-80 (Agricultural Occupations) at least 80% of minors employed on a piece-rate basis must be paid at least 85% of the minimum wage. The remainder must be paid at least 80% of the minimum wage.

The California Labor Commissioner does not look favorably on employers who gain some commercial benefit from the labor of "interns" if those interns are not paid at least minimum wage for their work.

If you conclude that your situation would meet one of these situations, talk with the Industrial Welfare Commission office nearest you to secure a license before you implement your program. You will find them listed in the "State Government" section of your local telephone directory.

For more information go to: California Labor Code Sections 1182.4, 1191, 1191.5, 1192, 1193, 1391.2.

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2. CALIFORNIA NON-COMPETE AGREEMENTS ILLEGAL

Entrepreneurs are an interesting group of people. On the one hand, they take risks easily because they believe in their product or service and the money-making possibilities those things offer. On the other hand, these folks are a bit hesitant to trust others with their business information.

Consequently, we see entrepreneurs often wanting to use special contract agreements with employees to limit the amount of damage they might possibly do to the entrepreneurs' business. Those can include basic employment contracts, but usually extend to Non-Compete Agreements and Confidentiality Agreements.

Well, in California at least, Non-Compete Agreements have now been judged by a California Court of Appeal to be unenforceable. The case was D'Sa v. Playhut (12/21/2000, No. B139673). Here are some of the points made by the Court in that case:

- Terminating an employee who refuses to sign a non-compete agreement is a wrongful termination that violates public policy.

- "An employer cannot lawfully make the signing of an employment agreement which contains an unenforceable covenant not to compete, a condition of continued employment, even if such agreement contains choice of law or severability provisions which would enable the employer to enforce the other provisions."

- Non-compete agreements are not a narrow restraint against the disclosure of trade secrets. They violate the protection given to employees in Section 16600 of the California Business and Professions Code. That section provides: "every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is void."

While it is quite clear that non-compete agreements are invalid in California, agreements against revealing trade secrets are still enforceable.

We suggest all Human Resource professionals in California review their policies and procedures to assure themselves they are not using non-compete agreements. Further, if you are using agreements against disclosure of trade secrets, we suggest you have them reviewed at least once each year by your management attorney.

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3. QUICK SURVEY FOR CALIFORNIA EMPLOYERS

A quick survey for California Employers...

We will compile the results and share them with you all within the next few weeks.

Thanks for participating.

If you are a California employer, please tell us ...

In light of the rolling blackouts caused by power shortages in the state, and the possibility of more blackouts in the coming summer months, what changes have you made to your HR policies, if any?

(You might consider policies involving benefits, wages and hours, telecommuting, office closing, attendance & punctuality, etc.)

- We have made no changes in policy and do not plan to make any.
- We have made the following changes:

- We plan to make the following changes if outages continue.

What is the size of your business?

o 1-15 employees
o 16-50 employees
o 51-100 employees
o 101-500 employees
o over 500 employees

Where is your primary work location?

o Northern California
o Southern California

Thanks for your help with this survey. We're eager to hear what you have to say.

Gentle Readers,

High technology employers will want to learn about changes to the H-1B application process. And, California employers will want to learn more about rules governing employee pay during power outages. Anyone interested in managing workplace diversity will want a copy of our latest book, "Before Diversity." You'll like it.

Bill Truesdell
Editor

IN THIS REPORT (Report #175, 4/6/2001)
---------- (Sent to over 1,600 subscribers)

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1. TIP-TOE THE TIGHTROPE OF TRUST: A manager's guide to success

By Jody Urquhart

How much do you trust your staff and why does it matter? Trust affects the bottom line-the way you treat employees is the way they will treat customers. If it's acceptable that a company or manager doesn't have to keep promises, then you can almost guarantee employees won't be keeping promises to customers either.

You've heard this before, "People do business with people they trust." A customer's trust in a company starts with a company's trust in its employees. As Lance Secretan says in Reclaiming Higher Ground, " Our society is suffering from truth decay." He goes on to suggest that, especially in teams, telling the truth is essential.

"If the members of a symphony lie to each other, they will play awful music," Secretan says. So it goes in any team environment. One of the most compelling advantages for telling the truth-it is efficient.

Over a third of a company's budget may be devoted to administrative functions like controls, reports and procedures. A lot of these controls exist because management doesn't trust employees. What if we could do away with the controls and trust each other to do our best? It would be much less expensive and much more efficient.

o Killing the Trust Factor

Is trust affecting your bottom line? Here are some things companies do that kill the trust factor:

1) They don't model what they say. As American aviation pioneer Wilbur Wright said, " A parrot talks much but flies little." Example: a company has a slogan, "Customer Service is our number one priority," yet you walk into the store and nobody says hello, they won't accept your checks and the staff are detached and uninterested. Example: a company says the most important asset is their people then they make changes that affect all employees without notice or input.

2) They make promises they can't keep. Example: a manager says she will give everyone a raise next month-she also said that last month.

3) They guard and selectively disclose information. Example: There are corporate zones off limits for some employees. Information is guarded and only a select few are in the know. Meetings happen behind closed doors.

4) They don't allow employees to exercise their own judgment. Example: the company always goes by the book. There are so many rules designed so that people don't have to think about what they should do.

5) The company asks for input and suggestions, then ignores them. Example: a manager asks for suggestions on improving service. An employee offers two good ideas and no one says anything or brings it up again. Employees get the feeling that management is going through the motions but they really don't want the input. Of course, you won't use all ideas, but follow-up is essential. It shows you are listening.

6) Everything is monitored, from the number of sick days to productivity levels.

o Defining Trust in the Workplace

When I speak to organizations about creating trust in the workplace, these are the most common qualities participants say about trustworthy companies and individuals.

o "They have never let me down before."
o "They do what they say they will do."
o "I know they have my best interests in mind."
o "He knows what he's talking about and admits it when he doesn't."

Here are the qualities I think define a trusting workplace:

1) Open communications. Employees talk openly and informally, sharing between individuals and departments. Everyone's opinion is valued equally. When changes occur employees are included and involved. Suggestions and input are encouraged and always followed up. Managers listen to employees;

2) Empowered employees. Employees are encouraged to use their own judgment to solve problems. Rules are a guideline, not a solution;

3) Everyone is accountable. From managers to every level of staff, people keep their promises. They don't say something will happen until they have the system and resources in place to make sure it will happen. Involve the whole group and make everyone accountable. Invest in commitments;

4) Managers model decisions. Until managers can model change themselves they don't expect other team members to. They are careful that what is said on paper is realistic. They know it's not just something to aim for but also something they are committed to and will happen.

Have you ever walked into a store and had an employee welcome you with as much enthusiasm as a two-by-four? It happens a lot. I always think, why don't you say it like you mean it? Simple-if they did, they would lose their job. An employee's attitude about their job is often a good reflection of the company's attitude about their employees. Companies who say "Service is our number one priority" and then cut staff hours and paychecks are making one big mistake: they are lying. Service can only be a priority when people become the priority.

Vancouver based, Jody Urquhart www.idoinspire.com speaks at meetings and conventions on, "Creating Meaningful Work- how to bring out the BEST in your people." To book Jody to speak at your next meeting call 1-877-750-1900, or email her at jody@idoinspire.com

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2. BEFORE DIVERSITY BOOK UPDATED & RELEASED

We are pleased to announce the release of our newest book. Actually, it's the second edition of our book entitled, "Before Diversity." In its 155 pages are 103 tough questions and honest answers about EEO, Affirmative Action and Diversity Management.

Cost of the new edition is $14.95. It measures 5.5" X 8.5" and is a paperback publication.

If you would like to see what it looks like, we invite you to visit: http://www.hrwebstore.com/products/beforediv.htm .

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3. CHANGES IN H-1B VISA PROGRAM - HEADS UP IF YOU PARTICIPATE

The Department of Justice has published in the Federal Register its new requirements for processing of H-1B Visa application forms. The Immigration and Naturalization Service (INS) as part of the Department of Justice is responsible for administering this visa program designed for high technology talent application for the most part.

For a complete copy of the Federal Register announcement go to: http://www.access.gpo.gov/su_docs/aces/aces140.html and enter the following search characteristics: From Date: 03/30/2001 To Date: 03/30/2001 Search Terms: H-1B The result should be the document you wish coming to the number one position on the list of search results.

This major change concerns changes to Form I-129W used for H-1B application data collection. This form was revised effective December

18, 2000. The INS will not accept any prior version of the form after April 13, 2001.

You can obtain a copy of the new I-129W form from the INS web site at: http://www.ins.gov/graphics/formsfee/forms/i-129w.htm

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4. DO YOU HAVE TO PAY EMPLOYEES DURING POWER OUTAGES?

Most folks have heard about the power problems in California. And, it has evoked laughter in many circles outside the state. Yet, employers within California are faced with many challenges as a result of this newest problem in the Golden State. One "Easterner" actually thought all California employees went outside to sit on the beach during rotating blackout periods.

One question came from an employer in the Los Angeles area.

Do we have to pay our employees during power outages?

The answer depends on what the employer decides to do with the business during that period. Rolling blackouts are supposed to last for a period of 45 to 90 minutes. In actual practice they have lasted from one to three or four hours.

If you opt to remain open and keep employees on the job, you should pay them, even though they may not be able to produce anything during the blackout period. If computers don't work, cash registers are locked up or telephone systems shut down, getting employees to actually accomplish something productive may be problematic. Nonetheless, if you instruct them to stay at their work location waiting for the return of power, you are required to continue paying their hourly rate as if nothing had gone wrong.

If you decide to send employees home, you may stop paying workers as of the time they leave your work location. Normally, California rules call for employees to be paid at least half of their usual shift if they are sent home early. But, that rule evaporates if the public utility fails to supply electricity, water or gas to your work location. In those circumstances, you are required only to pay workers for the hours they actually worked before being sent home for the day.

If you decide to call your employees back to work to finish their scheduled shift after sending them home, you are not obligated to pay the minimum two-hours' for the second reporting within one work day.

Naturally, to protect the "exempt" status of your exempt employees, you should not "dock" pay from their salary in less than full week increments. (Hopefully, the power won't be off for that long. If it is, I'll see you on the beach.)

For exotic situations, please consult with your management attorney.

Gentle Readers,

Finding and keeping talent continues to be the largest challenge for HR people. If you are responsible for recruiting or retention in your organization you'll want to read this week's articles on compensation and recruiting. And, if you are a California employer who has yet to post the new 2001 Wage Orders, we tell you how to get them for FREE!

Bill Truesdell
Editor

IN THIS REPORT (Report #176, 4/13/2001)
---------- (Sent to over 1,600 subscribers)

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1. CALIFORNIA "BLACKOUT SURVEY" RESULTS

Lack of electricity in California may be causing political problems and economic issues for some organizations, but our readers tell us there is no impact on their HR policies as a result of the rolling blackouts. Existing policies and practices are handling things just fine, thank you.

Only one organization in the health care industry said it would have to devise some procedures for handling cancellation of patient appointments and elevator problems when the lights go out. All others said they have no plans for any changes in their personnel policies or procedures as a result of power shortages.

We received responses from employers in all payroll size categories and from both Northern and Southern California. Our thanks to those of you who participated by sending us your responses.

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2. WINNING THE TALENT WARS

By Bruce Tulgan

With the economy in recent turmoil, now is a good time for business leaders to remember something they seemed to have forgotten in the last several years. The solution to the staffing crisis is not---nor was it ever---to be found in filling open positions on the organization chart. Staffing needs are always in flux. The person you need today is probably not the person you will need tomorrow. That's why successful organizations in today's economy will maintain very strong, but very

lean core groups, while using more flexible staffing options to get most of the work done every day.

CREATE A BROAD NETWORK OF TALENT

Many geographically diffuse organizations have, in recent years, created internal employee databases to enable managers in one location to utilize the organization's employees regardless of geography. But that's not enough. To meet today's varied and unpredictable staffing needs, managers need access to larger, more diversely skilled talent pools than any one organization can possibly afford to keep on its payroll. The killer solution is a huge network of talent---a proprietary talent database indexed by skill and performance ability and linked with up-to-date contact information---including a wide range of individuals and firms. Consider independent contractors, temps, consultants, part-timers, flex-timers, some-timers, telecommuters, outside firms, former employees, and job applicants who receive but don't accept offers.

BUILD YOUR OWN RESERVE ARMY

Your best former employees can quickly become backbones of your fluid staffing strategy. They already know how to do business in your organization. You've already trained them. They already know you and many of your colleagues, and probably plenty of your vendors and customers. Whose skill and performance abilities do you know better than the people who have already worked for you? When they come back, you'll probably have to fill them in on some new developments, but they'll get up to speed much more quickly than a brand-new employee. Of course, in many organizations, this will require an overhaul of your approach to departing employees:

No longer can you treat those who leave as disloyal job-hoppers. They are your reserve army. Treat them with respect.

OUTSOURCE EVERYTHING YOU POSSIBLY CAN

If you're not great at it---whatever it is---stop doing it, or else outsource it to a vendor that is truly great. The financial reason is diversification of risk and cost. But there is a much more important reason: Diversification of excellence. You can only be truly great at just so many things. So you must also become known for integrating the core competencies of other truly great vendors into your day-to-day work process and ultimately into your final products and services.

Bruce Tulgan is author of Winning the Talent Wars (W. W. Norton, 2001) and founder of RainmakerThinking, Inc. (www.rainmakerthinking.com). He can be reached at <brucet@rainmakerthinking.com>.

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3. COMPENSATION IN THE ACCOUNTING/FINANCIAL FIELD

The composite practitioner in the accounting/financial field with the highest annual income (salary plus cash bonus and cash profit sharing)

is a Chief Corporate Financial Officer with over 20 years experience in the field who has a college degree and oversees 10 or more professional employees. He or she is employed by a construction, land development, or engineering firm; a financial organization; a primary metals producer; a publishing firm; or a service firm.

The organization probably has an annual revenue of $1 billion or more and 10,000 or more employees, and is headquartered in or near Chicago, Cincinnati, Birmingham, or Kansas City, or outside the metropolitan areas studied in California or South Carolina.

While the median Chief Corporate Financial Officer makes $109,319 per year, the highest-paid individuals reported in the group make well over $600,000 annually.

Far to the other end of the income spectrum, junior account clerks have a median salary of $23,920. Making as little as $11,856, the composite lowest-paid junior account clerk works in accounts receivable or accounts payable for a hospitality organization, a non-profit organization, a machinery/heavy equipment manufacturer, a paper products producer, an educational institution, or a health care organization with annual sales or budget of $2,500,000 to $4,999,999 and a staff of under 100 employees. The organization is headquartered in or near Cleveland, St. Louis, or Tampa/St. Petersburg, or outside the metropolitan areas studied in Vermont or Indiana.

These composites represent the briefest possible "boil-down" of the voluminous data provided by 324 organizations regarding the current salary, salary ranges, bonuses & profit-sharing, and numerous demographic variables for over 2,800 individuals in the accounting/financial field. The end results of the survey appear in Compensation in the Accounting/Financial Field, 19th Edition, a three-volume, 645-page statistical analysis of current salaries and total cash compensation of 57 benchmark jobs in the field. For more information, contact Dr. Steven Langer, President, Abbott, Langer & Associates, Inc., Dept. ART, 548 First St., Crete, IL 60417 (telephone 708/672-4200; fax 708/672-4674; www.abbott-langer.com).

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4. CALIFORNIA WAGE ORDERS FOR 2001 AVAILABLE ON LINE

All 17 Industrial Welfare Commission (IWC) Wage Orders have been updated and reissued for 2001. All California employers must have the current Wage Order that applies to their organization posted at each work location for all employees to review.

Unfortunately, the IWC has not printed any of the Wage Orders, and because of budget reasons, may not. That does not relieve employers of their responsibility for posting the appropriate order in their work locations, however. It simply means you must print your own copy from the PDF file. In any event, if you have the old Wage Orders with the colored stripes across them, remove and destroy them. They are no longer current, and therefore no longer in compliance.

To help you meet your legal obligations without too much hassle, we have posted all 17 wage orders PLUS the current California Minimum Wage

poster on our web site. They are in Adobe PDF format and can be printed out and posted as required. You will find them at www.hrwebstore.com in the "FREE Stuff" department. Check the left-hand menu on the page. Look for "California Wage Orders for 2001." Naturally, they are FREE.

Gentle Readers,

Just when you get settled into believing federal regulations are finalized, it turns out that politics comes along and changes everything again. In this case, it's good for federal contractors, however. And, this week we ask the question, "Are we accurately counting the cost of our employee health care programs?" The answer may surprise you.

Bill Truesdell
Editor

IN THIS REPORT (Report #177, 4/20/2001)
---------- (Sent to over 1,600 subscribers)

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1. TOTAL COST OF EMPLOYEE HEALTH UNDERSTATED BY 80%

A new study by the Integrated Benefits Institute (IBI) says the cost of medical treatment is only one component of employer expense associated with health care. Results of the quantitative case study show that when employers ignore disability absences and lost productivity they risk underestimating the total costs of employee health conditions by as much as 80 percent.

IBI says focusing only on double-digit health care cost increases ignores the other key components of total employer costs. "Strategies that optimize medical care, absence and productivity can serve the goals of employees and employers alike," says the report.

Lost productivity (measured as the cost of replacement staff for employees absent from work due to "short term disability" - STD) accounted for nearly $1 billion.

Here are some other findings of the study:

- Employees out on STD represent 11% of cases but account for 53% of total group health and STD costs.

- Musculoskeletal, cardiovascular and mental health together account for nearly half of all medical and disability costs.

- Costs of treating STD medical problems varies according to the type of medical benefit plan being used. Fee-for-service plans cost the most, Preferred Provider Organizations (PPO)

cost less by 18% to 22%. And, Health Maintenance Organizations (HMO) cost the least, although HMOs have the largest share of STD claims.

For more information about the study, go to:
http://www.ibiweb.org/breaking.news/index.shtml

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2. CLINTON'S CHANGES TO FEDERAL ACQUISITION REGULATIONS ARE SUSPENDED

The last-minute rules implemented on January 19, 2001, just hours before President Clinton left office have now been suspended. The new administration is proposing that they be permanently revoked.

However, undoing federal regulations is as complicated a process as creating them. The public must be notified of the government's intentions and there must be a public comment period. In this situation, 60 days have been set aside during which the public may submit its comments and suggestions about the proposed revocation.

You will recall that these regulations are what many have termed contractor "blacklisting" rules because they placed in the hands of government contracting officers the power to eliminate specific vendors from consideration in federal bids. Originally, there were no appeal processes identified for contractors who had been singled out as unacceptable to government contracting officers.

Since there were no "checks and balances" in the process, many employers, federal contractors, the Society for Human Resource Management (SHRM) and the U.S. Chamber of Commerce strongly opposed implementation of the revised processes.

The Bush administration has published in the Federal Register its proposal for revoking these changes to the Federal Acquisition Regulation (FAR). You will find it on April 3, 2001 if you go to the Federal Register at http://www.access.gpo.gov/su_docs/aces/aces140.html and search for April 3, 2001 to April 3, 2001 with the subject for your search stated as "FAR."

Comments about the revocation of these regulations must be delivered to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Comments may also be submitted electronically via email to: farcase.2001-014@gsa.gov . "FAR case 2001-014" must be identified in all correspondence if it is to be properly routed to Ms. Duarte. Deadline for all comments is June 4, 2001.

Following the public comment period, comments will be analyzed and a final rule will be rewritten. It will be submitted to the Office of Management and Budget (OMB) for approval before being published as a new final rule in a future edition of the Federal Register.

If you feel the current regulations are burdensome to federal contractors, this is your opportunity to submit your viewpoint.

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3. H-1B PROCESSING BACKS UP AT INS

If you have submitted H-1B applications to the Immigration and Naturalization Service (INS) and haven't heard from them for some time, you might want to give them a call to discuss what's happened.

The Labor Condition Application (LCA) forms you typically FAX to INS have been backing up in their system and some have been lost all together. The Department of Labor's (DOL) FaxBack system has buckled under the load of activity it has experienced recently. DOL folks say they have worked out the problems and the FaxBack system should be working fine now.

That leaves the problem of application forms that have not yet generated a response for you. Here's what you can do ...

Write an email to INS containing your employer's Taxpayer Identification Number (the same as your Employer Identification Number), the date you filed your LCA form, the page link number and a name and telephone number for the INS to call if they need additional information. Send your email to LCAFax@doleta.gov .

Gentle Readers,

There are a couple of recent developments you will want to know about if you are involved with medical records or sexual harassment complaint handling.

Bill Truesdell
Editor

IN THIS REPORT (Report #178, 4/27/2001)
---------- (Sent to over 1,600 subscribers)

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1. MEDICAL PRIVACY RULE EFFECTIVE APRIL 14, 2001

The Bush Administration has allowed one of President Clinton's last-minute regulatory efforts to take effect as scheduled. Health and Human Services Secretary Tommy G. Thompson said his agency received about 7,500 new comments during the 30-day period he allowed for public input in the first quarter of the year.

Health care business associations generally cast a disfavorable opinion on the new regulations saying they are "unworkable." Privacy advocates have heralded the action as long overdue.

The 1996 Health Insurance Portability and Accountability Act (HIPAA) mandated these new regulations to streamline administrative and financial transactions in health care. Health care providers, payers, and clearinghouses will have two years to comply with the new rules.

The American Medical Association stated that the new rules are likely to require additional administrative burdens on physicians, but supports stronger protections for patients at the same time. The American Hospital Association felt more strongly, saying it was "profoundly disappointed" about the Administration's move to approve and implement these new regulations.

You can get a complete set of the new rules by going to www.hrwebstore.com and selecting "What's New" from the right hand menu. On that page you will be able to download the 401KB Adobe PDF file. It is 50 pages long, but if you are in the medical industry, you need to have it on hand.

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2. AAP REQUIREMENTS HAVE NOT DIED WITH INCOMING ADMINISTRATION

Some federal contractors and sub-contractors, it seems, believe that the new Republican Bush Administration will no longer enforce the regulations governing affirmative action programs. Nothing could be further from the truth.

We have talked with many contractors recently who tell us the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) continues to be tenacious in its pursuit of the agenda established under the previous administration.

Specifically, OFCCP Compliance Officers are saying they will find fault with contractors who have "any difference" results in analysis of their compensation programs. Discrimination indicators are taken to be proof of illegal discrimination and contractors must be prepared to counter such allegations. Compensation analysis continues to be a primary area of attention during every compliance evaluation.

A second area for contractor attention is in their definition of "applicant." We've all heard about this problem. OFCCP officials want contractors to use the definition that says: "Anyone who expresses interest in employment will be considered an applicant." We suggest that such broad terms can only cause problems for the contractor. And last December's regulatory update dropped that definition from the final version of regulations. Perhaps the OFCCP isn't as confident as they would like us to believe. We do know that so far, the Solicitor's office in Washington, DC has not pursued any contractor for using a definition of applicant that was more narrow than that proposed by its own agency. Contractors are currently being told they must agree to a Conciliation Agreement and adjust their definition of applicant, however. Be aware that you are not obligated to agree to something that is not required by the regulations.

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3. SINGLE UGLY REMARK IS NOT SEXUAL HARASSMENT

We have just received another bit of guidance from the U.S. Supreme Court on the subject of Sexual Harassment. It is the seventh case from the Supreme Court involving sexual harassment claims in the workplace during the 37 years since the Civil Rights Act of 1964 became law.

The ruling came on April 23, 2001 in the case of Clark County School District v. Shirley A. Breeden (U.S. No. 00-866). In this case, a supervisor of Ms. Breeden's made a crude sexually-oriented remark while meeting with Ms. Breeden to review psychological evaluation reports of four job applicants. When she complained about the behavior, she says the employer punished her for her complaint.

A federal judge dismissed Ms. Breeden's retaliation claim and that decision was overturned by the Ninth Circuit Court of Appeals in San Francisco. On Monday of this week, the U.S. Supreme Court told the Ninth Circuit Court that it was wrong.

In part the court said, "No reasonable person could have believed that the single incident...violated Title VII's standard (for determining hostile work environment harassment).

Gentle Readers,

The push for increasing H-1B visa quotas has, it turns out, not been necessary. The number of new visa applications continues to fall. And, to be effective, stock options should be given to middle managers and IT workers, not senior executives.

Bill Truesdell
Editor

IN THIS REPORT (Report #179, 5/4/2001)
---------- (Sent to over 1,600 subscribers)

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1. DISCIPLINING MANAGERS THROUGH PAY DEDUCTION CAN RESULT IN LOSS OF EXEMPTION

On April 13, 2001, the Sixth Circuit Court of Appeals reinforced the notion that management people may not be disciplined by pay deduction as is the case when employees are suspended without pay.

The case involved 27 managers of Hahn Automotive Corp. who said they had been disciplined by having their pay withheld during periods of disciplinary suspension. They claimed that making deductions from their pay constituted a violation of the Fair Labor Standards Act and they were therefore entitled to overtime pay for all the overtime they worked.

The Fair Labor Standards Act (FLSA) says exemptions to overtime pay requirements may only be maintained if the salary paid incumbents is "not subject to reduction because of variations in the quality or quantity of the work performed." Under this test, pay deductions that are made because of disciplinary violations are impermissible except in one instance - if they are "imposed in good faith for infractions of safety rules of major significance."

The Circuit Court relied on a Supreme Court ruling in Auer v. Robbins, 519 U.S. 452 (1997) in which the Court said, "an employer has not demonstrated an objective intent to treat a category of employees as exempt from the FLSA where that employer has an employment policy that creates a significant likelihood of disciplinary pay deductions or has an actual practice of making disciplinary deductions from such employees' pay."

Once again, the lesson is clear. If you deduct from exempt employee pay in less than whole-week increments, you risk losing exempt status for the position involved. More importantly, you could be gaining liability for unpaid overtime worked going back from two to four years.

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2. HR FORUM AT DUKE UNIVERSITY IN JUNE

The recent "arbitration ruling" by the U.S. Supreme Court will lead a list of discussion items at the 2001 Executive Human Resources Forum at Duke University from June 7 through June 8. The forum is sponsored by the Institute for Human Resources Training (IHRT) headquartered in the Raleigh, North Carolina Research Triangle Park area.

During the forum, IHRT will present a nationwide study of arbitration programs used by employers, along with an assessment of their success and failure.

Also on the agenda are topics such as: The Bush administration's labor initiatives and issues relating to telecommuters, contingent workers and technology in the workplace.

The gathering is designed to give policy makers a chance to share strategies on how leading companies plan to take advantage of new workplace opportunities and meet the challenges facing HR today.

If you wish more information about the forum, go to www.ihrtus.com .

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3. RECRUITERS DETERMINE TOP BUSINESS SCHOOLS

This week the Wall Street Journal published its list of the 50 top-ranked business schools in the country. The list was determined by recruiters' rating each school on 27 different attributes. The complete list and rating process can be found in the Monday, April 30, 2001 edition of the WSJ.

The top 10 were:

1. Dartmouth College (Tuck)
2. Carnegie Mellon University
3. Yale University
4. University of Michigan
5. Northwestern University (Kellogg)
6. Purdue University (Krannert)
7. University of Chicago
8. Harvard University
9. Southern Methodist University (Cox)
10. University of Texas at Austin (McCombs)

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4. COMPENSATION ISSUES AND H-1B UPDATE

According to the Wall Street Journal, the Wharton School of the University of Pennsylvania will soon release a study by its professors showing that companies can boost their performance with stock option grants. There is one trick, however. The performance improvement is dependent on the grants being made to middle managers and technical specialists.

The study found that in more than 200 New Economy companies that pay middle managers 20% more in options than comparable companies, performance increased and stock prices rose an average of 5% faster each year. Similar results were seen when companies paid their tech personnel at least 20% more in options. Large grants to top executives had little effect on stock performance.

And, according to the Immigration and Naturalization Service (INS) the quota on H-1B visas is not likely to be reached this year. You'll recall the quota was raised from 115,000 to 195,000 this fiscal year (ending September 30, 2001). The agency reports that it received only 16,000 applications in February compared to 30,000 in January. December 2000 applications totaled 53,000 by comparison.

As the economy has slowed, big users of the H-1B visa program have begun laying off workers. The Information Technology Association of America in Arlington, VA even expects many IT workers here on H-1B visas will actually leave the country, returning to their homes in other parts of the world.

Gentle Readers,

Budgets are freezing in many organizations due to economic slow-down. Some new Census figures are in, shedding light on multi-race selections, and vacations come to the front of some employee thoughts.

Bill Truesdell
Editor

IN THIS REPORT (Report #180, 5/11/2001)
---------- (Sent to over 1,600 subscribers)

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1. DOL BUDGET PROPOSAL FREEZES FUNDING

The Bureau of National Affairs (BNA) reports that the proposed fiscal year (FY) 2002 Labor Department budget would remain the same as the current year. The Bush Administration has mandated that the Department of Labor (DOL) undertake a "renewed emphasis on compliance assistance."

In February, the first proposed budget floated by the new Administration suggested that the DOL's discretionary spending be reduced from $11.9 billion to $11.3 billion. The $600 million difference represents a 5% reduction. Labor Secretary Elaine L. Chao issued a statement that said the shortfall would be made up "through redirected, or unspent money, from this year's budget."

Within the DOL the budget proposal would freeze law enforcement agency funds at the current levels for the new FY:

o OSHA	$426 million
o Mine Safety & Health Admin	$247 million
o Wage & Hour Div	$153 million
o Pension & Welfare Benefits Admin	$108 million
o OFCCP	$ 76 million

The government has said it will continue to emphasize development of new technologies to aid in compliance assistance efforts and cost reduction.

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2. CENSUS 2000 -- LESS THAN 3 PERCENT CLAIM MULTI-RACE STATUS

Only 2.4 percent of those responding to the 2000 Census said they belonged to more than one race. According to the Census Bureau,

274.6 million people reported only one race during last year's population count. About 75 percent of the people in this group were white, 12.3 percent were black or African American, 3.6 percent were Asian, 0.9 percent were American Indian and native Alaskan, 0.1 percent were native Hawaiian and other Pacific Islander, and another 5.5 percent said they belonged to "some other race." (They didn't explain what happened to the other 5.628 million folks that would need to be included to reach 100 percent.)

Hispanics, who may be of any race by government definition, totaled 35.3 million people. That represents about 13 percent of the U.S. population. Total headcount in the Census was 281.4 million people.

6.8 million people said they belonged to more than one race. Of those, 93 percent reported two races and 7 percent indicated three or more races.

For more information visit the Census web site at: www.census.gov/population/www/cen2000/briefs.html Look for a brief entitled: "Overview of Race and Hispanic Origin."

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3. VACATION POLICIES VARY WITH EMPLOYERS

According to the Wall Street Journal, vacation requests are piling up as summer looms.

First-come, first-served is still popular among many employers. At newer companies, like Cobalt Group, a Seattle Internet concern, seniority isn't an issue because it doesn't have much. "We're only six years old, so tenure isn't much of a factor," says a spokesman. Brinker International Inc., Dallas, usually allows vacations upon request, so it doesn't set important meetings during popular vacation weeks. Sun Microsystems Inc., Palo Alto, California, leaves vacation policies to individual managers.

For some, vacations might not seem like vacations. At Dallas-based 7-Eleven Inc., most headquarters employees take their cell phones and laptops with them. "We are our own worst enemy," says a spokeswoman. RealNetworks Inc., Seattle, requires anyone asking for more than 10 days off at a time to make the request through a vice president, rather than through a manager.

At Dallas-based Texas Instruments Inc., a semiconductor slowdown has it encouraging workers to take time off.

The Wall Street Journal, "Work Week," May 8, 2001

Gentle Readers,

New version of affirmative action software is now shipping with all its features for producing the new organizational display. And, there are more questions each day about California overtime rules. We share one with you in this edition.

Bill Truesdell
Editor

IN THIS REPORT (Report #181, 5/18/2001)
---------- (Sent to over 1,600 subscribers)

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1. PEOPLE CLICK RELEASES VERSION 6 OF AAP SOFTWARE

The folks at PeopleClick (formally PRI Associates) have begun shipping version 6.0 of their very popular AAPlanner(tm) software. The new version incorporates all the changes made to government regulations on affirmative action in December last year.

Users of the new version may choose between the traditional workforce analysis and the new organizational display. Availability Analysis has been modified to display the two factors now used in computing availability: internal and external. And, the new version accommodates the Corporate Initiative Directive on how employees are to be included in AAP establishments. It also allows users to save and distribute reports in Adobe's PDF format so email attachments are quick and easy.

All in all, the software is better than ever and users will find it most helpful in producing the reports they need for their affirmative action plan development.

Effective June 1, 2001, prices will be increased on all PeopleClick AAP software products. We will continue to honor the current pricing until that time. Here are the new prices for you to consider in your budget planning:

o AAPlanner6 (single user)	$2,995.00
o Adverse Impact Monitor5 (single user)	995.00
o PayStat Compensation Analysis (single user)	1,995.00
o Suite (All 3 Programs)	$4,995.00

This software is still the best available in our opinion. Thousands of employers across the country agree with us. Learn more about these fine HR management tools at www.hrwebstore.com .

You can even place your order with confidence on our secure server.

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2. OVERTIME QUESTION & ANSWER

One recent email read:

"I understand that California has a new overtime law (anything over 8 hours in a day is to be paid time and one half). The reason I write to you is my husband's boss told him his landscaping company was exempt from this. I would like to know if this is true or not so I can take further action. I appreciate you taking time to read my e-mail. If you would e-mail me an answer to XXXXX@YY.com it would be ever so helpful."

Here is our answer:

California's "new" overtime law (A.B. 60) became effective on January 1, 2000. And, you're right. It requires overtime pay after 8 hours in one workday as well as overtime for more than 40 hours in a workweek. Companies or employers are not exempt from the requirement to pay overtime. However, certain jobs are considered exempt based on the type of work done in those jobs. Exempt jobs can work all the "unpaid" overtime necessary. Exempt jobs are determined based on certain criteria specified in both state and federal law.

Whether or not your husband is due overtime payment depends on the job he performs and whether or not that job is exempt from overtime requirements. You can get more information about job exemptions at our web site, www.hrwebstore.com . Look in the "FREE Stuff" department and pull up a report called "California Overtime - Exemptions."

You can get additional information about overtime requirements from the California Labor Commissioner's office. You will find the office nearest you listed in the government pages of your telephone directory under State of California -- Industrial Relations Department -- Labor Standards Enforcement.

Don't forget that labor union agreements can also have an influence in how overtime is computed, although generally labor contracts provide for benefits greater than allowed under state law.

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3. ARBITRATION REQUIREMENT IN UNION CONTRACT IS VALID

According to the Bureau of National Affairs (BNA's Employment Discrimination Report, May 9, 2001) a collective bargaining agreement subjecting gender discrimination claims to binding arbitration is enforceable, even though a union's grievance procedure was inadequate and the employee had no control over proceeding to arbitration. The ruling came from the U.S. Court of Appeals for the Fourth Circuit in Safrit v. Cone Mills Corp. (4th Cir., No. 99-2677, 4/27/01).

"An agreement to arbitrate statutory claims is part of the natural tradeoff that a union must make in exchange for other benefits," the Fourth Circuit said in a per curiam opinion.

A "clear and unmistakable" waiver, the court said, can occur in two ways:

- the agreement can contain an explicit arbitration clause stating that all federal causes of action must be submitted to arbitration; or
- a general arbitration clause can be coupled with a provision "which makes unmistakably clear that the discrimination statutes at issue are part of the agreement."

Gentle Readers,

The BIG news this week is President Bush's recent appointment of Cari Dominguez as Chair of the EEOC.

Bill Truesdell
Editor

IN THIS REPORT (Report #182, 5/25/2001)
---------- (Sent to over 1,600 subscribers)

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1. FREE FORMS FOR EMPLOYEE MANAGEMENT

If you are like most HR Professionals, there are times when you need to have a form for a special occasion. Those special needs come more and more frequently these days, it seems.

Well, now there is a source you may not have thought of before. Office Depot has posted dozens of employee management forms on its web site and invites you to use those that you may need. Simply go to: http://officedepot.netbusiness.com/BusinessTools/forms/ and select the form for the immediate need.

If you are going to create a contract for employees, or others, it is a good idea to have your final version reviewed by your management attorney when you have completed your edits.

All the forms are provided for download in RTF files. Rich Text Format files can be imported to most modern word processors for editing and printing.

If you find something you need, you might say thanks to Office Depot in a note to their HR department.

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2. LINKS TO WOMEN AND MINORITY RESOURCES FOR EMPLOYERS

Netscape has developed a list of links to resources you may find helpful if you wish to locate special programs for women and minorities.

http://webcenter.netbusiness.governmentguide.com/small_business/women_and_minority.adp?id=16102298
This link will get you a list of government agency-sponsored programs wanting to assist minority- and women-owned businesses. If you are looking for minority- and women-owned vendors to help you with government contracts this may also be a good place to search.

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3. CARI DOMINGUEZ APPOINTED EEOC CHAIR

President George W. Bush has appointed Cari M. Dominguez as Chair of the Equal Employment Opportunity Commission (EEOC). As we have told you from time to time, there are currently two vacant seats on the five-member Commission. The seats currently occupied are filled by Democratic appointments whose terms will expire over the next two to three years.

Ms. Dominguez would be the first of three ultimate Republican seat appointments assuming President Bush will have the opportunity to name each of the three during his term. By agreement since 1964, the political party holding the White House is entitled to name three EEOC members while the other party holds the remaining two seats.

Dominguez was born in Cuba and has been a U.S. resident since 1961. She has worked in both public and private sector positions within human resource management functions. She was Director of Affirmative Action for the Bank of America during the 1980's, then moved to Washington, DC as the National Director of the Office of Federal Contract Compliance Programs (OFCCP). The title has since been changed to Deputy Assistant Secretary of Labor. She had earlier been a member of the OFCCP staff.

She has earned a Master of Arts degree in international studies from the American University in Washington, DC and a certificate in advanced public management from the Massachusetts Institute of Technology.

Ms. Dominguez is closely linked with the HR community and has maintained her professional relationships with many of her colleagues over the years. Most recently, she managed her own consulting firm, Dominguez & Associates, in Gaithersburg, MD.

We anticipate that her confirmation in the Senate will be swift. You can expect to see her influence at the EEOC in a few short weeks.

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4. DOL INVESTIGATES NURSING HOME VIOLATIONS

From The Wall Street Journal (5/22/2001) comes this summary of trouble in the nursing home industry...

In 1997, Department of Labor investigators found 70% of 288 nursing homes they looked at complied with overtime, minimum-wage and child-labor laws. Last year, investigators visited 136 facilities and found a 40% compliance rate. Investigators this year are targeting more than 500 nursing homes with either prior violations or law-breaking owners.

Most of last year's violations were overtime-related, though more than 100 minors were illegally employed at 20 homes. Industry watchers say high turnover in an often frustrating job combined with general industry troubles lead to chaotic work schedules and paperwork tangles. A spokesman for the American Health Care Association, which represents nursing homes, says complicated rules are exacerbated by homes running 24 hours a day. The Association also said the DOL studies are "clouded by methodological inconsistencies."

Gentle Readers,

Two important rulings from the Fourth Circuit Court of Appeal. And, some indication that minimum wages will continue to rise.

Bill Truesdell
Editor

IN THIS REPORT (Report #183, 6/1/2001)
---------- (Sent to over 1,600 subscribers)

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1. FOURTH CIRCUIT SAYS FLU IS COVERED BY FMLA

The U.S. Court of Appeals for the Fourth Circuit has ruled in a 2-1 decision that the flu can be a "serious health condition" and that Department of Labor (DOL) regulations implementing the Family Medical Leave Act (FMLA) are valid.

Ordinarily, the flu is not covered under the Act, as the Court pointed out in its opinion. However, the employee in this situation was unable to work for several consecutive days and required continuing treatment by a physician. Those two factors combined to meet the requirements of the regulatory criteria for a "serious health condition." The court also pointed out in its dissenting opinion that Congress never intended for "ordinary, garden-variety flu" to be protected under FMLA. Yet, DOL regulations can be interpreted as allowing protection for absences due to the flu. That, Judge Claude M. Hilton said in his comments, means the Secretary made new law rather than enforcing what Congress had enacted.

The majority opinion said, "Consistent with the statutory language, the regulations promulgated by the Secretary of Labor establish a definition of 'serious health condition' that focuses on the effect of an illness on the employee and the extent of necessary treatment rather than on the particular diagnosis."

If you have an employee absence of several days, with documentation from the employee's physician supporting the absence, you might want to discuss the situation with your management attorney before refusing to log the time as FMLA leave.

(Miller v. AT&T Corp., 4th Cir., No. 00-1928, 5/7/01)

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2. FIRST LIVING WAGE ORDINANCE IN U.S. PASSED BY SANTA MONICA

The city of Santa Monica, California is the first in the country to approve a living wage ordinance for employers who have no contract with the city. It will place the city's minimum wage at the top of every other minimum wage required elsewhere in the country.

Even though the ordinance will capture many more employers than just city contractors, it is still not universal. It applies only to employers who meet one of the following three qualifications:

- City contractor or vendor.
- Employer in the city's "Coastal Zone" with receipts of $5 million or more per year.
- Employer in the city's "Downtown Core" with receipts of $5 million or more per year.

Ordinarily, cities that have imposed living wage ordinances have made them apply to city employees, employees of city contractors and vendors or employees that receive tax abatements from the city. Santa Monica has extended its reach beyond these limits.

More than 50 cities nationwide have imposed living wage ordinances and an additional 80 are considering such action.

Under Santa Monica's new requirements, which go into effect on July 1, 2002, there would be two minimums required of employers depending on whether the employer provides benefits to its workers. The minimum hourly rate with benefits will be $10.50. If health benefits are not provided by the employer, the minimum hourly rate will be as much as $13.00 per hour.

California's state minimum wage is currently $6.25 per hour. The federal minimum wage rate is $5.15.

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3. ADEA DOES NOT COVER FOREIGN NATIONALS

The Fourth Circuit Court of Appeals has ruled that a Mexican national over the age of 40 is not entitled to protection under the Age Discrimination in Employment Act (ADEA).

The individual, Luis Reyes-Gaona, asked to be placed on a list of workers seeking employment in North Carolina. He made the request at Del-Al's office in Mexico. Del-Al told Reyes-Gaona that their client, North Carolina Growers Association (NCGA), would not accept workers over forty years of age unless that person had worked for them before. Reyes-Gaona filed suit against NCGA and Del-Al, claiming age discrimination since he was over the age of 40.

The court held that ADEA does not protect foreign nationals who apply in foreign countries for jobs in the United States. "The simple submission of a resume abroad does not confer the right to file an ADEA action," said the court.

Luis Reyes-Gaona v. North Carolina Growers Association, Inc., and Del-Al Associates, Inc. http://laws.lp.findlaw.com/4th/001963p.html

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Gentle Readers,

A reminder about training employees to help prevent workplace violence, announcement of California's new mediation program for resolving employment discrimination complaints, and the newest U.S. Supreme Court ruling on including front pay as part of actual damages computation.

Bill Truesdell
Editor

IN THIS REPORT (Report #184, 6/8/2001)
---------- (Sent to over 1,600 subscribers)

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1. WORKPLACE VIOLENCE: THE TRAINING TOPIC OF THE DECADE

By Ron Moore, CPT, CLS

As sexual harassment was the training topic of the 90s,workplace violence appears to be the topic for this decade. Courts and juries are beginning to issue large settlements to the victims of workplace violence. All businesses, no matter the size, will have to start evaluating the safety of their locations.

There is no way to ever completely protect yourself and your business from workplace violence, just as countries have found they can not protect themselves from terrorism or schools from the random acts of violence. But by showing effort in prevention and recognition programs, you can prevent unnecessary violence from occurring.

The need for seminars on Workplace Violence for business owners, managers and supervisors, is high and growing daily in this country.

The definition of violence is "any word, look, sign, or act that hurts a person's body, feeling, or thing." (as outlined in the No Bullying/Victim Violence Training Program). Too many people think workplace violence is only those sensational stories we hear on the news. Stories about wild shooting sprees and multiple deaths. Workplace violence should be considered anything that evokes the feeling outlined in the definition. Schools have bullies and when those bullies grow up, you find them in the workplace as well. Add angry customers; increased workloads and people with problems in their lives and you have the not-so-perfect formula for workplace violence. Most incidents of WPV never reach the level of national news coverage, but they do create problems with productivity, and employee retention. Not to mention the ever-present threat of litigation.

Workplace Violence is the training topic of the new decade. Companies must have stated workplace violence policies and provide training to all employees on the recognition and prevention of such.

Ron Moore is the President of National Resource & Training Service. He is a Certified Professional Trainer (CPT) and a Certified Seminar Leader (CSL) and is a co-founder of American Training & Seminar Association and can be reached at rmoore@AmericanTSA.com

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2. CALIFORNIA BEGINS MEDIATION PROGRAM ON DISCRIMINATION COMPLAINTS

California's Department of Fair Employment and Housing (DFEH) has officially launched its new Pilot Mediation Program. On May 7, 2001, ceremonies were held simultaneously in Los Angeles and Emeryville to open new offices dedicated to the program.

Under the new program design, employers and employees may volunteer to participate in the mediation effort at no cost to either party. Trained, third-party facilitators have been selected by DFEH to help parties arrive at mutually agreeable solutions to whatever issues caused their conflict. Mediators will be paid by DFEH.

After more than a year of planning and preparation, DFEH Director Dennis Hayashi said, "Adding mediation to California's discrimination complaint process is long overdue."

"Mediation is a confidential, collaborative, and cost effective tool that resolves often complex employment disputes, and we look forward to helping Californians take advantage of this opportunity," Hayashi concluded.

The Department expects to mediate approximately 2400 complaints per year, out of an annual total of approximately 18,000 employment discrimination claims filed with DFEH.

For more information, and a list of mediators selected to participate in the Pilot program, visit the Department's web site at: www.dfehmp.ca.gov and www.dfeh.ca.gov/new.htm .

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3. SUPREME COURT OVERTURNS CAP ON DAMAGES FOR HARASSMENT

This past Monday, June 4, 2001, the U.S. Supreme Court issued a ruling in the case of Pollard v. DuPont (U.S. 00-763) which effectively side-steps the $300,000 cap applied by the federal appeals court in accordance with the Civil Rights Act of 1991.

The decision places "front pay" damage awards in the "actual damages" category, as opposed to considering them as "compensatory damages" along with pain and suffering. In the DuPont case, there was an

estimated $800,000 in wages and benefits that the employee would presumably have earned had she been able to go on working at the company's chemical plant. The Civil Rights Act of 1991 said the limits it placed on compensatory and punitive damages did not apply to back pay and other remedies authorized by laws enacted prior to 1991.

While the 6th U.S. Circuit Court of Appeals in Cincinnati had ruled in one previous case that front pay amounts to compensatory damages, the Supreme Court said that was not a justified position.

Justice Clarence Thomas wrote the majority opinion and said, "We conclude that front-pay awards in lieu of reinstatement fit within (the definition of actual damages)."

Gentle Readers,

This week we look at the question of employer cost-saving efforts through use of unpaid-time-off plans that include exempt workers. Some of those plans may eventually cost more than employers suspect. And, oh yes ... the Secretary of Labor has named a new OFCCP Director.

Bill Truesdell
Editor

IN THIS REPORT (Report #185, 6/22/2001)
---------- (Sent to over 1,600 subscribers)

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1. WAGE DATA FOR CALIFORNIA WORKERS NOW ON WEB

The California Employment Development Department (EDD) has created an Internet site that contains data on wages by occupation and by counties within the state. Location differences can be pronounced within the same occupational category.

The 2000 edition of the "Directory of California Local Area Wages" contains data that is important to employers, human resource managers, educators, career counselors, and job seekers. Data from 1997 through 1999 is included.

The directory, produced by EDD's California Cooperative Occupational Information System, reports wages for both inexperienced and experienced new employees, and for employees with three or more years with a company. Non-exempt jobs are the only ones covered. Salaried positions are not included in this information.

Another advantage of the Directory is inclusion of data for both union-represented and non-represented rates within occupational categories if it is available.

A printed version of the Directory is available for $21 by calling the Labor Market Information Division at (916) 262-2162. To access the Directory on-line, go to www.calmis.ca.gov/file/occup$/DCLAW$.htm

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2. FEDERAL CONTRACTOR DEBARRED FOR NOT SUBMITTING EO SURVEY

Giant Merchandising has been debarred from federal contracting for six months for failing to complete and return an Equal Opportunity Survey it received in 2000. A U.S. Department of Labor Administrative Law Judge issued a consent decree requiring the contractor to submit its completed survey by January 2001. (OFCCP v. Giant Merchandising, DOL ALJ, 2001-OFC-2, 4/19/01)

The company originally believed it was exempt from the survey requirement because it did not meet the $500,000 threshold necessary for it to be considered a federal contractor. The Office of Federal Contract Compliance Programs (OFCCP) informed the company that the minimum contract value required for contractor status is $50,000 not $500,000. When the company failed to submit its EO Survey as requested by the OFCCP, the agency filed an administrative complaint against the company and subsequently sought injunctions to force the company to provide the information and to bar any government contracts for six months.

The EO Survey has been contested by contractors since its original release last year. They claimed the agency had no legal standing to require participation in the survey program because there were no federal regulations mandating such participation. That all changed in December last year when the OFCCP made regulatory changes effective that included contractor submission of data on the EO Survey.

The agency has stated that it intends to use the EO Surveys to determine which federal contractors will receive Compliance Evaluations in the future. It has yet to give any indication of the process it intends to use for sorting and evaluating data contained in the survey responses in making the decision that any given contractor requires an audit. This action seems to indicate that the OFCCP intends to enforce its demand for completed surveys when it sends them out to federal contractors.

If you decide you don't wish to respond to an EO Survey, we suggest you discuss the decision with your legal advisor who is a specialist in affirmative action laws and regulations.

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3. CAN YOU SAVE MONEY BY FURLOUGH OF EXEMPT EMPLOYEES?

Many companies these days are looking for ways to cut costs and weather the economic storm America seems to be caught up in. One way some employers have hit on to reduce cash flow and expenses is to ask employees to take unpaid time off for a few days each month. Other companies are scheduling "down weeks" when all employees will be scheduled off without pay.

In Silicon Valley, companies like Sun Microsystems, National Semiconductor, Network Appliance and Intuit have said in recent months that they would ask their employees to take unpaid time off. Those plans range from a few days to full weeks. Some other companies are looking at the July 4th Independence Day Holiday as an opportunity to have employees absorb some unpaid time off. This year, the holiday

falls on Wednesday and these employers are looking at Thursday and Friday as optimal "down days."

What's wrong with such planning? Well, some legal experts are suggesting that including exempt employees in unpaid-time-off plans may jeopardize their exempt status under either federal or state laws and regulations.

Under the Fair Labor Standards Act which governs federal rules about overtime pay and exempt status, the federal government requires employers to pay exempt workers' salaries on a WEEKLY basis. Some states have more strict requirements. California, for example, now insists that exempt status can only be maintained by payment of MONTHLY salaries. Certain adjustments can be made if the employer has implemented a bona fide sickness or accident absence plan. Vacation time can also be scheduled at the employer's discretion. All of these time-off policies result in full salary pay for the employee, however. It is when deductions from salary occur that the enforcement folks begin to question the legitimacy of the worker's overtime exemption status.

Exempt workers, the theory goes, can work as many or as few hours in a week or month as is necessary for them to complete their work. They are paid a flat salary for the period, regardless of their actual hours. And, theoretically, their salary has been designed to contain payment for some overtime during each pay period. In California now, if an exempt worker actually works part of one day in a month, that person shall be paid for the entire month. To do otherwise, say California's Labor Commissioner is to admit the worker is not really a salaried worker and therefore is not entitled to legal exemption from overtime requirements.

So, what happens if an employer insists exempt workers take unpaid time off to help control the budget? Maybe nothing. But, if a complaint is filed with the U.S. Department of Labor or with the state agency responsible for enforcing state labor laws, the employer may find exempt jobs reclassified as non-exempt. If that happens, employers can face two, three or four years of unpaid overtime bills, plus penalties and interest. The amounts can be staggering. And, for some employers, they can be so great that the financial health of the organization is threatened.

California officials just recently altered that state's position on the issue. In a May 30, 2001 letter from Miles E. Locker, Chief Counsel in the Division of Labor Standards Enforcement, it has been made clear that California expects employers to make employer-mandated time-off deductions from exempt employees' pay in no less than MONTHLY increments.

If you have created such a cost-saving strategy in your organization, and plan to include exempt positions in the plan, we encourage you to discuss the plan with your management attorney before proceeding. If you don't, your cost-savings could turn into expenses much greater than ordinary salary payments.

If you wish to view Mr. Locker's letter setting out California's requirements, go to http://dir.ca.gov/dlse/SalaryTestUnderNewOrders.pdf and you will be able to view or download a PDF version.

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4. DOL NAMES NEW NATIONAL DIRECTOR FOR OFCCP

Last Tuesday, June 12th, Secretary of Labor Elaine L. Chao announced her appointment of Charles Everett James Sr. as Deputy Assistant Secretary of Labor for the Employment Standards Administration (ESA). He will be responsible for the Office of Federal Contract Compliance Programs (OFCCP).

In making the announcement Chao said, "Charles has a tremendous breadth of knowledge and experience. OFCCP has some tough issues to tackle, from diversity to accessibility, and I am confident that Charles is the very best person to lead that effort."

Mr. James was appointed in 1998 by Governor James Gilmore to a seat on the Virginia Parole Board and served there until this appointment to the Department of Labor. From 1994 to 1998 he was director of Virginia's Department of Personnel and Training, and from 1984 to 1993 he served as manager of Bell Atlantic's Equal Employment Opportunity and Affirmative Action office.

Mr. James is a graduate of Kings College. He lives with his wife, Kay Coles James, in Arlington, VA. Mrs. James has been selected by President Bush as his nominee for Director of the Office of Personnel Management. (At least they can commute to the Senate confirmation hearings together.)

The appointment of Charles James to this OFCCP position puts to rest the rumors that the job would not be filled and the agency would be blended into the EEOC. It seems those rumors have surfaced with the changing of each administration in recent times. For now, the OFCCP is alive and well and continuing its enforcement activities.

Gentle Readers,

With the national SHRM convention in full swing this week, we had not planned to send you a Special Report. But ... California has been busy changing the rules again on deductions from exempt employees' pay. We thought you would want to know the latest.

Bill Truesdell
Editor

IN THIS REPORT (Report #186, 6/29/2001)
---------- (Sent to over 1,600 subscribers)

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1. CAN YOU SAVE MONEY BY FURLOUGH OF EXEMPT EMPLOYEES? (PART II)

It seems all we have to do is wait a short while and the regulatory climate in which we live will produce something unexpected. Such is the case with the issue of deductions from exempt employees' pay in California.

You will recall ...

Miles E. Locker, Chief Counsel of the California Division of Labor Standards Enforcement wrote a letter on May 30, 2001 stating that employer-mandated time-off deductions from exempt employees' pay could only be made in MONTHLY increments without jeopardizing the exempt status.

Thanks to Margaret Jacoby, PHR (MJ Management Solutions, 310-798-4569) we know that the Professionals in Human Resources Association (PIHRA) of Southern California has announced this turn of events to its members and others.

Well, Mr. Locker's opinion has been rescinded by a letter from Arthur Lujian, State Labor Commissioner, and Mr. Locker is reportedly no longer Chief Counsel for the Division of Labor Standards Enforcement. In part, Mr. Lujian's letter said, "At its recent meeting several members of the Industrial Welfare Commission indicated they would be reviewing this policy area with an eye toward making changes. Since the California law and regulation on which the letter is based appears in flux, and a higher level of certainty as to the law may soon be available, I have decided to withdraw the letter as the Division's enforcement position."

At the moment, California's rule for deductions from exempt employee pay remains consistent with federal requirements of full-week pay for exempt jobs.

At the June 29th meeting of the California Industrial Welfare Commission (IWC), the Commission plans to discus Mr. Locker's letter as an agenda item. According to Commission staff, no action is expected in view of Mr. Lujian's retraction of the controversial opinion. Any future changes to the one-week rule will likely come from the state legislature if it is so inclined.

At this writing, California has returned to the one-week interpretation for minimum exempt employee pay requirements. If you are planning to furlough exempt employees without pay as a budget-saving measure, we suggest you consult with your labor attorney before finalizing your plans and implementing your program. Your attorney can tell you the most current developments in this saga of regulatory confusion.

Thanks to Lee T. Paterson of Winston & Strawn for a copy of Arthur Lujian's letter. Mr. Paterson is legal counsel to PIHRA and can be reached at 213-615-1725.

Gentle Readers,

The world of federal enforcement continues to fascinate us. This week, we tell you why.

Bill Truesdell
Editor

IN THIS REPORT (Report #187, 7/6/2001)
---------- (Sent to over 1,600 subscribers)

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1. SECRETARY CHAO ANNOUNCES WORKPLACE INITIATIVE

On June 20, 2001, Secretary of Labor Elaine L. Chao called on the nation's public and private leaders to recognize trends shaping today's workforce. She made her remarks at a Department of Labor Summit on the 21st Century Workforce.

"There will be huge economic consequences if we don't address demographic changes in the workforce and technological changes in the workplace," she said. "We need America's workers, employers and unions to start working now on challenges that lie just beyond the horizon."

This summit was the first step in Ms. Chao's 21st Century Workforce Initiative. She and President Bush have created the initiative to focus the federal government on issues that affect the modern workforce. President Bush announced at the summit that he would sign a new Executive Order creating the Office of the 21st Century Workforce within the Department of Labor.

Secretary Chao also announced three other new programs at the summit:

- Secretary of Education Rod Paige joined Secretary Chao in announcing joint ventures between the Departments of Education and Labor. These include enhanced reading and math skills for adult workers and a program for at-risk youth participating in the DOL Job Corps to earn high school diplomas through distance learning and local public schools.

- A new web site to help Americans with disabilities enter the workforce. It contains comprehensive information on the President's New Freedom Initiative programs and services.

- A new joint venture with Monster.com to share information and

other resources with America's Job Bank, a national employment search program of the Department of Labor (DOL).

Alan Greenspan, Chairman of the Federal Reserve, also addressed the summit, saying, "The notion that formal degree programs at any scholastic level or that any other training program established today can be crafted to fully support the requirements of one's full working life has become subject to increasing doubt. It is evident that we need to foster a flexible education system--one that integrates work and training and that serves the needs both of experienced workers at different stages in their careers and of students embarking on their initial course of study."

The new DOL Office already has a series of web pages. You will find them at: http://www.dol.gov/dol/21cw/welcome.html

Listed under Resources are contacts for the following agencies and programs:

- Advanced Distributed Learning
- America's Career InfoNet
- America's Job Bank
- America's Learning Exchange
- America's Service Locator
- Office of Disability Employment Policy
- Employment & Training Administration
- Federal Learning Exchange
- FirstGov for Workers
- The Job Accommodation Network (JAN)
- Monthly Labor Review Online: Labor Force archives
- Occupational Information Network

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2. EEOC OFFERS BROAD CENSUS 2000 DATA

The Equal Employment Opportunity Commission (EEOC) has posted summary data from Census 2000 on its web site. You will find the data reports at: http://www.eeoc.gov/stats/census/index.html

They offer population data only at this time. There is no occupational information available. That is not expected to be released until March 31, 2003. Nonetheless, you may find broad population figures to be of some help before 2003. If you do, you will see that the EEOC report shows the following categories:

- Total Population (Hispanic/Non-Hispanic)
- White (Hispanic/Non-Hispanic)
- Black (Hispanic/Non-Hispanic)
- American Indian or Alaska Native (Hispanic/Non-Hispanic)
- Asian (Hispanic/Non-Hispanic)
- Native Hawaiian or Other Pacific Islancer (Hispanic/Non-Hispanic)
- Some Other (Hispanic/Non-Hispanic)
- White and Black (Hispanic/Non-Hispanic)
- White and Asian (Hispanic/Non-Hispanic)
- White and AI or AN (Hispanic/Non-Hispanic)
- Black and AI or AN (Hispanic/Non-Hispanic)

o Balance

You can retrieve data for the U.S. total, each state, every metropolitan statistical area, each county and every city with 50,000 or more people.

Although this data is not usable for affirmative action purposes, it does allow for comparisons of population figures with 1990 data. You may be surprised at how demographics have shifted in your location.

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3. LABOR DEPARTMENT ENFORCEMENT PLANS

The U.S. Department of Labor (DOL) has responsibility for enforcing federal laws ranging from equal employment opportunity, to workplace safety (including mine safety), wage and hour requirements, child labor rules, to affirmative action implementation.

It has been given powers of enforcement including the right to subpoena documents and people, issue citations for non-compliance, levy fines and ultimately to prosecute employers who fail to meet their legal obligations.

Always at issue is the zeal with which the enforcement agencies pursue their assignments. Under the Clinton Administration, for example, Shirley Wilcher, Deputy Assistant Secretary of Labor for the Office of Federal Contract Compliance (OFCCP), was fond of saying she knew employers were illegally discriminating and her agency was going to discover it and stop it.

While we don't yet have a Senate confirmation on Mr. Everett James' nomination as Ms. Wilcher's replacement, we do have clear indication from Secretary of Labor Elaine Chao that the current administration's approach to enforcement will be different from the last eight years.

Ms. Chao's approach is to help employers avoid violations. She recognizes that she could never obtain a large enough budget to support the enforcement officers necessary to ignore employer self-regulation. Her approach plays on the belief that it is in the employers' self-interest to comply with all our labor laws. There are so many, and they are so complex, that education is a primary component, whether applied before or after enforcement action.

"We'd like to ... help companies do compliance instead of after-the-fact 'gotcha,'" said Ms. Chao. "That's difficult and counterproductive."

Even this shift in enforcement philosophy has brought criticism from labor groups around the country while garnering support from business groups such as the U.S. Chamber of Commerce.

To implement her educational programs, Ms. Chao has established a DOL policy-planning board, which should be set up this month. The board's co-chairman will be Chris Spear, Assistant Secretary for DOL Policy. His counterpart will be Deputy Labor Secretary Cameron Findlay. Together, with their board, they will approve all DOL initiatives and

assist agencies in setting priorities. Their goal is to continue enforcement and "enhance compliance outreach," according to Mr. Spear.

Since the current Administration took office there has been speculation that OFCCP's new regulations might be overturned. Few continue to believe that is a possibility. Many now suggest that it could be possible for DOL to modify the Equal Opportunity Survey (EO Survey) every federal contractor must complete every other year. Contractors continue to contend that in its current form, the survey makes unreasonable demands for company data, including highly confidential salary information. According to the Wall Street Journal on July 3, 2001, "the department is looking into whether to shorten the survey or to change some of the questions." Mr. Spear says his group will review all Department agencies to be sure their missions are in line with Department and Administration objectives.

Gentle Readers,

Much has been happening recently in the area of force reduction. This week we look at how you can apply statistical testing to your employee data with the hope of preventing disparate impact that could be very costly to remedy.

Bill Truesdell
Editor

IN THIS REPORT (Report #188, 7/13/2001)
---------- (Sent to over 1,600 subscribers)

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1. EDUCATIONAL REIMBURSEMENT PART OF TAX BILL

One part of the tax relief bill passed by Congress last month was extension and modification of Internal Revenue Code Section 127. As you know that is the section containing provisions for employer reimbursements of employee educational expenses.

The new provisions extend the current non-taxable expense allowance for employers on such reimbursements. The maximum benefit to any one employee in any one year is set at $5,250.

Beginning January 1, 2002, employees seeking graduate degrees from accredited schools will also be able to participate in this program. Until then, only undergraduate programs are covered.

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2. TAKING FOLKS OFF THE PAYROLL? REMEMBER TO TEST FOR DISPARATE IMPACT

Downsizing is difficult enough without having to deal with claims of illegal discrimination. Human Resource professionals are at the center of most efforts to reduce employee headcount. And, many employers are continuing to experience force reductions in the face of the current economic downturn.

Part of any force reduction plan should be testing the likely outcomes for potential disparate impact. The best planned system for selection can result in disparate impact.

You recall that disparate impact is one of two types of illegal employment discrimination under state and federal laws. The other is,

of course, disparate treatment. Disparate Impact normally occurs where policies and procedures (and plans for downsizing) appear to be neutral, but in fact have a disproportionate effect on one or more protected groups.

If you use a totally objective criteria to determine the order of employee layoff you may not have need for disparate impact testing. For example, using a strict adherence to company seniority has been deemed an objective criteria. On the other hand, if you interject criteria based on judgment, you can begin to introduce unintended bias to your selection system, and the need for disparate impact testing increases. For example, using job performance evaluation ratings as the means to determine layoff order can be legitimate, but it can be possible for rater bias to influence the outcomes.

A simple test, called the 80% test, can be quickly applied to your employee data to determine if there is any possibility that one or more protected groups are being unjustly impacted. Here's how you might do that:

Total employees	567
# employees being cut from payroll	95
# of those who are White	68
# of those who are Black	10
# of those who are Hispanic	9
# of those who are Asian	8
# of those who are over 40 years old	50
# of total employees over 40	193
# males being cut	72
# males on payroll to start	329

Males v. Females

Males selected for reduction = 72/329 = 21.9% selection rate
Females selected for reduction = 23/238 = 9.7% selection rate
9.7/21.9 = 44.3%
The selection rate for females is only 44.3% that of males. Therefore, based on a requirement that males are selected at least 80% as often as females, there is potential disparate impact against males in these results.

Age (over 40)

Over 40 selected for reduction = 50/193 = 25.9% selection rate
Under 40 selected for reduction = 45/374 = 12.0% selection rate
12.0/25.9 = 46.3%
The selection rate for under 40 is only 46.3% that of over 40. Therefore, based on the requirement that under 40 workers are selected at least 80% as often as over 40 workers, there is potential for disparate impact against people over 40 years of age in these results.

Those are just two examples of how you can do a rough comparison in your planning. You can apply the same test to racial categories. Any indication you receive as a result should not be taken as "proof" of disparate impact. Rather, it should beg for additional testing.

Additional tests have been proven legally acceptable. They include statistical significance testing and probability testing. The point of these additional tests is to "weed out" any false positive you may have gotten from the 80% test. False positives can happen by chance and are therefore not valid indicators of certainty.

When all is said and done, if your statistical significance testing results in indications of disparate impact, you should re-examine your employee selection criteria to determine if it is possible to restructure your downsizing program to have less or no disparate impact on any protected group.

While this process can take some time, it is better to spend the effort at the beginning of the planning process, rather than during the preparation of your defense once disgruntled employees have sued for illegal discrimination in the layoff selection design.

In the HR Web Store you will find a software product that will help enormously in your statistical significance testing of these types of plans. Go to http://www.hrwebstore.com/products/ai-monitor.htm and you will see the tool we are referring to...Adverse Impact Monitor from PeopleClick (formerly PRI Associates). It can save you many hours of pencil and calculator effort.

Good luck with your force reduction efforts.

Gentle Readers,

This week, a potpourri of items of interest to HR Professionals.

Bill Truesdell
Editor

IN THIS REPORT (Report #189, 7/20/2001)
---------- (Sent to over 1,600 subscribers)

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1. A TEST FOR PREDICTING AGGRESSION IN POTENTIAL EMPLOYEES

According to MyBusinessmag.com, workplace violence costs employers $36 billion per year. As a result, the folks at The Psychological Corporation (www.psychcorp.com) have published a pre-employment test that can be used for screening out people with a penchant for violence.

Called the "Conditional Reasoning Test of Aggression," it is administered in English using paper and pencils, is scored by hand after the 25 minutes allowed for its administration. The publishers claim even small business owners can afford to predict aggression in their potential employees.

The test was developed by Lawrence R. James, Ph.D. and Michael D. McIntyre, Ph.D. at the University of Tennessee and uses reasoning problems to determine results. Dr. McIntyre reports that 90% of the people who scored high exhibited aggressive behaviors within their first six weeks on the job.

Cost of the test is $162 for an administrator manual and 25 copies of the test. It does not require professional training in its application and The Psychological Corporation claims it "is a perfect tool for employers...who screen large numbers of applicants for various positions."

If you prefer talking with a real person rather than visiting the web site, call 800-872-1726.

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2. FORD CHANGES MANAGER PERFORMANCE RATING SYSTEM

It's not just tires that are the subject of conversation at Ford Motor Company these days. According to the Wall Street Journal (7-11-2001),

grading performance on a curve may work in academia, but as of last week it was out at Ford Motor Company.

Chief Executive Jacque Nasser had strongly supported a performance management system that would "get tough" with poorly performing managers. Ford now says it will abandon major elements of its "Performance Management Process," including the practice of assigning a fixed percentage of managers every year to a "C" category that meant no bonus, no merit raise and potentially no job.

A similar system has worked successfully after it was implemented by General Electric Company Chairman John F. Welch Jr. The system of performance management he created has been credited with helping him build his high performance corporate culture. But, at Ford, it didn't work. A total of 57 current and former employees have signed on to two suits charging that the evaluation system is discriminatory. There are additional suits by individuals as well. And, the AARP (American Association of Retired Persons) is said to be considering throwing its support to one or more of the suits saying the company discriminated against older workers. Ford Chairman William Clay Ford Jr. is reported to be concerned about the system's impact on morale.

Many companies have implemented performance management systems similar to those advocated by Mr. Welch at GE. And, many are beginning to rethink their decisions, as Mr. Nasser is rethinking his. He acknowledged negative feedback about "what was viewed as an inflexible system by some, and discriminatory by a few others." Mr. Nasser denied that the system is discriminatory, but he outlined changes that will take effect immediately and are clearly aimed at defusing concerns about the system. Ford will stop designating a certain fixed percentage of employees as "C" or unsatisfactory performers who can be demoted or terminated if they receive that rating in two consecutive years.

Ford only introduced its evaluation system last year, when it said 10% of its managers had to be given C's. This year the quota for C's was dropped to 5%.

In its modified program, Ford will begin using ratings designated as "Top Achiever," "Achiever," and "Improvement Required." Those who receive ratings of "Improvement Required" will be given coaching and counseling, but they may also receive raises.

The message seems clear to us. Don't try to take someone else's successful management system and plug it in to your organization without very carefully considering how it will impact your people and your culture. Just because the system works for others is no guarantee that it will work the same way for you.

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3. DIVERSITY INITIATIVES IMPROVE COMPETITIVE ADVANTAGE

The Society for Human Resource Management (SHRM) and Fortune magazine recently conducted a survey of human resource professionals asking if there were any advantages to their organizations' diversity initiatives.

What they discovered is startling.

The majority of respondents said diversity initiatives have impacted the company's bottom line in several positive ways. For example, 79% said it improves corporate culture, 77% said it improves recruitment of new employees and 52% cited improved client relations. The vast majority of HR professionals (91%!!!) said their diversity initiative helps their organization keep a competitive advantage. More than half said diversity initiatives decreases interpersonal conflict among employees (58%), increases creativity (59%), and increases productivity (52%).

Among the diversity practices of these top companies, the most common initiatives were recruiting efforts designed to help increase diversity within the organization (75%), diversity training initiatives, education, and/or awareness efforts (66%), and community outreach related to diversity (61%). Least cited practices were diversity-related conflict resolution (16%) and company-paid literacy training (11%).

Nearly all respondents' initiatives (96%) include race as an aspect of diversity and 88% cover gender. However, more than half also cover age (65%), disability (64%) and sexual orientation (57%).

The SHRM/Fortune "Impact on Diversity Initiatives on Bottom Line" survey is available on-line for FREE to SHRM members at www.shrm.org/surveys . Non-members may purchase a survey report for $49.95 by calling the SHRM Store at 1-800-444-5006.

Gentle Readers,

Are you a California employer with someone on workers' compensation leave? If so, you will want to know about the new ruling that requires unlimited continuation of benefits for those injured employees.

Bill Truesdell
Editor

IN THIS REPORT (Report #190, 7/27/2001)
---------- (Sent to over 1,600 subscribers)

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1. CITY OF SANTA MONICA NEW LIVING WAGE APPLIES TO NON-CONTRACTORS AS WELL

Santa Monica, California is a city right on the Pacific Ocean not far from Los Angeles. The surf and sand make this community one of the most desirable in Southern California. Now the City Council has adopted a Living Wage ordinance that will control many employers, not just city contractors.

As of July 1, 2001, any employer who meets the following criteria must pay a minimum of $10.50 per hour plus health benefits to all employees. An allowance of $1.75 per hour for benefits will be increased next year to $2.50 per hour per employee. Therefore, the total minimum required this year is $12.25 per hour. Next year it will increase to $13.00 per hour.

Employers Must Comply If They Are...

- In the "Coastal Zone"
- Have gross receipts of $5 million per year (to be adjusted annually)

The ordinance was over two years in the making and drew criticism from many people in the community. It remains to be seen if the courts will support the City's right to govern private employment payroll practices within its borders.

For now, if you plan to do business in the City of Santa Monica you should plan to meet the new minimum wage requirements. For more information go to: http://pen.ci.santa-monica.ca.us/cm/news/wrap/

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2. OSHA COMPLETES PUBLIC FORUMS ON ERGONOMICS

The Organizational Safety and Health Administration (OSHA) has just completed a series of three public forums on the subject of workplace ergonomics regulation. They were held in Washington, DC, Chicago, Illinois and Stanford (Palo Alto), California.

The final forum was held this past Tuesday at Stanford Law School. While the public was invited to attend and everyone was given an opportunity to request a chance to speak, presentations were limited to 10 minutes each.

It is expected that any new proposals to come from this process will be offered before the end of this year.

As you know, OSHA's regulations on ergonomics developed by the Clinton Administration were cancelled when the Bush Administration took office. They were severely criticized by a wide range of organizations and individuals from across the country.

Stay tuned. Something is sure to follow, and we will share it with you when it comes along. Mean while, don't forget that the new OSHA record keeping requirements will go into effect on January 1, 2002. (See "The Advantage," July 2001 at www.hrwebstore.com/newsletr/jul2001.htm)

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3. CALIFORNIA EMPLOYERS MUST PAY BENEFITS DURING WORKERS' COMP

The California Workers Compensation Appeals Board (WCAB) has ruled that an employer must continue to pay its share of medical and other benefit premiums for employees who are absent on workers' compensation leaves. (Maraviov v. Tenent Health Systems) http://www.dir.ca.gov/WCAB/wcab.htm

Tenent Health System's policy said all employees who were absent on medical leave for more than 12 weeks would not receive company-paid health insurance or other benefits.

WCAB said employees only lost their benefits when they sustained an industrial injury and were unable to work for more than 12 weeks. That constituted discrimination against injured workers in the eyes of WCAB. The Board did leave open the possibility that an employer could show that "business necessity" required the cancellation of benefit payments.

We recommend that all employers check with their own legal counsel before making any decision to discontinue benefits for someone on workers' compensation leave in California.

Gentle Readers,

Who is an applicant?; how "workweek" is used to determine overtime in California; and, the growing influence of religious bias in today's U.S. workforce. We hope you can find something to use in this week's Special Report.

Bill Truesdell
Editor

IN THIS REPORT (Report #191, 8/3/2001)
---------- (Sent to over 1,600 subscribers)

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1. HANDLING OFCCP'S CHALLENGES TO YOUR DEFINITION OF APPLICANT

The Bureau of National Affairs reports in its Affirmative Action Compliance Manual that there are some potentially valid alternatives to the official definition used by the Office of Federal Contract Compliance Programs (OFCCP).

With Shirley L. Wilcher at the agency's helm, the government's definition of applicant was "anyone who showed any interest in employment through any means," whether that person was qualified or not. On more than one public speaking occasion, Ms. Wincher proclaimed that qualifications have nothing to do with applicant status. We obviously disagree with her interpretation and have always suggested affirmative action employers prepare their own written definition for job applicant. To be realistic, employers should recognize that considering only the people who are actually interviewed to be job applicants is a bit too restrictive, and almost never will be accepted by government Compliance Officers as a valid definition.

The following suggestions come from Leonard H. Berman, national director of human resources and affirmative action activities for the National Employment Law Institute (NELI).

- Merely searching a national database for job candidates does not make everyone in the database an applicant.
- Only those people identified in a keyword search done of large databases in electronic applicant data-retrieval systems will be considered applicants, not the entire database.
- A person must be at least minimally considered by the employer to be defined as an applicant (e.H., if an employer does not look at unsolicited resumes, those resumes do not constitute applications).
- Candidates who remove themselves from consideration are no

longer job applicants.
- People who fail to complete all the requirements of an application are not applicants.
- A person is no longer an applicant after the active consideration period expires.
- A person who applies for a specific job is not an applicant for other jobs.
- People who apply for positions when a company has no openings and is not hiring do not become applicants until considered and may never become applicants if the company does not consider candidates during the time their applications are active.

Remember, decide how you will define "applicant" based on how your hiring practice would have people move through your employment process. And, be sure to write it down.

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2. CASE STUDY FOR CALIFORNIA OVERTIME PAYMENT

Not infrequently employers experience situations where employees were paid more than they should have been paid. This can happen through simple error or by way of actual work time not matching with the hours anticipated and submitted to payroll for processing.

Incorrect over-payments may be reclaimed by employers, usually on the subsequent pay check. If you wish to avoid upset employees it is a good idea to include this provision in your employee handbook or policy manual. Letting workers know that errors can and will be corrected can avoid potential upset.

We recently received an email from an employee who was upset that he was going to lose his overtime from the previous week. Here's the situation:

Pay period includes two weeks. Week one: Employee actually works 24 hours without exceeding 8 hours in any one day. The payroll clerk was going to be gone on the day payroll had to be submitted and she submitted 32 hours for the employee assuming he would work one additional scheduled day that week. As it turned out, he was actually sick that day and should not have been paid under the company policy.

Week two: Employee worked 40 regular hours and 3.5 hours overtime.

The payroll clerk says she will deduct the 8 hours this employee was overpaid for week one. She also says that he will have to give back the overtime pay he received for week two's 3.5 hours because the total of 24 + 40 + 3.5 does not exceed 80 hours for the pay period. In California, is this correct payroll treatment?

The answer, of course, is "no." California Labor Code requires each work week to stand on its own in computation of overtime. Work weeks may not be combined to reflect a pay period greater than one work week in calculating overtime due workers.

In our example, the company would be within its rights to reclaim the 8 hours the employee did not actually work in week one. However, the payroll clerk was incorrect when she said she would reclaim the 3.5 hours of overtime for week two. Week two involved 40 regular hours and 3.5 overtime hours that should have been paid at the time-and-one-half rate. Each week is calculated on its own.

For more information, visit the following two web sites:

http://www.dir.ca.gov/IWC/iwc.html

http://www.dir.ca.gov/DLSE/dlse.html

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3. WORKPLACE RELIGIOUS REPRESENTATION INCREASES DRAMATICALLY

Slightly more than one-third of responding organizations said there are more religions represented in their workforce compared to five years ago. This from a survey conducted by the Society for Human Resource Management (SHRM) and the Athenaeum Center for Interreligious Understanding.

Results of the study are available to SHRM members on the web at www.shrm.org .

Religious diversity is emerging as an issue in the workplace because of many current trends, such as immigration, globalization, the "new economy," a tight labor market, the country's political climate and an aging population. Immigration from Africa, Asia and the Middle East is increasingly bringing Muslims, Hindus, Buddhists and members of other non-Judeo/Christian religions into the workplace. And many of these newcomers bring religious practices that are unfamiliar to U.S. employers.

The aging population in the U.S. also tends to be more religiously observant. This transfers to the workplace because workers are staying in the workforce longer and are being brought out of retirement in this tight labor market. At the same time, the political climate is pushing religion into the public arena and emboldening employees to assert their religious rights. With its 1,500 religious denominations, 90 percent of the U.S. population professes a belief in God. Religious beliefs are not turned off when a person enters the workplace.

As a result of these trends, complaints of religion-based bias in the workplace have increased more than 40 percent since 1992, according to the Equal Employment Opportunity Commission (EEOC). (The EEOC reports 1,338 religious-based charges in 1992 and 1,939 religious-based charges in 2000.) And monetary settlements have increased nearly 300 percent from $1.4 million in 1992 to $5.5 million in 2000.

Reason enough for HR professionals to begin looking at their own organizations to determine if they are treating requests for religious accommodation with appropriate responses? It would seem so. And for HR professionals to incorporate into management training programs additional information about religious-bias and how it can hurt the organization.

How are you doing in your organization?

Gentle Readers,

New state laws, unique disability resources and racial harassment top this week's list.

Bill Truesdell
Editor

IN THIS REPORT (Report #192, 8/10/2001)
-------------- (Sent to over 1,600 subscribers)

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1. RECENT STATE LEGISLATIVE ENACTMENTS

It's time for our mid-year look at some state legislative actions. The following information should be considered only a summary. If you believe your organization will be affected by any of these new laws we urge you to obtain a copy of the legislation and discuss the issue with your management attorney. Any policy changes should be made only after thorough discussions with your colleagues.

Smoking in the Workplace

California is virtually a "no smoking" state at this time. About the only place someone can smoke tobacco legally is in the open air and in their private residence. Public buildings, including bars and restaurants are now off limits as are all office buildings.

Joining the move to non-smoking laws are Arkansas which has just decided to require a designated number of police and sheriff vehicles as non-smoking. And, Rhode Island has added assisted living facilities to its list of public places where smoking is prohibited.

Child Labor

Child Labor laws in Tennessee have been updated to list the documents that can be used to prove age for purposes of obtaining an employment certificate.

Workplace Privacy

In Delaware employers must now give notice of electronic monitoring. The notice must be provided when employers intend to monitor email, telephone calls or Internet use.

Louisiana has banned the use of genetic information in employment decisions. Employers, labor organizations and employment agencies must not discriminate against any employee or job applicant based on genetic information. "Protected genetic information" refers to information about any individual's genetic tests, the genetic tests of an individual's family members or the occurrence of a disease, medical condition or disorder in family members of the individual.

In Oregon it is now illegal to use genetic information about a blood relative to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms and conditions of or otherwise affect any policy of insurance. Discrimination based on genetic information is also prohibited. Employers may not seek to obtain or use genetic information about an employee or job applicant or their blood relatives in any employment decision.

Do you know what's happening with your state legislature? You can assume that there are proposals being made that will make HR management more difficult if passed. Knowing what they are and taking a position on them is part of our responsibility as HR professionals.

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2. RACIAL HARASSMENT PROBLEMS ARE GROWING

Since 1990, the number of racial harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) has more than doubled. With two major corporate settlements in recent years, one would think the problem would begin to diminish. The reverse seems to be more true.

Coca-Cola agreed to settle its race discrimination challenges by paying employees $147 million out of a total $192 million agreement. The remaining $45 million went to attorney fees and other expenses associated with the case. In 1995, Texaco settled its widely publicized racial harassment case for $176 million.

Yet, management attitudes around the country continue to focus on the belief that "It can't happen here." Have you noticed that there appear to be more folks rushing to get through yellow lights at intersections these days? Some law enforcement reports indicate that incidents of red light running has jumped to unprecedented levels in recent years. So far, we have not seen any studies linking red-light-running with racial discrimination, but both behaviors tend to indicate a generally lower level of concern for one's fellow citizens and a higher disregard for legal requirements.

In legal terms, it is not always necessary to look to multi-national corporations for examples of problems. This past January the EEOC reached a $1.8 million settlement that will benefit a group of African-American workers who experienced racial harassment and racial discrimination at Larsen Automotive Group in Tacoma, WA.

Some of the behaviors cited in these complaints would shock most HR professionals who think they have heard everything already. Last month, the EEOC filed a law suit against Emery Worldwide Airlines Inc. in New Jersey on behalf of eleven black workers. The employees allege

they were subjected to nooses in the workplace and that their personal vehicles were vandalized. This in addition to the racial slurs and insults normally associated with racial harassment complaints.

How do you deal with this problem in your organization? Is there a more effective way to address issues of employment discrimination?

Answers to these questions are going to require HR professionals to deal with greater work loads if the problem is to be solved.

Consider this ... you probably only get a formal complaint of employment discrimination when the situation has become absolutely intolerable for your employee. That means other problems exist but you haven't heard about them yet. If you can convince employees to file more complaints with you so your office can conduct proper investigations and remedy the problems before they become "absolutely intolerable" you will prevent some, if not many, of the complaints from traveling outside to enforcement agencies. And, handling complaints internally is a lot less expensive than having them go outside to enforcement groups. So, bottom line ... try to increase your work load by encouraging complaints from employees. You will find the increase will last for a limited time. Once you have gained the employees' confidence and gotten smoldering issues to surface so you can resolve them you can expect a drop in case load. Not only will case numbers fall, but the time it takes for you to resolve them will fall also. Your management staff will find it saves them time if they work with you to overcome what ultimately can be described as communication difficulties in many complaints.

When you actually encounter a situation involving discrimination, you can recommend and help implement a remedy that will be less costly early on than it would be if allowed to continue through time. And, you know, the upset will go away sooner, too. Less upset means less negative impact on production. Now that's a direct route to the "bottom line."

The statistics suggest there is a dramatic increase of racial problems in our workplaces. It's up to us to deal with that.

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3. RESOURCES FOR EMPLOYEES WITH DISABILITIES

In each of its six issues every year Ability magazine publishes information about resources for people with disabilities. Subscriptions cost $29.70 per year and can be arranged by calling 949-854-8700 or by visiting their web site at www.ABILITYmagazine.com .

Here is a sampling of resources from their current issue:

- Center for Developmental Disabilities
  800-922-9234
  Maintains a database with information about resources across the country, including rehab resource, assistive technology and lists of therapists and rehab engineers.

- Clearinghouse on the Handicapped

202-732-1250
A national clearinghouse group providing information on disabilities.

- Direct Link for the Disabled
  805-688-1603
  A non-profit referral agency, Direct Link maintains listings of more than 10,000 organizations and community-based resource centers for all ages and disabilities.

And, for the golfers in your workforce who may have a disability, (other than their score) there are some special contacts they may find interesting:

- Fore All!
  301-881-2828
  www.foreall.com

- Fore Hope, Inc.
  614-870-7245
  www.forehope.org

- National Amputee Golf Association
  800-633-6242
  www.amputee-golf.org

- Professional Golf Association
  www.pga.com/faq/disabled/events

Gentle Readers,

A new and impressive software product is now on the market to help federal contractors with their AAP development. We'll tell you about it.

Bill Truesdell
Editor

IN THIS REPORT (Report #193, 8/17/2001)
---------- (Sent to over 1,600 subscribers)

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1. NEW AAP SOFTWARE HAS EVERYTHING IN ONE PACKAGE

Biddle Consulting Group, Inc. has introduced a new software package for federal contractors wishing to develop their affirmative action plans (AAP) in-house. It's titled "AutoAAP." It runs on any contemporary PC equipped with a Pentium processor and Windows 95+ or Windows NT 4.0+. 32MB of RAM are required as well as 100MB of hard drive storage space. You'll need a CD-ROM to load the program. These are all typical system offerings in PC's found in most of today's offices.

But, what can the program do for you?

Since it is completely self-contained, it will produce your narrative AAP sections and allow you to edit them as you wish in your copy of Microsoft Word. The narrative includes special AAP documents so you can meet requirements for having affirmative action plans for both disabled and veterans. All of the statistical reports you are required to produce for minority and women affirmative action are included. You can import your employee data directly from most Human Resource Information Systems (HRIS) or from a Microsoft Excel spreadsheet.

Once your data is imported, AutoAAP creates various databases that will assist you by producing Workforce Analysis, Job Group Analysis, Availability Analysis, Incumbency Analysis, and Goals. Goals Achievement reports can be generated at any time after the AAP is created allowing you to give your CEO quarterly or monthly updates on progress throughout the AAP year.

The entire 1990 Census EEO Special File of data in included in the program. You do not need to order any Census data separately. And, the software will help you determine which of the 4,200+ Census areas

to use by compiling a ZIP Code analysis on your employee and job applicant residences. It couldn't be more simple to build an accurate picture of your recruiting territory for each job group.

Also built into the software is the capability for performing disparate impact testing on your employee movement such as new hires, promotions, transfers, and terminations. You can drill down in the data to determine which step of the employment process may be causing you to experience disparate impact.

All of the mathematical formulas for statistical significance and probability used in the software have been developed by Biddle Consulting Group to meet requirements of case law. Biddle has been a leading expert witness in support of employers across the country for many years. Their technical expertise is well established in the legal community.

Finally, you will find the AutoAAP software outputs the COMPLETE EO Survey for you. It doesn't just do a section of the report. It compiles the entire EO Survey document you must file with the Department of Labor every other year.

The government has estimated it will take a new federal contractor an average of 179.5 hours to prepare the first AAP document. Annual updates as required by federal regulations will require an estimated 74.9 hours. With AutoAAP software you will be able to cut your time investment by as much as 90%.

If you would like to learn more about this fine software, please visit the HR Web Store at www.hrwebstore.com and go to the HR Software department. If you would like to receive a CD containing a demonstration of the program, please call our toll-free order line at 1-888-671-0404. We know you will be as impressed as we are.

Remember, all orders placed through the HR Web Store before August 31, 2001, will receive FREE SHIPPING!

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2. CALIFORNIA EMPLOYEES WITH LEGAL PROBLEMS NOW HAVE HELP

How often have you wanted to give employees a resource they can use to help with personal legal problems like divorce, adoption, traffic violations, domestic violence, probate and small claims issues?

Well, now there is an Internet resource you can suggest that will provide California residents with free or low cost legal help on such matters. It's called the California Courts Web Self-Help Center and you will find it at http://www.courtinfo.ca.gov/selfhelp/ .

Subjects seem to cover a wide spectrum including elder law, landlord-tenant law, disability issues and alternative dispute resolution.

Legal and personal problems can easily impact a worker's productivity. The next time one of your employees asks for help with a legal matter you might suggest they check out California Courts Web site.

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3. BUSH ADMINISTRATION SUPPORTS AFFIRMATIVE ACTION...FOR NOW

The Bush Administration has asked the U.S. Supreme Court to uphold a federal program of set-asides in purchasing. That action sends the signal that the Administration is not yet ready to make its case for eliminating affirmative action programs as was a campaign promise of President Bush. Attorney General John Ashcroft has also openly opposed affirmative action. Yet the Justice Department has filed a brief with the U.S. Supreme Court (August 10, 2001) supporting the government's Disadvantaged Business Enterprise Program.

In 1995, the Supreme Court ruled in Adarand that giving construction firms and their sub-contractors some added chance to win government business was inappropriate if that was determined on the basis of race. The Clinton Administration "revamped" the program and it was reissued with a preference based on economic condition of the owners of the bidding construction companies. Current rules have set a requirement that individuals have a net worth of less than $750,000 to qualify as disadvantaged. The old Minority and Women's Business Enterprise Programs (M/WBE) were replaced with bid preferences based on the bidder's economic disadvantage.

Under the new guidelines, Adarand qualified as disadvantaged, even though he is white. His company installs highway guard rails. Because of this, in 1999, a federal court in Denver ruled his challenge to the program was invalid. In 2000, the U.S. Supreme Court again ruled in the case that Adarand's challenge was not moot. Subsequently, the Appellate Court ruled the government's program was Constitutional. It is the appeal of that final ruling which brings the case (Adarand Constructors, Inc. v. Mineta) back to the Supreme Court for a third time.

Why hasn't the Administration opposed continuation of the contract set-aside purchasing program? Some legal experts suggest that a better case will come along in the future, one that will allow the government to argue for elimination of even the disadvantaged economic-based purchasing programs.

We should also be watching for the Administration's stance on cases involving college admissions and "true affirmative action" programs based on Executive Order 11246. Sooner or later they will come around as well.

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4. CARI DOMINGUEZ CONFIRMED AS CHAIR OF EEOC

Cari Dominguez, former Department of Labor (DOL) official with close ties to the human resource profession and SHRM, was confirmed by the Senate as the Chair of the Equal Employment Opportunity Commission (EEOC). Dominguez was sworn into office on Monday, August 6. Dominguez formerly served as director of the DOL's Office of Federal Contract Compliance Programs and served as head of the Employment Standards Administration. Most recently Dominguez worked as a

consultant on workforce issues from her office in the Washington, DC area.

During her tenure at the DOL, Dominguez focused on the advancement of women and minorities in the workforce. Dominguez lead the department's glass ceiling task force. She replaces Ida Castro as chairwoman of the Commission and will serve a five-year term expiring July 1, 2006.

Following her nomination, we corresponded with Ms. Dominguez and were pleased to hear that she maintains her solid sense of balance on issues of employment discrimination. We look forward to the next five years as a time for realism, honesty and fairness in the EEOC.

Gentle Readers,

Progress is being made at the Department of Labor. The Secretary is moving forward with her plan to coordinate the work of all her agencies.

Bill Truesdell
Editor

IN THIS REPORT (Report #194, 8/24/2001)
---------- (Sent to over 1,600 subscribers)

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1. DON'T EXPECT A LETTER OF COMPLIANCE FROM OFCCP

Federal contractors who enjoy revenues of $50,000 or more each year and have 50 or more workers on the payroll are required to prepare a written affirmative action plan (AAP) for minorities and women. They must also have written AAPs for disabled workers and veterans. And, every federal vendor is subject to periodic audits from the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP).

If you should receive notice that you are to be audited, you will likely want to have the outcome indicate you are in compliance with all the requirements. Unfortunately, the OFCCP no longer provides what used to be called a "Letter of Compliance" for those contractors who measure up to all regulations and demonstrate their good faith efforts for AAP implementation.

In 1998, the OFCCP eliminated the Letter of Compliance. At the same time, it eliminated the "Letter of Commitment" which was used to note minor problems found during audits called "Compliance Evaluations." In their place there is now a "Compliance Evaluation Closure Letter." If you have done everything right, and your Compliance Officer has found no violations during the audit, you will receive a letter that says you have no violations at this time. (After all your hard work and document preparation it would be nice to get a letter saying you are in compliance, but alas, that is no longer an option.) Your closure letter will tell you that you must maintain your current program efforts to maintain your compliant status.

If the Compliance Officer discovers some minor violations that can be corrected on-site within 10 to 15 working days after conclusion of the Compliance Evaluation, you will still receive a "Compliance Evaluation Closure Letter that lists those minor violations and your deadline for making necessary corrections.

Serious violations uncovered during an AAP audit can include such things as not having a complete and thorough AAP document with all of the component parts specified in the regulations. Your Compliance Officer will also cite as a serious violation your definition of job applicant if you haven't created a definition the government agrees with, or if you haven't met your obligation to perform an Impact Ratio Analysis on your new hires, promotions, transfers and terminations. There are many other "serious violations," but those appear to be taking most of the spotlight in recent months.

All serious violations will result in a "Conciliation Agreement." This must be signed by an official of your organization and becomes a contract for corrective action items specified in the agreement. And, you can plan on seeing your Compliance Officer at six month intervals until all of the items in your Conciliation Agreement have been corrected. Before you sign any Conciliation Agreement, you should have it reviewed by an attorney who is competent in all AAP-related regulatory requirements. This is a special area of law and requires a specialist to provide appropriate legal advice.

One myth believed by many federal contractors is that they have a two-year period of relief before they can be audited again by the OFCCP. Unfortunately, that is not true. In days of old, the agency operated on that basis as a means of managing their work load. It was never part of the formal regulation, however, and the OFCCP denies that it offers any such grace period following conclusion of a Compliance Evaluation. So, it is possible that you could see your Compliance Officer more frequently than every other year.

Chances are you will not be bothered with another audit again soon if you have met all of the requirements and gotten a closure letter telling you that you have no violations. In today's world, that's about all you can hope for.

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2. PRESIDENTIAL TASK FORCE ON DISABILITIES BEING FORMED

The U.S. Department of Labor has announced the formation of a Presidential Task Force on Employment of Adults with Disabilities Youth Advisory Committee. (PTFEAD Youth Advisory Committee)

The Secretary of Labor is chair of PTFEAD and has decided to establish an Advisory Committee to provide youth and young adult perspective to assist the Task Force in carrying out its job of providing recommendations to the Secretary of Labor on ways of addressing education, transition, health, rehabilitation, and independent living issues impacting the employment of young people with disabilities. The Advisory Committee will also provide insight on recommendations to be included in the Task Force's final report to the President.

The committee will have about 15 members and meetings will be open to all interested parties. The Chair of the National Council on Disability's Youth Advisory Committee will be invited to serve in a non-voting ex officio capacity. Committee members will serve from the date of their appointment until July 26, 2002, the date the Task Force terminates, unless the Task Force is extended. The Advisory Committee will meet at least once a year. Members will not be compensated for their service. The initial meeting of the Advisory Committee is expected in the fall of 2001.

Nominations should be submitted to the Task Force no later than September 14, 2001. Self nomination is permitted. Advisory Committee members should be between the ages of 14 and 28 and selection will be based on relevant experience, demonstrated leadership, knowledge, and commitment.

Nominations may be submitted to: Richard Horne, Senior Policy Analyst, Presidential Task Force on Employment of Adults with Disabilities, 200 Constitution Avenue, NW, Room S-2220, Washington, DC 20210. The Task Force will not formally acknowledge or respond to nominations. For further information contact 202-693-4939.

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3. MANAGEMENT REVIEW BOARD WILL COORDINATE DOL OPERATIONS

When she was nominated to her position in the Bush Administration, Labor Secretary Elaine L. Chao promised she would coordinate the work being done in all of the agencies of the Department. On August 14, 2001, she announced the formation of a new management review board to do just that.

According to its notice published in the Federal Register on August 15, 2001 (Volume 66, Number 158, Pages 42917-42919) the Management Review Board will be given authority and responsibility for defining and addressing Department of Labor (DOL) management initiatives and major cross-cutting management issues. The Board will also provide a forum for obtaining views and perspectives of affected DOL agencies and offices and for coordinating Department perspective and recommending courses of action.

The Department of Labor includes the following agencies:

- Administrative Review Board
- Benefits Review Board
- Bureau of International Labor Affairs
- Bureau of Labor Statistics
- Employees' Compensation Appeals Board
- Employment Standards Administration (ESA)
  - Office of Federal Contract Compliance Programs (OFCCP)
  - Office of Labor-Management Standards (OLMS)
  - Office of Workers' Compensation Programs (OWCP)
  - Wage and Hour Division (WHD)
- Employment and Training Administration
- Mine Safety and Health Administration (MSHA)
- Occupational Safety and Health Administration (OSHA)
- Office of Administrative Law Judges (OALJ)

- Office of the Assistant Secretary for Administration and Management
- Office of the Assistant Secretary for Policy
- Office of the Chief Financial Officer
- Office of the Inspector General
- Office of Disability Employment Policy
- Office of Small Business Programs
- Office of the Solicitor
- Pension and Welfare Benefits Administration (PWBA)
- Veterans' Employment and Training Services (VETS)
- Women's Bureau (WB)
- Pension Benefit Guaranty Corporation
- President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry

According to the DOL the Board will coordinate action on President Bush's management reform agenda. Key activities will involve performance management, priorities of the President and the Secretary, and overall program performance and accountability.

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4. CASTRO RESIGNS FROM EEOC

On August 13, 2001, Ida L. Castro resigned from the Equal Employment Opportunity Commission (EEOC). She served as Chairwoman of the Commission from October 1998 until her departure. Newly appointed EEOC Chair Cari M. Dominguez said, "The American people owe Ida Castro a huge debt of gratitude for her exemplary public service during her leadership of the Commission for nearly three years. Ida's charisma and can-do spirit, boundless energy and dedication to EEOC's mission, and heartfelt commitment to equal opportunity for all, will be greatly missed by everyone at the agency."

During her term as Chair, Ms. Castro said, "The Commission's many accomplishments are due in no small measure to increased resources - over $60 million in the past three years - and the hard work of agency staff." The Commission's accomplishments during her service include:

- Reducing the pending backlog of private sector charges by 23%, to a 15-year low
- Cutting the average charge processing time to less than the statutorily required six months
- Obtaining record monetary benefits for victims of workplace discrimination
- Implementing a highly successful National Mediation Program and Small Business Initiative
- Expanding outreach and technical assistance to stakeholders and under-served communities
- Increasing litigation of systemic and egregious discrimination and harassment cases
- Streamlining the federal sector EEO complaint process to better serve employees and agencies
- Issuing several comprehensive guidance documents on key legal and employment issues.

Gentle Readers,

In the midst of additional workforce layoffs, HR professionals are sometimes caught in the downsizing.

Bill Truesdell
Editor

IN THIS REPORT (Report #195, 8/31/2001)
---------- (Sent to over 1,600 subscribers)

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1. VETS-100 REPORTS DUE SEPTEMBER 30

If you have revenue from federal government sources for $25,000 or more this year, you are required to file a VETS-100 report. The deadline is September 30, 2001.

While you can file by mail, you can also file on-line at http://vets100.cudenver.edu/

If you have never submitted a VETS-100 before, you will need to have three codes plus employee data before completing the form.

- SIC Code: (Standard Industrial Code) 4-digit code applicable to the hiring location for which the report is filed. If there is not a separate SIC Code for the hiring location, use the SIC Code for the parent company.

- Dun and Bradstreet I.D. Number (DUNS): If the company or any of its establishments has a Dun and Bradstreet identification number you should enter those 9-digits on your VETS-100.

- Employer I.D. Number (EIN): This is the 9-digit number assigned by the IRS for tax reporting purposes. If you have an EIN specific to the hiring location, use it on your VETS-100 report, otherwise use the EIN for the parent company.

You can obtain a VETS-100 form by going to the web site shown above. You can also write to:

U.S. Department of Labor
Veterans' Employment and Training Service
VETS-100 Reporting Office
6101 Stevenson Avenue
Alexandria, VA 22304

If you would like to speak to someone directly, you can write an email to vets100@dyncorp.com or you can call 703-461-2460.

Just remember to get your form in before the September 30 deadline.

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2. GET YOUR COPY OF CENSUS 2000 OCCUPATIONAL CATEGORY LIST

As you read this, the U.S. Census Bureau is compiling data that will eventually become the EEO File which is expected to be released on March 31, 2003. We have yet to learn how many geographical areas they will include in the file. In 1990 there were over 4,200 including each state, county and city of 50,000 or more people in the country. We expect that quantity of locations to grow in the Census 2000 EEO File.

As you know, the EEO File is required for computing qualified and available workforce in affirmative action plans. In order to do that it is necessary to "drill down" to the most accurate occupational category published in the Census. The more categories the better for the sake of accuracy. In 1980 there were fewer than 400. In 1990 there were 512 occupational categories. In the 2000 Census there are 509. Although it may appear we are seeing a retreat to less accuracy, the list of occupations has been completely revamped for 2000.

There are many more categories of management jobs than there were in 1990. And, the number of professionals has been expanded as well, particularly for high technology jobs. What that means is, we will no longer have to rely on a "catch all" category to represent comparisons for software engineers, as an example. "Computer Software Engineers" will be an individual occupational category in the Census 2000 file.

If you would like your own copy of the complete list for Census 2000, it is available at the HR Web Store at no cost. Simply go to "What's New" and you will find a PDF file (40 KB) that you can download and print. (www.hrwebstore.com)

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3. LAYOFFS CONTINUE. HR POSITIONS INCLUDED.

The Federal Reserve continues to lower interest rates in its attempt to kick-start the economy. Real inventory levels continue to fall in reports from one industry after another. Yet, some employers are having a very difficult time believing they will be able to continue without cutting their workforce.

Among jobs being cut are those in Human Resource Management and employee training. Just last week, Bank One Corp. announced it would cut 150 HR positions. This week, Gateway Computer announced it will lay off 5,000 workers. Traditionally, HR and training jobs have been first on the list of downsizing candidates because they do not generate revenue for the employer.

In a Wall Street Journal article (August 28, 2001), speculation rises that these cuts in HR staff may be permanent. More companies are

turning to software and outsourcing to replace HR functions such as payroll and benefits. "Once they get the numbers down, they don't go back up," says Helen Drinan, CEO of the Society for Human Resource Management (SHRM).

Traditionally, business planners have considered a ratio of 100:1 to be viable for employees to HR staff. Drinan expects that ratio to expand as time goes on. Fewer HR staff handling more employees.

The only way that can happen is for the workload to be shifted away from HR and onto others, such as employees and line managers. Certain efficiencies can be achieved through automation of needed data tracking systems, and real savings can be achieved by allowing employees to input and correct their own data in those systems. That takes Human Resource folks right out of the work flow. Further, if line managers can access the systems and pull their own reports, HR professionals can be used to concentrate on more important policy questions.

Whatever happens, HR professionals must continually be upgrading their skills and strategic-thinking abilities if they wish to remain in the profession. We may be great folks, but we still have to prove ourselves everyday just like our colleagues in sales, marketing, accounting, and operations. And, it wouldn't hurt to occasionally show the CEO how we can control expenses like turnover, injury and illness or employee lawsuits through proper performance management and employee training. Even though HR doesn't generate revenue, it can still add to the "bottom line" on financial reports through its contributions.

Gentle Readers,

Some states remain active in employment legislation arena.

Bill Truesdell
Editor

IN THIS REPORT (Report #196, 9/7/2001)
---------- (Sent to over 1,500 subscribers)

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1. STATE LEGISLATION UPDATE

<< Gender Identity >>

Gender identity protections from employment discrimination have become law in Rhode Island as of July 13, 2001. The new law covers transgender individuals who have not been protected up to this time. Of the fifty states, only Minnesota, Connecticut and now Rhode Island have laws protecting gender identity or transgender individuals.

While only three states have implemented legislation on this subject, state and federal courts are beginning to ring in on the same issues. The Federal Ninth Circuit Court of Appeals has determined that verbal abuse based on gender stereotypes amounts to sex discrimination, and New Jersey's Appeals Court said in Enriquez v. West Jersey Health Systems that gender discrimination includes discrimination based on gender identity.

<< Ergonomics Safety Requirements >>

Employers in California and Washington should not be lulled into complacency by the recent overturn of proposed federal OSHA standards on workplace ergonomics. For several years, California has had a requirement that all employers report ergonomics injuries and implement corrective programs. A recent move by organized labor to adopt the failed federal standards in that state fell short of the necessary support when the Cal OSHA Board unanimously rejected the labor petition to adopt tougher standards than now used in the state.

Washington also has a current ergonomics standard which subjects employers to compliance requirements.

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2. RECORD KEEPING REQUIREMENTS FOR FEDERAL CONTRACTORS

One of the most frequently asked questions we hear has to do with what records must be kept by federal contractors to satisfy affirmative action regulations. Actually, there are two parts to the question: 1) What records are required? and, 2) How long must they be kept?

<< What Records are Required? >>

Here are some examples of records that federal contractors are expected to maintain:

- Requests for reasonable accommodation from either employees or job applicants and all notes about considerations and decisions concerning the requests.

- Results of any physical examination for employees or job applicants.

- All job advertisements and job postings.

- All job applications and resumes used in the employment process.

- All employment tests and test results for each job applicant.

- Interview notes from all individuals who conduct interviews.

- All records concerning decisions involving hiring, job assignments, promotions, demotions, transfers, lay-offs or other terminations.

- All compensation-related information including rates of pay, individual compensation, and pay analysis records.

- All records relating to selection decisions involving employment, termination, training participation or apprenticeship.

<< Retention Requirements >>

Generally, all of the records mentioned should be kept by the employer for a minimum of one year unless the employer has a contract of at least $150,000 OR has more than 150 employees. If either of these conditions is met, the records must be retained for a minimum of two years after they are created.

Don't be fooled into believing that all records can be destroyed after two years. There are records retention specifications in other government regulations that may affect how you plan your record handling procedures. For example, OSHA requires employers to retain hazardous exposure records for a minimum of 30 years past employee termination. Some medical records must also be retained for 30 years past employee termination.

Your financial advisors may want to keep compensation records for seven years or more to help them meet their needs in submitting and defending income tax filings for the enterprise.

Records retention should be approached from a holistic view. Identify all of the records you maintain and then assign a minimum retention period to each type of record. Make sure every manager in the organization receives a copy of the list and has a chance to understand exactly what records fall into each category.

These and other equal important pieces of information can be found in our publication, "Secrets of Affirmative Action Compliance - 5th Edition," which you can find at www.hrwebstore.com .

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3. CAN EMPLOYERS MANDATE OVERTIME?

State law generally covers the question of mandated overtime. And, requirements do vary from one part of the country to another, so be sure to check your local requirements before taking action at your work location.

One California employee came up with the following question:

Does an employee, by law have to work overtime? Is it mandatory to work overtime? For example a person works M-F (8 hours each day) then works Saturday and Sunday (8- 12) or more hours. Then the person works their M-F (8 hours). The company is saying that they can file insubordination against the employee.

The answer can be found in the California Industrial Welfare Commission (IWC) Wage Order posted in each work location. Since the writer didn't say what type of work is being done there is no way of knowing which of the 17 Wage Orders may apply.

For the sake of example, let's assume the writer is part of a normal office operation and subject to Wage Order #4: Professional, Technical, Clerical, Mechanical and Similar Occupations. In paragraph 3(L) under "Hours and Days of Work" it says:

(L) No employee shall be terminated or otherwise disciplined for refusing to work more than 72 hours in any workweek, except in an emergency as defined in Section 2(D).

Be sure you are referring to the 2001 version of the Wage Order. Some provisions have changed this year. If you don't yet have a copy of the 2001 Wage Order that applies to your industry, you can get a FREE copy by visiting "FREE Stuff" at the HR Web Store at www.hrwebstore.com .

Gentle Readers,

Tragedy has hit us all this week. Americans will work together to successfully achieve the reaction that is appropriate. We must be on guard to assure our reaction doesn't generalize a guilt association with all people of Arab origin.

Bill Truesdell
Editor

IN THIS REPORT (Report #197, 9/14/2001)
---------- (Sent to over 1,500 subscribers)

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1. EDITORIAL: TUESDAY MORNING, SEPTEMBER 11, 2001
William H. Truesdell, Editor

The choice was one of a music cassette or "News Radio" as I got into the car to drive to the morning's seminar on "Working with Problem People." I chose news and heard the first announcements about the World Trade Center disaster. Later, I had a fleeting wish that I had chosen the music.

The evil souls who created that disaster and the Pentagon tragedy may well be counting their murders in the thousands when the rescue and recovery efforts are finally over.

It is now Wednesday morning, a day later, and most Americans are thinking about getting back to work...and about getting retribution. As they do, they take with them the anger and frustration created by yesterday's events and the glaring images on television that were broadcast all day. Radio interviews this morning are concentrating on the questions: What went wrong at our airports? And, Who should be held responsible for these terrible events?

Our reaction to these events as a nation has yet to be determined. As individuals our reactions are very personal. We have customers and clients who worked in the World Trade Center. We have no idea what their fate may be and may not know for quite some time.

How many people in this country work in high rise buildings? How many employees feel safe returning to work in those locations? Some may be a bit nervous for some while. Some may be truly frightened. Others won't be bothered at all. As HR professionals we will have our hands full getting the help needed by the nervous and frightened employees so they can return to work and once again be productive workers.

This is the time for all HR professionals to take stock of their organizations. And, to watch for emerging problems in the workforce.

One problem that has already begun to surface is a backlash against Islamic organizations with a presence in cities around the country. Many of the web sites representing Islamic organizations have discontinued operations because of the hate mail they began receiving as early as Tuesday morning. Islamic schools have closed. One mother said she wouldn't send her daughter out in public again until she could do so without worrying about people's negative reaction to the scarf her daughter wears for religious reasons.

If you have Islamic employees you will be challenged to assure they are not harassed in your workplace. As heinous as yesterday's attacks were, they were not perpetrated by every Islamic practitioner in this country. Nor are all people of Arab decent responsible. Our citizens have the right to practice their religious beliefs without harassment in the workplace, regardless of what those beliefs may be. And, people have the right to be free from workplace harassment based on their National Origin.

Yes, I'd say HR professionals will be working some extra hours in the weeks ahead. You may find that it is necessary or desirable to conduct employee meetings to discuss these issues and acknowledge the potential for religious harassment. While we struggle to achieve whatever will become a normal condition in the future, we pray for those multitudes of people who lost so much yesterday. They were mothers and fathers, sons and daughters, and some were undoubtedly HR professionals. In their names, we will strive to continue doing the right thing.

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2. SENATE CONFIRMS NEW OSHA HEAD

On August 3, 2001, the U.S. Senate unanimously confirmed John Henshaw as the Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA). Mr. Henshaw most recently served as director of environment, safety and health for Astaris LLC in St. Louis, MO. He has also been president of the American Industrial Hygiene Association. He told Senators during his confirmation hearings that he plans to focus on education, compliance assistance and enforcement during his tenure.

His first educational challenge will be teaching employers around the country to use OSHA's new injury and illness recordkeeping regulations. They become effective in January 2002. He also promised to send a mailing to all employers subject to the regulations informing them of the new requirements. Equally as important, he said, will be finalizing the agency's compliance directive and training all compliance personnel in how to use it.

OSHA has moved forward with its implementation of the new regulations for January 2002. It has agreed to withhold the implementation of two provisions until January 2003, however. Those are the new requirements for hearing loss and musculoskeletal disorder (MSD) injuries. Additional hearings are expected on these two provisions since they

have raised such opposition from the employer community around the country.

Gentle Readers,

Managing human resource compliance means controlling financial liability for the employer. This week, we share with you some examples.

Bill Truesdell
Editor

IN THIS REPORT (Report #198, 9/28/2001)
---------- (Sent to over 1,500 subscribers)

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1. $91 MILLION UNPAID OVERTIME JURY AWARD IN INSURANCE INDUSTRY

California employers should be aware that overtime exemption rules in that state are different from federal rules. Improper classification of insurance claims adjusters has resulted in a $91 million jury award for back overtime pay to more than 2,400 employees at Farmers Insurance Exchange. (Bell v. Farmers Insurance Exchange)

The award covers a seven-year period from October 1993 to the beginning of the trial in June 2001 and provides over $37,000 to each adjuster. It may be the largest award of its kind in the country. And, the company could be facing additional liability of $30 million for interest and attorneys' fees. The suit took five years to reach the jury.

Farmers Insurance argued that it followed normal industry convention across the country when it classified adjusters as "Exempt Administrative" employees. Unfortunately, California law only permits exemptions for jobs that require more than half of employee time in duties that are intellectual, managerial or creative and require use of discretion and judgment.

While Farmers Insurance said it would appeal the verdict, other suits were being filed against other insurance firms such as 21st Century Insurance Group.

According to the California Chamber of Commerce, "The verdict against Farmers is expected to further fuel a boom in class action overtime lawsuits brought by low-level managers, supervisors and administrators in other industries. This legal trend began in the retail industry and has skyrocketed recently."

For more information about California overtime exemption classifications, you can obtain a FREE copy of our special report, "California Overtime - Exemptions" at the HR Web Store. Go to www.hrwebstore.com and look in the "FREE Stuff" department. If you would like assistance reviewing your jobs for proper classification, we offer that consulting service as well. You can send us an email message to begin discussions. Our address is info@management-advantage.com .

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2. NEW RULING: EMPLOYERS MUST EXPLAIN FAMILY LEAVE CALCULATION

How do you calculate the 12-month period during which employees can take federal family leave under the Family and Medical Leave Act (FMLA)? A new 9th Circuit Court of Appeals ruling has said that if employers are not clearly communicating their policy to employees the employees may elect to use whichever method gives them the most family and medical leave time. (*Bachelder v. America West Airlines*, No. 99-17458, 9th US Cir, 8-8-2001)

While not all employers in the country must offer FMLA leave, those who do should heed the Court's ruling.

FMLA provides that eligible employees are entitled to a maximum of 12 workweeks of leave during any 12-month period. Qualifying reasons include the employee's own illness, the need to care for ill family members, or the need to care for new children. Federal regulations allow employers to elect one of four methods to determine how the 12-month "leave year" will be established:

- Calendar year
- Any fixed 12-month period, such as a fiscal year, a year required by state law, or a year starting on the employee's service anniversary date
- A 12-month period measured forward from the date an employee's first FMLA leave begins
- A rolling 12-month period measured backward from the date an employee uses any FMLA leave

Employer policies should specify which of these methods of calculation will apply to employees in their establishment. And, the policy must be clearly communicated to employees to ensure understanding of the policy.

It is possible for employers to change their calculation method as long as they provide employees with 60-days notice before the new policy

becomes effective. Employees must always be able to retain the full 12-week leave benefit under any method the employer chooses.

You should review all employee management policies every year, but it would be a good idea to check your FMLA policy now in light of this new court interpretation.

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3. CAN CALIFORNIA EMPLOYERS REQUIRE WORKERS TO TAKE VACATION?

The basic answer is yes. But let's look for a moment at how that can be done within the confines of the California Labor Code.

Since 1982's California Supreme Court ruling in *Suastez v. Plastic Dress-Up Company*, the state's employers have been unable to legally have a "use it or lose it" vacation policy. California Labor Code Section 227.3 orders that all accrued and unused paid vacation time be paid in cash to the employee upon termination of employment.

Within this requirement to pay employees for accrued vacation they have not taken are several acceptable policy variations. Employers may elect any vacation policy they wish as long as they don't deprive workers of the value of their accrued and unused vacation time. Here are three of the most common policies.

- **No Carry Over to Next Year**
  Employers may have a policy that requires employees to use all of their vacation time in the year it was allotted. If, for some reason, the employee is unable to actually take vacation time off, the unused portion of the accrued vacation benefit should be paid out at year's end as a separate payroll line item. Everyone then begins the new year with zero vacation benefits and begins the eligibility accrual all over again. The amount of vacation time accrued is usually tied to length of service.

- **Carry Over of Some or All Vacation to Next Year**
  Employers may allow carry over of vacation time to the next year. If an unlimited amount of carry over is allowed, the employer's financial liability for the unused time continues to mount. If a limited amount of carry over is allowed, the unused balance must be "cashed out" at the close of the old year.

- **Cap on Accrual With Carry Over up to Cap Maximum**
  Employees are allowed to accrue a maximum amount of unused vacation time. Once the cap is reached, they don't have any additional accruals added to their account. The entire amount may be carried from one year to another, but until some time is used from the employee's account no additional vacation will accrue.

Since the Suastez decision, most California employers have operated with a policy that caps vacation accruals at some maximum level. That is simply a business decision related to limiting a growing financial liability.

Once an employee reaches the vacation accrual cap, no more vacation time will be accrued until there is a reduction in the employee's vacation account. When the account has fallen below the allowed limit, accrual will recommence until the maximum is once again reached. This approach has the consequence of encouraging employees to actually use their vacation time. Not many people like the idea of having their vacation accruals stop, so they take time off to use hours from their vacation account and allow continuing accruals.

Employers are entitled to designate when employees will take their vacation time off. In manufacturing settings it is not uncommon for employers to designate the last week or two of each calendar year as a time when the factory will be closed. If employees want to be paid for that time off they must "save" some or all of their vacation time for that year-end period. Any request for vacation time off must be approved by the employer who has the prerogative of denying the request due to needs of the business during the requested vacation period.

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4. DIVERSITY TRAINING SEMINAR IN VANCOUVER - GREAT OPPORTUNITY

Rickie Banning, one of our colleagues on the national Workplace Diversity Committee at SHRM (Society for Human Resource Management), has agreed to conduct a diversity training seminar at the new training institute sponsored by Employee Assistance Program Association International (EAPA). Their first program will be held in Vancouver, British Columbia on October 26, 2001.

She is well qualified to conduct this program having achieved many professional certifications in her career including: SPHR, LCSW, CEAP among others. She is an expert in Employee Assistance Programs and how they fit into human resource management strategies.

Fall in the Northwest sounds delightful. To take advantage of all the beauty the Vancouver region has to offer, AND gain insights into running a contemporary diversity management program within your organization, you really must attend Rickie's program.

The program is called, "Globalization, Diversity, and EAP's." You will receive information on the business, social, work style, and behavioral case for diversity, exploring domestic and global corporate trending, best practices, self and organizational audits, global networking, diversity policy and initiatives.

The seminar is planned for October 26, 2001 from 1:00 p.m. to 5:00 p.m. Cost is $215 for EAPA members and $280 for non-members. For your reservation call Katie Borkowski, Director of Education and Training for EAPA, 703-387-1000 Extension 306 or send an email message to edudir@eap-association.org . Special guided tours of Vancouver Island will be available on Saturday following the Friday seminar for those who are interested.

Gentle Readers,

It's that time of year again. If you want your very own picture wall calendar, get your request in quickly. We'll send them out until they are all gone.

Bill Truesdell
Editor

IN THIS REPORT (Report #199, 10/5/2001)
---------- (Sent to over 1,500 subscribers)

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1. FREE 2002 PICTURE CALENDAR OFFER

This has been an eventful year for us all. We are looking forward to 2002 as one of peace and prosperity for all America.

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 2002. This issue will impress you with its spectacular photos of such places as

- Lake Tahoe, NV
- Sudbury, MA
- St. Simons Island, GA
- Reelfoot Lake, TN
- Grand Teton National Park, WY
- Tamworth, NH
- Waunakee, WI
- Great Smoky Mountains National Park, NC
- Orange, VT
- Baxter State Park, ME
- Keweenaw Peninsula, MI
- Lexington, KY

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. However, supplies are limited to 250 copies and we will respond to requests in the order they are received. Don't miss out! Once they're gone we will have to return requests unfilled.

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2. AFTER THE MOURNING - TRAINING EMPLOYEES

Employers across the country are tightening security following the disasters on September 11th. And, many are planning to conduct employee training on the subject of workplace violence. These insights come from a survey of HR professionals by the Society for Human Resource Management (SHRM) in cooperation with eePulse.

Diversity issues have also risen to new heights in the workplaces of America. Anger and shock at the devastation have caused some people to lash out at ethnic or religious stereotypes. HR professionals are working diligently to address these problems in their organizations.

You can find the SHRM survey at www.shrm.org . Look for "HR Implications of the Attack on America...Executive Summary of Results of a Survey of HR Professionals."

The survey summary says: "...training implications also exist for diversity training and issues of violence in the workplace. The fastest growing religion in the world is the Islamic religion and the American workplace has gotten increasingly diverse in this regard. According to a 2001 survey about religion in the workplace, there has been a 36% increase in religions represented in the workplace over the past five years."

In the final analysis, we have discovered some needs for more work and greater focus as HR professionals. Now is the time to plan for the training you know your workforce needs.

We invite you to consider our turnkey training program called, "Workplace Violence Prevention Seminar." It is designed so any qualified trainer can present the information employees need to have today. Trainers need not be experts in the subject of workplace violence prevention. Conduct the training yourself and save the cost of outside help. You owe it to yourself and your workforce to review this fine program. You will find it at www.hrwebstore.com/products/wpv.htm .

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3. CALIFORNIA UNEMPLOYMENT BENEFITS GOING UP...ALONG WITH TAXES

California Governor Gray Davis signed into law S.B. 40 on October 2, 2001, effectively increasing unemployment insurance benefits by $4.5 billion over the coming four years. Employers pay 100% of the cost of

unemployment insurance in the state. Where is the extra money going to come from? Employers, who else? Experts predict that unemployment insurance rates will increase in a year or two when the current account surplus has been used up by the higher benefit rates. When the new law reaches its maximum amount of $450 per week, those who know claim taxes will be forced up by at least 32%, on or before January 1, 2005.

The California Chamber of Commerce had opposed the bill as being too generous with benefit increases and not offering any options for funding aside from employer taxes. Governor Davis, on the other hand, said he was signing the legislation because of the multitude of Americans that find themselves out of work as a result of the September 11th terrorism.

Last year, the Governor vetoed a bill that was virtually the same as that he signed in Los Angeles this week.

Beginning this coming January, maximum weekly benefit checks will increase by $100 or over 43%. Here is the schedule:

New California Unemployment Maximum Weekly Benefit

...as of January 1, 2002	$330.00
...as of January 1, 2003	370.00
...as of January 1, 2004	410.00
...as of January 1, 2005	450.00

California's current weekly maximum of $230 is lower than 45 other states. It does exceed the amounts paid in Arizona, South Dakota, Alabama and Mississippi. These new increases will place California at 16th on the list of state benefits.

Gentle Readers,

In celebration of our 200th issue of Special Reports for HR Professionals we have created a new FREE report for you, our subscribers. You will find it at the HR Web Store in the "FREE Stuff" department. And, we bring you more wisdom from Joni Daniels, one of your favorite contributors to our publications.

Bill Truesdell
Editor

IN THIS REPORT (Report #200, 10/12/2001)
(Sent to over 1,500 subscribers)

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1. NEW FREE REPORT ON RETENTION REQUIREMENTS

This is our 200th issue of Special Reports for HR Professionals and we are celebrating with the release of a new FREE report to honor you, our subscribers.

"Employer Records Retention Requirements" can be found in the HR Web Store (www.hrwebstore.com) in the "FREE Stuff" department. As with everything, we must add the legal disclaimer that the information is intended to be a summary of employer requirements currently in effect. If you should encounter an unusual situation or wonder about something not on our rather long list of documents, you should always check with your legal counsel.

Well, that said, what will you find in this new job aid for HR Professionals? How about these requirements:

- Wages, Hours, Working Conditions
- Occupational Safety & Health Records
- Non-Discrimination EEO & Affirmative Action Records
- Workers' Compensation Benefits
- Income Tax Records
- Unemployment Tax Records
- Social Security and Medicare Tax Records
- Work Authorization Records

- Polygraph Exam Records
- Public Works Contracts - Prevailing Wages Records
- Pension Plans
- Other Personnel Records

There are literally scores of documents listed in this new report. In some cases, California requirements and federal retention rules do not match. In the case of records retention, the longer requirement wins. Be sure to check out the list of "Other Personnel Records" that must be retained permanently.

We appreciate your continued support of our Special Reports, newsletter, books and manuals. Your positive response has been uplifting and sustaining through the years. We do appreciate having you as one of our special subscribers. We hope you can use this new report on your job. If so, we would love to hear about it.

Why not tell one or two of your colleagues about all the great information available at the HR Web Store, and how they can become a FREE subscriber, too? (There is a link to our subscriber page at the bottom of every page on our web site.)

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2. POWER TOOLS FOR WOMEN: GET A TOOL KIT

By Joni Daniels

Melissa has a position with a local firm as the Director of her division. Her reputation as a “people grower” within her company adds to her standing as one of the best managers. With technical knowledge and a broad base of experience within the industry, she is invaluable to the project teams she advises. Her ability to handle several highly detailed projects with accuracy and insight has added to her reputation as one of the most talented members of the executive team.

When Melissa walks through the door to her home, however, she is overwhelmed with the chaos that meets her. Her children seem to be unable to start dinner, clean their rooms, or begin their homework without her guidance. When her daughter asks for help in narrowing down her college choices, Melissa feels as overwhelmed as her high school senior. When her husband reminds her that they promised her parents that they would get together over the weekend to talk about their move to an assisted living facility, Melissa can’t remember having had the discussion, let alone making the commitment. She feels like she has a split personality. The disorder at home bears no resemblance to her organization and control at the office.

She looks out the window to her neighbor Nancy’s home and sighs with envy. Nancy’s home is right out of a Martha Stewart magazine with perfectly coordinated furniture, the welcoming smell of something just baked wafting from the kitchen, and each member of the family outfitted to coordinated perfection, right down to the family dog.

What she doesn’t see is Nancy’s corporate office. Nancy can’t quite believe how her workspace could have so many piles of papers, folders and reference books. There is no longer any desk, couch or floor space.

Dead and forgotten plants line her windowsill, and boxes of files obscure the view.

Melissa uses her skills to create order at work. She knows how to delegate, advise, systematize and follow up professionally. Nancy knows how to make her vision of a comfortable, coordinated and warm home a reality. What neither seems to understand is how to take the skills that make them so successful in one domain and transfer them into another.

I used to wonder how women could be so able in one area of their lives and seem so incapable in another. The skills that Melissa, Nancy, and hundreds just like them use to be empowered and achieve their goals and objectives are interpersonal tools that they possess and wield with control. But something mysterious happens and they drop these powerful tools as they enter other areas of their lives.

These are the Power Tools that I talk about with women. Power comes in many shapes and sizes:

- **Title Power** - The president has full power of the position and it is independent of her personal power.
- **Reward Power** - Also known as Lollipop power, the ability to provide compensation.
- **Coercion Power** - Also known as spanking power, the threat of embarrassment or making future trouble.
- **Referent Power** - The person stands for something and others refer and treat that person as an authority on that subject.
- **Charisma Power** - The magnetism and force of personality.
- **Expertise Power** - Having the knowledge or ability that others don't have.
- **Situation** Power - Having authority simply because of the situation you are in, like a teacher in a classroom.
- **Information Power** - The sharing of information can form a bond, and the withholding of it can be intimidating.

The best and most useful power is portable power, the type you take with you wherever you go. So if you can be candid with your boss, you can be candid with your sister-in-law. If you can share your vision of success with your employees, you can share it with the guests coming for a special occasion. And if you can ask a technician to walk you through the information systems problem at work, you can ask your mechanic about the details involved in the service he thinks your car requires.

Women who experience accomplishment at work can discover ways for success to be molded and shaped and carried into their non-work life. Endeavors at home can be styled and formed and brought into the workplace. Women have this ability to plug in to their skills whether it is at work or at home, at religious worship or community service. In fact, once you learn the benefits of these tools using them across the board is very gratifying. Today the line between life and work is blurred. You can email, FAX, be accessible by mobile phone anywhere, anytime, and leave voice mail messages 24 hours a day.

The women I see today have both personal and professional passions. They may have worked in the past, are working now or plan to work in

the future. They may be overworked, under-compensated, volunteering, or in a bartering deal.

They may ask questions like:

- If I can shrug off the catty remark my sister-in-law made at the family picnic, why can't I shrug off the dig made by the financial analyst in the meeting last week?

- If I can convey my vision of a successful audit to the accounting staff, why can't I convey my dream of a hassle-free wedding to my relatives?

- If I can fire the employee who doesn't improve their work performance, what stops me from leaving my chronically unemployed, in debt, and irresponsible boyfriend?

- If I can use my power at home, why can't I use it at work?

The answer is that they can and so can you.

The best thing is that we all have these abilities, even if you aren't so sure. I have discovered that each and every woman who thinks she is missing a critical skill is only doing a cursory inventory of the talent and abilities she possesses. Experience a type of success in one arena of your life, such as organization, delegation or using humor, and you have the potential to employ that powerful skill in other parts of your life as well.

The location may be different because office and home are different places. The personalities may be poles apart because your employees are not anything like your relatives. You, however, are the same person. The challenge is to identify how to carry your power with you and maintain uniformity in your life. This way you can create a congruency that makes you feel like you are living an integrated life, rather than living the lives of two completely different people. The key to success is not only accessing your power tools, but also having them close at hand, in any situation.

A nationally recognized speaker, trainer and author, Joni Daniels is Principal of Daniels & Associates, providing solutions to training needs and presenting programs on personal and professional development. An instructor in management topics at the Wharton School's SBDC, she has successfully addressed a wide variety of audiences, has written a variety of articles, serves as a resource for a variety of business publications, and is frequently quoted on management topics. She is author of "POWER TOOLS FOR WOMEN: Plugging into the Essential Skills for Life and Work." (Crown Business, February 2002) Reach her at www.jonidaniels.com.

Gentle Readers,

Diversity management isn't a subject we can pick up occasionally and ignore when we don't have time for it.

******FLASH: California Governor Gray Davis signed S.B. 168 on 10/11/2001. It will become effective on January 1, 2002. It prohibits public display of Social Security Numbers or transmission of SSNs across the Internet except in encrypted mode. More next week in our Special Report for HR Professionals.
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Bill Truesdell
Editor

IN THIS REPORT (Report #201, 10/19/2001)
---------- (Sent to over 1,500 subscribers)

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1. DIVERSITY: PICTURE IT

By Sylvia Henderson

The demographics of the meetings and conventions I attend are quite varied. Diversity in race, religion, ethnicity, gender, and age are represented in general sessions, breakout rooms, dining areas, and exhibition halls. The mix is representative of the organizations sponsoring the meetings, confirming that progress has been made in serving the needs of a diverse population.

However, this progress is rarely shown in printed materials. When I receive a conference information package I excitedly break the seal and begin looking through the details. Next, I'll scan the array of photographs of the speakers and seminar facilitators, which are prominently displayed in most conference brochures. As an African American woman, most of the time I ask myself, "Where are 'they'? Are there any speakers or seminar facilitators who look like me?" Judging

from the photos usually displayed in the brochures, it's easy to conclude that the answer is "no."

Surely I am not the "only one" (minority woman) who belongs to the organization! Yet year after year, conference after conference, I seldom see photographs of speakers who represent the true demographics of the organization.

You should book your speaker because she or he - whatever the demographic - is an engaging presenter with appropriate information to give or message to relay. Once the speaker is hired, however, consider going out of your way to show the diversity represented in your program.

To convey a stronger image of diversity in your brochure, try the following:

o Eliminate the hierarchy

When conference organizers decide whose photographs should be featured in their brochures, the decision is usually determined by the relative importance of the speaker to the program. Consider using an additional criterion: Make the display of diversity just as important as the display of prominent speakers in the conference information packet.

o Show them often

Conference mailings are usually repeat performances, with multiple mailings often the norm. Show diverse photos in more than one brochure. It's such a rare event to see diversity in promotional materials that it requires repeat exposure before sinking in.

o See past the windows

Feel good about showing diversity in your printed materials. Be careful of the fine line, however, between showing that yours is a far-sighted organization and "window dressing" - placing a photograph in a prominent position for the sole purpose of showing you've "got one on the program."

But once you have a diverse platform, advertise it. Proudly display the photographs of more than just the well-known speakers and facilitators. The next time I open a meeting brochure, let me see photographs of the 35-year-old Latino male facilitator of the "employee retention seminar," the 40-year-old African-American female keynoter who motivates audiences to "overcome difficulties," the 25-year-old woman of Asian descent who is on the "management challenges of the millennium" panel, along with the 55-year-old Caucasian male keynoter who speaks about "wireless Web technology." An organization with such a platform will truly convey a "practice what we preach" message to its members.

 Sylvia Henderson has more than 20 years of experience as a trainer and manager in technology companies. She facilitates seminars and speaks on presentation-delivery,

communication skills, productive meetings, and managing priorities. She can be reached through her web site at www.springboardtraining.com or by email at springboardtrain@aol.com .

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2. NON-UNION EMPLOYERS SUBJECT TO NLRB REQUIREMENTS

Caval Tool of Newington, CT is a division of Chromalloy Gas Turbine Corporation, and a Newington, CT firm. The division is non-union. One of its employees, Diane Baldessari, spoke out against a new break policy during a company meeting. There were a series of these meetings held informally and led by the company president, Paul Pace. At each session there was a period for questions and answers.

The company had previously allowed employees to take a 15-minute break in the morning and any number of breaks to get coffee from the company's vending machines or to attend to personal business. Because of concerns for productivity and "scrap" rates at Caval, the company changed its policy to allow two 10-minute breaks, one in the morning and one in the afternoon. The president explained during these employee meetings that employees were expected to tend to all personal business during these two 10-minute periods each day.

Baldessari asked if the new break policy would apply to office workers. Pace asked if she would like the policy to apply to office workers. She said it seemed only fair. Pace said the policy would indeed apply to office workers. Baldessari asked if employees would no longer be allowed to get coffee throughout the day outside the designated break times and if they would be "written up" if they did so. Pace said yes to both questions. Baldessari asked if the new break policy was meant to punish workers for the high "scrap" rate and downtime. She said she felt management was taking a privilege away from workers despite the fact that they had no control over the amount and timing of the work given to them. Baldessari blamed management for scheduling problems leading to poor work flow. Pace responded by asking her if she would like him to fire all the managers. She said that "would be a start," except for one particular manager whom she considered to be a good manager. Pace expressed his displeasure with Baldessari's continued complaints about management and suggested a Human Resources employee "come up with a package so [Baldessari could] leave." At that point Baldessari stopped her questioning and the meeting continued.

For her opposition, that afternoon Baldessari was escorted out of work and placed on suspension for an indefinite period of time. Some time later, she returned to work and was placed on probationary status for an indefinite term. Eleven months later, she was given a letter saying her probation would be lifted.

Baldessari filed a complaint with the National Labor Relations Board (NLRB) and that complaint was eventually heard by an Administrative Law Judge (ALJ). The ALJ found that Baldessari had been suspended and placed on probation as a result of her questions and comments at the president's employee meeting. Further, the ALJ said, that action was designed to punish an employee for protected "concerted activities" under the National Labor Relations Act (NLRA). The conclusion was Caval engaged in unfair labor practices affecting commerce within the

meaning of Section 8(a)(1) of the NLRA. The NLRB agreed with the ALJ decision in this case.

Federal District Court Judge Underhill agreed with the NLRB, saying it had applied the proper legal standards in this case. Caval appealed to the 2nd Circuit Court of Appeals. It, too, supported the NLRB interpretation.

(NLRB v. Caval Tool Division, Chromalloy Gas Turbine Corporation, No. 00-4203 (2d Cir. 8/21/01))

You can find the entire Second Circuit Court of Appeals decision at: http://csmail.law.pace.edu/lawlib/legal/us-legal/judiciary/second-circuit/test3/00-4203.html or at http://laws.lp.findlaw.com/2nd/004203.html

So, what does that mean to the rest of the employer community? Here are a few suggestions:

1) Listen with Respect.
   Even one employee can enjoy protection of "concerted activities" under the NLRA. It is not necessary for two or more workers to be involved in discussions with management over terms and conditions of employment. A single voice must be heard if it speaks of issues impacting terms and conditions of employment. Be sure your CEO and other organization leaders are aware of this latest development in legal requirements.

2) Expect Respect from Employees
   Protection of "concerted activities" can evaporate if the employee behaves in "an abusive manner." Even upset employees can be expected to conduct themselves in a civilized manner.

3) Don't Discipline Workers for Disapproval of Management Policies
   Of course, the wise management team will involve employees in the formulation of company policies. Yet, even if management decides what those policies should be without employee involvement, it has a responsibility to listen to employee criticism without punishing the person who is criticizing. Management is not, however, obligated to adopt every employee viewpoint when offered.

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3. LATEST EEOC APPOINTMENT

According to the Bureau of National Affairs (BNA's Employment Discrimination Report, October 3, 2001), President Bush has his intention to appoint Leslie Silverman to fill one of the two vacant Republican seats on the Equal Employment Opportunity Commission (EEOC). Actually, if approved by the Senate, Ms. Silverman would serve the remainder of a term scheduled to expire on July 1, 2003.

Ms. Silverman has served as labor counsel of the Senate Health, Education, Labor, and Pensions Committee since 1997. From 1990 to 1997, she was a litigation and employment associate at the firm of Keller and Heckman in Washington, DC.

A graduate of the University of Vermont, she earned her law degree from American University and master of laws in labor and employment law from Georgetown University Law Center.

If approved by the Senate, it is expected that Silverman will be designated Vice Chair of the Commission.

There remains one vacant Republican seat on the five-member Commission. The job of general counsel is also vacant. It is expected that position will be filled by Lawrence Lorber, a partner with Proskauer Rose, who was formerly a Labor Department official.

Gentle Readers,

The votes and vetoes are in for this year's session of the California Legislature. We share with you the outcomes...both good and bad news for employers.

Bill Truesdell
Editor

IN THIS REPORT (Report #202, 10/26/2001)
---------- (Sent to over 1,500 subscribers)

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1. NEW CALIFORNIA EMPLOYMENT LAWS

It's that time of year again when the California Legislature has wrapped up its work for the current session and the Governor has made his decisions on what legislative actions to approve or reject. We thought you might like to see a summary of new employer rules that will become effective beginning January 1, 2002. For a more complete list you can visit our web site at www.hrwebstore.com and go to the "Legislation" department. Parenthetically, Congress has not made any overt actions on employment legislation so far.

- Complaint Investigation Exemption for HR Professionals (S.B. 208)
  Would have amended the Business and Professions Code to allow HR professionals the right to conduct harassment investigations without first obtaining a private investigator license as is now required. Strongly supported by the Northern California Human Resource Association and the Society for Human Resource Management. Also supported by the California Chamber of Commerce. VETOED by Governor Davis on 10/12/2001. Back to the starting line on this one.

- Employment Discrimination - Off Duty Behavior (A.B. 1015)
  Makes it illegal for employers to discipline employees for off duty lawful conduct that occurred off the employer's premises.

SIGNED by Governor Davis on 10/13/2001.

- Employment Discrimination - Religious Exemption (A.B. 1475 and (S.B. 504)
  Exempts religious institutions from claims of religious discrimination under the state's Fair Employment and Housing Act. SIGNED by Governor Davis on 10/14/2001.

- Employment Discrimination - English Only Policies (A.B. 800)
  Prohibits English-only policies in the workplace unless required by an overriding legitimate business purpose such as the safe and efficient operation of the business and there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact. SIGNED by Governor Davis on 10/10/2001.

- Information Reporting Systems - Use of Social Security Numbers (S.B. 168)
  Places additional requirements on credit reporting agencies and prohibits publicly posting or displaying in any manner an individual's Social Security Number. Prohibits transmitting SSNs over the Internet without encryption. Requires an annual disclosure, beginning next year, informing the individual that he or she has the right to stop the use of his or her SSN in a manner prohibited by this law. Does not apply to state or federal required uses of SSNs. Becomes effective on July 1, 2002. SIGNED by Governor Davis on 10/11/2001.

- Joint Labor-Management Committees (S.B. 588)
  Allows joint labor-management committees to bring civil lawsuits against public works contractors and subcontractors for failure to pay correct prevailing wages. SIGNED by Governor Davis on 10/13/2001.

- Unemployment Insurance (S.B. 40)
  Increases unemployment benefits by up to 72% and employer premiums to pay for the increased benefits. Added employer costs are expected to be $4.5 Billion over the next four years. SIGNED by Governor Davis on 10/1/2001.

- Violence (A.B. 276)
  Creates a 2-year limit for filing a complaint of violence or the threat of violence with the California Department of Fair Employment and Housing (DFEH). The current window only allows 1 year. SIGNED by Governor Davis on 10/13/2001.

- Workplace Accommodation for Lactation (A.B. 1025)
  Requires employers to provide a reasonable amount of unpaid break time to employees desiring to express milk. Employers will be required to provide use of a room, or other location, other than a toilet stall, in close proximity to employee's work area. SIGNED by Governor Davis on 10/13/2001.

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2. FREE DIVERSITY RESOURCE

If you would like a FREE diversity lesson each week all you have to do is sign up for the email delivery at Diversity Training University International (DTUI) http://www.diversityuintl.com/index.htm .

If you visit their web site you will discover a wealth of training programs that can help your organization improve its diversity management program. Of course, they also offer training-for-fee programs as well.

Dr. Billy Vaughn is president of DTUI. You'll like him. If you have the chance to stop in and say "Hi," tell him you heard about his firm through the Special Report for HR Professionals.

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3. OSHA MSD RULE DELAYED FOR ONE YEAR

Over objections from the AFL-CIO, the Occupational Safety and Health Administration (OSHA) has delayed by one year the effective date of record keeping requirements related to musculoskeletal disorders (MSD). Consequently, employers will not have to check the MSD column on OSHA logs until January 1, 2003.

The cause of this delay is simple. OSHA does not yet have a definition of what constitutes a musculoskeletal disorder nor does it have criteria for recording work-related hearing loss. MSDs are only one of the issues OSHA must address before announcing its decision on how it will treat ergonomics injuries in the workplace. Originally, the decisions were due in September but they have been postponed without a target date as a result of the September 11th terrorist attacks.

In a related story, Cal/OSHA is proposing the adoption of a new rule that will parallel the federal requirement for OSHA Log 300 use beginning on January 1, 2002. Federal requirements can be found at 29 CFR Sec. 1904 and the existing California rule is located at 8 CCR Sec. 14301. A public hearing is scheduled for October 29th to review the proposed state rule changes. The proposal can be found at www.dir.ca.gov . A major change expected in the new rule is inclusion of public sector employers in reporting requirements. They have been exempt up until this point. If the new rule is adopted as written, public sector employers with 10 or fewer employees in the entire organization will continue to enjoy the same exemption as private sector employers. This will likely affect some special districts and small municipalities.

Gentle Readers,

The EEOC collects some BIG checks from errant employers and one California Appellate Court rules against affirmative action programs. And, it's back to the drawing board for guidance on EEOC policy regarding non-discriminatory health benefit programs under ADEA.

Bill Truesdell
Editor

IN THIS REPORT (Report #203, 11/2/2001)
---------- (Sent to over 1,500 subscribers)

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1. EEOC SETTLES HIGH PROFILE CASES

Do it wrong and you'll have to pull out your checkbook. That has happened to two major employers in recent weeks.

First, Eagle Global Logistics (Eagle U.S.A. Airfreight, Inc.) reached agreement with the Equal Employment Opportunity Commission (EEOC) that will settle a lawsuit in U.S. District Court at Houston, TX. Eagle wrote a check for $9,000,000 in this voluntary settlement. The suit was filed on behalf of a class of African-Americans, Hispanics, and female employees and applicants who were allegedly subjected to race, gender, age, national origin discrimination and harassment on the basis of sex and retaliation.

$8.5 million of the settlement amount will be allocated to back pay and damages to be distributed among the class members. The extra $500,000 will be used to establish a Leadership Development Program to benefit minorities and women by preparing them for leadership roles in employment at Eagle. The Program will include distribution of funds to set up scholarships and facilitate other educational and advancement opportunities for current and prospective Eagle employees. Eagle has also agreed to provide annual mandatory training to all supervisors

concerning the avoidance of harassment and discrimination and investigation of employee complaints.

Jim Crane, Chief Executive Officer for Eagle said, "While we continue to deny the EEOC's allegations, we feel that it is in the best interest of our Company and its future to resolve this matter at this time..."

Second, we learn that Wal-Mart is currently running its TV ad telling the story of two deaf men's employment discrimination claim against the retail giant. The 60-second ad is running for two weeks on ABC, CBS, and NBC affiliates in Arizona. The company also wrote a check for $427,500 as payment of a contempt-of-court fine. Why the fine? It turns out the company had reached agreement with the EEOC on settling the complaint of Jeremy Fass and William Darnell that they were not hired because they are deaf. The consent decree was approved by the Federal District Court. Then, the company failed to make good on promises it made in the consent decree. The court has approved another amended consent decree with the addition of the fine and evidence that Wal-Mart will live up to its agreement.

"Everyone is familiar with Wal-Mart's compelling national television advertisements featuring people with disabilities as valued employees," said EEOC Chair Cari M. Dominguez. "I am very pleased that this amended consent decree will more closely align Wal-Mart's image with its employment practices."

So, if you don't do it right, get out your checkbook. You can find news releases about each of these cases in the News section of the EEOC's web site at www.eeoc.gov .

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2. EEOC RESCINDS GUIDANCE ON ITS RETIREE HEALTH PLAN POLICY

The Equal Employment Opportunity Commission (EEOC) has rescinded its policy guidance on treatment of retiree health plans under provisions of the Age Discrimination in Employment Act (ADEA). It had earlier said that retiree health plans that are reduced or eliminated on the basis of age or Medicare-eligibility violate the ADEA. This had impacted employer-sponsored retiree health benefit plans such as those offering extended health care coverage in the form of a Medicare bridge (coverage until Medicare eligibility at age 65).

The rescission was approved on August 17, 2001, by a unanimous vote of the Commission.

Ms. Cari M. Dominguez, Chair of the Commission said, "The Commission has heard from a wide range of stakeholders including employer, employee, and labor groups expressing concerns about the impact of the now rescinded policy on the future of employer-sponsored retiree health benefits. The Commission shares these concerns, and our review will focus on the development of a new policy, consistent with the ADEA, that does not discourage employers from providing this valuable benefit."

The full text of the rescission, as well as other information about the EEOC, is available on the agency's web site at www.eeoc.gov .

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3. CALIFORNIA PUBLIC SECTOR RACE PREFERENCE PROGRAMS DECLARED ILLEGAL BY COURT

On September 4, 2001, the Third District Court of Appeal struck down race preferences in hiring by California state government and the California Community Colleges, and race preferences in contracting by the state Lottery and the state Treasurer's office.

The three-judge panel unanimously voided legal schemes requiring race-based "goals and timetables" for hiring minorities and women at the Community Colleges and in the state civil service workforce generally. According to the court, the voided legal provisions imposed a "duty" on "every managerial employee ... to achieve the agency or departmental goals." The court further said, "Such an establishment of specific hiring goals necessarily is, in itself, the establishment of hiring preferences."

The Court found the preferences illegal not only under the California Civil Rights Initiative (Proposition 209), but also under the Equal Protection Clause of the United States Constitution. The other legal schemes voided by the court mandated race-based preferences in certain contracts let by the state Treasurer's Office and the California Lottery. Left standing, however, were provisions that require monitoring of how many minorities have been hired by the state.

This leaves open the question about compliance with federal affirmative action requirements for federal contractors and whether or not the California Community Colleges fall into that category of organizations.

(Connerly v. State Personnel Board, 3rd Cir Court of Appeals, No. C032042, September 4, 2001)

You can read the entire opinion of the Court at: www.courtinfo.ca.gov/opinions/documents/c032042.pdf .

Gentle Readers,

This week we bring you the first in a series of articles about the OFCCP's new national director...what he thinks, where he wants his agency to go, what he is planning on the enforcement front, and ... what is an applicant? Watch for the continuing story in future issues of Special Report for HR Professionals.

Bill Truesdell
Editor

IN THIS REPORT (Report #204, 11/9/2001)
---------- (Sent to over 1,500 subscribers)

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1. DIRECT FROM THE DIRECTOR - (Part 1)
by William H. Truesdell

It's Halloween morning, the last day of October 2001. We are gathered in San Francisco's Union Bank headquarters building for a joint meeting of the Northern California Industry Liaison Group (ILG) and the Silicon Valley ILG. While not rare, it does take some effort for members to wend their way into the City through all the rush hour traffic. Some have come from 80 to 100 miles away, having gotten up extra early just to be here on time. They did it because they want to meet Charles E. James, Sr. recently appointed head of the key affirmative action enforcement agency in the country. Mr. James is officially Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor's Employment Standards Administration.

He has personal experience managing equal employment opportunity (EEO) and affirmative action programs in both public and private sectors. For nine years he was the director of such efforts at Bell Atlantic, now Verizon. Most recently he served as a member of the Virginia Parole Board. He also managed the entire personnel and training functions for several years in the State of Virginia.

OFCCP is not a large agency by government standards. Even so, Mr. James comes to his new job with over 700 employees looking to him for

direction. He has been in this role now since his appointment was confirmed by the U.S. Senate in June.

On this bright, crisp autumn morning, Mr. James tells the group of 100 assembled contractors that they will once again have a place at the government policy table. He makes it clear that he understands what it is like being responsible for EEO and affirmative action within a contractor organization and that he expects to seek out contractor opinions about enforcement issues.

Contractors around the room can be seen to visibly relax at the notion that they will again be invited to contribute to the government's process. There are still strong memories of being shut out from that process by Mr. James' predecessor, Ms. Shirley Wilcher. Ms. Wilcher said on many occasions that she did not view federal contractors among her constituents in the enforcement process. She said things like, "I know you are illegally discriminating, and we are going to find out where and hold you accountable for a strong remedy." "Adversarial" might be the kindest way to describe OFCCP and contractor relationships during the last administration. Mr. James says he wants to change that.

He is a self-described "first waver." As an elementary school student in Roanoke, Virginia, he was one of nine Black children assigned to integrate what had previously been an all-White school. Ironically, he said, his new assignment meant he could walk to school rather than ride the bus across town to the old facility. He has been involved in equal opportunity issues ever since.

"I have no personal agenda other than what the President and the Secretary (of Labor) want to accomplish," he said. "Our mission remains the same, but the way we will accomplish it in the Bush Administration is somewhat different. Our emphasis will be on small contractors who have the greatest need for compliance assistance."

Mr. James explained that he looked at the work to be done at his new agency when he arrived in June and realized it would be necessary to establish some priorities. Among his highest priorities are three issues that have puzzled and infuriated contractors for quite some time.

Mr. James' priorities are:

1. Defining "What is an applicant?"
2. Creating a practical process for approving Functional AAPs.
3. Determining the value of the Equal Opportunity Survey and what, if any, modifications it should undergo.

On the issue of defining job applicant, Mr. James had these things to say.

He believes the most appropriate way to deal with the issue is to use the Uniform Guidelines on Employee Selection as the communication vehicle. They are expiring this year and must be reissued with a new approval from the Office of Management and Budget (OMB). Any changes to content of the Uniform Guidelines must be agreed to by the three

agencies that "own" them... the OFCCP, the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice.

Who is an applicant becomes important for federal contractors because once known, the contractor must invite each applicant to self-identify race/ethnicity and sex. Without these demographic data it is impossible to conduct a disparate impact analysis to determine if minorities or women may be experiencing illegal discrimination in a contractor's hiring process. And, the new federal regulations at 41 CFR 60-2 make contractors responsible for conducting such an analysis.

Further, it can be costly for contractors to satisfy their obligation to invite applicants to self-identify...especially if they use the U.S. Mail. Postage, printing, addressing, and logging responses can amount to thousands of dollars for larger contractors. For that reason, contractors have been quick to embrace electronic resume and application movement. Returning an electronic mail request for demographics costs far less than the old postcard or letter approach. Yet, the question remains...Who should the requests be sent to? Who is an applicant?

Some contractors have tried to convince the government that job applicants are those people they interview. Yet, the employment process must necessarily involve one or more selection decisions in order to determine who will be interviewed.

On the other end of the spectrum, the government's position has been exceedingly broad, claiming that an applicant is anyone showing any interest in employment with the contractor, whether that person is qualified for the job or not.

According to Mr. James, "The definition we ultimately arrive at will be somewhere in the middle between those two extremes.

Ms. Cari Dominguez, Chair of the EEOC, has been quoted as recently saying, "A click does not an applicant make."

With both Mr. James and Ms. Dominguez signaling their willingness to support a definition that allows for consideration of such things as job qualifications, brings hope to the hearts of contractor representatives. "We want a definition that both contractors and the government can live with," said Mr. James. "I recognize there are business needs for contractors and we have enforcement needs in the government. I want to include contractor's use of 'minimum qualifications' in the definition if that is possible," said James. As an example he offered, "I doubt very much that a second-year law student should be considered an applicant for the job of chief in-house counsel, which would happen if we considered everyone who 'clicks' on an Internet response button."

You can expect movement on the definition of applicant before the end of this calendar year.

To be continued ...

Watch for the next issue of Special Report for HR Professionals to learn more about Functional AAPs, the EO Survey and where Mr. James wants his agency to be going. If you have colleagues who represent other federal contractors, you might want to share this issue with them and invite them to subscribe for their own copy.

Gentle Readers,

We continue our series of articles about the new OFCCP Director and his priorities for the affirmative action enforcement agency.

Bill Truesdell
Editor

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IN THIS REPORT (Report #205, 11/16/2001)
---------- (Sent to over 1,500 subscribers)

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1. DIRECT FROM THE DIRECTOR - (Part 2)

by William H. Truesdell

(This is the second in a series of articles about comments from Mr. Charles E. James, Sr., Deputy Assistant Secretary, Office of Federal Contract Compliance Programs [OFCCP], Employment Standards Administration, U.S. Department of Labor. Comments are taken from a presentation Mr. James made at a joint meeting of the Northern California Industry Liaison Group [ILG] and the Silicon Valley ILG on October 31, 2001 in San Francisco.)

You will recall from our first article in this series that Mr. James cited three top priority issues he is addressing since taking office in June of this year. They are:

1. Defining "What is an applicant?"
2. Creating a practical process for approving Functional AAPs.
3. Determining the value of the Equal Opportunity Survey and what, if any, modifications it should undergo.

In this issue we pick up the story with the subject of Functional AAPs.

Functional AAPs

"I have written a Directive that will be issued as soon as the Solicitor's office has finished its review," said Mr. James. That directive will outline how contractors can apply for and receive permission for functional AAP establishments.

"Our biggest hurdle, he said, is that the OFCCP needs to understand functional AAPs. No contractor can receive a quality audit until the OFCCP has that understanding. Therefore, we have a training challenge within the agency," he concluded.

American industry doesn't wake up each morning to pyramidal or hierarchical structures any longer. Not every "AAP establishment" is confined to a single street address these days. Many organizations are created along functional rather than physical boundaries. One example is the sales or marketing unit in a national enterprise. It is no longer uncommon for individual sales people to work in "remote" areas of the country, operating from their home offices. If scores of sales workers are scattered across the country in as many geographies, yet all report to the corporate officer responsible for sales, the contractor has every right to expect affirmative action enforcement of its good faith efforts will correspond to its functional organization design.

Mr. James has made clear his intention to have his agency adapt to the way business is being done today. And, that will require some adjustment in the thinking of Compliance Officers who are used to dealing with a physical address.

"OFCCP will not be punitive about companies that are currently using functional AAPs," stated Mr. James. "I am working on assembling an advisory task force to guide us through the process of redefining what establishments should be, and how we can evaluate them during a compliance audit." He expects the task force to be assembled within a couple of weeks and for their report to be available before the beginning of the new year. "I believe functional AAPs can provide many benefits for the OFCCP. Among them will be our ability to cover more employees in a single audit and our ability to leverage our resources to cover more companies over time." The task force will help by developing a directional guide for how that change will be implemented.

Equal Opportunity Survey

The third priority for the new director's attention is the subject of much debate around the country...the EO Survey. To date, about 57,000 surveys have been sent to contractors. That is roughly half of the contractors in OFCCP's database. "We have had a 92% response rate from contractors," said James. The contractor community continues to voice its concern that EO Survey compensation data has no value for either the contractor community or for enforcement officials. "We will test that idea and analyze the data we have received to determine if there is any compliance enforcement value to be gained by the current survey format."

Regulations require the OFCCP to use a survey of contractors in its enforcement efforts. They don't specify, however, what content is appropriate for that survey effort. "Our primary focus is on assuring the American workplace run by federal contractors is committed to equal employment opportunity." Whatever survey is used the Bush Administration will have to contribute to that effort.

"More and more, businesses are realizing that their employee demographics must look like their customer demographics as a matter of sound business strategy," said James. "In this administration we will be concentrating on creating a partnership between the enforcement community and the contractor community. I am convinced we are both headed toward the same equal employment opportunity goal."

To further extend the enforcement effort, Director James said the OFCCP will be rebuilding its technical compliance support group. He pointed out that the agency has continued to make use of its ombudsman program and that it is both physically and organizationally separated from the enforcement component of the agency. Questions directed to the ombudsman program are not shared with the enforcement groups except as issue summaries. Contractors are not targeted for compliance audits because they call the agency for assistance.

Mr. James pointed out that the EO Survey is a very costly exercise in gathering data from contractors. As it was originally justified by the last Administration, the EO Survey was to be used as an instrument for gathering contractor data that could then be used to determine which contractors should be scheduled for a compliance review. So far, the OFCCP has not concluded its analysis of the first EO Survey responses. Therefore, it cannot yet determine if the Survey will prove to be the useful tool for scheduling audits that it was intended to be. "As a businessman I believe we should be getting value for our government investment in the survey's distribution, collection and analysis. If the survey doesn't prove itself of greater value for scheduling audits than our current system, we will not likely be continuing to use the survey in its current form."

<u>September 11, 2001</u>

Director James said the OFCCP, along with all other federal enforcement groups, are sensitive to companies directly affected by events of September 11, 2001. Any employer that receives notice of audit from the OFCCP who has been impacted by loss of personnel, records or in some other way, can request the audit be rescheduled. There have been a number of reviews already postponed indefinitely because of the disaster. Contractors should simply discuss the issue with their Compliance Officer or District Director if they receive a scheduling letter and are among those impacted companies.

To be continued ...

Watch for the next issue of Special Report for HR Professionals to learn more about where Mr. James wants his agency to be going. If you have colleagues who represent other federal contractors, you might want

to share this issue with them and invite them to subscribe for their own copy.

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2. CALIFORNIA MINIMUM WAGE INCREASING IN JANUARY

The California state minimum wage will increase to $6.75 per hour effective January 1, 2002 adding another 50 cents per hour to the current requirement. These levels were set by the California Industrial Welfare Commission at it'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 2002, 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.

You can get a copy of the 2001 Minimum Wage Order from the IWC web site. That poster shows the new 2002 minimum rate which will be a posting requirement as the higher payment level becomes effective. You can find it at: http://www.dir.ca.gov/iwc/iwc.html .

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3. BENEFIT PLANS FOR NEXT YEAR

A survey by MetLife Inc., New York, of 481 benefits professionals at big companies found 8% plan to add prepaid legal services, 6% plan concierge services, and 3% plan pet insurance.

(Source: Carlos Tejada, Wall Street Journal, November 13, 2001)

Gentle Readers,

We conclude our series of articles about the new OFCCP Director and his priorities for the affirmative action enforcement agency. We are sending this issue early because our office will be closed on Thursday and Friday for the holiday. Happy Thanksgiving to each of you.

Bill Truesdell
Editor

IN THIS REPORT (Report #206, 11/23/2001)
---------- (Sent to over 1,500 subscribers)

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1. DIRECT FROM THE DIRECTOR - (Part 3)

by William H. Truesdell

(This is the third in a series of articles about comments from Mr. Charles E. James, Sr., Deputy Assistant Secretary, Office of Federal Contract Compliance Programs [OFCCP], Employment Standards Administration, U.S. Department of Labor. Comments are taken from a presentation Mr. James made at a joint meeting of the Northern California Industry Liaison Group [ILG] and the Silicon Valley ILG on October 31, 2001 in San Francisco.)

You will recall that we reported in our first two articles in this series about Mr. James' three top priorities for attention now that he has taken over the helm of the OFCCP. Those were:

1. Defining "What is an applicant?"
2. Creating a practical process for approving Functional AAPs.
3. Determining the value of the Equal Opportunity Survey and what, if any, modifications it should undergo.

There were other subjects addressed in his remarks as well. When asked if there would be a new compliance manual to replace the ten-year-old

version now being used, he said it is on the list of projects to be done, but is not as high a priority as the top three.

Here are some additional responses to questions from contractors:

Q - How can we improve the flow of information from Washington to local ILGs and contractors?

Mr. James - I want to improve our use of OFCCP's web site as a means of communicating with contractors. We will be doing that over the coming months. Additionally, I want to increase the use of email to ILG chairs around the country so they can redistribute information to their members. We will be working on that more after the first of the new year.

Q - The recent Third Appellate District Court decision in Connerly v. State Personnel Board (9/4/01) specifically prohibits California state employers from a) conducting focused recruitment; 2) establishing AA goals and timetables; 3) any "statutory scheme" (AA Plan) that requires managers or supervisors to certify their awareness of a goal or plans to reach a goal; and 4) providing a financial incentive to achieve the goal. How does OFCCP react to this decision?

Mr. James - Federal law supersedes state law in many cases. In the case of affirmative action, all federal contractors must still meet requirements set out in the federal regulations. Anyone who takes a program beyond what the regulations require may cross the line (into illegal discrimination). Contractors get to decide for themselves what constitutes good faith efforts. During a compliance audit they simply have to convince the Compliance Officer that they have indeed made good faith efforts.

Q - How do you feel about the term "Affirmative Action?"

Mr. James - I prefer the term "Affirmative Access." The goal of OFCCP is equal employment opportunity within the contractor community. What contractors do to get to that goal should not involve trammeling on other people's rights to equal access.

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2. RELEASE OF CENSUS 2000 DATA FOR AAPs HAS BEEN DELAYED - AGAIN

Leaders of both the OFCCP and the Equal Employment Opportunity Commission (EEOC) have told federal contractors to wait for a final ruling from the government before spending any substantial amount of money modifying their computer systems to track employee and applicant race and ethnic data.

You will recall that this has been a subject of much debate over the past few years. For the first time in history, the U.S. Bureau of the Census was directed by the Office of Management and Budget (OMB) to allow multiple-race designations during the Year 2000 Census. For federal contractors, this has created some concern because there are nearly 200 possible combinations of race and ethnic categories under the plan approved by the Clinton Administration several years ago.

Contents of the EEO File from Census 2000 is the issue. While preliminary guidance had been released by OMB before the close of 2000, the new Administration is saying that final decisions about what the EEO File will actually contain are yet to be made. Until that has happened, contractors should not expend resources to reconfigure their data systems.

Coincidentally, the government has announced that the EEO File from Census 2000 will not be available until the fourth quarter of 2003. Until this announcement, it was expected that the EEO File would be available on March 31, 2003. Not possible, said the government, considering that we don't know yet what will be in that file.

In the mean time, contractors will be expected to continue using Census data from 1990 in preparing their affirmative action plans.

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3. WATCH OUT! HOLIDAY PARTIES CAN BRING "LIQUOR LIABILITY"

Holiday parties are a tradition in many companies. Yet that seems to be dwindling in popularity each year. One reason for less frequent celebrations is a growing recognition of company liability for accidents that cause injury to participants or others. "Liquor Liability" it is called in the meeting-planner's lexicon.

There are actually 33 states that have some form of law holding servers of alcohol liable for the actions of intoxicated guests. Some states among them even extend liability to social hosts. By far, though, the greatest attention is paid to business hosts.

Here is a list of states showing which have business host liability laws and those that do not. You can talk with your attorney to get specific information about case settlements and jury awards for cases in your area.

State	Business Host Liability	State	Business Host Liability
Alabama	Yes	Nebraska	No
Alaska	Yes	New Hampshire	Yes
Arizona	Yes	New Jersey	Yes
Arkansas	Yes	New Mexico	Yes
California	Yes	New York	Yes
Colorado	Yes	Nevada	*
Connecticut	Yes	North Carolina	Yes
Delaware	No	North Dakota	Yes
D.C.	No	Ohio	Yes
Florida	No	Oklahoma	No
Georgia	No	Oregon	Yes
Idaho	Yes	Pennsylvania	Yes
Illinois	Yes	Rhode Island	Yes
Indiana	Yes	South Carolina	No
Iowa	Yes	South Dakota	No
Kansas	No	Tennessee	Yes
Kentucky	No	Texas	Yes

State	Business Host Liability	State	Business Host Liability
Louisiana	No	Utah	Yes
Maine	Yes	Vermont	Yes
Maryland	No	Virginia	No
Massachusetts	No	Washington	No
Michigan	Yes	West Virginia	No
Minnesota	Yes	Wisconsin	Yes
Mississippi	Yes	Wyoming	No
Missouri	Yes	Puerto Rico	No
Montana	Yes		

* Regulated by city and/or county.

Table of information from Successful Meetings magazine, October 2001. Circulation: 847-647-7987.

Gentle Readers,

We are coming to the end of another year, and that means it is time to begin seriously thinking about the requirements we must meet in the next twelve months. We offer some suggestions.

Bill Truesdell
Editor

IN THIS REPORT (Report #207, 11/30/2001)
---------- (Sent to over 1,500 subscribers)

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1. OBTAINING AND USING EMPLOYEE MEDICAL INFORMATION AS PART OF EMERGENCY EVACUATION PROCEDURES

The Equal Employment Opportunity Commission (EEOC) has recently released new guidelines on how employers can request information from workers that will assist in the event of an emergency evacuation from the workplace. A comprehensive emergency evacuation plan should provide for prompt and effective assistance to individuals whose medical conditions may necessitate it.

Since September 11, 2001, and the terrible disasters of that day, many employers have asked how the Americans with Disabilities Act (ADA) and the Rehabilitation Act affect their ability to evacuate employees safely and effectively. Specifically, the EEOC says, employers are wanting to know if they can request information to help identify individuals who might need assistance because of a medical condition and whether they can share this information with others in the workplace. The EEOC's conclusion? "Federal disability discrimination laws do not prevent employers from obtaining and appropriately using information necessary for a comprehensive emergency evacuation plan."

According to the EEOC, there are three ways that an employer may obtain information:

1) After making a job offer, but before employment begins, an employer may ask all individuals whether they will need assistance during an emergency.
2) An employer also may periodically survey all of its current employees to determine whether they will require assistance in an emergency, as long as the employer makes it clear that self-identification is voluntary and explains the purpose for requesting the information.
3) Finally, whether an employer periodically surveys all employees or not, it may ask employees with known disabilities if they will require assistance in the event of an emergency. An employer should not assume, however, that everyone with an obvious disability will need assistance during an evacuation. For example, many individuals who are blind may prefer to walk down stairs unassisted. People with disabilities are generally in the best position to assess their particular needs.

Employers should inform all individuals who are asked about their need for emergency assistance that the information they provide will be kept confidential and shared only with those who have responsibilities under the emergency evacuation plan.

You can find the Fact Sheet on this new guidance at:
http://www.eeoc.gov/facts/evacuation.html

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2. INTERNATIONAL CONFERENCE ON WORKPLACE BULLYING

If workplace violence is an issue of concern to you, you might just want to consider attending the Adelaide International Workplace Bullying Conference: Skills for Survival, Solutions, and Strategies to be held February 20-22, 2002, at the Novatel Adelaide in Adelaide, South Australia.

Workplace bullying creates a hostile work environment and brings employer financial liability along with all the negative employee reactions one might expect. According to experts, workplace bullying ultimately leads to workplace violence if it is not properly handled. At the conference, experts from Norway, Australia, South Africa, Washington State and Boston, MA will convene to offer solutions to these common workplace problems.

Bullying can be one result of increased workplace diversity, something we are all seeing more of these days. Learning how to live with various cultures and personal preferences is a major concern to employers all over the globe. Competing successfully in the 21st century marketplace will require management skills in crafting methods for dealing with seriously disruptive behaviors such as bullying and threats of violence. This conference is designed to provide those strategies.

For more information, visit ww.eventstrategies.com.au/conf_calendar.htm

Our colleague, Rickie M. Banning will be leading a conference training workshop entitled: "Workplace Violence and Diversity: Strange Bedfellows." You won't want to miss it.

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3. ADDITIONAL CALIFORNIA LEGISLATION EFFECTIVE IN 2002

A few weeks ago we told you about key legislation passed by the California Legislature that will impact employers beginning in 2002. It seems appropriate to add some additional information about new laws that may not impact every employer, but that will bring new requirements to specific industries or segments of the employment community. Here then are some additional obligations certain employers will be faced with beginning this coming January.

- Domestic Partnerships (AB 25): Allows a person to collect unemployment insurance if he or she leaves a job to relocate with a domestic partner; allows domestic partners to use kin care (sick leave) to care for the other partner or the other partner's child.

- At-Will Exception (SB 20): Prohibits at-will termination of janitors and building maintenance personnel under certain circumstances.

- Overtime Exemption (SB 1208): Creates an overtime exemption for doctors paid on an hourly basis.

- Drug Testing (SB 871): Places new requirements and penalties on motor carrier employers who are subject to federal Department of Transportation drug and alcohol testing requirements, including triple damages if a driver injures someone.

- Garnishments (AB 1426): Adds a new penalty for failure to comply with child support garnishments, and allows court-ordered electronic transfer of garnishments from the employer's account.

- Temporary Nursing Staff (AB 1643): Places new requirements on employment agencies that provide temporary certified nurse assistants or licensed nursing staff for long-term health care facilities, including background checks.

If you wish to have additional information about any of these new California laws, please talk with your legal advisor.

Gentle Readers,

This week we share with you some updates on hidden risks of labor relations violations, an explanation of why the U.S. Supreme Court cancelled its processing of Adarand II, and a brief summary of a recently released SHRM survey on employee layoffs.

Bill Truesdell
Editor

IN THIS REPORT (Report #208, 12/7/2001)
---------- (Sent to over 1,500 subscribers)

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1. FUNDRAISING FOR THE SEPTEMBER 11 TRAGEDIES - POTENTIAL RISKS

Many employers have adopted work rules that prohibit employees from soliciting for causes or distributing materials regarding outside organizations or activities during working time or in working areas. These "no-solicitation/no-distribution" policies are generally lawful.

The problem arises when an employer allows a charity or other organization to solicit its employees in the workplace but later attempts to assert the no-solicitation/no-distribution policy to preclude similar activities by a union. This type of "discrimination" has been held to be unlawful by both the National Labor Relations Board (NLRB) and the courts.

NLRB General Counsel Arthur Rosenfeld, however, recently issued a memorandum clarifying the agency's position on fundraising conducted in light of the tragedies of September 11. According to Rosenfeld, "an employer may lawfully permit a small number of isolated beneficent acts as exceptions to a valid no-solicitation/no-distribution rule."

In assessing whether an employer's conduct falls within the exception, Rosenfeld continued, the NLRB will examine the number of incidents of

solicitation or distribution and their length of time. "Although the Board has not defined the exact number of incidents necessary to find unlawful discrimination," Rosenfeld wrote, "it has found that three incidents of employer condonation of charitable solicitation was permitted."

On the other hand, an employer that allowed 13 different groups to solicit workers shortly before denying a union similar access was held to have violated federal labor law. Similarly, a grocery chain that allowed the Salvation Army and other groups to solicit employees for periods ranging from a few days to a month each year was held to have unlawfully denied a union access to its workers.

The bottom line is that employers that want to be able to enforce a no-solicitation/no-distribution policy should be very cautious in making exceptions. Nonetheless, the NLRB's acknowledgement that limited incidents should not undermine such a policy is a positive development.

Note that there have been efforts to legislatively address this issue, even before the September 11 tragedies. Earlier this year, Senator Tim Hutchinson (R-Arkansas) introduced a bill that would allow retailers to permit charitable groups to solicit on company property and still otherwise enforce a valid no-solicitation/no-distribution rule. The measure was referred to a House subcommittee last summer, where it remains.

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2. SUPREME COURT CANCELS AFFIRMATIVE ACTION DECISION

On November 27, 2001, the United States Supreme Court issued a decision to stop its second review of the Adarand case. (Adarand Constructors, Inc., v. Norman Y. Mineta, Secretary of Transportation, No. 00-730) The most recent question was whether or not the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program is consistent with the constitutional guaranty of equal protection.

Six years ago in Adarand Constructors, Inc. v. Pena (515 U.S. 200, 1995, Adarand I) the Court held that strict scrutiny governs whether race-based classifications violate the equal protection component of the Fifth Amendment's Due Process Clause. The Court said, in part, "Federal racial classifications, like those of a State, must be narrowly tailored to further that interest." Adarand complained that it had lost its highway construction subcontract bid because of preferences allowed by the DOT selection process.

The U.S. Supreme Court sent the case back to the Federal District Court in Colorado to determine if the race-based components of the DOT's DBE program could stand up under the Adarand I ruling. The District Court determined that no race-based component then in operation could satisfactorily meet the required test and survive.

Then the Court of Appeals overruled the District Court's decision saying that Adarand had been certified by the Colorado Department of Transportation as a DBE. In 1999, the Department of Transportation issued new regulations regarding procurement of federal funds for highway projects.

The complication comes because in Adarand II, the company changed its complaint so it challenged only the statutes and regulations pertaining to contracting for highway construction work on federal lands. Since the regulations had changed after the initial review, the Supreme Court reasoned that it would be addressing a different question than that addressed by the Court of Appeals.

As a result, the Court ended its review of Adarand II. We are not likely to see any further determination regarding DBE programs until another case makes its way through the judicial process. We are left with the existing guidance the Court gave in Adarand I.

You can find the Court's ruling at:
http://supct.law.cornell.edu/supct/html/00-730.ZPC.html

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3. SHRM PUBLISHES "LAYOFFS AND JOB SECURITY SURVEY"

The Society for Human Resource Management (SHRM) has just published its survey results in a new study of layoffs and job security. You will find the report, available only to SHRM members, on the web at: www.shrm.org .

A layoff is a form of involuntary separation that occurs in an organization that typically is experiencing financial problems. The survey data collection period ended on September 7, 2001, prior to the tragic events of September 11th. SHRM says, however, that it is likely that the practices reported in the survey are likely still being used following the terrorist attacks. More than half of all respondents indicated they had not laid off any employees in 2000 or 2001, through September 7th.

When asked how employees usually found out about their layoffs, 41% said it was usually their supervisor and HR who had responsibility for conveying the news. Most often, those not being laid off were told about the force reductions in group meetings. When asked how much lead time employees were given before their last day on the payroll, 43% of respondents said there was no lead time. Employees were told on their last day of work in these situations.

Prior to actually taking action to involuntarily reduce employee count, many employers tried to reduce expenses through other means. The top four methods for saving money prior to layoffs were: Attrition (63%); employment freeze (49%); not renewing contract workers (21%); and encouraging employees to use vacation (20%). 45% of all companies surveyed said they had rehired some of the employees they had laid off during 2000 and 2001.

As a result of the layoffs study respondents indicated the following as outcomes from the process:

Employee gossip has increased	54%
Employee morale has decreased	58%
Resignations have increased	27%
Productivity has increased	25%
Profits have increased	32%

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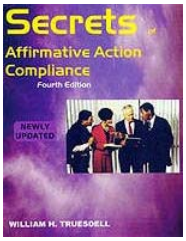

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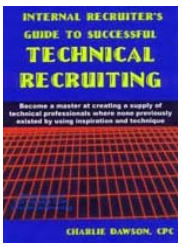

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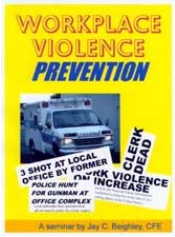

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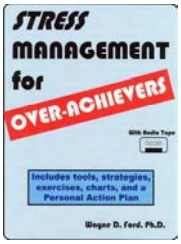

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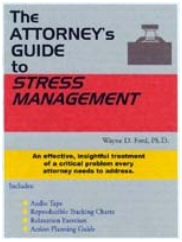

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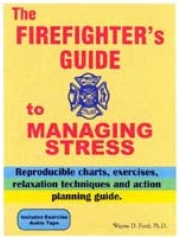

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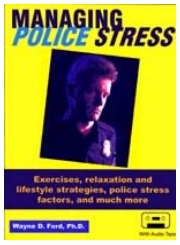

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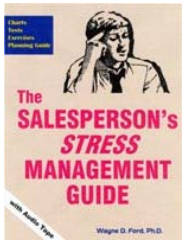

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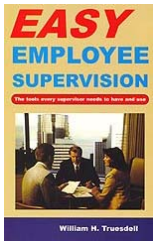

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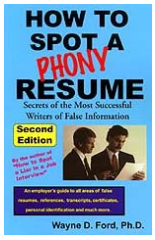

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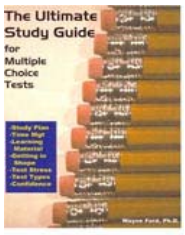

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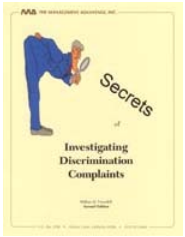

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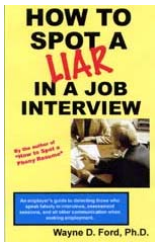

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