Gentle Readers

Special Reports for HR Professionals 2003

Collection of email reports.

GENTLE READERS: Special Reports for HR Professionals - 2003

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

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

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Gentle Readers,

We would like to begin this edition with a warm wish for each of you, that you have a truly Happy New Year. Celebrations for the most part have been completed and we are all settling into our normal routines. This is the time to make sure current events don't catch us unprepared.

Bill Truesdell
Editor

IN THIS REPORT (Report #249, 1/10/2003)
---------- (Sent to over 1,500 subscribers)

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1. 10,000 RESERVISTS ALERTED FOR WAR

According to various news wire services, the Army said this past Monday that it had alerted more than 10,000 reservists to prepare for active duty as early as this week in support of a U.S. military buildup near Iraq. In addition, the hospital ship Comfort has been ordered to sail for the Gulf region and Defense Secretary Donald Rumsfeld is weighing plans to deploy up to 200,000 troops in the Gulf by mid-February.

Deployments are expected between January 10 and late February. Included in the call-ups are engineers and intelligence specialists. There are currently 65,000 troops in the Gulf region and another 25,000 have already received orders to go.

The Navy has been ordered to prepare two aircraft carrier battle groups and two amphibious assault groups to be ready to head to the region sometime in January. Recent troop deployments include:

- Some Marines at Camp Pendelton, California who are part of the 1st Marine Expeditionary Force, which already has its headquarters in Kuwait.
- The first B1 bombers, which could leave Ellsworth Air Force Base in South Dakota this week for Oman. F15E Strike Eagles could deploy from Seymour Johnson Air Force Base in North Carolina.
- Some 11,000 troops from the 3rd Infantry Division that will soon leave Georgia to join the 4,800 other division troops already in Kuwait.

Also alerted for possible deployment are the 101st Airborne

Division, based at Fort Campbell, Kentucky, troops from the 1st Armored Division and the 1st Infantry Division in Germany.

Some of these deployments may impact your workforce. When reservists and National Guard members are called to active duty, employers have specific responsibilities under Federal law, and some state laws.

Some suggestions for employers and HR professionals in light of these current events:

- Recognize that employers may not prevent military personnel from leaving their jobs to report if so ordered. There are no exemptions allowed employers in these circumstances. And, it is not just military members who can be affected in these circumstances. Any member of a uniformed service may be called to active duty. That includes, for example, members of the civilian health services.

- Employers may request a copy of the official orders received by their employees and should ask employees to complete a request for leave of absence for military reasons.

- Study employer requirements and employee rights under USERRA (Uniformed Services Employment and Reemployment Rights Act of 1994). You will find a digest of information in our Special Report on Leaves of Absence. It's FREE in the HR Web Store. Go to www.hrwebstore.com and select "FREE Stuff" from the left hand menu. Look for the report on Leaves of Absence. Then go to "Military Leaves."

- Be sure to offer ALL employees who go on Military Leave a COBRA-like opportunity to extend their health insurance coverage programs for themselves and their dependents if they wish to do so. There are no exclusions for small employers as there are for COBRA. Any employer, even those with fewer than 20 employees, who offer health insurance programs, must provide this option to Military Leave participants.

- Don't permanently replace anyone on military leave until you know for sure that employee has elected not to return to work following the leave of absence. You may use temporary workers to fill in during the leave period, but hiring permanent replacements can cause you problems if you are not prepared to keep both people when the time comes.

- Log all questions for which you don't have answers and have regular conversations with your legal advisor to get current answers. You do not want to make a mistake in these situations.

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2. NEW FEATURE DISCOUNT AVAILABLE AT HR WEB STORE

Want some of the best products in HR management AND get a discount,

too? Well, starting this month, the HR Web Store is offering a discount on its featured product of the month.

This month, the Workplace Violence Prevention seminar binder is on sale. It is the Featured Product for January. You will find it in our "What's New?" department. While there you will also see the coupon number you can use to secure your discount when checking out with your purchase.

The discount applies to any quantity of copies you may wish to buy. But, it only lasts through January. If you want a program that will allow you to train your own people on preventing workplace violence, this is easy to use and self contained..."turnkey" as they say...and this month it can come to you for even less.

Check back with the HR Web Store every month, because we will be changing our Featured Product and adding new discount coupons to the store. You won't want to be left out just because you didn't take a moment to check.

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3. OSHA DRAFTS GUIDELINES FOR NURSING HOME ERGONOMIC STANDARDS

The Occupational Safety and Health Administration (OSHA) has settled on its draft of guidelines for nursing home ergonomics and has posted them on its web site at:
http://www.osha.gov/ergonomics/guidelines/nursinghome/index.html

The government's initial ideas were submitted to the public for comment with a September 30, 2002, response deadline. Those comments were evaluated and adjustments made to the proposed guidelines. The result is what we now have before us on their web site.

While there has been mixed reaction to the proposals from employers and special interest groups alike, there is no general consensus about these new guidelines as an enforcement tool.

Why start with the nursing home industry?

The government's answer is that nursing homes have an unusually high number of musculoskeletal disorders, or MSDs (muscle, nerve and joint-related injuries). The actual rate of injury is three times higher in nursing homes than in other industries according to OSHA reports.

These new draft guidelines urge nursing homes to minimize or eliminate the manual lifting of residents, using two or even three caregivers and a full body-sling when necessary. They say employees should be trained in identifying and mitigating ergonomic "stressors" - tasks that exceed their physical capabilities. They also recommend setting up a system for workers to recognize and report MSDs.

And, if OSHA has its way, there will be more guidelines issued in the future for other specific industries.

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4. CORRECTION ON AB 1599 AGE DISCRIMINATION THRESHOLD IN CALIFORNIA

From one of our readers, Judy A. Callahan, California Statewide Discrimination Complaint Coordinator at the State Personnel Board comes the following correction to the information we shared with you previously about California's AB 1599.

"On your summary of legislation you note that the FEHA amendment as a result of AB 1599 'Drops the threshhold of 40 from age discrimination language and prohibits consideration of any person's age in employment decisions.' This is incorrect. I am the California Statewide Discrimination Complaint Coordinator and work for the State Personnel Board and agree that the bill is confusing. I have received clarification of the bill from Department of Fair Employment and Housing's chief counsel and our legal staff that this does not extend age for discrimination. It is intended to expand the protections for workers over 40 to training and benefit reimbursement programs. In June, the Senate Committee specifically stated the following on this subject:

"It should be noted that under FEHA [Government Code Section 12926(b)], "age" refers to the "chronological age of any individual who has reached his or her 40th birthday." Thus the bill extends all of the protections provided by Section 12940 and related statutes to all persons over 40, including training programs and other terms and conditions of employment. It would not allow an age-based discrimination lawsuit by someone under the age of 40, as some opponents claim."

Similarly, the Assembly stated in January:
"While the bill on its face appears to broadly outlaw all employment discrimination based upon age, it must be read in conjunction with another statute. Government Code 12926(b) defines "age" as referring to "the chronological age of any individual who has reached his or her 40th birthday." Therefore, the effect of this bill is to make unlawful discrimination relating to training programs based upon a person being 40 years of age or more."

THANKS Judy for your help in clarifying this complicated issue.

We are back to basics, folks. Over 40 years of age is still a protected class in California.

Gentle Readers,

Finding and sharing Internet resources for HR Professionals is one of our tasks here at The Management Advantage, Inc. This week we have some new resources you may find helpful.

Bill Truesdell
Editor

IN THIS REPORT (Report #250, 1/17/2003)
---------- (Sent to over 1,500 subscribers)

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1. AAP Census Data Available on Web for FREE

Well, sure...we're still using 1990 Census data for our AAP reports. Census 2000 hasn't been released as yet for AAP use. But, what the heck. You can get the 1990 stuff for free on the Internet.

If you're interested, go to: http://tier2.census.gov/eeo/eeo.htm .

You will find "Census '90 Detailed Occupations by Race, Hispanic Origin and Sex."

Although access to the information is FREE, you will find it a bit cumbersome to "drill down" to the information you want. You can only seek data for one of the 512 occupational codes at a time. If you want data for more than one occupational code, you must "back out" of the data area and reenter specifying the next code you wish to see race and sex data for.

Once you have selected the occupational code, you are able to select the geographical area for which you wish the information. You can select, national, state, place (any location with 50,000 or more residents), MSAs and CMSAs (Metropolitan Statistical Areas and Consolidated MSAs).

If there are more than 50 items in any search response you will have to move from one group of 50 displayed responses to the next group of 50. In large states it can take a while to locate the city or county you wish to get information about.

The Bureau of the Census has not specified a date on which the new Census 2000 EEO File will be released to Affirmative Action employers. Until that day comes, we are obliged to use the 1990 data.

Think about this:

If you are experiencing deficiencies between your incumbents and computed availability based on 1990 Census data, imagine what will happen when you begin computing availability based on Census 2000 data.

(Hint: In the past 12 years, substantially more minorities and women are represented at all levels and in all spectrums of the workforce of this country. Said differently, minority and female populations in the workplace have increased. If you are experiencing a computed need when using 1990 data, you know the results using Census 2000 data will express an even greater need.)

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2. OSHA Ergonomics Committee Meeting this Month

The National Advisory Committee on Ergonomics (NACE) will hold its first meeting in Washington, DC, January 22. The public is invited to attend the session which will be held beginning at 9:00 a.m. at the Washington Court Hotel, 525 New Jersey Avenue, NW in Washington.

The session agenda includes these items:

- Introduction of Committee members
- Overview and brief history of OSHA's activities on ergonomics
- Discussion of information related to industry- or task-specific guidelines
- Identifying gaps in existing research on ergonomics in the workplace
- Research needs and efforts
- Outreach and assistance methods to communicate the value of ergonomics
- Increasing communication among stakeholders

The NACE Committee has been initially chartered for two years and is expected to meet two to four times annually to advise OSHA on issues related to ergonomic-related injuries. Committee members come from industry, academia, labor, legal and the medical professions.

Last April, OSHA announced its intention to reduce ergonomic injuries in American workplaces. Since then, three industries have stepped forward to work with the agency to create the first sets of guidelines...nursing homes, retail grocery stores, and poultry processing.

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3. OSHA Launches Teen Safety and Health Site

Earlier this month, OSHA unveiled a new web site designed to keep America's working teens safe and healthy while on the job.

"Every year 70 teenagers die from work-related injuries and 77,000 more are injured seriously enough to require emergency medical treatment, and that's just not acceptable," said OSHA Administrator John Henshaw. "This site is one more way to provide our young workers with the knowledge they deserve so they can have safe and positive work experiences."

The new teen site educates young workers, parents, employers, and educators on workplace safety. The site offers educational resources such as fact sheets on workplace rights and responsibilities, hazards on the job, ways to prevent injuries, work hours, job restrictions, and more. It also links to states that have special web sites or initiatives designed for young workers.

Take a look for yourself at:
http://www.osha.gov/SLTC/teenworkers/index.html

This might be a bit of information you will want to share with your employees so they can talk with their own teen workers about safety on the job.

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4. DOL EVE Awards Open for Nomination

It's time for federal contractors, including construction contractors, to consider submitting their names for consideration in the 2003 EVE AWARD program run by the Office of Federal Contract Compliance Programs (OFCCP). EVE is short for Exemplary Voluntary Efforts. The award program was begun in 1983 to honor contractors that have gone a bit further in their outreach and recruiting efforts.

Officially, the EVE Award "honors federal contractors that have demonstrated through programs or activities, exemplary and innovative efforts to increase the employment opportunities of employees, including minorities, women, individuals with disabilities, and veterans."

The awards are presented each year in a ceremony at the Department of Labor headquarters in Washington, DC, traditionally held in October.

In 2002, EVE AWARD recipients were:

- Buffalo Rock Company, Birmingham, Alabama
- Kaiser Permanente, Pasadena, California
- Kuharchik Construction Inc., Exeter, Pennsylvania
- Sea World San Diego, San Diego, California
- Valero Energy Corporation, San Antonio, Texas

There are three criteria for EVE AWARD nominees:

- Each award recipient must be a Federal contractor covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

- Nominees must not have any unresolved violations of Federal Law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must not have any enforcement actions pending, or be subject to any corrective actions or consent decrees that have resulted from litigation under laws enforced by the Department of Labor (DOL).

- The EVE Award can be for a single establishment or for the entire corporation. Recipients of the EVE and Secretary of Labor's Opportunity Award must have developed and implemented a multi-faceted affirmative action program directed toward the changing demographics of the labor force. This may include involvement in community-based projects that assist in the development of a diverse workforce for the future.

If you have made special outreach efforts, have significant involvement with community programs directed at job training or placement, or have developed special recruiting programs for minority, female, disabled or veteran candidates, you may wish to consider nominating your company for an EVE AWARD. There is a specific application process that you can learn about from your District or Regional office of the OFCCP. You will likely find someone in the Regional office who will be willing to assist you in completing the nomination package and helping you submit it to Washington for consideration. A simple phone call will locate that individual in your region.

For information about EVE AWARDS go to:
http://www.dol.gov/esa/ofcp_org.htm and select "EVE AWARDS" from the left hand menu. For information and telephone numbers for your Region office look at: http://www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm

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Gentle Readers,

This week we offer you some additional web resources that may be helpful.

Bill Truesdell
Editor

IN THIS REPORT (Report #251, 1/24/2003)
---------- (Sent to over 1,500 subscribers)

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1. OFCCP RELEASES ACTIVITY DATA ON LAST FISCAL YEAR

During the past fiscal year, the Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) actually conducted fewer compliance reviews than in prior years. Also declining were the benefits the agency secured for individuals and classes of employees in settlement of complaints and compliance review discoveries.

The number of "Glass Ceiling" or Corporate Management Reviews went up during the same period ended September 30, 2002. During FY2002 the agency conducted 42 corporate level reviews compared to 36 during the previous year.

One federal contractor, Goya Foods, was debarred during the most recent year. That compares with one debarment in FY2001 and none in each of the four years prior to that.

In place of the compliance review activity, OFCCP Compliance Officers spent nearly triple the number of hours on compliance assistance programs as the year before. That includes almost 300 workshops, seminars and town hall meetings and 500 individual contacts with contractors.

Some specific data for the FY2002:

Number of Federal Contractors (estimate)	60,000	
Number of Compliance Checks	2,359	(down 4%)
Number of Compliance Reviews Completed	4,135	(down 12%)
Number of Corporate Management Reviews	42	(up 17%)
Number of Reviewed Facilities with Violations	1,626	(down 37%)
Number Resolved with Conciliation Agreements	910	(down 54%)
Number Resolved with Notice of Compliance with Deficiency (Previous Letters of Commitment)	671	(up 25%)

Total Complaint Investigations Completed	297	(up 6%)
Remedy Agreements Resulted in	$23,921,000	(down 17%)
Number of Remedy Agreements	104	(down 50%)
Total OFCCP Staff Nationwide	730	(down 6%)
Number of Compliance Officers on Staff	411	(down 7%)

For more information see BNA's Employment Discrimination Report dated 1-1-03, Volume 20, Number 1.

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2. GOVERNMENT'S DISABILITY INFORMATION CONSOLIDATED ON WEB

When he first took office, President George W. Bush announced a plan to support people with disabilities who wish to participate more fully in the American way of life, including the work world. He called the program the New Freedom Initiative.

Last October, the Administration activated a new web site designed to offer a consolidated approach to government programs that support disabled individuals. If you look it over, you will likely conclude that it is the next best thing to one-stop shopping you can find on the subject.

There is information available in a wide range of subjects including:

- Employment
- Housing
- Health
- Technology
- Civil Rights
- Education
- Transportation
- Income Support
- Community Life

Many of these categories correspond to government departments. In those cases, the Department Secretary opens the section with a statement about the commitment of that department to support for people with disabilities. Other links offer additional information by connecting readers with both governmental- and non-governmental-links.

As an HR professional, you may well find this site of value when faced with employee needs for information about disabilities in general or specific disability issues in particular. You will likely want to add it to your bookmarked resource list.

DisabilityInfo.gov http://www.disabilityinfo.gov/

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3. FEDERAL EMPLOYEES HAVE RESOURCES FOR INFO ON BENEFITS

Several electronic newsletters are available to federal employees and members of the armed forces. They offer updates on employee benefits and other aspects of federal employment. Here are two of them:

- FEDweek

FEDweek is a FREE weekly electronic newsletter for all federal employees, postal workers and retirees. Its the largest newsletter in the federal government with now over one million weekly readers! Every week, FEDweek brings you the latest information on your federal pay and benefits, legislation, retirement & more!

o Armed Forces News
Armed Forces News is a FREE weekly electronic newsletter for all military personnel, retirees and their families. Every week, Armed Forces News gives you the latest information on military pay and benefits, legislation, retirement & more!

Anyone interested in subscribing to these publications can do so at: http://www.armedforcesnews.com

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Gentle Readers,

A new definition of "applicant" is still a ways off, but we now have an "interim" definition from OFCCP's Director, and a new Executive Order has amended affirmative action's EO 11246.

Bill Truesdell
Editor

IN THIS REPORT (Report #252, 1/31/2003)
---------- (Sent to over 1,500 subscribers)

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1. "INTERIM" DEFINITION OF APPLICANT ANNOUNCED WHILE TASK FORCE IS GRANTED ANOTHER EXTENSION

To everyone's surprise, On November 7, 2002, OFCCP Director James announced at the National Employment Law Institute Affirmative Action Briefing in Washington, D.C. that a new "Interim" OFCCP position on "Who is an applicant?" was being introduced. According to John Fox, of Fenwick & West, who was the primary presenter at the briefing, Mr. James' comments represent "podium policy" and are not likely to see their way to the written word in official circles. Yet, he made the announcement. Here's what he said:

"Those NOT minimally qualified are NOT applicants."

According to Mr. Fox on January 23, 2003, at a briefing he gave to the Silicon Valley Industry Liaison Group (SVILG), District offices have not yet heard about this new "interim" policy.

The implication for Affirmative Action Officers is clear ...

If you include "qualified" in your definition of job applicant, and an OFCCP Compliance Officer gives you problems because of it, suggest that they check up their line of management with Director James. And, tell the Compliance Officer about Mr. James' comments.

To no one's surprise the Office of Management and Budget (OMB) has granted another one-month extension to the government task force charged with updating the definition of "job applicant." OMB is also apparently prepared to grant further extensions as necessary.

The interagency task force has been working on the project for more than two years. This latest extension sets a deadline of January 31,

2003, for delivery of the new definition.

Currently, applicants are defined in a very broad way, not at all consistent with contemporary methods for recruiting in an Internet employment world according to many employers. That definition has not been updated since 1978, long before Internet resume submissions were even dreamed of, much less considered in the process of creating a definition for job applicant.

The Equal Employment Opportunity Commission (EEOC) heads the task force. Other members include the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), the Department of Justice, and the Office of Personnel Management.

Once the task force has completed its work, it must submit the new definition of applicant to OMB for approval prior to publishing it in the Federal Register for public comment.

Given Mr. James' comments last quarter in Washington, we have reason to believe minimum qualifications will be included in the definition of job applicant when it finally arrives.

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2. OMB SEEKS AGENCY INPUT ON REGULATORY REFORMS

It is normally the role of the Office of Management and Budget (OMB) to prepare a list of regulatory reforms each year and submit them to Congress for review. This year, however, OMB has decided to take a different approach. It has requested each federal agency to review a list of 316 regulations and guidance documents submitted by the public. These public recommendations were included in the 2002 Report to Congress on the Costs and Benefits of Federal Regulations.

This process is followed each year, but in 2002 the number of public submissions more than tripled from 71 in 2001. It is now the role of each agency to review the change recommendations that apply to its jurisdiction and decide if action will be taken to process them further.

The Department of Transportation received the most recommendations, followed by the Environmental Protection Agency, the Department of Health and Human Services, the Department of Labor and the Federal Communications Commission according to the Bureau of National Affairs (BNA).

BNA says the Department of Labor has already rejected the idea of modifying the mandatory pay surveys known as the Equal Opportunity (EO) Survey. In December, the Office of Federal Contract Compliance Programs (OFCCP) mailed another 10,000 of the surveys to randomly selected contractors across the country. The only change in that mailing over the previous survey mailings is the extension from 45 days to 90 days on contractor response deadlines.

OMB also asked in its report for the EEOC to consider whether the definition of "applicant" is too burdensome and if changes to the EEO-1 form expanding occupational and race/ethnic categories would also be

too burdensome and unnecessary.

For a copy of OMB's reform collection go to:
http://www.whitehouse.gov/omb/pubpress/2002-67.pdf

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3. FAITH-BASED GROUP FEDERAL CONTRACTING EXEMPTION EXTENDED

Last month, President Bush signed Executive Order 13279 allowing faith-based groups to participate in federal contracting and grants programs, and to give hiring preferences to members of their own faith.

Ordinarily, federal contractors must abide by Title VII of the Civil Rights Act of 1964, including its prohibition of employment discrimination based on religion. Under Title VII religious organizations are permitted to use religion as an employment selection criteria for jobs that are faith-based jobs.

The executive order makes clear that religious organizations that bid on contracts in amounts of $10,000 or more can make hiring decisions on a religious basis.

When Executive Order 11246 was signed in the 1960s, faith-based groups were not involved in federal contracting. In the time since, some religious organizations have become involved in federal contracting.

President Bush said at the signing, "Faith-based groups will never replace government when it comes to helping those in need, yet government must recognize the power and unique contribution of faith-based groups in every part of the country. And when the federal government gives contracts to private groups to provide social services, religious groups should have an equal chance to compete. When decisions are made on public funding, we should not focus on the religion you practice, we should focus on the results you deliver."

This new order amends EO 11246, Section 204, regarding exemptions and makes the affirmative action clause requirement of Section 202 inapplicable to religious groups that hold government contracts "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on ... of its activities."

To see the complete Executive Order go to:
http://www.whitehouse.gov/news/releases/2002/12/20021212-5.html

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Gentle Readers,

The EEOC offers new guidance on telework as a reasonable accommodation. We also offer you a new source for your compliance posters and OSHA forms. HR and OSHA forms are also available in the HR Web Store on CD-ROM. Check it out.

Bill Truesdell
Editor

IN THIS REPORT (Report #253, 2/7/2003)
---------- (Sent to over 1,500 subscribers)

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1. HR WEB STORE NOW OFFERS ALL-IN-ONE COMPLIANCE POSTERS

As part of our continuing effort to increase the resources available to you, our HR professional friends, we now offer labor law compliance posters for every state in the HR Web Store. (Go to: www.hrwebstore.com)

Actually, there have been several different posters added to our store.

1) State and Federal All-in-One Labor Law Posters include all federal, state, and OSHA posting requirements for your state. Best of all, they come in one sheet so you don't have to wrestle with individual pieces of paper. Take your pick of states. Each All-in-One poster is only $29.95. That's less than the cost of phone calls you would have to make to collect free documents from each of the agencies involved.

2) All-in-One OSHA Safety Posters put all your federal safety requirements into one poster. Save yourself time and money by using our consolidated presentations of this mandatory material.

3) Healthcare Employers' Bloodborne Pathogens Poster will satisfy the need to communicate safety procedures and hazards associated with working around human blood and blood products. Anyone in the healthcare industry will need to have this poster at each work location.

4) Federal Interview Room Poster is required for all employers with 10 or more workers on the payroll. It must be placed in the interview room, or where ever job applicants can view it.

Don't forget that state and federal requirements change often. Many new posting requirements went into effect on January 1, 2003. Now is the time to be sure you have the current information and are really in compliance.

Now you can get all of your posters from one location, in one visit.

Regardless of the quantity you need, we are ready to serve you. Won't you take a look when you have a chance. HR Web Store at www.hrwebstore.com .

And, here's a secret. We've put a discount coupon in the "What's New" department of the HR Web Store. Compliance posters are the featured product for February. You can get 10% off on any order of $150 or more during this month. But, don't wait. The offer expires on February 8th. We'll see you there.

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2. REMINDER TO BE SURE YOUR OSHA 300 INJURY & ILLNESS REPORT IS POSTED

Most employers are required to post their annual summary of injury and illness that occurred during the previous calendar year. It used to be that your report had to remain posted for only one month. Now, it must remain up from February 1, 2003 through April 30, 2003.

The summary report is called OSHA Form 300A and contains summary data that must be posted in a conspicuous place. Generally, that means where you normally post other information for your employees, including the necessary labor law posters. If you have more than one work location, be sure a copy of Form 300A appears at each of them.

The detailed injury and illness report (OSHA Form 300) must be kept for five years after the reporting year. There is no requirement to send the form to OSHA.

Before you put your Form 300A up on the bulletin board, be sure it is signed by the company owner or highest ranking management person at that work location.

If you don't have the OSHA forms you need for your safety program and reporting requirements, we have them available for you on CD-ROM in the HR Web Store. There are 15 forms on the disk in both PDF and MS Word formats so you can easily print them out, or use your MS Word program to fill in the data and then print them.

The disk costs only $29.95 but can help you prevent fines of $7,000 or more. OSHA Forms 300, 300A and 301 are included in this package. You also get forms for Accident-Exposure Investigation, Employee Safety Meeting records, Safety Suggestions, Safety Training, Accident Reports, Facility Inspections, and Hazard Communication along with several others. This CD-ROM is designed to help you place your organization in compliance with safety regulations.

Take a look at the HR Web Store and order your copy today.
www.hrwebstore.com/products/OSHAformsCD.htm

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3. EEOC RELEASES FACT SHEET FOR TELEWORK AS ACCOMMODATION

The Equal Employment Opportunity Commission (EEOC) released a new fact sheet on telework (telecommuting) as a reasonable accommodation for employees with disabilities. The fact sheet was posted on the Commission's web site on February 3, 2003. You can access it at:
http://www.eeoc.gov/facts/telework.html

The new guidance explains the ways that employers may allow an individual to work at home as a reasonable accommodation, including through existing company telework programs.

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to the physical and mental limitations created by a disability. Employers can use existing telework programs to meet this obligation. However, it may be necessary for the employer to waive certain eligibility requirements, such as rules requiring employees to work for one year before applying for the program. Even employers who do not have an existing telework program may need to allow disabled employees to telecommute as a reasonable accommodation.

"The fact sheet provides a guided approach for employers and employees to explore telework and to determine if it would be a workable solution for both parties," said EEOC Chair Cari M. Dominguez.

The fact sheet addresses the following questions:

1. Does the ADA require employers to have telework programs?
2. May permitting an employee to work at home be a reasonable accommodation, even if the employer has no telework program?
3. How should an employer determine whether someone may need to work at home as a reasonable accommodation?
4. How should an employer determine whether a particular job can be performed at home?
5. How frequently may someone with a disability work at home as a reasonable accommodation?
6. May an employer make accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home?
7. How can employers and individuals with disabilities learn more about reasonable accommodation, including working at home?

Gentle Readers,

There are some new developments at EEOC and OFCCP both this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #254, 2/14/2003)
---------- (Sent to over 1,500 subscribers)

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1. OFCCP UPDATE ON EO SURVEY

Only about 10,000 Equal Opportunity (EO) Surveys were distributed to federal contractors last December. The year before, nearly 50,000 were sent out. Unlike the last round of surveys, this current round was allowed 90 days to respond. The deadline is February 28, 2003.

If you have an EO Survey in hand, the government has acknowledged that it will take you 21 hours to complete your 12-page form. That is about half the amount of time some contractors are saying it actually requires. If you figure it will take between 20 and 40 hours, you will be in the ballpark.

On January 30, 2003, the Office of Federal Contract Compliance Programs (OFCCP) published in the Federal Register its intention to request a two-year extension on its distribution of 10,000 EO Surveys per year. The public, including federal contractor community, is invited to submit written responses to that proposed extension. All responses must be in by March 31, 2003.

They should be sent to: Ms. Hazel Bell, U.S. Department of Labor, 200 Constitution Ave., NW, Room S-3201, Washington, DC 20210. You may call with questions to 202-693-0418. Their FAX number is 202-693-1451 and their TTY number is 202-693-1308. By email, you can reach Ms. Bell at hbell@fenix2.dol-esa.gov . Comments should only be submitted in one form, mail, FAX or email. You can find the announcement in the Federal Register on January 30, 2003, Volume 68, Number 20, Pages 4797-4798.

If you are one of the 10,000 contractors who received EO Surveys this year, some new exemptions have been announced. From Mickey Silberman, Affirmative Action Practice Group Leader at Jackson Lewis law firm in New York, comes the announcement that OFCCP has approved the following conditions as exemptions:

1) There is an open compliance review in the establishment.
2) The establishment has received a scheduling letter at any time prior to February 28, 2003.
3) The establishment still has open its progress report phase following a recent compliance review.
4) The establishment has had a compliance review during the past two years.

5) The establishment does not have 50 or more people on any one day at this location during the 12-month reporting period. Simply pick that day as the reporting data date and it's over.

None of these exemptions was available to any of the contractors who received surveys in years past. This is new for the current round of 10,000.

While all EO Surveys MUST be returned, they do not all have to contain employee data. If you have one or more of the exemptions in one or more of your establishments, here's what to do:

In the framed box at the lower left of page one, check the little box and write in the reason you are not submitting data on this survey. Then, on page two, complete the certification in the lower right-hand box. Be sure it is properly signed and submit your survey without data.

When asked if the OFCCP had published these exemptions in writing, Mr. Silberman said they had not. The Deputy Regional Director who attended the meeting said he was aware of the exemptions, but had not seen anything in writing concerning them.

We called the EO Survey Policy Assistance Help Desk, staffed by OFCCP personnel in Washington, DC. (You can reach them, too, by calling 1-800-397-6251.) We were told that, yes, contractors could use the exemptions, as long as they returned their surveys with the proper sections completed on pages 1 and 2.

Even though it is not in writing, it appears to be official. Mr. Silberman estimated that up to 20% of contractors to whom this cycle of surveys was mailed may be able to "opt out" by using one of these exemptions.

By the way, if you are reading this feeling lucky because you haven't had a current-year survey show up on your desk, you might want to do some checking. The reason is, all 10,000 surveys were sent to "Chief Executive Officer" at each of the establishments. In large organizations, absent an individual name, it could take quite a while to route to the Affirmative Action Officer. Talk with your CEO's office just to be sure nothing was received from OFCCP. Even if it's still sitting there, you have only until February 28 to get your response back to the government.

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2. EEOC TO DROP OPPOSITION TO MANDATORY ARBITRATION REQUIREMENTS

According to the law firm of Orrick, Herrington & Sutcliffe LLP, the Equal Employment Opportunity Commission's (EEOC) Office of Legal Counsel has announced it will recommend a reversal of EEOC policy on employers' mandatory arbitration requirements.

This has been a point of contention between the employer community and EEOC since 1997 when the EEOC published its opposition to mandatory binding arbitration.
(www.eeoc.gov/press/7-10-97.html)

At that time, employers were seemingly rushing to develop policies that required employees to give up their right to pursue employment discrimination claims in court through the implementation of mandatory binding arbitration policies.

The Commission said that it was permissible to have policies offering "voluntary" alternative dispute resolution programs to resolve employment discrimination disagreements. However, requiring employees to participate in mandatory programs was not permitted.

Now, it seems, that position will be changing. The proposal the Office of Legal Counsel will forward to the Commission for its consideration will include the following requirements:

- Arbitrators must follow substantive statutory discrimination law.
- All remedies including punitive damages as available under federal discrimination law and injunctive relief.
- Traditional burdens of proof.
- Regular statutes of limitations for filing claims.
- Impartial and fair method of selecting arbitrators.
- Arbitration agreements to be in writing and contain traditional statutes of limitation.
- Nothing in the arbitration agreement can interfere with the EEOC's right to investigate and pursue any claim even those going to arbitration.

The Commission is expected to issue guidance in this area before year end.

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3. USERRA PROTECTS FMLA RIGHTS OF MILITARY RESERVISTS

Many employers are seeing workers called up for military service these days. Not only are reservists of the major military branches involved, but National Guard members and others as well.

If your organization has had this experience, be sure you make a note that these people fall under special rules related to the Family and Medical Leave Act (FMLA) when they return to work following their military tour of duty.

National Guard and reservists returning to civilian occupations after serving in support of current military operations should have their active duty time counted towards their eligibility to take time off from work under the FMLA.

Under ordinary circumstances, a worker becomes eligible for leave under the FMLA after working for a covered employer for at least 12 months, during which he or she completed at least 1,250 hours of work. The U.S. Department of Labor says that employers should count the months and hours that reservists or National Guards would have worked if they had not been called up for military service towards FMLA eligibility.

The months and hours that the employee would have worked, but for his or her military service, should be combined with the months employed and the hours actually worked to meet the 12-months and the 1250 hours of employment required by FMLA.

Questions about eligibility should be referred to the Veterans Employment and Training Service (VETS) or to the Wage and Hour Division. State directors for VETS are listed at www.dol.gov/vets and local Wage and Hour Division offices can be found at www.dol.gov/esa/whd or by calling the toll-free number 1-866-487-9243.

Gentle Readers,

Who would you like to work for if you were seeking a job and had a disability? A new survey gives us some hints. If you have employees on military leave, we point you to a new resource you may find helpful. And, finally, we are on notice that OFCCP is targeting larger employers for compliance reviews.

Bill Truesdell
Editor

IN THIS REPORT (Report #255, 2/21/2003)
---------- (Sent to over 1,500 subscribers)

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1. TOP EMPLOYERS FOR PEOPLE WITH DISABILITIES

Careers & the disABLED magazine has published results of its annual reader survey. Readers were asked to name employers in both the public and private sectors for whom they would most like to work or that they believe would provide a progressive environment for people with disabilities.

Fifty "winners" were listed in the private sector, and twenty government agencies were also listed.

In the private sector the top 15 employers were:

1. Wal-Mart Stores
2. IBM
3. Microsoft
4. Verizon
5. Citibank
6. Avis Rent-A-Car
7. Fidelity Investments
8. General Motors
9. Sprint
10. American Express
11. Ford Motor
12. Pitney Bowes
13. Lockheed Martin
14. State Farm Insurance
15. Northrop Grumman

The top 10 government employers were:

1. Social Security Administration (SSA)
2. Federal Bureau of Investigation (FBI)
3. Central Intelligence Agency (CIA)
4. Federal Aviation Administration (FAA)
5. U.S. Department of Defense (DOD)
6. National Aeronautics & Space Administration (NASA)
7. Internal Revenue Service (IRS)

8. U.S. Postal Service (USPS)
9. Federal Reserve Bank
10. Patent & Trademark Office (PTO)

Readers were also asked to make suggestions to empoyers for working with people with disabilities. Here are a few of the comments the survey received:

- Be fair.
- Don't be afraid to hire us.
- Make accommodations when needed.
- Treat and respect us equally. Don't talk down to us.
- Ask questions - don't assume. Be aware that no matter how diversity sensitive you may be, people with disabilities experience discrimination - both subtle and overt everyday.

For the complete results, see the Winter 2002/2003 issue of Careers & the disABLED (Volume 17, No. 2), Equal Opportunity Publications, Inc., 445 Broad Hollow Road, Suite 425, Melville, NY 11747. Subscriptions are $10 per year with payment; $12 per year with invoice. 631-421-9421 www.eop.com

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2. EMPLOYER RESOURCE GUIDE FOR MILITARY LEAVES

There is an organization, headquartered in Arlington, VA, called Employer Support of the Guard and Reserve. The organization has a web site at
http://www.esgr.org/contents/download/ESGR_HR_Guide_Final.pdf

If you visit their web site you will find, among other things, a 30-page "Employer Resource Guide" containing tips for civilian employers and fact sheets about the law allowing military leaves of absence from civilian employment.

There is also a list of scores of companies that have gone beyond minimum legal requirements in support of guard and reserve members who are employees in their organizations. Perhaps your organization is on that list. If not, perhaps it should be.

The site is supported by such prestigious companies as EMS Technologies, General Dynamics, Lockheed Martin, and Microsoft Licensing Inc.

If you have guard or reserve members in your workforce this web site could be a good resource for you.

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3. OFCCP TARGETING LARGER EMPLOYERS WITH REVIEWS & OUTREACH

If you are a federal contractor, it's likely that you are wondering what the Office of Federal Contract Compliance Programs (OFCCP) has planned for FY 2003.

Charles James, National Director of OFCCP, told the Bureau of National Affairs (BNA) that his agency would not be targeting any specific industry for the 3,000 to 4,000 compliance reviews it expects to conduct this year. However, OFCCP does plan to direct its review efforts at larger contractor organizations, and will also include in its review schedule more corporate management reviews. Those are often referred to as "glass ceiling" reviews.

It may be interesting to note that in all of the corporate management

reviews the agency has conducted over the past several years, it has not once found a case of illegal discrimination. That may be significant if someone were to use that result to counter the claim that there is a "glass ceiling" in corporate America.

Compliance assistance is the real focus of Mr. James' efforts at OFCCP. He has consistently said since taking the job that getting contractors to comply is his primary mission. It is more efficient in his view to have contractors monitor their own activities and assure compliance. He says helping them do that is something his agency will be spending more time on this year.

Enforcements efforts during last year resulted in 4,135 completed reviews, 581 fewer than the year before. Last year OFCCP secured nearly $24 million for victims of discrimination including $9 million in back pay. While the total dollars recovered fell by about $5 million from the year before, the back pay awards remained at nearly the same level.

It may be difficult to think of an enforcement group as "kinder and gentler," but all indications point to OFCCP's sincerity in wishing to help contractors before they are selected for a compliance review. If you have compliance questions, you may wish to give them a try by calling your local District or Region Director. Interesting to note...according to a call we made to the National Director's office...the position of "Ombudsman" has been eliminated from the national office. There is no longer a single point of entry to OFCCP for contractors with problems or questions. That means working through the agency management hierarchy is the only remaining approach for dealing with questions, problems, or issues of concern.

Gentle Readers,

The definition of job applicant is no longer the cause of OFCCP compliance review cases remaining open indefinitely. The agency is sending letters to contractors to close those cases. And the EEOC is going to pilot a new mediation program in another effort to do more with less.

Bill Truesdell
Editor

IN THIS REPORT (Report #256, 2/28/2003)
---------- (Sent to over 1,500 subscribers)

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1. OFCCP CLOSING REVIEWS THAT WERE HANGING ON APPLICANT DEFINITION

You may have been the lucky recipient of a closure letter from the Office of Federal Contract Compliance Programs (OFCCP) ending your compliance evaluation. If so, you are apparently among many around the country.

According to an internal agency memo read to us by one official, Charles James, National Director of OFCCP, announced at a Washington, DC conference hosted by the Equal Employment Advisory Council (EEAC), his agency is reducing the backlog of cases that have been held open because of disagreement about the definition of job applicant.

Many contractors across the country have wondered what happened to their compliance evaluations over the past several years. They were presented with Conciliation Agreements which they refused to sign because they disagreed with the government definition of job applicant. In almost all such cases the review was left open, pending resolution of the applicant definition issue. Contractors didn't get any closure, but neither did they get any additional compliance reviews in those establishments. (The government can't initiate more than one compliance review at a time in any one establishment.)

According to Mr. James, OFCCP is sending out closure letters that contain boilerplate language closing compliance reviews until the definition of applicant is resolved through the regulatory change process.

The Office of Management and Budget (OMB) has extended its deadline for the Equal Employment Opportunity Commission (EEOC) and OFCCP along with other agencies to complete their work on redefining job applicant. The new deadline is March 31, 2003.

If the definition of job applicant was the only sticking point in your compliance review, you can expect that OFCCP will be sending

you a closure letter in the near future.

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2. EEOC TO EMPHASIZE MEDIATION IN CURRENT YEAR

Alternative Dispute Resolution (ADR) has been with us for many years. This year, Cari Dominguez, Chair of the Equal Employment Opportunity Commission (EEOC), has said she will begin a new pilot program using mediation to resolve complaints.

The new program, expected to begin in the near future, will rely on existing mediation plans currently in use at large employer organizations. Because it will be a pilot program, it will only be tried at four or five of the EEOC's District offices. Only employers that have pre-approved internal mediation programs will be eligible to participate. Approval will be determined by EEOC based on a specific set of criteria.

Under the pilot mediation effort, a complaint could be placed in abeyance for 60 days at the option of the charging party so both parties can resolve the dispute using the employer's mediation process. Participation in the program will be voluntary and the complaining employee will not be required to give up any rights under Title VII of the Civil Rights Act of 1964. If a resolution cannot be reached in 60 days, the EEOC will process the charge as if there had been no attempt at mediation.

According to the Bureau of National Affairs (BNA) EEOC Compliance Manual (1-31-2003) any employer who is selected for this program will have to meet the following criteria:

- Participation in the program must be voluntary.
- The internal mediation program must be at least one year old.
- The internal mediation program must have clearly written procedures that have been communicated to employees.
- No fee may be charged to use the mediation program.
- The internal mediation program must include issues and claims made under the laws enforced by EEOC.
- Resulting settlements must be in writing and enforceable in court.
- The program must advise employees in writing that EEOC charge filing time limits are not tolled while they participate in the employer-provided program.

It is expected that from 10 to 20 employers will be asked to participate in this initial trial.

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3. EEOC CHARGE ACTIVITY JUMPED 4.5% IN PRIVATE SECTOR LAST YEAR

The Equal Employment Opportunity Commission (EEOC) last fiscal year took in 84,442 complaints of illegal employment discrimination, an increase of 4.5% over the previous year.

The average time required for EEOC to process a private sector charge declined by 6% to 171 days. Case inventory continued to drop, down to 29,041 or 11% lower than fiscal year 2001.

Here is a breakdown of the charges from last year by type:

- 29,910 alleged race discrimination (up 3.5% from FY 2001)

- 25,536 alleged sex/gender discrimination (up 1.6% from FY 2001)
- 22,768 alleged retaliation (up 2% from FY 2001)
- 19,921 alleged age discrimination (up 14.5% from FY 2001)
- 15,964 alleged disability discrimination (down 3% from FY 2001)
- 9,046 alleged national origin discrimination (up 13% from FY 2001)
- 2,572 alleged religious discrimination (up 21% from FY 2001)
- 1,256 alleged Equal Pay Act violations (unchanged from FY 2001)

For more information go to: http://www.eeoc.gov/press/2-6-03.html

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Gentle Readers,

While we were sleeping ...

This week, some news from OFCCP and a comparison of Workers' Compensation premium rates in all states.

Bill Truesdell
Editor

IN THIS REPORT (Report #257, 3/14/2003)
---------- (Sent to over 1,500 subscribers)

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1. VETS-100 REPORT RULES FINALIZED

On February 14, 2003, the Department of Labor (DOL) published its final rules governing how federal contractors determine minimum and maximum employee count on form VETS-100. You will find the four-page document at: http://www.access.gpo.gov/su_docs/aces/aces140.html

While outlining some alternative ways for that determination, the final paragraph of the rules say, "...any reasonable method of computation of the maximum and minimum number of employees is considered acceptable."

The VETS-100 report requires contractors to report, for each hiring location, the number of protected veterans by job category, and number of new hires, including protected veterans hired during the reporting period covered by the report.

To permit contractors flexibility in how they determine the maximum and minimum number of employees, DOL published an Interim Final Rule (66 FR 65452, December 19. 2001) that withdrew the language specifying how contractors were to determine the maximum and minimum number of employees. The requirement to report those numbers remained.

DOL has decided to permit contractors to utilize any reasonable method for those computations. Consideration of whether a procedure is reasonable will include how the employer normally maintains records about its employees and whether the employer has been consistent in its methodology for counting employees across reporting cycles.

DOL has suggested it will accept numbers determined according to the following methodologies:

- Methodology Based on Organizational Structure
- Methodologies Based on Payroll Systems
- Methodology Based on Company Headcount

Specific examples are addressed in the Federal Register document.

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2. BFI WASTE SYSTEMS DEBARRED BY OFCCP

BFI Waste Systems of North America Inc. has been debarred for six months by the Office of Federal Contract Compliance Programs (OFCCP). Charged with violating a conciliation agreement by failing to enhance its minority recruitment efforts and by failing to hire and provide back pay to an African American female job applicant, the company may not bid on or enter into government contracts during the life of its debarment.

Debarment was imposed by ruling of a Department of Labor (DOL) Administrative Law Judge in OFCCP v. BFI Waste Systems, DOL ALJ, No. 03-OFC-2, 1/7/03.

BFI Waste Systems denied violating the executive order and did agree to enter into a consent decree lasting for two years. If, after six months, the company has convinced the Director of OFCCP that it is in compliance with Executive Order 11246, the debarment will be lifted for the balance of the consent decree period.

BFI is the second company to be debarred from federal contracting since the Bush administration took office.

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3. CALIFORNIA WORKERS' COMPENSATION PREMIUMS TOP ALL STATES

According to a new study by the Oregon Department of Consumer and Business Services, California leads the nation in cost to employers of Workers' Compensation. It is based on 2002 data.

Here are the ten most expensive states for workers' compensation premiums and the ten least expensive...

Highest Workers' Compensation Premiums

Rank	State	Index Rate
1	California	5.23
2	Florida	4.50
3	Hawaii	3.48
4	Delaware	3.38
5	Rhode Island	3.29
6	Texas	3.29
7	Louisiana	3.19
8	New York	3.13
9	Montana	3.04
10	Nevada	3.02

Lowest Workers' Compensation Premiums

Rank	State	Index Rate
42	South Carolina	1.82
43	Iowa	1.74
44	Utah	1.67
45	Washington	1.65
46	Arizona	1.63
47	Arkansas	1.62
48	South Dakota	1.61
49	Virginia	1.50
50	Indiana	1.37
51*	North Dakota	1.24

*District of Columbia is included in the list to raise the total number to 51.

California has the distinction of a rate 116% of the number two state (Florida) and 422% of the least expensive program in North Dakota. In recent years, multiple premium increases in California have not been accompanied by any cost cutting measures.

Gentle Readers,

The top story for Affirmative Action employers this week is that we are still at least three months away from knowing the government's proposal for defining job applicant.

Bill Truesdell
Editor

IN THIS REPORT (Report #258, 4/4/2003)
---------- (Sent to over 1,500 subscribers)

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1. JOB APPLICANT DEFINITION ANOTHER THREE MONTHS AWAY

The definition of job applicant is still at least three months away. The Office of Management and Budget (OMB) has been asked to approve another three-month extension for the task force delivery of its work.

Should we be surprised? Probably not. The Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and others working on the problem are all "civilian" government entities. These days, the only activity of note in Washington, DC is that related to the war effort. None of the civilian agencies are drawing much attention, and they certainly don't want to create any controversy that might detract attention from the war effort.

You can expect that this sixth request for a three-month extension will be granted by OMB without so much as a second thought. Affirmative Action employers don't have quite so much to worry about these days, though, because the Office of Federal Contract Compliance Programs (OFCCP) has decided to withdraw its insistence that contractors agree with its definition of job applicant. It has taken action to begin closing those still-open compliance reviews that were pending resolution of the applicant issue.

Whether or not we see a proposed definition come forward at the end of June will depend in large part on whether or not the war in Iraq has concluded by that time. If it hasn't, look for more extensions in three-month increments.

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2. DEPARTMENT OF HOMELAND SECURITY IMPLEMENTS CHANGES

The U.S. Department of Homeland Security (DHS), newest cabinet-level government department, has recently announced changes involving some of its agencies.

What used to be called the Immigration and Naturalization Service (INS) is now known as the Bureau of Citizenship and Immigration Services (BCIS). You will find them at a new web address: www.immigration.gov BCIS is responsible for all worker-related visa processing, including H-1B visas. If you have any workers on your payroll who have been granted

H-1B visas, you will want to familiarize yourself with this new government contact information. "Green Card" processing for alien residents is also handled in this newly named agency.

Immigration as an organization was split in two with the new structure. The border patrol portion of the old organization has joined the Customs organization in what is now known as the Bureau of Customs and Border Protection (CBP). Also an agency within DHS, CBP became effective on March 1, 2003, and has begun setting up its new management structure with the appointment of interim field management directors.

This is one government department that is receiving a lot of attention because of world events and you can expect that processing times for immigration issues will suffer at least temporarily while the new structure is implemented and procedures developed. You will find their new web site at: www.whitehouse.gov/deptofhomeland/

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3. BUSINESS ETHICS DEPENDS ON LEADERSHIP

All we have to do is look around in our corporate environment and we can see evidence of leadership ... some of it good, and some of it bad. Bad leadership causes organizations to falter and even collapse. Witness ENRON among others.

There are still some strong organizations in the world. Perhaps you are a part of one of them. If they weren't in the majority, our entire system of business would have collapsed by now. So, we need not despair.

On the other hand, when we see an example of strong leadership, willing to step up and be counted, it is refreshing, and ... reinforcing.

Such is the case with Charles Schwab Corp. On Monday of this week, the Wall Street Journal reported that the co-chief executives of that company didn't get bonuses in 2002 and GAVE BACK their stock-option grants for the past three years. These two individuals, Charles Schwab and David Pottruck, declined their awards so that more funds would be available for bonuses for other staffers, according to a Securities and Exchange Commission filing. They admitted that the company wasn't doing as well financially as they would like. Well, neither one will be going hungry with base salaries of over $800,000. Yet, in 2000, each received bonuses of more than $8 million. Giving that up voluntarily makes a strong statement and places real value in the commitment of those leaders.

According to the Wall Street Journal article, Schwab's executives are in the minority among executives taking such action. Although total compensation packages have shrunk for other chief executives many still top $10 million. For example:

- Morgan Stanley's CEO Philip Purcell received $11 million in 2002
- Goldman Sachs Group Inc.'s Henry Paulson received $12.1 million
- Lehman Brothers Holdings Inc.'s Richard Fuld received $12.5 million

Organizational culture and ethics begin at the top of any organization. What lessons can we learn from the actions of those two leaders at Charles Schwab Corp.?

(Wall Street Journal, "Schwab CEOs Decline Bonuses, Give Up Options," by Susanne Craig and Jathon Sapsford, pg C4, Monday, March 31, 2003)

Gentle Readers,

News from the IRS and EEOC might be of interest this week. Then there is a reminder to California employers about vacation policies and the need to pay for accrued vacation time.

Bill Truesdell
Editor

IN THIS REPORT (Report #259, 4/11/2003)
---------- (Sent to over 1,500 subscribers)

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1. IRS TARGETS OFF-SHORE EMPLOYEE LEASING ARRANGEMENTS

Employee leasing is a common practice through companies called Professional Employer Organizations (PEO). There is nothing illegal about employee leasing, and indeed, there can be many benefits for employers who wish to tap into larger benefit buying power for example.

However, according to John D. McKinnon, writing in the Wall Street Journal (4/7/2003), the Internal Revenue Service (IRS) has uncovered a rather widespread practice of employee leasing through off-shore companies designed to escape tax obligations. According to McKinnon, there have been advertisements in medical journals, and such arrangements were even described in a Forbes magazine article in 2001. Most such programs were targeted at physicians, dentists and other professionals.

"In a typical arrangement, a physician signs an employment contract with an employee-leasing company established in an off-shore tax haven. The company then leases his services, directly or indirectly, back to his domestic employer. The offshore company provides the physician with enough money to cover his expenses, and holds the rest offshore, sheltered from the IRS."

The IRS has a voluntary compliance initiative in place that will allow offshore tax evasion participants to receive forgiveness for civil fraud and information return penalties. That program expires on Tuesday, April 15th. More information is available at http://www.irs.gov/newsroom/article/0,,id=108117,00.html

If you are interested in employee leasing as a strategic approach to employee management, be sure you do a thorough investigation of the organization you wish to affiliate your company with.

One way to do that is to contact the National Association of Professional Employer Organizations. You will find them on the web at http://www.napeo.org/index-j.html . They offer referrals to member companies in virtually all geographies across the country.

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2. EEOC WILL BE RESTRUCTURING TO SAVE MONEY

As reported by the Bureau of National Affairs (BNA) in its EEOC Compliance Manual the Equal Employment Opportunity Commission (EEOC) will begin a process of restructuring to reduce its budget requirements.

The detailed recommendations come from an independent analysis of EEOC at its request. The National Academy of Public Administration (NAPA) conducted the study and made the recommendations. Among those recommendations were:

- Establishment of a national call center for complaint intake
- Establishment of a system for electronic charge filing
- Reorganizing EEOC's Washington, DC headquarters to better align functions, improve coordination, and reduce management review levels
- Reduce the number of field offices from 51 to something less

According to Cari Dominguez, EEOC Chair, the agency is spending 11 percent of its $320.4 million budget on rents.

Dominguez has established an internal EEOC task force to review and analyze the NAPA report and recommendations. The effort will be known as Operation Kaizen, after the Japanese management principle meaning continuous improvement. She expects that some of the NAPA recommendations will be adopted and others may not be accepted.

NAPA is an independent, nonprofit organization chartered by Congress to improve governance at all levels. EEOC funded the report, which was written by a five-member panel of fellows headed by Singleton Beryl McAllister.

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3. CALIFORNIA VACATION RULES ARE STILL IN DOUBT BY SOME

Some employers in California are still wondering about the requirements for paid vacation policies. The requirements have not changed for the past 21 years, yet new folks come into human resource management positions and have to start the learning process from the basics.

Here is the question:

"If you grant vacation leave in California, can you make it mandatory to take all 40 hours in one year. Can you remove the hours if they do not take them?"

Here is the answer:

There is no requirement, in California or any other state, that private employers offer paid vacation to workers. However, once paid vacation is offered, California imposes some requirements for how it is managed.

Since 1982's California Supreme Court case, Suastez v. the Plastic Dress-Up Company decision, employers have been prohibited from having a "use it or lose it" vacation policy. This decision said that vacation time accrued by employees through the year must be paid for at the time of termination just as if it were actual work time.

If an employer's policy requires people to use all their vacation time in the year it is earned, any unused time at the end of the year must be "cashed out" by the employer. It cannot be abandoned as unpaid time. The new year may begin with zero vacation hours carried over.

Any employer who allows vacation time to be carried over from one year to the next should reflect the value of that vacation time on their financial records as a liability that must be settled in future payment, either by the employee actually taking time off or by the company paying for the value of that accrued time.

Subsequent to the Suastez decision, these requirements were entered into the California Labor Code as Section 227.3.

Gentle Readers,

Next week is "Take Our Daughters and Sons to Work" day. The DOL has released its proposed changes for the FLSA overtime exemption categories and is seeking comments. And, you might need to change your Internet browser bookmark for the OFCCP web site.

Bill Truesdell
Editor

IN THIS REPORT (Report #260, 4/18/2003)
---------- (Sent to over 1,500 subscribers)

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1. DOL SUBMITS PROPOSAL FOR MODIFYING EXEMPTIONS TO FSLA

The U.S. Department of Labor (DOL) has published proposed rules that would update the Fair Labor Standards Act (FLSA) regulations speaking to overtime exemptions. You can find the notice in the Federal Register on March 31, 2003, Vol. 68, No. 61, Page 15560. If approved, these changes would impact 29 CFR Part 541.

These proposals would revise regulations implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions are often referred to as the FLSA's "white collar" exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than specified minimum amounts.

The basic "duties" tests were originally established in 1938 and revised in 1940. The duties tests were last modified in 1949 and have remained essentially unchanged since that time. The "salary basis" test has remained essentially unchanged since 1954. The salary levels required for exemption were last updated in 1975, and the amounts adopted at that time were intended as an interim adjustment. Suggested changes to the part 541 regulations have been the subject of public commentary for years, including a review of the regulations by the U.S. General Accounting Office (GAO) in 1999. GAO recommended that the Secretary of Labor comprehensively review and make necessary changes to the part 541 regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends.

Here are the proposed criteria (tests) for each of the exemptions from overtime requirements:

- Executive Exemption
  - Minimum salary of $425 per week
  - Primary duty of management of the enterprise of a recognized department or subdivision
  - Customarily and regularly directs the work of two or more other employees
  - Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other changes of status of other employees is given particular weight)

- Administrative Exemption
  - Minimum salary of $425 per week
  - Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
  - Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level skill or training

- Learned Professional Exemption
  - Minimum salary of $425 per week
  - Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience

- Creative Professional Exemption
  - Minimum salary of $425 per week
  - Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

- Computer Employees Exemption
  - Minimum salary of $425 per week
  - Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software of system functional applications; or (B) design, development, documentation analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user of system design specifications; or (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.
  - Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.

- Outside Sales Employees Exemption
  - No salary test required
  - Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer
  - Customarily and regularly engaged away from the employer's

place or places of business

If you wish to make comments about these new proposals, address them to Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210. All comments are due by June 30, 2003.

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2. APRIL 24 IS TAKE OUR DAUGHTERS AND SONS TO WORK DAY

Once again, the Ms. Foundation is sponsoring "Take Our Daughters and Sons to Work Day." This is the tenth year the organization has encouraged employees and employers to include young people in the workplace for a day.

The age group targeted is 8- to 12-year-olds. In its initial years the program was intended to expand girls' understanding of career opportunities and encourage equal opportunities for women in the workplace. Since then, boys have been encouraged to participate.

A complete explanation of the program is available on the group's web site at www.daughtersandsonstowork.org

The organization has developed an eight-page activities guide for employers and offers it in PDF format at www.daughtersandsonstowork.org/user-assets/PDF/Activities_4_pp2.pdf

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3. OFCCP WEB SITE ADDRESS CHANGED

The Department of Labor has been trying to "clean up" its web sites by consolidating those of individual agencies into the master site address. The Office of Federal Contract Compliance Programs (OFCCP) operated its own web site for many years. That site address is no longer available.

Now, if you wish to see OFCCP on the web you must use the new address, which is part of the Department of Labor site. You will find it at: http://www.dol.gov/esa/ofccp/index.htm

Gone is the availability of news and new developments. There is simply no link to those types of features. There is a cool organization chart, however, with colored boxes that identify functions. There is no link from any box on the organizational chart to additional information or contact help.

The OFCCP Key Personnel page lists the five headquarters executives and their phone numbers. That's helpful if you need to get in touch with an executive. Regional Directors are also listed if you follow leads to individual pages for each region. District offices are not listed anywhere, so getting in touch with a District Director, if you don't know the phone number, requires calling the Regional Office for that information.

Compliance Assistance is seriously underdone. For example, clicking on Executive Order 11246 from the Compliance Assistance page will produce links to questions & answers concerning the Equal Opportunity Survey (EO Survey) but will offer precious little help for anyone wishing to learn more about affirmative action plan requirements.

There is no more information available to actually help contractors with disabled or veteran AAP development or implementation. Regulations can be accessed from the site, but without some explanation, those regulations don't offer much help to someone with a substantive question.

That leaves attorneys and consultants as the only viable source of information about AAPs. If you have questions, call us. AAPs are our business.

Gentle Readers,

If you are a California employer, you should take action now to assure your supervisors and managers are trained in the new reporting requirements for serious job injury or death. The penalties have increased by a factor of 10 for failing to properly report such accidents.

Bill Truesdell
Editor

IN THIS REPORT (Report #261, 4/25/2003)
---------- (Sent to over 1,500 subscribers)

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1. CALIFORNIA FATALITIES/SERIOUS ACCIDENTS HAVE NEW REPORTING PENALTIES FOR 2003

Thanks to a new law in California, employers now face penalties ten times greater for failure to report a job-related death or serious injury. AB 2837 has become effective and requires employers to immediately report any work-related accident resulting in a serious injury or death. Cal/OSHA defines "immediately" to be "as soon as practically possible, but no longer than eight hours after the accident.

The major change in this requirement is that of the civil penalty that will be assessed for failure to meet the 8-hour deadline. It is now a MINIMUM of $5,000. Before this new law went into effect, the minimum penalty was only $500.

Emergency response providers are required to file a report with Cal/OSHA when they attend a workplace accident that has resulted in serious injury or death. Employers should not forget, however, that they too must file a report with Cal/OSHA. Do not rely on the emergency service provider's report to get you off the hook. It won't.

This new legislation also provides that employers, officers, management officials, or supervisors who KNOWINGLY fail to report a death to Cal/OSHA or KNOWINGLY induce another to do so are guilty of a misdemeanor. Penalties for such behavior can be up to one year in jail, a fine of up to $15,000 or both. Corporations or limited liability companies could be fined up to $150,000.

This new law requires Cal/OSHA to develop procedures/methods to involve the local district and city attorneys in fatality investigations.

Of course, we don't ever want anyone in our workforce to be injured, let alone be killed on the job. Yet, as a responsible employer, you should now include these requirements for immediate reporting in your management and supervisory training programs. It is unacceptable and unfair to have untrained supervisors and managers when the stakes have just increased to this extent.

If you would like to see the list of information that you must include in the report, go to:
http://165.235.90.100/DOSH/NoticeJan2003.html

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2. CONTROVERSIAL PROPOSAL FOR TELEWORK BY EEOC TRIAL ATTORNEYS

In January of this year, the Equal Employment Opportunity Commission (EEOC) Inspector General Althea Brown submitted a report to the Commission suggesting that implementation of a telework program at the agency could save money, particularly in the trial attorney section. Specifically, the report said that work done by the "trial attorneys, administrative judges, investigators, and mediators is well suited for frequent telework."

In her report, Ms. Brown estimated that a three-year trial program in Dallas, Los Angeles, Miami and Washington, D.C. would result in considerable cost savings. The report suggested that if desired savings could not be reached through voluntary participation by EEOC employees, management could stimulate participation through a mandatory participation requirement.

The agency's regional attorneys were upset by the Brown report and have told EEOC Chair Cari Dominguez that trial attorneys must work closely together to achieve the agency's stated goals of "impact" and class action proceedings. Attorneys in the agency's New York office were forced to work from home for a year following the September 11, 2001, World Trade Center collapse. EEOC offices were in the WTC complex. The litigators have said that two or three days of telecommuting each week is excessive, inefficient and "damaging to the work trial attorneys do to support EEOC's mission."

A great deal of energy is being spent by the EEOC these days in an effort to reduce expenses. According to Ms. Dominguez her agency will come up $18.3 million short in this fiscal year which ends on September 30, 2003. That large a shortfall could mean the Commission would have to furlough ALL of its employees for 19 days. She has appealed to Congress for additional money to prevent the furlough. If money isn't found and a furlough is necessary, about 10,000 private sector complaints and 1,200 federal sector complaints will not be resolved. In addition, the agency's attorneys would not be able to respond to court needs in any of their litigation cases.

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3. ADEA CASE ACCEPTED BY U.S. SUPREME COURT

The U.S. Supreme Court announced this week that it will hear a case of "reverse discrimination" based on the Age Discrimination in Employment Act of 1967 (ADEA).

Dennis Cline and 195 other employees of General Dynamics Land Systems, Inc. brought suit against their employer after their labor union, the United Auto Workers, and General Dynamics entered into a new collective bargaining agreement. The agreement took effect July 1, 1997. Before that date, the parties had been bound by a collective bargaining agreement that obligated General Dynamics to provide full health benefits to retired workers who had accumulated 30 years of seniority. With one exception, the new agreement no longer required General Dynamics to provide full health benefits to retirees. That exception held that only employees 50 years of age or older on July 1, 1997, remained eligible to receive full health benefits upon retirement.

As a result, Mr. Cline and the other employees sought, and obtained, a determination from the Equal Employment Opportunity Commission (EEOC) that the new contract adversely affected General Dynamics employees who were between the ages of 40 and 49 on July 1, 1997.

The District Court dismissed Mr. Cline's suit at the request of General Dynamics, saying the ADEA did not provide for protection of members of the over 40 group against other members of the over 40 group.

Writing for the majority in the Sixth Circuit Court of Appeals, Circuit Judge Ryan said, "There is no doubt that the facts of this case are unusual and fall outside the typical ADEA claim, in that the plaintiffs were younger than the employees who were to receive health benefits upon retirement under (the new contract). But the fact that some members within the protected class were beneficiaries of the discriminatory action of which other members of the protected class ... were victims, does not somehow suspend the language of the statute, which prohibits age discrimination against 'any individual' within the protected class."

The Sixth Circuit overturned the District Court ruling, saying the employees should have an opportunity to try their case. Now the U.S. Supreme Court will hear arguments in the matter and presumedly determine if the ADEA protects some workers who are over 40 against other workers who are also over 40.

We will let you know how things turn out after the decision is made.

General Dynamics Land Systems, Inc. v. Dennis Cline, et al. (02-1080). U.S. Court of Appeals for the Sixth Circuit, January 21, 2003 (00-3468)

Gentle Readers,

News from the EEOC this week along with a new U.S. Supreme Court ruling that will interest small employers.

Bill Truesdell
Editor

IN THIS REPORT (Report #262, 5/2/2003)
---------- (Sent to over 1,500 subscribers)

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1. SUPREME COURT SAYS TO COUNT OWNERS AS EMPLOYEES

When the Clackamas Gastroenterology Associates, P.C. in Oregon terminated the employment of Deborah Anne Wells as bookkeeper, she sued the medical clinic for unlawful discrimination on the basis of disability under Title I of the Americans With Disabilities Act (ADA).

The clinic said that it wasn't covered by the ADA because it didn't have 15 or more employees for the 20 weeks required by the law.

In this case, it was undisputed that the accuracy of that assertion depends on whether the four physician-shareholders who own the professional corporation and constitute its board of directors are counted as employees. If they are employees, the ADA suit may proceed. If they are not employees, there is no ADA jurisdiction.

Justice Stevens wrote the majority opinion for the Court. He said it is appropriate to rely on the Equal Employment Opportunity Commission (EEOC) guidance on this question.

"The EEOC argues that a court should examine whether shareholder-directors operate independently and manage the business or instead are subject to the firm's control. Specific EEOC guidelines discuss the broad question of who is an 'employee' and the narrower one of when partners, officers, board of directors' members, and major shareholders qualify as employees. The Court is persuaded by the EEOC's focus on the common-law touchstone of control and specifically by its submission that each of six factors are relevant to the inquiry whether a shareholder-director is an employee."

The opinion went on, "Because the District Court's findings appear to weigh in favor of concluding that the four physicians are not clinic employees, but evidence in the record may contradict those findings or support a contrary conclusion under the EEOC's standard, the case is

remanded for further proceedings."

The EEOC's six factors for determining employee status are:

- Whether the organization can hire or fire the individual or set the rules and regulations of the individual's work.
- Whether and, if so, to what extent the organization supervises the individual's work.
- Whether the individual reports to someone higher in the organization.
- Whether and, if so, to what extent the individual is able to influence the organization.
- Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts.
- Whether the individual shares in the profits, losses and liabilities of the organization.

(EEOC Compliance Manual Section 605:0009)

While the EEOC does not assert that these six factors are "exhaustive" they do reflect that as the Court's opinion said, "an employer is the person, or group of persons, who owns and manages the enterprise. The employer can hire and fire employees, can assign tasks to employees and supervise their performance, and can decide how the profits and losses of the business are to be distributed. The mere fact that a person has a particular title -- such as partner, director, or vice president -- should not necessarily be used to determine whether he or she is an employee or proprietor."

If you would like to read the entire 17-page ruling, go to:
http://www.supremecourtus.gov/opinions/02pdf/01-1435.pdf

(Clackamas Gastroenterology Associates, P.C. v. Wells, U.S. No. 01-1435, 4-22-03)

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2. NEW EEOC GUIDELINES FOR MULTI-NATIONAL EMPLOYERS

The Equal Employment Opportunity Commission (EEOC) has issued new guidelines for multi-national employers to address legal responsibilities for U.S.-based operations. Similar guidelines were created and published for U.S.-based employees of foreign-owned corporations.

Find these new references at:

Employers: http://www.eeoc.gov/facts/multi-employers.html
Employees: http://www.eeoc.gov/facts/multi-employees.html

Multinational employers that operate in the United States or its territories -- American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands – are subject to EEO laws to the same extent as U.S. employers, unless the employer is covered by a treaty or other binding international agreement that limits the full applicability of U.S. anti-discrimination laws, such as one that permits the company to prefer its own nationals for certain

positions.

U.S. EEO laws do not apply to non-U.S. citizens outside the U.S. or its territories. Employers that are incorporated or based in the U.S. or are controlled by U.S. companies and that employ U.S. citizens outside the United States or its territories are subject to Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act.

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3. NAOMI C. EARP IS NEW VICE CHAIR AT EEOC

On April 28, 2003, Naomi C. Earp was sworn in as the new Vice Chair of the Equal Employment Opportunity Commission (EEOC). She will serve the remainder of a five-year term expiring July 1, 2005. President Bush signed the recess appointment of Ms. Earp on April 22nd. Under the recess appointment, she will serve until the end of the 108th Congress unless she is confirmed by the Senate in the interim. The President nominated Ms. Earp on November 27, 2001, and again on January 9, 2003.

You can read the full story about her appointment by going to:
http://www.eeoc.gov/press/4-28-03.html

Currently, the Commission members are:

Chair	Cari M. Dominguez	Term Expires: July 1, 2006
Vice Chair	Naomi C. Earp, Esq	Term Expires: July 1, 2005
Commissioner	Leslie E. Silverman, Esq	Term Expires: July 1, 2003
Commissioner	Paul Steven Miller, Esq	Term Expires: July 1, 2004
Commissioner	Vacant	

Gentle Readers,

There is only one article in this week's Report. If you care about, work with, or belong to a public sector employer organization in California, you will want to continue reading. If you don't, you can file this report in an appropriate location.

Bill Truesdell
Editor

IN THIS REPORT (Report #263, 5/9/2003)
---------- (Sent to over 1,500 subscribers)

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1. NEW CALIFORNIA LAW CONFLICTS WITH FEDERAL REGULATIONS

California State Senator Polanco and State Assembly Member Diaz authored a bill in 2001 that was passed this last August, signed by Governor Gray Davis and became law on January 1, 2003. It has to do with government employment and contracting, and it directs public agencies to do things in direct conflict with federal regulations. (SB 1045)

The rub is that the state directs public sector entities to compute underrepresentation by comparing each minority group and women to that group's representation in the current civilian labor force in the jurisdiction of that agency. (Government Code 11139.6(b)) Overall civilian labor force numbers represent everyone from laborers to eye surgeons and gives no opportunity to compare incumbents with qualified workforce in the recruiting territory.

Federal regulations, however, say that availability of minorities and women must be computed by separately determining the availability for each job title within each job group in the reasonable recruiting area. (41 CFR 60-2.14(g))

Many public sector entities in California are just learning of this new law, while some agencies have no idea it exists.

Proposition 209, enacted by the voters on November 5, 1996, amended the California Constitution by adding Section 31 to Article I to ban discrimination or preferential treatment based on race, ethnicity, and gender in the operation of public employment, public education, and public contracting.

SB 1045 declares the Legislature's intent to support the concepts of Proposition 209, and specifically authorizes governmental agencies to engage in various general recruitment and outreach programs and focused outreach activities to increase diversity in public employment and public contracting.

Three years ago, in an August 1, 2000, report to the Governor by the Governor's Task Force on Diversity and Outreach, recommendations were made to gather data about minority-owned, women-owned and disabled veteran-owned businesses that are awarded contracts by state government departments or agencies. SB 1045 requires state departments and agencies to collect this information and forward it to the Governor's

office on or before July 1 of each year. The new law also authorizes each local agency receiving state funds to collect that same information and forward it to the Governor's office annually.

These annual reports must include dollar values of contract awards for the following categories of contractors:

(a) Construction
(b) Architecture and engineering and other professional services
(c) Procurement of materials, supplies, and equipment
(d) Information technology procurements

If you would like a copy of SB 1045, go to the following address, select the 2001-2002 legislative session, then enter 1045 as the bill number to search for.

http://www.leginfo.ca.gov/bilinfo.html

For a copy of the federal regulations, go to

http://www.dol.gov/esa/regs/cfr/main.htm

and select 41 CFR Chapter 60 from the list. On the next page select 60-2, and then 60-2.14 from the list on the following page.

If you are an HR professional in a public sector entity within California, or work for the state itself, you will want to discuss this conflict of legal expectations with your attorney. For years there has been a political argument raging in public sector organizations around the state about using general population data to determine availability versus using occupational data reflecting the qualified people in the available workforce. Until this year the state had no written directives upon which employers could rest their argument. Now that there is a definitive state requirement to use general civilian workforce data you can expect to see the arguments increase. This new controversy between federal and state expectations will more likely fan the flames rather than quench them.

You will have to resolve this conflict as you and your legal advisors feel best. There will undoubtedly be political influences as well. Think it through and do what's best for your organization.

Gentle Readers,

This week we share with you some Internet resources you may find helpful when picking your way through federal bureaucracy. We also found some new information about older disabled people brought to light in a recent study. Then, log a new resource on dealing with hate violence offered by the California DFEH.

Bill Truesdell
Editor

IN THIS REPORT (Report #264, 5/16/2003)
(Sent to over 1,500 subscribers)

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1. GOVERNMENT WEB SITES FILLING IN THE GAPS

Part of President Bush's eGovernment strategy, announced earlier in his term, is to provide citizens with access to government information and services with no more than three mouse clicks.
http://www.whitehouse.gov/omb/

Out of that effort have grown some rather interesting web sites, and services that go with them. If you haven't visited any of these locations yet, you might find them helpful both personally and professionally.

www.FirstGov.gov - Designed as the primary federal government portal for U.S. citizens. Here you will find access to on-line passport implications, driver's license renewal, applications for government jobs, social security applications and a neat government benefit determination engine that can tell you, after a few questions, what federal government benefits you might be eligible to receive. You can easily move into any of the federal agencies from this one point of entry. It is well thought out and cleverly designed.

www.regulations.gov - This web site is not as intuitive as FirstGov. Yet, once you figure out that the initial selections should be made in the top right corner of the page, you will be on your way to easily determining what is currently happening in the proposal of federal regulations. I was amazed at how fast the search engine returned a summary of the active proposals. The beauty is that you don't have to wade through hundreds of regulatory proposals you don't want to get to the ones you do want.

www.govbenefits.gov - This is a direct entry into a sorting process that allows you to determine which current government benefits programs you may be eligible to receive. You can go directly, or through links from other sites such as www.FirstGov.gov.

www.recreation.gov - If you have an interest in playing or relaxing on government land, this site is for you. You are offered a U.S. map from which you can select the specific geography of interest.

In addition there are active links to such things as:
State Tourism Sites
National Scenic Byways
National Register Travel Itineraries
National Recreation Trails

Unfortunately, the U.S. Department of Labor is lagging behind. True, they have combined their two sites for the Office of Federal Contract Compliance Programs (OFCCP) into one, and eliminated much of the confusion created in the past. Yet, on the current site, there is no link to press releases from the agency, for example. And, updates are made only infrequently. As best we can tell the last update is several months old as of this writing.

Every government agency is being given a grade rating (from A to F) for the accomplishments they have made in using electronic means of conducting their business. We haven't seen any of the grades given out in the first year of the program, but we would have to give DOL a failing grade because of their slowness in dedicating resources to this fine communication tool. For the past 10 years, we have been talking with DOL officials about the need for utilizing their web site as a communication tool. And, for that long, officials have been promising improvements. Someday, it may actually happen.

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2. AARP STUDY RESULTS AVAILABLE ABOUT OLDER AMERICAN FEARS

The AARP's Public Policy Institute (PPI) has released results of its recent study of fears faced by older disabled Americans. It seems that losing independence is the number one fear of older people with disabilities.

Although the great majority of Americans 50 and older don't have disabilities, this issue eventually will affect almost everyone, directly or indirectly, says Mary Jo Gibson, an AARP policy adviser and lead author of "Beyond 50: A Report to the Nation on Independent Living and Disability."

"Most people -- at some point in their lives -- will need help with such simple, everyday tasks as bathing, cooking and shopping," she says. "And most families will step up to the plate to help their older members."

The good news, she says, is that options for independent living are increasing. The bad news is that many of the most vulnerable -- those with lower incomes or severe disabilities -- are being left behind.

The report is based largely on findings from the first-ever national survey of Americans 50-plus with disabilities, bolstered by data from other research. It is the third report in AARP's "Beyond 50" series, which examines midlife and older Americans' progress in such areas as economic security and health.

The 1,102 survey respondents constituted a diverse mix in terms of type of disability, age of onset, life experiences, gender and race. Even so, Gibson says, a common theme emerged: the need for independence to maintain dignity in their lives.

To learn more about the study or to download a copy of the document go to: http://research.aarp.org/general/beyond_50.html

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3. CALIFORNIA DFEH PUBLISHES NEW GUIDELINES ON HATE

The California Department of Fair Employment and Housing (DFEH), the state's Fair Employment Practices agency, has published a new set of guidelines entitled, "Responding to Hate: Rights, Remedies, Prevention Strategies."

The report is in PDF format, available for download from http://www.dfeh.ca.gov/Publications/38330_DFEH.pdf

In its more than 50 pages, the report outlines suggestions for victims and witnesses, as well as victim assistance providers. It tries to explain why hate violence occurs and offers suggested prevention strategies.

Among the suggestions are these:

- Creation of a critical incident response team
- Using hate violence network interventions
- Response models for suppression of hate violence
- Incident-specific organizing for communities
- How to organize a hate violence prevention and response network

The report also cites laws and court decisions pertaining to hate violence.

It is highly recommended for anyone faced with issues such as these, whether in the workplace or other communities.

Gentle Readers,

Did you know the rules for overtime exemption qualification are being changed? In this issue, we tell you about that and the upcoming National ILG conference in Charleston, SC. You can also learn about the newly expanded mediation program trials at EEOC.

Bill Truesdell
Editor

IN THIS REPORT (Report #265, 5/23/2003)
---------- (Sent to over 1,500 subscribers)

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1. NATIONAL ILG CONFERENCE IN CHARLESTON THIS AUGUST

Anyone involved in managing employment affirmative action programs for a federal contractor should be involved in a local chapter of the Industry Liaison Group (ILG). This is an organization created by the Office of Federal Contract Compliance Programs (OFCCP) in the 1980s to bring contractors and compliance officials together for discussions and learning. OFCCP may not use information gleaned from ILG meetings to schedule compliance reviews of contractor organizations.

Local ILGs are volunteer organizations. Most avoid charging fees for membership. Belonging to an ILG usually requires nothing more than attending a meeting and signing the roster. The value of membership is unlimited when contractors discover a problem they have not yet faced and can turn to ILG members for suggestions. The networking opportunities are boundless.

Well, there is a National ILG, the grandaddy of all such groups. Each year, the NILG holds a national conference. The meeting location moves from year to year so folks in different parts of the country can have an opportunity to participate. National conferences require registration fees.

This year's conference is going to be convened in Charleston, SC from August 11 to 15. Cost of this year's conference is $525. That can be reduced with early registration. Here's the schedule:

Register before June 1, 2003 (Early Bird)	$425
Register between June 1 and July 23	$475
Register after July 23	$525

You can register on-line at www.nilg-conference.com . Hotel accommodations have been reserved for the conference at the Embassy Suites and a special conference rate is available through July 14. Once the block of rooms is gone, the special room rate will be gone with it. More information is available on the conference web site.

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2. RULES FOR FLSA EXEMPTIONS ARE BEING REVISED

The U.S. Department of Labor (DOL) has published a proposal for revising the way overtime exemptions are established under the Fair Labor Standards Act (FLSA). The public has until June 30, 2003, to file its comments about the proposal. If you have any of your employees classified as "EXEMPT" from overtime, you will want to review this proposal.

To get a copy of the proposal, go to www.regulations.gov and in the top right corner of the page, select "Labor Department" from the pull-down menu. On the next page select "Wage and Hour Division." That should bring up a brief summary of the new proposed regulations. It also gives you the chance to elect to see the entire document from the federal register. (Federal Register: March 31, 2003, Volume 68, Number 61, Pages 15559 to 15597) Officially the new regulations will be a codification of 29 CFR 541.

Here are some highlights:

- The minimum salary required for exemption in any category will increase to $425/week. ($1,841.67/month)
- A new qualifier will be created: "Employees paid $65,000 or more annually and performing non-manual work would be exempt if they have an identifiable executive, administrative or professional function as described in the standard duties test."
- Current qualifying criteria in what have been called the "long" and "short" tests will be replaced by one "standard test."

The DOL estimates that the Public Sector will save $48.5 million to $86.2 million annually when the proposal is implemented. Private sector employers are expected to absorb an additional cost of approximately $400,000 annually. Some industries will save money, while others are expected to spend more.

The DOL has been talking about revisions to the FLSA since 1979. This proposal follows a full year of meetings with stakeholders around the country.

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3. EEOC EXPANDS PRIVATE SECTOR MEDIATION PROGRAM

The Equal Employment Opportunity Commission (EEOC) has announced that it is expanding its mediation program in the private sector.

The EEOC program is considered a "pilot" effort to determine if complaints of illegal employment discrimination can be remedied through mediation by Fair Employment Practices Agencies (FEPA) around the country. The EEOC maintains contractual relationships and work sharing agreements with over 90 FEPAs nationwide to process discrimination charges filed against private employers or state and local governments.

Noting that the expansion of mediation is the centerpiece of her Five-Point Plan to improve the EEOC's operational efficiency and effectiveness, EEOC Chair Cari M. Dominguez said, "By all accounts, our National Mediation Program has proved highly successful in processing charges faster, better and cheaper in a non-adversarial fashion. We want to build upon this record of success with our FEPA partners."

This current expansion of the program will allow FEPAs in nine states to

handle mediation of charges filed with EEOC. The nine participating FEPAs are:

- The Alaska Commission for Human Rights
- The City of New York Commission on Human Rights
- The Florida Commission on Human Rights
- The Indiana Civil Rights Commission
- The Iowa Civil Rights Commission
- The Kansas City Human Relations Department
- The Ohio Civil Rights Commission
- The New Mexico Department of Labor
- The South Carolina Human Affairs Commission

The launch of the FEPA Mediation Pilot follows the recent implementation of a "Referral Back" Mediation Pilot for private employers, in which discrimination charges filed with the EEOC will be referred back to a participating employer's internal dispute resolution program, as appropriate. Both pilots stem from the overwhelming success of the EEOC's National Mediation Program, the largest Alternative Dispute Resolution (ADR) program of its kind.

In 1999, EEOC conducted more than 44,000 mediations, resolving over 29,000 charges and obtaining over $400 million in benefits for aggrieved individuals, all within an average processing time of 86 days. A recent study conducted by independent university professors with expertise in ADR found that over 91% of charging parties and 96% of employers that have participated in EEOC mediation would use the program again if they were a party to a future charge.

For more information, go to the EEOC web site at www.eeoc.gov .

Gentle Readers,

The BIG news this week is that the EEOC has published its intent to revise the EEO-1 form. We tell you what it will look like if the EEOC proposal is adopted.

Bill Truesdell
Editor

IN THIS REPORT (Report #266, 6/13/2003)
---------- (Sent to over 1,500 subscribers)

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1. EEOC RELEASES DRAFT OF NEW EEO-1 FORM ASKING FOR COMMENTS

On Wednesday, June 11, 2003, the Equal Employment Opportunity Commission (EEOC) published a notice in the Federal Register announcing its intention to update the EEO-1 form. Written comments must be sent to the EEOC before August 11, 2003.

All employers with 100 or more employees on the payroll, and all federal contractors with 50 or more employees, must file an annual report showing their headcount by race-sex breakdown. Called the EEO-1 Report, this form is part of a family of forms designated Special Form 100. Other Form 100s concern themselves with different types of employers. The EEO-1 collects data from private sector employers. The EEO-4 collects data from public sector employers. The EEO-2 applies to joint labor-management committees. EEO-3 collects data from local Unions with 100 or more members. EEO-5 and EEO-6 are data collection forms for educational organizations such as public elementary and secondary schools, colleges and universities. They have been included in Department of Education forms that collect other data.

The EEO-1 form has been a controversial data collection instrument for many years. Employers, especially federal contractors, have claimed that it took too much time to complete and could produce only diluted information to the government. Others have seen the Special Form 100 family as the only means of collecting employee information showing race/sex information along with occupational categories.

Whatever you may think about it, the EEO-1 form is not likely to be going away any time soon. As a matter of fact, the current plan to modify the form and its categories is clear indication that the form will be with us for a long time to come.

Here are the key changes proposed by the EEOC:

1) In accord with changes made in 1997 to the Standards for the Classification of Federal Data on Race and Ethnicity, "Hispanic or Latino" will be separated from "race" categories and sex data will be reported separately for

Hispanic ethnicity. All "Non-Hispanic or Latino" individuals will be reported in one of six race categories by sex.

2) The race categories will be:
   - o White
   - o Black or African American
   - o Asian
   - o Native Hawaiian or Other Pacific Islander
   - o American Indian or Alaska Native
   - o Two or more races

   Any employee indicating a heritage of two or more races will be reported in this column. The specific combinations of multiple races will not be reported.

3) The Officials and Managers job category on the current form will be expanded into three categories and renamed. They will be called Executive/Senior Level Officials and Managers, Mid-Level Officials and Managers, and Lower-Level Officials and Managers.

4) Professionals, Technicians and Sales Workers will remain the same. Office and Clerical will change to Administrative Support Workers.

5) Service Workers will move from category #9 to category #6 and Craft Workers, Operatives and Laborers and Helpers will move down accordingly.

6) Totals will be required for both rows and columns.

7) Totals will also be required for columns showing the previous year employee counts.

To learn more, and to see a PDF version of the actual port format, go to www.eeoc.gov/eeo1 . You can also obtain a copy of the Federal Register notice at the same web site.

Gentle Readers,

There may be more changes to federal rules about reporting on veterans if a DOL advisory committee has its way. Mixed-motive discrimination cases are once again addressed by the Supreme Court. And, the number one question we get from California employers and employees alike is about vacation and sick leave policies. We tell you the question and the answer right here.

Bill Truesdell
Editor

IN THIS REPORT (Report #267, 6/20/2003)
---------- (Sent to over 1,500 subscribers)

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1. DOL CONSIDERS DROPPING VETS-100 REPORT

From BNA Affirmative Action Compliance Manual update comes the news that during its recent quarterly meeting, the advisory committee on Veterans' Employment and Training, recommended dropping the yearly Federal Contractor Veterans' Employment Report VETS-100 Form. The advisory committee advises the Labor Secretary.

Any federal contractor with contracts of $25,000 or more is required to report annually the number of workers it employs, including the number of veterans. That threshold rises to $100,000 on December 1, 2003.

The requirement, while modeled after affirmative action programs and partly designed to promote the hiring of veterans, does not sanction employers that do not hire veterans. This renders the reports useless, said Committee Chairman James Magill, who is also Veterans of Foreign Wars' director of employment policy.

"If you want to get veterans into contracting positions you have to make it as painless as possible and not keep adding layer upon layer of bureaucracy," said Magill.

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2. DIRECT EVIDENCE OF DISCRIMINATION NOT ALWAYS NECESSARY

A new U.S. Supreme Court decision has concluded that "Direct evidence of discrimination is not required for a plaintiff to obtain a mixed-motive jury instruction under Title VII." The case is Desert Palace, Inc., DBA Caesars Palace Hotel & Casino v. Costa (No. 02-679,

6/9/2003).

The Civil Rights Act of 1991...which provides, among other things, that (1) an unlawful employment practice is established "when the complaining party demonstrates that...sex...was a motivating factor for any employment practice, even though other factors also motivated the practice," and (2) if an individual proves a violation under [that 1991 law], the employer can avail itself of a limited affirmative defense that restricts the available remedies if it demonstrates that it would have taken the same action absent the impermissible motivating factor.

In this case, Ms. Costa was the casino's only female warehouse worker and heavy equipment operator. She had problems with management and her co-workers, which led to escalating disciplinary sanctions and her ultimate termination. She sued the employer for sex discrimination.

The District Court instructed the jury that if Ms. Costa proved by a preponderance of the evidence that sex was a motivating factor in the adverse work conditions imposed on her, but the employer's actions were also motivated by lawful reasons, Ms. Costa was entitled to damages unless the company could prove by a preponderance of evidence that it would have treated her similarly had gender played no role. The jury awarded Ms. Costa backpay and compensatory and punitive damages. The Ninth Circuit Court of Appeal reversed the District Court's decision, saying at first by panel, that the judge should not have given the jury the mixed-motive instruction. The full Ninth Circuit, however, reinstated the judgment, finding that the 1991 Act does not impose any special evidentiary requirement.

The U.S. Supreme Court obviously agreed with the final circuit court ruling.

What does it mean to employers?

Mixed-motive situations will cause employers problems. It is not OK for an employer to illegally discriminate by considering a protected status while making an employment decision, even if other factors considered would have resulted in the same decision.

Employers should remind their management people that sex is just one protected factor that is "off limits" when determining who to hire, fire, or give compensation treatment to. Be sure you check with your state to determine what other factors are protected against consideration in employment decision making.

Want your copy of the 15-page decision? It's easy to get one. Simply go to: http://www.supremecourtus.gov/opinions/02pdf/02-679.pdf

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3. CALIFORNIA VACATION & SICK LEAVE QUESTIONS KEEP POPPING UP

We get more questions about vacation and sick leave policy requirements in California than for any other subject. Here is another one on the subject you might find interesting...

Q. I had an agreement with my boss to have no cap on my sick leave or

vacation leave. I have been working hard for 3 years and taken minimal absences for vacation or sick days. Just recently I looked at my paystub and my vacation hours were cut from 140 to 109 and my sick leave from 90 to 39 hours in one pay period. When I asked my employer he said he never agreed to this and so he just "took" the hours away. I have heard that he must either offer me to take the time off immediately or give me the cash value before any change can be made to the sick/vacation hours that I have accrued?

A. In California vacation policies are governed by the Labor Code. Employers are not required to offer vacation to employees. However, once they do, they are prohibited from a policy known as "use it or lose it." In 1982, the California Supreme Court in a case called Suastez v. the Plastic Dress-Up Company made that ruling. It was subsequently entered into the Labor Code as Section 227.3. Today, policies are permitted that cap vacation hours as are policies that prohibit carry over from one year to the next. However, in those instances, any unused and accrued vacation time must be paid out in cash just as if it were work time. Withholding is required on such payments.

The same is not true of sick leave time. It is still permitted to have a sick leave policy that contains a cap or prohibition against carry over. No payment is required for unused sick leave time that has been accrued.

Gentle Readers,

This week, there is both good news and bad news. The bad news is that the applicant definition issue continues to languish with a new deadline extension. The good news is the 6th Edition of our book, "Secrets of Affirmative Action Compliance" has returned from the printer and is ready for shipping.

Bill Truesdell
Editor

IN THIS REPORT (Report #228, 6/7/2002)
---------- (Sent to over 1,500 subscribers)

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1. FREE PUBLICATIONS AVAILABLE FROM CALIFORNIA EMPLOYMENT DEPT.

California's Employment Development Department (EDD) offers many free publications that can benefit employers. Among them are the following titles you may find interesting:

- California Sign Language Interpreter Referral Agencies Resource List (GCEDP)
- A Guide to Planning Accessible Meetings (DE8380)
- Language Guide on Disability: A Primer On How To Say What You Mean To Say (DE6031)
- The Ten Commandments of Communicating with People with Disabilities
- Supervising Adults With Learning Disabilities

The department requests employers to allow six weeks for delivery of their publications after an order is placed. To order, write to:

California Governor's Committee
For Employment of Disabled Persons
P.O. Box 826880, MIC 41
Sacramento, CA 94280-0001

In your request, state the title you wish and the number of copies you need up to 200 copies per title. They will be mailed to the address you specify in your request.

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2. CHARGING INTERNS FOR THEIR JOB EXPERIENCE?

On June 4, 2002, the Wall Street Journal ran a story about interns who pay for the privilege of working for employers over the summer

months. According to the article, 13 interns with one placement program each paid from $650 to $1,600 for their internships.

You may have already guessed that these programs are being developed and promoted by various universities or their affiliates. Students are registered in the program during the summer and sometimes are required to attend weekly seminars related to their intern assignments.

One such program is run by the Public Leadership Education Network in Washington, DC. The network, PLEN, prepares young women for leadership roles.

It seems too good to be true. Get an eager, bright employee for the summer and it won't cost you a thing as the employer. Well... as with most such things, it probably is too good to be true.

University career centers are split on their opinions of these programs. Some say the experience for young people is worth its weight in gold. Others say they don't encourage their students to pay for internships. There are plenty of opportunities available where students can work for no pay or receive some pay and gain the same experience. Some students have said they believe pay-for-your-internship programs are scams. In most such programs the students receive college credit for having participated.

Be careful to check your state requirements related to minimum wage payments. In California, for example, it is illegal to have someone performing work that benefits the employer without paying that person minimum wage or more. (There are some specific exemptions to that requirement having to do with training programs for the disabled. Eligible employers must meet certain requirements and receive advance approval from the Labor Commissioner before paying less than minimum wage.)

As always, we recommend that you check with your labor or management attorney to determine what eligibility you may have in your state before embarking on a sponsorship for one of these internship programs.

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3. CALIFORNIA DFEH OPENS THREE MEDIATION OFFICES TO COVER STATE

California's Department of Fair Employment and Housing (DFEH) has announced the opening of three offices to provide mediation services on employment discrimination complaints. One office will be in San Diego serving Southern California and the other two will be in Santa Clara and Fresno serving Northern California.

DFEH has been experimenting with third-party mediation for a year. It's pilot program began in May 2001.

On May 21, 2002, the Department announced the awarding of contracts to mediators in three of its regions. Two mediators have been contracted to provide services in Santa Clara, three have been signed up for San Diego and one has been selected for Fresno.

According to the DFEH, this is the first state-wide program of its kind in the country. Employees with complaints of illegal job discrimination have only been able to seek Department resolution in the enforcement process. Of course, with a "Right to Sue" letter, they are entitled to prosecute their case in state court. Now, with this new program, employers will find they have an option not available in the past. Employers can elect to mediate a resolution to the complaint, and in doing so, keep the issue and themselves out of court.

Andrea Rosa, Deputy Director of the DFEH, is in charge of the mediation program. For more information, visit their web site at www.dfeh.ca.gov

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Gentle Readers,

This week, there is both good news and bad news. The bad news is that the applicant definition issue continues to languish with a new deadline extension. The good news is the 6th Edition of our book, "Secrets of Affirmative Action Compliance" has returned from the printer and is ready for shipping.

Bill Truesdell
Editor

IN THIS REPORT (Report #268, 7/11/2003)
---------- (Sent to over 1,500 subscribers)

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1. NEW EDITION OF AFFIRMATIVE ACTION BOOK READY FOR SHIPPING

We are delighted to tell you that the 6th edition of our best selling book, "Secrets of Affirmative Action Compliance," is now ready for shipping. It has been updated with the latest information about Department of Labor activities and has been expanded to include requirements for Construction Contractors under 41 CFR 60-4. We have also added a detailed example of IRA calculation for terminations.

This newest edition boasts 520 pages AND we have maintained the price at $99.95 per copy. As a way of saying "Thank You" to each of you, our subscribers, we have created a special discount coupon good for a $10 discount on every copy you purchase through the HR Web Store (www.hrwebstore.com) between now and August 4, 2003. When you go to www.hrwebstore.com/products/AAP6.htm and order your personal copy, simply enter this Coupon Number at check out and your purchase will be credited with the $10 discount for each copy of the book you order ... (Coupon Number 253698). This is one way we can say thank you for your subscription and support of our business.

You can save even more money by ordering the new edition on CD-ROM in PDF format. The same book in this electronic format is priced at only $49.95. While there is no coupon for this version of the new edition, we think you will agree that half-off is a very good deal.

If you have responsibility for affirmative action in your organization, you will want a copy of this newest edition on your book shelf as a key reference. The cost is less than half that of the competition, and many have said there is more value in our publication. We invite you to see for yourself.

The first 100 copies of the print version sold will be autographed and numbered.

Don't forget ... the discount coupon expires on August 4th, 2003. Order your copy today.

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2. APPLICANT DEFINITION POSTPONED FOR ANOTHER THREE MONTHS

Federal contractors have been waiting for years to learn what the government will finally determine is the definition of job applicant. The Equal Employment Opportunity Commission (EEOC) is leading the group of agencies working on the issue. The group was directed to deliver its definition by June 30th for public comment. Officially, the task force agencies are still reviewing the final draft of their work. Unofficially, there remains disagreement among representatives of the Department of Justice, EEOC and the Office of Federal Contract Compliance Programs (OFCCP). It appears the OFCCP is at odds with other agencies.

In any event, the new deadline, set by the Office of Management and Budget (OMB) is September 30, 2003. Perhaps something will be forthcoming by that date.

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3. OSHA FINALIZES RECORDKEEPING RULES, ELIMINATING MSDs

The Occupational Safety and Health Administration (OSHA) announced on June 30, 2003, that it has dropped proposed provisions that would have required employers to record work-related musculoskeletal disorders (MSDs). The proposal to require employers to use a separate column to track MSDs on the new OSHA 300 form would have gone into effect on January 1, 2004.

Employers and the Society for Human Resource Management (SHRM) suggested to OSHA that there "is no way to assess the originating cause of the injury or to determine how much work-related activities contributed to the injury."

Knowing when ergonomics injuries occurred has always been a problem for OSHA regulators. Complications arise when trying to determine how much weight to give to factors such as non-work related activities, genetics and age.

OSHA has invited public comment on two issues in its most recent Federal Register posting. One issue is whether or not to reinstate the MSD column on the OSHA 300 form. The question remains, "Would the statistics generated by an additional column of information be superior to the statistics now generated by the BLS?"

The second issue OSHA invites comments on is, "If a separate column is included for MSD injuries and illnesses, what definition of MSD should be used?"

This final rule on recording and reporting occupational injuries and

illnesses will become effective on January 1, 2004.

For a copy of the Federal Register posting, go to http://www.access.gpo.gov/su_docs/fedreg/a030630c.html and look for "Occupational Safety and Health Administration" on the list of agency postings. You can get a copy of this document in either HTML or PDF format.

Gentle Readers,

We had a new experience last weekend, one that we would like to share with you. Learning new things is always exciting.

Bill Truesdell
Editor

IN THIS REPORT (Report #269, 7/25/2003)
---------- (Sent to over 1,500 subscribers)

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1. ROSIE THE RIVETER AND WAR-TIME EXECUTIVE ORDERS

If you are over the age of 40, chances are you have heard of Rosie the Riveter, even though you might not know much about her or where the name came from.

As with many such subjects, over time, the origin of "Rosie the Riveter" has become clouded. Some people say she was a real living worker. Others say she was a composite created from characteristics of many women workers at the time. The most likely story, however, is that a government propaganda writer created the idea of Rosie as a symbol of American strength and determination.

Over 12 million American men joined the ranks of military units deployed around the world during World War II. Their departure left vast holes in industrial workforces at home. The American government created a campaign using Rosie the Riveter to entice American women into industrial jobs essential to the war effort.

For the first time, women remaining at home were learning to work in factory jobs, as journalists and as drivers, farmers, mail delivery personnel, garbage collectors, builders and mechanics.

In the aircraft industry, women were assigned to rivet aircraft bodies in huge assembly plants. General Eisenhower has been quoted as saying that women provided significant help in winning the war, specifically praising their work in factories making the DC-3 airplane. (The military version of this passenger liner was dubbed the C-47, for cargo aircraft.) It was this airplane that transported supplies into the front lines and moved wounded soldiers to rearward hospitals, saving many lives in the process.

In Richmond, California, Henry Kaiser built three massive shipyards on San Francisco Bay. It was at these yards the company made Liberty Ships, 441 feet long transporters of men, women, equipment and

supplies. It wasn't long after the bombing of Pearl Harbor that Kaiser was given contracts to create the construction yards and begin producing ships. It was Kaiser workers who developed the techniques for welding rather than riveting ship components, reducing the overall manufacturing time significantly. While there weren't many riveters at the west coast Kaiser ship yards, there were plenty of welders...many of them women.

Some interesting things were happening around the same time. Beginning in 1939 when the war in Europe officially began, the American government was concerned about making war material available to our allies, particularly the British. Despite the sense of urgency, there were deeply seated biases in the country regarding employment of minorities and women in jobs traditionally held by white males.

The problem became so serious, that President Franklin D. Roosevelt issued an executive order in the middle of 1941 that all defense-related jobs be filled without consideration of race, creed, color, or national origin. It was the first time our government had issued such a non-discrimination policy related to jobs. (Look for Executive Order 8802, dated June 25, 1941. Point your browser to http://www.eeoc.gov/35th/thelaw/e0-8802.html) This executive order predates all other job-related equal employment opportunity and affirmative action executive orders and legislation. It took a war to cause it to happen.

When the word went out around the country that there was "ship building in California," thousands of people migrated to the San Francisco Bay area. At the war's height, women, many of them African-American, made up more than a quarter of the Kaiser shipyards' 90,000 workers. From 1942-1945, nearly 500,000 African-Americans migrated to California, about 15,000 to Richmond alone. It was the largest voluntary black westward migration in the nation's history according to Dr. Shirley Ann Wilson Moore, a history professor at California State University in Sacramento.

In 1945, the minimum wage was increased to 40 cents an hour. You could buy a gallon of milk for about 62 cents and a loaf of bread cost 9 cents. An average new car, such as Ford or Chevrolet, cost around $1,000. Luxury cars were much more expensive, fetching $2,500 and up.

That same year, Congress made an effort to pass an Equal Pay for Equal Work bill, but those efforts fell short. It wouldn't be until 1963 that such legislation would finally succeed. (An additional 22 years were required to gain the political support for requiring that women be paid equally with men for doing the same work.)

While Rosie the Riveter may not have been a real person, there was another symbol of war-time production that seemed to pop up everywhere. You may have seen reference to it in your history books. The symbol was "Kilroy was Here," showing a pair of eyes and nose with fingers on each side as though looking over a fence. Kilroy was named after James Kilroy, an inspector of rivets at the Fore River Shipyard in Quincy, MA.

In the 1970's, the City of Richmond, CA began spending what would become $15 million on cleaning up the old Kaiser shipyard sites. And,

they began planning a memorial for all the women who had worked so hard to support the American war effort.

Where shipyard No. 2 once stood is now a beautiful city park. And, in that park, is a 441 foot long memorial representing the Liberty Ships built by those 90,000 workers in those three war years. There are granite slabs along a concrete path representing the ship's keel. On those slabs are carved quotations from women workers at the shipyards. They tell a story about a group of people who had never been given a chance to do such work before, discovering that they did have the talent and abilities needed. And, from that realization came the pride that they were helping support their husbands, brothers, cousins, fathers and friends who were in the shooting part of a war for freedom many thousands of miles away.

Rosie the Riveter may not have been a real person. But, the image is very real...and it lives on in that memorial to a collection of individuals with a spirit that refused to be defeated.

That's what I did this past weekend. I visited Rosie.

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2. DEADLINE APPROACHING FOR $10 SAVINGS ON NEW AAP BOOK

Don't forget that August 4, 2003, is the last day you can use the $10 coupon for savings on the new 6th Edition of "Secrets of Affirmative Action Compliance." The coupon only applies to orders entered through the HR Web Store (www.hrwebstore.com). And, only you, as one of our valued subscribers, knows to use coupon number 253698. This special savings offer is not being shared with anyone other than current subscribers.

If you need a reference for your affirmative action planning efforts, there is none better on the market. Until August 4th you can get your personal copy at $10 off the already below-market price of only $99.95. Not only the best reference, but the least expensive available.

Remember, the first 100 orders will receive autographed copies of the new edition. Get yours today!

Gentle Readers,

This week we are introducing some exceptional HR resources. You will want to look them over, even if you don't have a current need. There is going to be a time when you will want to have help from these products.

Bill Truesdell
Editor

IN THIS REPORT (Report #270, 8/1/2003)
---------- (Sent to over 1,500 subscribers)

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1. LABOR LAW POSTER REQUIREMENTS IN REMOTE LOCATIONS

A client recently wrote to us asking the following question:

"We are trying to make sure we're in compliance with respect to federal postings. In our own facilities, we know we have met the requirements, but we are wondering about those people we send out to work at client locations for as much as months at a time. Do we have to provide employment posters for only one or two people at each location?"

This is an interesting question because having workers at remote locations is more and more common these days. Employers are having people work from their homes or at customer locations. Under those circumstances, only one or two people may be at a given address for the employer.

The regulations say that all employers must provide employment posters for every work location. There is no qualifier for the number of people who must work at an address before posters are required. Therefore, if there is only one person at an address, employment posters are required. (29 CFR 1903.2(a)(1) and 29 CFR 903.2(b))

If you have people working at a client location and the client has employment posters as required, you can count that as a location in compliance as long as your people have access to those posted materials at least once per day and the materials are current.

It is when there are no other posters present in the work location that a problem arises. Not many people want to glue or staple employment posters to the wall in their home office. So, what can be done?

The solution is available in what is called the "Mobile Poster Pak." Each Mobile Poster Pak is Velobound and contains all of the employment posters you are required to put up at your work locations. As with wall-mounted posters, state requirements vary, so a different Pak is required for each state. You can order one Pak for each of your remote work locations, regardless of the number of people assigned to those

locations. If there is only one employee at a given location, one Pak is required. If that location has 3 or 6 or 12 workers, only one Pak is required. Each employee must sign a form acknowledging that they have seen the employment posters. The package must be kept in a location that permits each employee access every day. If you have two remote work locations in a given state you will need two packages, one for each address.

Cost of the Mobile Poster Pak is only $29.95, and it contains both state and federal information. These can keep you in compliance and help you avoid enforcement agency fines of up to $7,000 for not having the appropriate posters available to your workers.

Take a look for yourself. It's a small price to pay. You'll be glad you did. www.hrwebstore.com/products/MobilePosterPak.htm

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2. NEW SAFETY, FMLA AND ORIENTATION RESOURCES NOW AVAILABLE

The HR Web Store has arranged with J.J. Keller & Associates to carry many of their publications and software. These valuable resources are now available to all HR professionals through the on-line store HR and legal professionals have come to for one-stop shopping.

Here's what you will find when you visit www.hrwebstore.com ...

- FMLA Manager - software to track employee time off.
- FMLA Revealed: A Step-by-Step Approach - complete FMLA requirements to help you understand and comply with federal regulations on Family and Medical Leave Act demands.
- Human Resource Training Customizer - software covers 18 key HR topics, complete with point-by-point outlines, support information, discussion ideas, and more.
- HR Orientation for Employees - 25-minute video and leaders' guide covering 10 important HR issues.
- Workplace Safety Orientation for Employees - 25-minute video and leaders' guide covering basic OSHA requirements and encouraging employees to think "safety first."
- Workplace Emergency & Disaster Plan Customizer - software that includes 12 topics, helping you decide which apply to your situation, then writes your plans for you.
- Safety Plan Customizer - software that creates your safety plan for you.
- Forklift Safety: An Operator Training Program - 21-minute video and course materials to train forklift operators and prevent accidents.
- Hazard Communication for Employees - 18-minute video plus instructor and participant materials that meet OSHA requirements for employee communication about workplace hazards.
- Lockout/Tagout: Safety Training for Employees - 15-minute video plus instructor and participant materials covering OSHA rules on this important safety subject.

- Confined Spaces: A Training Program for Employees - 20-minute video plus instructor and participant materials covering the four OSHA-required role-specific areas of training.

Many of these resources come in both English and Spanish versions. You will find more information about each of these outstanding products at the HR Web Store. And, you can order them on-line because our ordering system is on a secured site.

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3. OFCCP SCHEDULING COMPLIANCE REVIEWS BASED ON EO SURVEY

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is in the process of scheduling 2,000 audits to test the validity of the controversial Equal Opportunity Survey (EO Survey). Last year the agency distributed 10,000 copies of the survey to federal contractors. These audits will be scheduled with 20% of the companies that submitted completed surveys.

This is all part of the process OFCCP is undertaking to determine if the EO Survey is a valid tool for selecting contractors to be audited.

A new consulting company has been hired by OFCCP to analyze the 10,000 EO Surveys submitted last year. Based on that analysis, 20% will be chosen for audits this fiscal year. OFCCP typically does about 4,000 audits in any given year. This effort will represent about half of their current year activity.

Ever since the Clinton Administration created the EO Survey, employee advocacy groups have contended that the EO Survey is a valuable tool for OFCCP in its effort to detect illegal workplace discrimination. Employers have countered saying the Survey is drafted in a way that the reports are meaningless, and certainly can't be used as an audit selection tool.

Who is right remains to be seen. OFCCP Director Charles James has said nothing to date about plans for distribution of more EO Surveys this year. New regulations require his agency to do so, but so far we don't know when or how that will be done.

In the mean time, don't be surprised if you receive notice that you will be audited, especially if you completed an EO Survey last year. It is quite possible that large contractors will receive multiple audit notices. We suggest you discuss those situations with the District Director or Regional Director. OFCCP has promised it will try to remedy those situations so no one contractor is overly burdened by audit activity.

Gentle Readers,

The EEOC remains active in its movements to revise current enforcement rules. And, it is making a proposal to keep the EEO-4 form unchanged while it suggests major changes to the EEO-1 form. Employers will be happy to learn that it is OK to require a doctor's release for return to work following an absence of three or more days, as long as the same requirement applies to all employees.

Bill Truesdell
Editor

IN THIS REPORT (Report #271, 8/8/2003)
---------- (Sent to over 1,500 subscribers)

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1. REQUIRING DOCTOR'S RELEASE FOR EMPLOYEE TO RETURN TO WORK IS OK

The Equal Employment Opportunity Commission (EEOC) has determined that an employer will not violate the Americans with Disabilities Act by requiring a doctor's clearance for employees who are absent for sickness on three or more consecutive days. The opinion was written in an informal guidance letter, April 15, 2003 (EEOC Advisory Letter).

The same position can be found in the EEOC's Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA. The key to avoiding illegal discrimination is to treat all employees in the same way. If you require a doctor's clearance from employees who are disabled you must also require a doctor's clearance from employees who are not disabled under the same circumstances.

In a separate EEOC issue, Senate Minority Leader Tom Daschle (D-S.D.) has asked President Bush to nominate Stuart Ishimaru to fill the Democratic vacancy on the Equal Employment Opportunity Commission. If the President moves forward with Ishimaru's nomination, and it is approved by the Senate, it would bring the EEOC to full strength with five commissioners.

Ishimaru is currently a civil rights consultant. He has served as deputy assistant attorney general for civil rights at the Justice Department, as acting staff director of the U.S. Commission on Civil Rights, and as counsel on two congressional committees.

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2. EEOC PROPOSES EXTENDING EEO-4 REPORT WITHOUT CHANGES

The EEOC published a notice on June 20, 2003, of its intent to extend the status quo for EEO-4 reporting. All state and local government entities with 100 or more employees are required to submit an EEO-4

report each year, much as private employers are required to submit EEO-1 reports.

Public comments are due on or before August 19, 2003 and should be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507.

There are some interesting questions raised by this proposal. Extending the EEO-4 report as it now stands will put the report at odds with changes the EEOC is proposing for the EEO-1 report. The EEO-4 will retain the old occupational categories while the new EEO-1 would see categories shifted around and renumbered.

The EEO-4 will retain the old race and ethnic categories for reporting purposes while the new EEO-1 proposal will cause every private employer with 100 or more workers to resurvey its workforce requesting self-identification of race and ethnicity. Multiple race choices are going to be permitted in the EEO-1 proposal and the Hispanic/Non-Hispanic ethnic choice would override all race selections. We wonder why the EEOC finds it convenient to alter the EEO-1 while not similarly altering the EEO-4 and other Standard Form 100's. The EEOC is claiming that changing the EEO-1 report is essential because of the shift in data tracking that was approved by the Office of Management and Budget (OMB) prior to Census 2000. If it is truly essential, we are curious about why that same essential set of compelling arguments doesn't apply to reporting by government employers.

Comment period for the EEO-1 change proposal has already closed.

To see the Federal Register notice go to June 20, 2003, Volume 68, Number 119, Pages 36988-36989.

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3. EEOC PROPOSES LIFTING ADEA PENALTIES FROM RETIREE HEALTH PLANS

On July 14, 2003, the Equal Employment Opportunity Commission (EEOC) published in the Federal Register its intent to provide an exemption to its rule that has prohibited reduction of benefits or elimination of company-sponsored health insurance when retirees become eligible for Medicare or state-sponsored health plans. (If you wish a copy of the posting, go to http://www.gpoaccess.gov/fr/index.html and in the search box for 2003's volume 68 enter "page 41542" and be sure to use the quotation marks.)

The proposal would modify 29 CFR Parts 1625 and 1627. If you wish to submit written comments about the proposal, you have until September 12, 2003. Directions about where you should direct your comments are included in the posting.

Following a lengthy study of the subject which began in August 2001, the Commission has concluded that its rule alone is adversely affecting employer offerings of health benefits to retirees.

In many cases, employers offer retiree health benefits as a bridge to Medicare so that younger retirees have access to affordable health care benefits when they leave the workforce before reaching the age of Medicare eligibility. Often those benefits are more generous than Medicare benefits because, for example, the employer simply includes younger retirees in its group plan for existing employees. In other cases, employers wish to offer their retirees age 65 and older health benefit plans that supplement the coverage provided under Medicare so that these retirees have access to comprehensive health care benefits at

a time when their health care needs may be greatest. The Commission now believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

The proposed exemption would become effective on the date a final rule is published in the Federal Register. It is intended that the exemption shall apply to existing, as well as newly created, employer-provided retiree health benefit plans.

Gentle Readers,

Women are in the news this week. And, in California, the government may be driving additional spikes in the state's economy when it lays off over 100,000 folks.

Bill Truesdell
Editor

IN THIS REPORT (Report #272, 8/15/2003)
-------------- (Sent to over 1,500 subscribers)

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1. FIRST WOMAN ADMINISTRATOR AT DEA

President George W. Bush and the Senate have appointed and confirmed the first woman to hold the position of Administrator at the Drug Enforcement Administration (DEA). It was finalized on July 31, 2003 when the Senate voted unanimously to endorse her appointment. Karen P. Tandy becomes the ninth Administrator at the agency.

Prior to becoming Administrator she was Associate Deputy Attorney General and Director of the Organized Crime Drug Enforcement Task Forces. In that role she was responsible for oversight of the Drug Enforcement Administration and the National Drug Intelligence Center, as well as responsible for developing national drug enforcement policy and strategies.

At the same time, President Bush announced his intention to nominate Michele Leonhart as the Deputy Administrator of the DEA. She has been with the DEA since 1980 when she became a DEA Special Agent. This followed her service as a police officer in the Baltimore Police Department. Most recently, Special Agent Leonhart was the Special Agent in Charge (SAC) of DEA's Los Angeles Field Division.

For more about either of these executives, go to: www.dea.gov .

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2. WOMEN OF COLOR MAKE GAINS IN EMPLOYMENT AND JOB STATUS

A new Equal Employment Opportunity Commission (EEOC) study reveals that women of color now comprise 14.5 percent of America's private sector workforce, a major increase from a decade earlier. And, more women of color obtained employment as officials and managers, though numbers vary widely by industry.

Commission Chair Cari M. Dominguez said about the study, "Still, we see some stubborn patterns needing our attention. Too many women of color are concentrated in certain industries and appear to have plateaued in lower occupational categories. We are also mindful that women of color

tend to file more charges of discrimination against a handful of industries."

Of all women of color, African Americans continue to represent the highest rate of employment (7.6 percent of the total workforce). The most dramatic improvement in overall employment was among Hispanic women (now 4.7 percent of the total workforce.) whose rate exceeded 100% during the most recent 10-year period. The number of Hispanic women working as officials and managers more than doubled over the same 10-year period.

Asian women (2.1 percent of the total workforce) reflect the most progress in attaining higher-level positions during the period studied.

Data was obtained for the study from the EEOC's database for tracking charge processing activities and from EEO-1 forms filed during the study period.

For a complete copy of the study report, go to: www.eeoc.gov/womenofcolor.html . The Commission's press release on this study can be found at: http://www.eeoc.gov/press/7-31-03a.html

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3. GOVERNMENT JOB LOSSES DRIVE UP CALIFORNIA UNEMPLOYMENT

The economy in California continues to be a serious issue, particularly in the employment market, and despite the political circus surrounding the recall of Governor Gray Davis.

In July, the actual nonfarm job count in the state decreased by 158,000 jobs. The state had 14,431,700 jobs in nonfarm industries in the same month. Some industries actually increased job count:

- +7,400 Construction
- +2,700 Leisure and hospitality
- +1,800 Information
- + 900 Financial activities
- + 600 Natural resources and mining

It seems reasonable to surmise that these increases are due in part to the summer season. However, it is interesting to note that the housing market in the state continues to be its strongest economic stronghold.

Job losses occurred at significant levels in sex sectors:

- -146,300 Government
- - 17,100 Educational and health services
- - 2,900 Trade, transportation and utilities
- - 1,800 Professional and business services
- - 1,800 Manufacturing
- - 1,500 Other services

Clearly, government downsizing activity is creating an impact on the state's unemployment problems. In light of the economic situation reported so widely in the news media, seeing a drop in educational and health services jobs is no surprise.

In a Harris Poll taken during July with an on-line survey of 2,215 Americans, California came out as first choice for the most favorite state in which to live. It seems people outside the state don't put much credence in the economic situation faced by Californians.

Employment in the state continues to be hampered by high housing costs

and private sector hesitation to expand its workforce.

Smart money says the state will recover its economic footing, but it's anyone's guess as to when that will happen.

(Source: California Labor Market Information e-Newsletter from the Employment Development Department. Data is available on-line at:

Labor Force (unemployment rate)
http://www.calmis.ca.gov/htmlfile/subject/lftable.htm
Industry employment (number of jobs in geographic area)
http://www.calmis.ca.gov/htmlfile/subject/indtable.htm
Hours and earnings for manufacturing industries
http://www.calmis.ca.gov/htmlfile/subject/indh&e.htm

Also available at http://www.calmis.ca.gov/SpecialReports/SOSLM-2002.pdf is the annual labor market report for California. This report provides an overview of the state's economic condition and the key factors affecting California's labor markets.)

Gentle Readers,

Congress and the state legislatures have been on vacation this month so things are a little slow in the area of developing legislation. We thought you would like to know about the two items we uncovered this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #273, 8/22/2003)
---------- (Sent to over 1,500 subscribers)

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1. FEDERAL WORKERS' EEOC COMPLAINTS GET LARGER SETTLEMENTS

The Equal Employment Opportunity Commission (EEOC) is responsible for processing complaints of illegal discrimination against employers in both the public and private sectors. One of the greatest areas of activity is found in complaint activity generated by federal workers.

During the last federal fiscal year, which ended September 30, 2002, The EEOC received 21,945 complaint filings from federal employees. That number represents a decrease of 6 percent over the previous year. And the amount of time it took the EEOC to process the average federal complaint fell from 402 days in 2001 to 326 days in the most recently completed fiscal year.

Employees received $143.1 million in monitary awards in FY2002. The previous year total was $82.9 million. That's a 72.6 percent jump in settlement dollars.

EEOC Chair Cari Dominguez said the government earned a "C+" report card grade. She cited six federal agencies for making significant improvements in processing and resolving complaints of illegal discrimination. Those agencies were: Department of State, Department of Veterans Affairs, Securities and Exchange Commission, Consumer Product Safety Commission, Smithsonian Institution, and Railroad Retirement Board.

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2. NINTH CIRCUIT RULES STATE LAW ON REVERSE DISCRIMINATION PREVAILS

According to the Ninth Circuit Court of Appeals, a state's constitution prohibiting reverse discrimination is not preempted by Title VII of the Civil Rights Act of 1964. (Malabed v. North Slope Borough, 9th Cir., No. 99-35684, 7/8/03)

In the case, North Slope Borough, a political subdivision within Alaska, said its enactment of a preference for employment of Native Americans was legal and consistent with federal and state requirements.

Three non-Native Americans felt they had been denied employment or

promotion due to the Borough ordinance. In federal court, they said the preference was illegal under both state and federal law.

In a twist of legal procedure, the Ninth Circuit asked the Alaska Supreme Court to determine if the Borough's ordinance violated state law or constitution. The Alaska Supreme Court ruled that the ordinance violated the state's constitutional guarantee of equal protection "because the Borough lacks a legitimate governmental interest to enact a hiring preference favoring one class of citizens at the expense of others and because the preference it enacted is not closely tailored to meet its goals."

The Ninth Circuit then ruled that the ordinance is invalid under the state's constitution. The North Slope Borough, the EEOC and the Alaska Federation of Natives, continued to press for the position that the ordinance was legal and should be maintained. All of their arguments were rejected by the Ninth Circuit. The EEOC contended that a general federal policy promoting economic opportunities for Native Americans favored preemption of the state's constitution.

Basically, the case was lost because the Borough ordinance was not "narrowly tailored." It cut a wide swath through the employment practices of the Borough.

Gentle Readers,

Say the word "tattoo" and some folks will give you a very negative reaction. Others, as we find out this week, will show you their latest body art. How does all that impact our workplace today?

Bill Truesdell
Editor

IN THIS REPORT (Report #274, 8/29/2003)
---------- (Sent to over 1,500 subscribers)

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1. DRESS CODE POLICIES COST BIG MONEY - $2.2 MILLION

In most states, employers are entitled to set dress code policies for their employees. This is most obviously done when employers require uniforms for their workers. For example, fast food restaurants usually require specific uniforms for employees when they are on duty.

In some cases, state law requires that employers pay for uniforms if they are required. California is a good example. In each of its 17 Industrial Wage Orders, California specifies, "When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term 'uniform' includes wearing apparel and accessories of distinctive design or color." (California Code of Regulations Section 11040(9)(A)) In each of the 17 wage orders, the same language can be found in section 9(A).

So, what's the problem?

Actually, the problem comes into focus when you ask, "How is 'uniform' defined?"

Some employers in the retail clothing industry have made it a policy that employees must wear clothing on duty that was purchased from their employer. Such was the policy at Abercrombie & Fitch.

It has been a long-standing interpretation by the California Division of Labor Standards Enforcement (DLSE) that clothing required on the job, that can also be worn off the job, is not a uniform per se, and the employer is not obligated to pay for purchase or maintenance of that clothing. Requiring dark slacks, dark shoes and a white shirt or blouse would not subject the employer to interpretation that the work outfit was a uniform because that same clothing could be worn off the job.

Also clearly understood for many years is the interpretation by DLSE that clothing that has a name sewn on and/or a company logo is considered to be a uniform because it would not generally be worn away from the work environment. It is common, for example, that employees of gas and electric utilities wear shirts with the utility logo and their

name embroidered when they visit residence or business customers.

The Abercrombie & Fitch policy didn't fit either of these interpretations. The retailer required employees to purchase clothing from the employer and wear that clothing on the job. They argued that such a policy did not require a "uniform." Rather, it was not a uniform because the clothing could also be worn away from work.

DLSE disagreed saying that requiring a certain brand of clothing on the job would be alright because it could be worn off the job as street apparel. However, DLSE balked when looking at the retail industry specifically, saying brand-name clothing could not be worn on the job if employees were to move to another employer. Therefore, DLSE said, the policy requires uniforms and the employer is responsible for purchase and maintenance expense.

Abercrombie & Fitch settled with DLSE for $2.2 million. The settlement applies to nearly 11,000 employees who worked for the company between January 1, 1999, and February 15, 2002. The settlement reimburses former workers for brand outfits purchased from the store to wear for work. It also contains an agreement that the retailer will not force workers to buy its clothes to wear to work in the future.

DLSE has made an issue of this policy question with the entire retail clothing industry. Other class actions have been brought against Gap Inc., Polo, Ralph Lauren of New York and Chico's FAS Inc. of Florida involving the same issue.

These situations always provide HR professionals with the opportunity to reevaluate policy in their organizations. If you conclude that your dress code policy requires employees to purchase work clothes from the employer for use on the job, you might wish to raise the issue with your executive team. As things now stand in California, there would be nothing wrong with requiring employees to wear the employer's brand name clothing as long as the employer paid for that clothing. Take a look at requirements in the state where you operate.

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2. ESTABLISHING A DRUG USE POLICY

We recently received the following question from a reader: "We have a company in California, and we need to know laws re drug use. If drugs are not used at work, but person is supposedly using outside of work, does this affect his status? Any info you can provide, concerning what employer must do if employee is using an illegal drug outside of work will be helpful and appreciated."

Here is what we said in response: In order to give you definitive information I would need to know more about your employer organization. For example, there are HUGE differences between private and public sector employers when it comes to the issue of drug use policies.

Let's take an example in the private sector...

The employer gets to decide if it wants a drug use policy or not. If the organization is a common carrier or bus company covered by Department of Transportation regulations, there may not be a choice about a drug use policy.

If you have drivers delivering goods to customers or sales/marketing people driving on company business, you may well want to consider a drug use policy. If you have people working on machinery in a manufacturing environment you may well want a drug use policy.

A drug use policy almost always is accompanied by a drug testing program for job applicants and sometimes it includes random testing of existing employees if there are safety considerations for example. A private sector employer has the right to establish such a requirement. There are very detailed requirements for drug testing, however. Generally, most organizations follow the DOT procedures that describe in detail the chain of custody requirements and the specific test equipment to be used and the tolerances involved in results.

If you have drivers, for example, and one of them is involved in a traffic accident, causing serious injury to another party, the employer may find itself exposed to legal tort charges of negligent hiring or negligent retention if it knew of a drug use problem or should have known of such a problem.

A drug use policy in the private sector can include prohibition of any substance that would cause a person to be incapable of performing their job safely. Such policies usually include reference to alcohol as well.

I do recommend you work closely with a management-labor attorney before finalizing such a policy, however. Even if you have a competent HR consultant work with on the preparation, legal review is essential.

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3. WHAT IS YOUR POLICY ON EMPLOYEE BODY ART?

What would happen if one of your key employees came in to work on Monday morning and showed you she had gotten a tattoo or body piercing over the weekend? Such situations are happening more frequently these days.

In the past, tattoos were strictly worn by people considering themselves in the counter-culture. Three decades ago about one American in 100 had a tattoo. Today, according to an article in the Wall Street Journal ("The Tattooed Executive," Mielikki Org, Thursday August 28, 2003) one in every 10 Americans carry body art. According to the Alliance of Professional Tattooists based in Annapolis, MD, tattooing is one of the fastest growing retail businesses in the U.S.

How do employers react to this phenomenal jump in the popularity of tattooing and body piercing? It depends on the employer, as you might expect. Each cultural environment is a bit different. Some employers never even know that employees have tattoos or piercings. They are usually hidden by work clothes.

The Wall Street Journal offered the following about individual employers and policies about body art:

Company	Tattoo Policy	Piercing Policy
Wal-Mart	"Non-offensive" tattoos OK to show	Earrings allowed; facial jewelry prohibited
Boeing	"Non-offensive" tattoos permitted	Allowed if they don't pose safety risks
Tenet Healthcare	None	None
Ford Motor Co.	"Non-offensive" tattoos permitted	Allowed if they don't pose safety risks

Subway Restaurants	Discrete tattoos permitted	Limited to one per ear

While these are only a sampling of the employer community, you can tell that main-stream American workplaces are being impacted sufficiently that some major corporations have developed policies about body art.

As always, when developing employment policies, we encourage you to consider the impact body art will have on the employee's work performance. If there are safety considerations they should be heard also. And finally, with 10 percent of the population participating in the body art movement, can you afford to exclude all of those people from your employment considerations? How much talent will you be ignoring if you do?

Gentle Readers,

In a surprise move, the Department of Labor's OFCCP is asking contractors to comment on the burden of providing compensation data to the agency. If you are an Affirmative Action Contractor you will want to know about this opportunity.

Bill Truesdell
Editor

IN THIS REPORT (Report #275, 9/5/2003)
---------- (Sent to over 1,500 subscribers)

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1. OFCCP ASKING CONTRACTORS ABOUT COMP DATA BURDEN

The Office of Federal Contract Compliance Programs (OFCCP) has decided to ask federal contractors about the level of burden they are experiencing as a result of OFCCP's request for compensation data during the "desk audit" phase of a compliance review.

A questionnaire has been developed by the agency and is being sent to those contractors selected for a compliance review during the months of August, September and October of this year.

For the first time in our recollection, the agency is asking contractors about their view of the usefulness of compensation data for federal contract compliance.

The questionnaire asks for contractors to specify the number of staff hours required to provide the data requested by OFCCP in the compliance review.

If you would like a copy of the 2-page questionnaire, you can get it for FREE at the HR Web Store in the "FREE Stuff" department. Go to: www.hrwebstore.com and click on "FREE Stuff." Low on the next page you will discover the download link that will allow you to retrieve a 171 KB file in PDF format.

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2. EEOC SEEKING PUBLIC INPUT ABOUT "NEW WORKPLACE REALITIES"

On September 8, 2003, the Equal Employment Opportunity Commission (EEOC) will hold an all-day Commission meeting to examine trends and issues driving the need for organizational change and customer service improvements at the nation's premier civil rights enforcement agency.

The purpose of the meeting is to gather input and feedback from a wide-range of invited agency stakeholders, government reform experts, and EEOC employees from field and headquarters offices on the ways the Commission can enhance customer service and respond organizationally to such things as demographic shifts in the workplace and the impact of

technology.

For more information go to: http://www.eeoc.gov/press/9-03-03.html

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3. EEOC ISSUES NEW DIRECTIVE FOR FEDERAL AGENCIES

On October 1, 2003, a newly issued Management Directive 715, issued by the Equal Employment Opportunity Commission (EEOC), will go into effect for all federal agencies. It specifies how agencies must conduct affirmative action programs to assure equal employment opportunity for disabled people under Section 501 of the Rehabilitation Act. There are specific reporting requirements detailed in this Directive.

The Directive applies to all executive agencies and non-uniformed military departments, the United States Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Smithsonian Institution, and all other units of the judicial branch of the federal government having positions in the competitive service.

With over two million employees, the federal government has challenged itself to create work environments that will attract, develop and retain top-quality individuals to that workforce. The new Directive modifies federal programs to reflect recent changes in the law, including recent Supreme Court decisions.

Some of the key requirements for management and program accountability include:

- Establishing procedures to prevent all forms of discrimination, including harassment based on disability.
- Evaluating managers and supervisors on efforts to ensure equality of opportunity for all employees.
- Implementing effective reasonable accommodation procedures that comply with all legal requirements and government policies.
- Operate a fair and efficient dispute resolution process for employees.

The complete 22 page Directive can be located at:
http://www.eeoc.gov/federal/eeomd715.html

Gentle Readers,

There are some rather interesting reports that we have summarized and share with you this week.

Bill Truesdell
Editor

IN THIS REPORT (Report #276, 9/12/2003)
---------- (Sent to over 1,500 subscribers)

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1. WORKPLACES DON'T REFLECT CULTURAL CHANGES

It's been well-reported that the nation has become more diverse over the last decade, but there hasn't been much detail about how well minorities have worked their way up the ladder in the nation's workforce. California, for example, now has no ethnic majority in the general population. The 2000 Census demonstrated that all racial groups in the state represent less than half of the overall population.

The Dallas Morning News analyzed a recently released set of census data to see what progress minorities had made during the 1990s in 12 occupational areas, including medicine, law and the media. Information from the U.S. Department of Defense was used to study diversity within military officer and enlisted ranks.

Why these areas?

They were chosen because they represent positions of leadership, responsibility and interaction with the public. Some are jobs that influence the direction and tone of public discourse on important issues. Also, many of them require college degrees or some advanced training.

Law enforcement, education, religion, technology fields and the judiciary all were areas put under the microscope.

The findings: America's diversity is still not reflected in the percentage of minorities working in these top jobs, despite the overall growth of minorities in the workforce from 1990 to 2000.

The study, aside from the military numbers, is based on the U.S. Census Bureau's 1 percent Public Use Microdata Sample, or PUMS. The 1 percent PUMS from 2000 includes about 2.8 million records, or about 1 percent of the nation's 281 million people. It's a sample of responses to the census long form that went to about one in six homes nationwide in 2000.

SOURCE: (c) 2003, The Dallas Morning News. Paula Lavigne. Distributed by Knight Ridder/Tribune News Service.

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2. PRIVATE SECTOR HAS MORE MINORITY WOMEN THAN IN 1990

Women of color have seen their ranks in the private-sector workplace swell over the last decade, a recently released federal survey shows.

Employment of Hispanic women increased at the highest rate -- 104 percent -- during the period of the Equal Employment Opportunity Commission study; that of black women grew at the lowest rate, 43 percent.

The EEOC conducted its first women-of-color survey this summer, using information gathered from the agency's annual employment reports. The survey found that between 1990 and 2001 women of color as a group increased from 11 percent of the private-sector workforce to 14.5 percent.

Nursing and residential care facilities employed the largest percentage of black women and the largest percentage of women overall. Black women were 7.6 percent of the private-sector workforce and were most likely to become managers in legal services.

Hispanic women went from making up 2.9 percent of the private sector in 1990 to 4.7 percent in 2001. Crop production employed the largest percentage of Hispanic women and the largest percentage of total Hispanics. Nationwide, Hispanic women are most likely to be employed as managers in water transportation, sightseeing and accommodations, the study found. Hispanic women professionals have the highest probability of becoming managers in legal services, doctors' offices and architectural and engineering firms.

Asian and Native American women's numbers are still a small fraction of the private-sector workforce. Asian women made up 2.1 percent of that workforce in 2001. The top industry for Asian women is computer and electric product manufacturing-which also is the highest-rated industry for Asians overall. The top three industries for Asian women managers are the motion picture business; the sound recording industry; and nursing and residential care facilities. Professional Asian women are most likely to become managers in full-service restaurants, the survey found.

Native American women had the slightest increase, from 0.2 percent to 0.3 percent of the private workforce. Native American women are most often employed in gasoline stations and apparel manufacturing. Professional Native American women are most likely to become managers in legal services, the survey said.

These data come from 39,000 EEO-1 reports representing 52 million American employees during 2001.

SOURCE: (c) 2003, The Palm Beach Post, FL. Alex Navarro Clifton. Distributed by Knight Ridder/Tribune Business News.

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3. OFCCP REPORTS TO CONTRACTORS ON NEW AUDIT APPROACH

At the National Industry Liaison Group (NILG) meeting in Charleston, SC last month, Charles James, Director of the Office of Federal Contract Compliance Programs (OFCCP) reported that his agency had shifted its focus on compliance reviews to take full advantage of the new abbreviated compliance review program. According to Harold M. Busch, OFCCP Director of Program Operations, 80% of the 4,700 compliance

evaluations conducted by the agency in the last fiscal year were closed at the desk audit stage. In all, over $18 million was collected from contractors for 10,000 victims of discrimination.

That, said James, is what we want. He said if the compliance officers didn't find indication of serious problems, they should close the review quickly. And, even those with serious problems that require an on-site visit and more in-depth analysis, should be concluded more quickly than they might have been in the past. He acknowledged that agency personnel had a tendency to take the maximum allowable time to conduct reviews. That, he said, is changing.

Part of the cultural change that James has begun at the agency, in addition to the shift in focus of compliance reviews to cases of serious systemic discrimination, is the effort he is making to solicit feedback from federal contractors. While previous Directors have held "town meetings" with hand-picked contractor representatives, none has developed a written tool for soliciting feedback until now.

During August, September and October, all contractors who are selected for a compliance review will be sent a questionnaire asking them to rate OFCCP's performance in several areas. This customer service questionnaire document is still being reviewed by the Office of Management and Budget (OMB), the White House group responsible for approving all requests to solicit additional work from the American public. It is generally expected that OMB will approve the document and its distribution will begin.

At the same conference, agency personnel announced their agenda for future changes. Among them were:

- Increasing the level of compliance assistance to contractors.
- Revising the Compliance Manual used by OFCCP and contractors alike.
- Revising regulations for Section 503 of the Rehabilitation Act to bring compliance procedures in line with those of other OFCCP regulations. (e.g.: eliminate an obligation for on-site visits during a compliance check.)
- Revise regulations dealing with federal construction contractors. (This has the least priority among all other agenda items.)

According to Chris Lindholm, Biddle Consulting Group, Inc., OFCCP reports that 65 functional AAPs have been approved by the agency. Over 100 additional companies have submitted requests for functional AAPs and then changed their minds before action was taken on their applications. A new branch of the agency, reporting to Harold Busch at headquarters, will begin auditing functional AAPs beginning next year.

Gentle Readers,

VETS-100 report forms are in the mail to federal contractors. The true U.S. unemployment rate is higher than reported. And, we share with you some Internet resources in case you wish to become a federal contractor.

Bill Truesdell
Editor

IN THIS REPORT (Report #277, 9/19/2003)
---------- (Sent to over 1,500 subscribers)

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1. VETS-100 SURVEY REPORT MAILED TO EMPLOYERS ON SEPT 15TH

In normal times, the Veterans Employment and Training Service (VETS), a U.S. Department of Labor agency, would have expected contractors to file their VETS-100 report by September 30.

The VETS-100 Report is generally mailed to Federal contractors and subcontractors between June and July. This year, however, Washington has been concentrating on other issues. And, there have been rumors that the VETS-100 report will be eliminated all together. Well, that's not going to happen this year. And, despite the fact that the agency's web site contains only information about 2002 filing, we are told that the reports went out on Monday.

According to Elsie Bigley, VETS-100 Project, the web site should be updated and accurate for 2003 information by September 22nd.

"The due date for the 2003 report will be October 31, 2003," she said. "Instructions on how to request a further extension will be included in a letter which will go out with the form and instructions."

If you are a federal contractor or subcontractor and haven't yet received your copy of the form, you might wait until after the 22nd and then submit an inquiry with the Veterans Employment and Training Service. Their web address for the VETS-100 form is:
http://vets100.cudenver.edu/

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2. U.S. JOBLESS CLAIMS GROW, "TRUE" UNEMPLOYMENT RATE 9.1 PERCENT

The number of first-time jobless benefit claimants in the week ended

September 6 rose 3,000 to a two-month record 422,000, following a 22,000-strong leap the previous week, seasonally adjusted Labor Department data showed.

Analysts, who generally consider the jobs market is deteriorating if new claims exceed 400,000 a week, had been hoping for a decline, according to BMO Financial Group analyst Paul Ferley.

"But the level of claims has moved even further above 400,000, pointing to another decline in payroll employment for September," he said.

Last week, the government said U.S. employers had unexpectedly slashed 93,000 jobs in August, demolishing hopes of a revival in the crippled jobs market despite signs that an economic recovery is gathering pace.

The unemployment rate was 6.1 percent in August, it said.

But the true unemployment rate was more like 9.1 percent, according to an analysis of the August data by international outplacement agency Challenger, Gray and Christmas, Inc.

"Most only see the government statistic of the unemployed -- 8.9 million in August -- but there are 4.8 million who are not working but want jobs," the agency report said. People who have exhausted their unemployment insurance benefits are also not counted in the government figures.

"Because they did not actively seek employment during the last month, they were not counted by the government as part of the unemployed labor force," it added.

U.S. businesses boosted productivity at an annual pace of 6.8 percent in the second quarter, stirring hopes for a rapid recovery but giving few crumbs to job hunters.

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3. SO YOU WANT TO BE A FEDERAL CONTRACTOR ...

In many ways, the federal government is the grandaddy of all customers. It needs a wide array of products and services and something new is always popping up. But, how can a small company compete with the larger employers when it comes to winning government business?

In the past few years, the government has been making a concerted effort to simplify its web sites, making them easier to navigate and find specific information. It is a slow process. Today, looking at some government web sites, it might seem that nothing has been done, so you can imaging what state they used to be in.

Well, becoming a federal contractor is something you can do in each of many ways. The most obvious way is to visit each federal agency and department, either on the Web or in person, determine what they need,

and then complete the paperwork necessary to submit a proposal for satisfying those needs.

Another way is to visit agency buyers at federal procurement shows held in various geographies throughout the year.

Perhaps the easiest approach is to use one or more of the commercial Web sites that gather data about federal, state and local government bid requests and RFPs, then offer that information to you and me for an annual fee ranging from $1,500 to $25,000 or more.

The General Services Administration (GSA) reports that the Department of Defense (DOD) purchased from the following sources during FY2002:

- Men's clothing stores $ 12.4 million
- Window treatment stores $ 16.1 million
- Bookstores $ 27.0 million
- Taxi service $ 68.3 million
- Independent artists, writers, performers $168.9 million
- Nursing care facilities $265.2 million
- Quick printing $391.3 million
- Food service contractors $391.3 million
- Professional & management development training $ 2.64 billion
- Data processing services $ 3.27 billion

Finding the proper match to your business can be an exercise in frustration if you try to do it all yourself. Investing a small amount in one of the following services may save you a great deal of money in the long run.

Web Sites That Can Help You Locate Government Contracts

- Subcontract.com
- FedBizOpps.com
- RFPadvisor.com
- Pro-Net.SBA.gov
- Fedmarket.com
- DefenseBizOpps.com
- Input.com
- FedSources.com
- Onvia.com
- DemandStar.com
- Web.SBA.gov/Subnet

These are just some of the major players. As you learn more about your specific industry and government needs, you will discover other services on the Internet that can help you reach your goal of obtaining government contracts.

And, remember...

When you reach 50 employees and have $50,000 or more in federal contracts, you must develop a written affirmative action plan. We can help you with that process, but you also have the option of purchasing our book, "Secrets of Affirmative Action Compliance." Look for it in the HR Web Store at: http://www.management-

advantage.com/products/AAP6.htm

Gentle Readers,

Corporations in the U.S. demonstrate their leadership in civil rights as applied to gay, lesbian, bisexual and transgender workers. This week you will also find information about accessing technical assistance from both the EEOC and the DOL.

Bill Truesdell
Editor

IN THIS REPORT (Report #278, 9/26/2003)
---------- (Sent to over 1,500 subscribers)

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1. PERFECT SCORE FOR 21 COMPANIES ON CORPORATE EQUALITY INDEX

The Human Rights Campaign Foundation's Corporate Equality Index is a simple and effective tool to rate large American Businesses on how they are treating gay, lesbian, bisexual and transgender employees, consumers and investors. 2003 results were released on August 25th. This is the second annual survey conducted by the Human Rights Campaign Foundation.

The report rates 250 companies from two respected lists: the Fortune 500 and Forbes 200 largest private companies. The median score for these companies was 71%. The median score for companies in 2002 was 57%. Because each factor on the index accounts for 14 percentage points, this rise in 2003 means that employers are generally meeting one addition criterion of the index compared to 2003.

Twenty-one companies received a score of 100%. (An asterisk indicates the company achieved 100% for the first time in 2003.)

- Aetna Inc.
- American Airlines (AMR Corp.)
- Apple Computer Inc.
- Avaya Inc.
- Bank One Corp.*
- Capital One Financial Corp.*
- Eastman Kodak Co.
- Hewlett-Packard Co.*
- IBM Corp.*
- Intel Corp.
- J.P. Morgan Chase & Co.
- Lehman Brothers Holdings Inc.*
- Levi Strauss & Co.*
- Lucent Technologies Inc.
- MetLife Inc.*
- NCR Corp.
- Nike Inc.
- PG&E Corp.*
- Prodential Financial Inc.*

- S.C. Johnson & Son Inc.*
- Xerox Corp.

Companies were rated on a scale of 0 to 100 percent based on whether they:

1. Have a written non-discrimination policy covering sexual orientation in their employee handbook or manual.
2. Have a written non-discrimination policy covering gender identity and/or expression in their employee handbook or manual.
3. Offer health insurance coverage to employee's same-sex domestic partners.
4. Officially recognize and support a gay, lesbian, bisexual and transgender employee resource group; or would support employees' forming a GLBT employee resource group if some expressed interest by providing space and other resources; or have a firm-wide diversity council or working group whose mission specifically includes GLBT diversity.
5. Offer diversity training that includes sexual orientation and/or gender identity and expression in the workplace.
6. Engage in respectful and appropriate marketing to the gay, lesbian, bisexual and transgender community and/or provide support through their corporate foundation or otherwise to GLBT or HIV/AIDS-related organizations or events.
7. Engage in corporate action that would underline the goal of equal rights for lesbian, gay, bisexual and transgender people.

Overall, 80 companies improved their scores in 2003 over 2002. The Human Rights Campaign Foundation also lists on its web site those companies scoring zero percent. You can find it at: www.hrc.org/worknet/cei/ .

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2. EEOC OFFERS TECHNICAL ASSISTANCE RESOURCE MANUALS ON CD

The Equal Employment Opportunity Commission (EEOC) has made available its Technical Assistance Resource Manuals in CD-ROM format. The entire seven volume set is included in the package. The volumes included are:

- Employer EEO Responsibilities
- Race and Color Discrimination
- Sex Discrimination
- National Origin Discrimination
- Religious Discrimination
- Age Discrimination
- Disability Discrimination

This is a comprehensive and invaluable EEO library on employment discrimination issues. Each volume contains training exercises, practical guidance and copies of EEOC's most important policy interpretations, including information concerning recent important U.S. Supreme Court decisions affecting Federal EEO law.

Each volume is written and compiled by legal professionals and training experts from the EEOC. The entire series is updated annually to reflect changes in law, court decisions and new EEOC guidance.

HR professionals will find this set a great help. Lawyers will also find it a beneficial reference. Cost of the CD version is $199.00 and you can use the order form on the EEOC web site to submit your order.

Go to www.eeoc.gov/outreach/manuals.html and look for the order form link at the bottom of the page.

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3. COMPLIANCE TOOLS AVAILABLE FROM DOL

If you are like most HR professionals, you have on one or more occasions groaned at the thought of new laws and requirements you must help your organization meet.

Now the U.S. Department of Labor (DOL) has consolidated a set of "Compliance Tools" at one web portal. Pass through it and you will find links to 10 assistance sites, each dealing with one of DOL's compliance issues.

The site is designed to help employers understand the requirements of laws and regulations enforced by DOL. The links include:

- elaws Advisors - Web-based, interactive systems that provide easy-to-understand, tailored information about a number of federal employment laws and safety and health standards using a question and answer format. Provides access to "FirstStep Employment Law Advisor" to help employers simply and quickly determine which of the major employment laws administered by DOL apply to their business or organization.
- National Call Center - toll-free, universal access point providing callers with general information and relays of detailed inquiries to the proper DOL office.
- Small Business Compliance - Compliance assistance issues for small businesses and links to DOL tools and initiatives designed specifically for small businesses.
- elaws Workplace Poster Advisor - Helps employers determine which workplace posters they must display. Users can also download and print posters directly from the Advisor. (Remember, this is for Federal DOL posters only. There are no state-required posters at this site. You can still get all Federal and State posters on one laminated sheet at the HR Web Store [www.hrwebstore.com])
- Major Laws and Regulations Enforced by the DOL - Access to compliance assistance on more than 20 DOL laws and regulations.
- Employment Law Guide - Requirements of major DOL laws and help for employers in determining which requirements apply to their businesses or workers.
- Rulemaking - Links to information about plans for rulemaking and any rulemakings currently underway at the Department.

While some of the agencies have done a superior job with their web sites, others have yet to make the major effort required to offer appropriate information to the employment community. Getting to the right agency (and the right person within that agency) still remains problematic. This access system makes a lot of sense and HR professionals should bookmark the site for future reference.

http://www.dol.gov/dol/compliance/compliance-comptools.htm

Gentle Readers,

While we wait for new Census 2000 data to be released, OFCCP is giving some consideration to a new program of "Confidential Consultations" that could relieve contractors of compliance evaluation eligibility. And, don't forget to get your order in for your FREE 2004 scenic wall calendar. It's first come, first served. When the supply is exhausted, we will have to return requests unfilled.

Bill Truesdell
Editor

IN THIS REPORT (Report #279, 10/10/2003)
---------- (Sent to over 1,500 subscribers)

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1. NEW CENSUS DATA FOR AFFIRMATIVE ACTION EMPLOYERS ???

In previous decades, new Census data has been made available to affirmative action employers within two years after the collection of data. Census 2000 data is still not available for employers, although it was known early on that changes in the data file format and content would likely cause a delay in delivery.

Known as the EEO Special File, it contains information about specific job titles, showing race/ethnicity and sex head counts in each of nearly 4,500 geographical areas around the country. For the current data set, a completely new list of job titles has been developed, specifically to give greater definition to jobs classified in the Officials & Managers, and Professionals categories. The government recognized that clearer separations were required among specific responsibilities in those job groups. You can expect each report to contain information about 472 occupational categories and 88 industries.

As before, a complete set of titles and race/sex data will be available for geographical areas including: National, each state, each county of 50,000 population or more, every city with 50,000 population or more, and for some combinations of counties or cities that are called Consolidated Metropolitan Data Areas. Total all of those physical areas and you will have almost 4,500 reports.

Affirmative Action employers use these reports from their recruiting territories to compare representation with their incumbent workforce. When statistically significant differences occur, the employers are obliged to create special recruiting programs to entice job candidates into their selection pools. Of course, selections are focused on the best qualified, if they are to be legal.

We recently asked the Office of Federal Contract Compliance Programs (OFCCP) when the new EEO File would be available to employers. James C. Pierce said, "We have been informed that the Census Bureau has indicated that the Census 2000 EEO ... File data will tentatively be released in

December 2003. Once this file is released, OFCCP will place a notice on its website of the availability of the data and will post information on when this data should be used for Affirmative Action Program Planning purposes."

Mr. Pierce reminded us that the "Census Bureau has recently released population figures under 'Summary File 4' on its American Factfinder website at www.factfinder.census.gov . The Summary File 4 contains Census 2000 population figures for some geographical areas by race, ethnicity, and gender for 125 broad occupations and occupational groups." This is NOT the EEO Special File, however, and should not be used as such.

The wait is coming to an end. You can expect that there will be an additional period of time between the data release and the date on which OFCCP expects all contractors to use that new data. Exactly how long that period will be is anyone's guess at this point. Look for the new EEO File about the end of the year.

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2. OFCCP EXPLORING POSSIBLE NEW "CONFIDENTIAL CONSULTATIONS"

As reported in BNA's "Employment Discrimination Report" on September 17, 2003, the Labor Department's Office of Federal Contractor Compliance Programs (OFCCP) is exploring a new approach to compliance assistance. The concept would allow a contractor to request a confidential consultation with the agency, and, based on that consultation, possibly obtain an exemption from future compliance reviews for up to three years.

The draft proposal, which is modeled after a similar program at the Occupational Safety and Health Administration (OSHA), is only in a preliminary stage and has yet to go through the department's internal review process.

After a contractor asks for a confidential consultation, OFCCP "will advise the contractor of the necessary corrective action," according to an internal agency document that outlined parameters for the proposal.

"If the contractor certifies to OFCCP that it has taken the recommended action, the agency will consider the problem to have been corrected for compliance purposes and OFCCP will afford the contractor an exemption from compliance evaluations for three years," the draft document explained.

Certification is necessary according to OFCCP, to ensure both parties that the "agreement" reached as part of the program will be honored. The contractor will receive a document from OFCCP saying the issue has been resolved following the contractor's certification. The OFCCP receives assurance that the contractor is obtaining an exemption from review based on its actual implementation of corrective action.

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3. 2004 PHOTO WALL CALENDARS NOW AVAILABLE FOR THE ASKING

It's that time of year again. We are pleased to extend our annual offer to you for a FREE photo wall calendar for 2004. Measuring 8" wide by 8.5" high, this issue of our HR Web Store calendar features some remarkably beautiful scenes.

Here are some of the photos included:

- Toiyabe National Forest, NV
- Black Earth, WI
- Sedona, AZ
- Pyramid Lake, Jasper National Park, Alberta, Canada
- Washington Monument, Washington, DC
- Orton Plantation Gardens, Wilmington, NC
- Golden Spike National Historic Park, Promontory, UT
- Golden Gate National Recreational Area, San Francisco, CA
- Stone Mountain, GA
- Red Mill near Parfeyville, WI
- Lower Wisconsin Dells, WI
- And more

If you would like a FREE copy of this beautiful publication, simply send an email to calendar@hrwebstore.com and include the following information:

- Your Name:
- Your Organization:
- Your Mailing Address:
- Your City
- Your State
- Your Zip Code

We are sorry to say we can only mail calendars to our clients and friends in the U.S. Foreign addresses cannot be accommodated. As soon as we receive your request we will process it and your calendar will be on its way to you.

We know you will enjoy the beautiful scenes throughout next year.

Gentle Readers,

Mudville has no official definition of job applicant. Nor does anyone else in the country. We are soon to complete the fourth year that a multi-agency task force has been working on the issue. We tell you the latest. And, AAP employers are about to get a new federal data base for filing job openings. Then, we look at the lowering of caps on employment-related visa authorizations. And, a SPECIAL OFFER for California employers!

Bill Truesdell
Editor

IN THIS REPORT (Report #280, 10/17/2003)
---------- (Sent to over 1,500 subscribers)

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1. COMMITTEE DEFINING "JOB APPLICANT" GETS ANOTHER 90 DAYS

After nearly four years, the inter-agency committee working on the definition of "Job Applicant" has been given another 90 days to submit its work.

Permission for the extension comes from the Office of Management and Budget (OMB), the White House arm responsible for coordinating all Executive Branch agency work product.

The result of this extension is that it will be 2004 before we hear any definitive result for an effort that is very nearly going to celebrate its fourth anniversary.

If you are a federal contractor, waiting for this official definition so you can modify your data collection program for job applicants, you should continue using the method currently employed by your organization. We suggest you don't spend any effort in an attempt to guess what the new definition will be. You will likely just be wasting your time.

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2. DOL TRIES TO BUILD JOB OPENING DATA BASE FOR AAP EMPLOYERS

The U.S. Department of Labor painted itself into a corner when it finalized regulations for Veterans Affirmative Action programs. Part of that regulatory shift required that employers have the ability to select U.S. veterans in preference to other types of job candidates.

Unfortunately, the current national job data base called America's Job Bank (AJB) doesn't provide for identifying veteran status. So, the Veteran's Administration said it cannot be used to meet federal

requirements that job openings be posted with state employment agencies.

That leaves affirmative action employers with only one alternative if they wish to post openings on-line. That is to go to each state employment agency web site and determine if they offer job posting on-line, then to post openings as required.

This is cumbersome at best. So, the federal government has begun development of a national data base that will allow federal contractors to continue to post job openings on-line after the December 1, 2003, deadline for implementing the new regulations.

The Labor Department says it will meet that deadline. We will follow their development efforts and keep you posted.

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3. FOREIGN WORKERS LIKELY TO GET FEWER U.S. WORK VISAS

Congress is considering a serious reduction in the number of visas it makes available to foreign workers. U.S. employers have made use of foreign worker visas to supplement the American workforce with high-tech professionals from other countries.

When the employment market took a tumble a few months ago, American employers all but stopped filing applications for foreign worker visas. In fact, many employers found themselves having to reduce their workforces.

The H-1B visa program is about to retreat to its former authorization cap of 65,000 annual slots. That is because the higher cap of 195,000 enjoyed since 2000 will soon expire and Congress is not likely to extend the higher limit. H-1B visas are used for speciality professional workers, generally with advanced education, to work in the U.S. for up to 6 years. In recent years these visas have been used for computer programmers, engineers and other high-tech workers. Lately, they have also been used for teachers and health-care workers.

L-1 visas allow companies to transfer executives, managers and workers with "specialized knowledge" of the company from overseas operations to U.S.-based operations. L-1's have been used by both small businesses and international corporations.

There is already some indication that Congress may lower the caps on each of these employment-related visa categories even further. That would make them harder to get by employers. Action could come as early as the end of this calendar year, according to some sources.

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4. PRE-ORDER YOUR NEW 2004 CALIFORNIA EMPLOYMENT POSTERS AND RECEIVE A *FREE* GIFT

We know for sure that California's employment posters will be changing on Januray 1, 2004, because of the laws passed and signed up to this moment. While we are still unsure about a couple of them, enough have been signed to require employers to update their postings beginning in January.

We would like to extend an special offer to all of you California employers.

If you order your new laminated All-On-One California labor law poster

before November 21, 2003, we will send you a FREE copy of our book, "Before Diversity," a $14.95 value absolutely FREE. Your poster will be shipped immediately after January 1st and your credit card will not be billed until your poster ships.

Best of all, the price for the 2004 version remains the same without ny increases. You pay only $29.95 for the one laminated sheet of state and federal posters...one sheet that will meet all of your posting requirements...one sheet that's easy to handle rather than a dozen or more individual pieces of paper, some of which may get lost.

Order either the English version or the Spanish version. You will receive a FREE copy of "Before Diversity" with either order. Go to http://www.management-advantage.com/products/posters/CA-allonone.htm and scroll to the bottom of the page to find this outstanding offer.

Remember, this offer expires on November 21st. Why not place your order today while you are thinking about it.

Gentle Readers,

The government has approved a two-year extension of the EO Survey. We introduce to you our latest publication that will help you achieve the results you want in both personal and professional terms. And, finally, we may soon see an EEOC with a full compliment of five Commissioners.

Bill Truesdell
Editor

IN THIS REPORT (Report #281, 10/24/2003)
---------- (Sent to over 1,500 subscribers)

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1. EO SURVEY APPROVED FOR TWO MORE YEARS

The Office of Federal Contract Compliance Programs (OFCCP) has received permission from the Office of Management and Budget (OMB) to send out 10,000 Equal Opportunity Surveys (EO Surveys) in each of the next two years.

The Department of Labor agency said it needed these additional samples from contractors for its outside consulting firm to assess the value of using the survey as an audit selecting tool. The most recent survey was distributed in December 2002. OFCCP has not released a date for its next mailing of the document.

The contractor community continues to criticize the EO Survey saying its request for compensation, tenure and personnel activity data is burdensome and worthless for any valid analysis. EEO advocacy groups, however, continue to argue that the survey is a good tool for uncovering employers who are illegally discriminating.

If you haven't received an EO Survey yet, chances of your company's name coming up in this year's random selection are 1 in 15. OFCCP claims that companies who have already completed the survey document will be exempt from receiving another during this period of analysis. Charles James, national director of OFCCP, also promised that companies receiving EO Surveys would be exempt from compliance evaluations for that year.

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2. NEW BOOK AVAILABLE TO SUPPORT YOUR DRIVE TOWARD RESULTS

Twenty years of training experience and three years of writing have finally resulted in a document that will guide you in the search for more effective interpersonal relationships. It is finally here.

"What Color is Your Paradigm?" is now available to help you and your team members achieve the results you are seeking. It will help you on both a personal and professional level.

This book is about thinking clearly and avoiding the distortions and illusions foisted upon us by an unconscious society. It will help you refine your thinking and better thinking will refine your decisions.

Within its pages you will discover an adventurous path to discovering improved personal effectiveness. Learn the fundamental distinction between events and interpretations. Discover how your thinking can be distorted and how to guard against that.

So many people operate in a disfunctional mode these days. When that happens at work, productivity suffers, not only for the disfunctional person, but for those in the same environment as well.

Finally, discover a new possibility for accountable living that is both radical and empowering. If you are looking for results as your outcome, nothing will get you there faster than being grounded in the thinking mechanism behind all human endeavor.

Learn practical methods to preempt old patterns and constantly choose thought and action in alignment with your vision.

If self-improvement is your goal, "What Color is Your Paradigm?" is your guide. See it at www.hrwebstore.com/products/Paradigm.htm .

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3. PRESIDENT APPOINTS ISHIMARU TO DEMOCRATIC EEOC SEAT

President Bush announced on October 7, 2003, that he intends to appoint Stuart Ishimaru to fill the Democratic vacancy on the Equal Employment Opportunity Commission (EEOC). Senate Minority Leader Tom Daschle (D-S.D.) supports the Ishimaru appointment and is likely to help speed the Senate confirmation hearings. It may even happen that Ishimaru's appointment is processed in conjunction with that of Leslie Silverman, who was reappointed to the Republican EEOC seat for a second term in July.

If both nominees are confirmed by the Senate as is expected, the EEOC would have all five Commission seats filled for the first time in many years.

Ishimaru is a former civil rights attorney who has served as deputy assistant attorney general for civil rights, as acting staff director of the U.S. Commission on Civil Rights, and as counsel on two congressional committees. He graduated from the University of California at Berkeley and earned a law degree from George Washington University.

Presuming the requested confirmations, the EEOC would then look like this:

Cari Dominguez	Chair	Republican Seat
Naomi Earp	Vice Chair	Republican Seat
Leslie Silverman	Commissioner	Republican Seat
Paul Steven Miller	Commissioner	Democratic Seat
Stuart Ishimaru	Commissioner	Democratic Seat

The five-member Commission is always constituted with three seats for the party of the current Presidential Administration and two seats for the alternate political party.

Gentle Readers,

This week we share with you some information about privacy and how you can protect it for yourself. We also address a common problem with smaller federal contractors and discuss a new trend among employers ... asking applicants for their SAT scores.

Bill Truesdell
Editor

IN THIS REPORT (Report #282, 10/31/2003)
---------- (Sent to over 1,500 subscribers)

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1. AN UPDATE ON PRIVACY ISSUES FOR YOU AND YOUR EMPLOYEES

Privacy is such a concern for people these days because identity theft has increased alarmingly over the past two years. If you protect your credit cards and driver's license and don't ever lose them, you may still be subject to identity theft from a source few of us suspect...your hotel room key.

Southern California law enforcement professionals assigned to detect new threats to personal security, recently discovered what type of information is embedded in the credit card type hotel room keys used through-out the industry.

Although room keys differ from hotel to hotel, a key obtained from the "Double Tree" chain that was being used for a regional Identity Theft Presentation was found to contain the following information:

- The Customer's Name (Your Name)
- The Customer's Partial Home Address
- Hotel Room Number
- Check In Date and Check Out Date
- Customer's credit card number and expiration date.

When you turn your hotel key in to the front desk as you check out, your personal information is there for any employee to access by simply scanning the card in the hotel scanner. An employee can take a handful of cards home and by using a scanning device, access the information and capture it on a computer, then go shopping at your expense.

The investigation found that hotels do not erase these cards until an employee issues the card to the next hotel guest. A used card is usually kept in a drawer at the front desk with all your information on it.

The Pasadena Police Department recommends that you keep your hotel key cards or destroy them. Never leave them behind and never turn them in to the front desk when you check out of the hotel. Hotels do not charge guests for these cards.

Next...

We have just discovered that Google.com, the largest search engine on the Internet, offers a service that can impact your security and privacy.

Go to Google.com and type in any telephone number, such as 925-671-0404, and you will receive information about the person or company that telephone number belongs to...AND you will receive their address. Unlisted telephone numbers are excluded from such searches.

At the end of the response line are two links to mapping sites that will give you the location of the number's owner.

If you give out your telephone number, or a child or single person should share their telephone number, anyone can use this simple method to locate the address and get a map to that physical location.

If you do not want Google.com to offer this service on your telephone number, you must "opt out" by clicking on the telephone icon at the beginning of the response listing. In the first section of the next page you will see a link near the bottom of the section that allows you to remove your number from the Google.com directory.

As it becomes easier for us to find one another, it also becomes easier for those who would wish to do harm to others. Consider erasing your telephone number from the directory and sharing this information with your employees. It could be a matter of their safety as well as their privacy.

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2. MAKING THE COST OF AFFIRMATIVE ACTION MORE PALATABLE

Don't let anyone fool you. Complying with federal affirmative action regulations is an expensive proposition. It takes internal resources to develop the program initially and to maintain it throughout the year. The federal government says the average time required per contractor to develop an initial AAP is 179.5 hours. Updating the AAP on a yearly basis as required will cost another 74.9 hours per contractor according to the government.

That means the Affirmative Action Officer will have to dedicate 4 and a half weeks to nothing but AAP development once the company secures a federal contract worth $50,000 per year and the payroll sits at 50 or more workers. No answering the phone. No sitting in on staff meetings. No recruiting or open enrollment activities or counseling line managers.

In real life, few if any HR professionals can dedicate such large blocks of time to any subject. That's why we are here to help. We can take that load off your shoulders and deliver a plan we guarantee will meet federal requirements.

But what about the cost of AAP implementation? There is cost involved with training all managers who are active in employment selection decision making. There are others in your Human Resources Department that need to know the content of your new AAP. These training obligations are also requirements of federal regulations. You can attach dollar values to the training sessions.

There is the cost of applicant tracking, and maintenance of logs capturing data on new hires, promotions and terminations. There is the

cost of preparing data files each year that will be used to update your AAP and compute Impact Ratio Analyses and Job Area Acceptance Range analysis reports.

Add all of this up and if you are a new contractor with only a $50,000 contract you may wonder why you sought out federal business when all your profits are going to developing and implementing your AAP. It's a fairly common problem for smaller employers.

What can you do?

We suggest you work with your company people to pursue additional federal contracts. The incremental cost for AAP maintenance is small by comparison with the initial fixed costs. Very few variable costs attach to AAP maintenance. More contracts mean more revenue and little of that will be spent on AAP activities.

If you are interested in some Internet sites that might be able to help your organization secure more federal business, consider the following:

(We have no association with any of these web sites and cannot endorse their business practices. We simply offer them to you as examples of resources you can find on the web.)

- SBA Sub-Net
  http://web.sba.gov/subnet/

- Demand Star by Onvia
  http://demandstar.com/

- FSI Government IT Market Intelligence
  http://fedsources.com

- Input - Win More Government Business
  http://input.com/index.cfm?action=home.show_Homepage

- DefenseBizOpps
  http://defensebizopps.com

- RFP Advisor.com
  http://www.rfpadvisor.com

- FedMarket.com
  http://fedmarket.com

- SubContract.com
  http://subcontract.com

Helping your production and financial people win additional federal business can place you and your HR organization squarely in the business discussions you wish to access.

And, remember, if you don't have time to do your own AAP development or updating, call us. We can help. It's what we specialize in. (1-888-671-0404 Toll-Free)

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3. SOME EMPLOYERS ASKING APPLICANTS FOR SAT SCORES

From the Wall Street Journal (10/28/2003) comes the revelation that some employers around the country are asking job applicants to provide their combined SAT scores on employment applications. A few employers are even saying they want candidates who have combined scores above 1300 out of a maximum 1600, for example.

The SAT, or Scholastic Aptitude Test, is normally taken during the Junior or Senior year in High School. It is a key criteria for college admissions.

But, now, recruiters are sometimes using this criteria as a job selection tool, often years after a candidate has completed college and may be looking for another job following layoff.

Who's to say whether asking for candidates that score a combined 1300 on the SAT is a wise move on the part of employers? "According to the New York-based College Board, the association that administers the SAT, the 1.4 million SAT takers in the class of 2003 earned average scores of 519 on the math portion of the test and 507 on the verbal section, for a total of 1026. The math average is the highest in more than 35 years, meaning that those who are applying for jobs right now on average scored lower." If 1026 is considered above average, how do employers get to the requirement for a score of 1300 or better?

Remember, recruiters represent employers as agents and therefore the employer is liable for every action taken by the recruiter in the employment selection process.

Using a combined SAT score as an employment selection tool can be perfectly legal, IF the employer (recruiter) can PROVE it is a valid selection tool. That means the employer may have to conduct validation studies for the combined SAT score and demonstrate for every job in which it is an employment screening tool that it is a valid screening tool.

Requirement for validation studies comes from long-standing federal regulations in 41 CFR 60-3, the Uniform Guidelines on Employee Selection Procedures (1978). These requirements apply to every employer subject to the Civil Rights Act of 1964, Title VII, which basically means any employer with 15 or more
people on the payroll.

Be sure your organization does not cavalierly adopt any screening devices in your employment selection process. Any test, interview rating process, skills demonstration, or SAT score requirement must be proven to be a valid selection device FOR THE JOB TITLE IN QUESTION. That means you must revalidate any selection device for each job title.

What happens if you don't meet the federal requirements and use an employment screening tool without validating it to the job title?

The answer is right in the regulations...(41 CFR 60-3.3 A)

"Procedure having adverse impact constitutes discrimination unless justified. The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these

guidelines, or the provisions of section 6 of this part are satisfied."

Section 6 says any procedure that uses a score should be validated. If procedures that don't use scores can't be validated, they MUST be shown to have specific relevance for successful performance of job content.

For a complete copy of current 41 CFR 60-3 regulations go to
http://www.management-advantage.com/media/UniformGuidelines.pdf
We offer these federal regulations to you on our web site because they are critical in human resource management of employment functions.

The bottom line?

Don't use any selection criteria until you have determined that it is job relevant and have validated that criteria if required to do so by the regulations. If SAT scores can in fact help you in your selection process, and you have the validation studies to back up that claim, by all means, use SAT scores to choose employees for the job in question.

Gentle Readers,

New labor laws go into effect in many states on the first of January each year. California has some particularly nasty surprises in store for employers this coming January. We tell you about one of them.

Bill Truesdell
Editor

IN THIS REPORT (Report #283, 11/7/2003)
-------------- (Sent to over 1,500 subscribers)

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1. CALIFORNIA EMPLOYERS IN NEW FINANCIAL DANGER BEGINNING IN JANUARY 2004 DUE TO NEW LABOR LAW

On October 12, 2003, Governor Gray Davis signed a piece of legislation that will become effective on January 1, 2004. It is known as the "Labor Code Private Attorneys General Act of 2004."

Here's what it does. It allows any employee or former employee to file a lawsuit against you, the employer, for any labor code violation including such issues as expired labor law posters or incorrect Cal/OSHA posters.

If you have 20 or more employees, and don't have the correct wage-and-hour poster on the wall at your place of employment, you can be fined by the court $100 per employee per pay period for up to three years. A second violation will cost $200 per employee per pay period for up to three years. That means you could be liable for fines from $52,000 up to $156,000 depending on the amount of time the poster error existed. A second offense or more will bring fines of DOUBLE those amounts. Poster violations just got a whole lot more expensive than they have been. And, attorney fees will be assessed on top of the penalty.

Here's how the money will be divided for findings that go against an employer of more than one person. "Civil penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities under this code, available for expenditure upon appropriation by the Legislature, and 25 percent to the aggrieved employees."

The potential for employees to get money from employers just increased. California's state-wide Chamber of Commerce said about the bill's signing: "Trial lawyers were given a lucrative new incentive to file meritless lawsuits against employers..."

You can find Senate Bill 796 at:
http://www.leginfo.ca.gov/pub/bill/sen/sb_0751-

0800/sb_796_bill_20031012_chaptered.html

If you wish to avoid the possibility that some former employee will file a lawsuit against you because your employment (including Cal/OSHA) posters are not current, be sure you get your order in before November 21st for late December delivery of laminated All-On-One posters that will be effective January 1, 2004. Many changes were made to the state's labor code and some require poster updates. Come January 1, 2004, you will need to have new labor law posters that comply with these legal updates. If you don't, mark your calendar because that is the day your financial liability begins under SB 796. And that liability will run for three years in arrears.

To get your order in, simply call our toll-free order line at 1-888-671-0404. Or your can go to our HR Web Store at www.hrwebstore.com and follow the links to California's employment posters. There you will find a pre-order opportunity for 2004 updates.

Anyone ordering these California updates prior to November 21st will receive a FREE copy of our book, "Before Diversity," a $14.95 value. Call today.

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2. QUESTIONS FROM READERS

Q - I thought employers with more than 25 (or 50?) employees were required to provide health insurance for any full-time employee after ninety days. Is this true? Can an employer deny providing vacation and health benefits by calling an employee "temporary" even after ninety days of full-time employment in a non-exempt, hourly paid position?

A - Here's the deal...

1) Employers are not currently required to provide vacation or health benefits to any employee. If they choose to do so as a way to entice job candidates and retain employees, they may do so by class of employee. For example: Vacation benefits may be provided to regular full-time employees only, with other classes of employees NOT receiving vacation benefits. Other classes might include temporary, project-related, part-time, etc. The same can be done with health benefits currently. Governor Davis signed SB2 on October 12, 2003, which now mandates employer health benefits to every employee if there are more than 50 workers on the payroll. If the employer doesn't provide such health benefits under the new law, the employer would have to pay an equivalent amount of money to a state health insurance fund. These new requirements take effect on January 1, 2004.

2) Under both California and Federal rules, no job that is compensated on an hourly basis may be classified as exempt from overtime. And, just because the job is compensated by salary, doesn't mean it is necessarily exempt either. See the special FREE report on overtime exemptions at the HR Web Store (www.hrwebstore.com). Click on the left hand menu item "FREE Stuff."

Q - I would like to know how the California Department of Fair Employment and Housing (DFEH) processes a discrimination complaint.

A - The DFEH is responsible for processing, investigating and resolving complaints of illegal employment discrimination that occur within California. They have law enforcement authority in that arena. They have a toll-free complaint line at 1-800-884-1684.

When an employee calls that number the person they talk with will pre-screen the complaint for jurisdiction. Once it is clear DFEH has jurisdiction over the complaint, an appointment will be made for the employee to visit with an investigator at DFEH to get their complaint in writing and let DFEH begin processing it.

You should know that the employer will be notified of the complaint. In that notification will be a warning against any retaliation against the employee for availing himself/herself of the complaint process. Retaliation is as illegal as discrimination. The notice will also ask the employer to respond to the allegations within 30 days of receiving the notification. It is often possible to get an additional 30 days if you need it to conduct your own investigation and prepare your response to the allegations. Since DFEH (and EEOC) are law enforcement agencies, you should seek assistance from a labor attorney or consultant specializing in such matters before formulating your written reply.

It can take up to a year to resolve a complaint through DFEH.

In the end, every complaint will receive one of three types of closure letters:

o Closure with cause - the investigation found the complaint was appropriate and the employee was illegally discriminated against in employment.

o Closure without cause - the DFEH investigation was unable to support the complaint.

o Administrative Closure - The employee requested the case be closed so a lawsuit could be filed in state court, or the agency ran out of processing time, or some other administrative reason.

Each closure provides the employee with a "right to sue" letter meaning the employee can sue the employer in state court. Employees cannot file a lawsuit based on employment discrimination without first going through either DFEH or the federal equivalent agency, the Equal Employment Opportunity Commission (EEOC). Employees don't have to allow the agency to complete their processing of the complaint, however. They can request an administrative closure and right to sue letter at any time after they file their complaint.

To be timely, the complaint must be filed within 300 days after the last illegally discriminating event occurred. In states that don't have a reciprocal agreement with the EEOC, complaints must be filed with EEOC within 180 days of the last event.

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3. HOW DO WE KNOW IF WE ARE AN AFFIRMATIVE ACTION SUB-CONTRACTOR AND NEED TO HAVE A WRITTEN AAP?

If you sell goods or services to any of several thousand companies you may have received a letter from one or more of those customers telling you they are federal government contractors and if you meet certain thresholds, your company, too, may need a written affirmative action plan (AAP).

How do you know if you are an affirmative action sub-contractor? To answer the question you have to get past a couple of hurdles. The first is the requirement for headcount and contract value. If you have 50 or more people on the payroll and the value of one or more of your contracts equals $50,000 in any calendar year,

you may be required to have a written AAP for minorities and women.

To know for sure, you must cross the next hurdle, which is the need for a direct link to the product or service being sold to the government by your customer, the prime contractor. Here's the test:

If your product or service is essential as a component of that eventually being sold to the government, and there is a direct link to that government product, you can consider yourself a federal sub-contractor and will need to prepare an affirmative action plan.

For the sake of explanation, let's say you manufacture semi-conductors and sell some of them to a computer manufacturer, that, in turn sells computers to NASA. Are you a federal sub-contractor? It depends.

Let's presume that you make generic semi-conductors that are used in desktop computers, automotive computers and space shuttle computers. If your computer manufacturer buys semi-conductors of the same variety from a wholesaler and they arrive all mixed up without the ability to identify which company made which semi-conductors, your chips cannot be specifically identified in the final assembly process. You are not a federal sub-contractor in that scenario.

Now let's presume that the chips you manufacture are made to order and the computers NASA ordered require special design. Therefore, your chips are the only ones that will work in computers ordered by NASA and there is a direct link to the primary government contract. You are an official government sub-contractor and must prepare a written AAP for minorities and women.

Chances are that no-one will tell you the moment you become subject to federal regulations dealing with affirmative action requirements. It is the responsibility of every employer to be aware of the moment that happens. From the first moment you become a federal contractor or sub-contractor, you have 120 calendar days in which to prepare your written AAP for minorities and women.

There are also requirements for written AAPs dealing with disabled and veterans.

If you find yourself in the position that you must develop your first AAP and wish to know what is required and how to accomplish the job, we suggest you secure a copy of our book, "Secrets of Affirmative Action Compliance" which is now in its 6th edition. You will find it at the HR Web Store (www.hrwebstore.com).

Gentle Readers,

This week we summarize 17 pieces of legislation that California employers must be aware of because they become effective on January 1, 2004. We also tell you the latest about resources for affirmative action employers filing their job openings with America's Job Bank or the new Veteran's Job Clearinghouse.

Bill Truesdell, SPHR
Editor

IN THIS REPORT (Report #284, 11/14/2003)
---------- (Sent to over 1,500 subscribers)

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1. FEDERAL CONTRACTORS WILL HAVE NEW JOB POSTING RESOURCE

Over the past several years many federal contractors have come to rely on America's Job Bank (AJB) to meet their mandatory job listing requirements for covered veterans under the Vietnam Era Veteran's Readjustment Assistance Act (VEVRAA).

Effective December 1, 2003 Federal law mandates changes in the listing requirements for federal contractors under VEVRAA.

As of December 1, 2003, employers can meet this mandatory job-listing requirement by any ONE of the following options:

1. Continue to post employment openings with AJB. The America's Job Bank Service Center will work with the appropriate agencies to insure distribution of the jobs to the local employment service delivery system.

Note that all jobs must include the Zip Code of the location of the job or the hiring point.

Additionally, third party job posters who aggregate openings and send them to AJB on behalf of multiple employers will have to establish separate accounts for each federal contractor for which they are posting jobs. If you have any questions on the creation of these additional accounts, please contact the AJB Service Center for assistance at pihelp@ajb.dni.us <mailto:pihelp@ajb.dni.us>.

2. List all employment openings directly with the appropriate local employment service delivery system.

3. Post all employment openings on Veterans' Job Clearinghouse, <http://www.jobsforveterans.org> (available December 1, 2003). This option will distribute your jobs to the appropriate local employment service delivery system. There will be no job seeker access to this site.

If you have any questions, please contact the AJB Service Center for

assistance at scvccntr@ajb.dni.us <mailto:scvccntr@ajb.dni.us>.

Additional information is available at:
<http://www.jobsearch.org/static/VJC_Employer_Letter.html>

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2. NEW CALIFORNIA LEGISLATION EFFECTIVE JANUARY 1, 2004

The California Legislature has had a busy year. Spurred on by the recall of Governor Gray Davis, there was a push to codify as many employee-friendly programs as possible before the Governor's office changes hands on November 15, 2003, and Arnold Schwarzenegger takes over the reins.

This flood of anti-employer legislation has been stacked up, ready to kick into effect on January 1, 2004. We already know from the 2002 legislative year that Paid Family Leave will cause employees to pay another deduction beginning January 1, 2004. Paid leaves under the program will become available beginning on July 1, 2004. It would be a good idea to warn your employees that they will see another payroll deduction in January.

Here are some of the bills passed and signed by the Governor this year:

- Employment Discrimination: New Liability (AB 76 - Corbett) provides that an employer will be held liable, under the provisions of the Fair Employment and Housing Act (FEHA), for the sexual harassment of a worker by any person, such as clients or customers.

- Employment Discrimination: New Liability (AB 196 - Leno) creates new basis for employment discrimination lawsuits for gender identity discrimination under the Fair Employment and Housing Act (FEHA).

- Attorney Fees in Employment Cases. (AB 223 - Diaz) provides new incentive to file frivolous lawsuits against employers by ordering employers to pay attorney fees and costs when a worker is awarded one penny or more by a court.

- Labor Violations: Private Enforcement. (SB 796 - Dunn) We told you about this last week in Special Report for HR Professionals #283. Provides a new lucrative incentive for workers and their private attorneys to file meritless lawsuits against employers for Labor Code violations under the "Labor Code Private Attorney General Act of 2004" - a new private right of action to enforce any and all Labor Code provisions. The suing employee will keep a portion of assessed fines and penalties.

- New Workplace Leave Program: Crime Victims (SB 478 - Dunn) establishes new, UNLIMITED right to workplace leave program for some employees.

- Foreign Languages. (AB 309 - Chu) new costly requirement that business deliver to the other party a translation of any contract or other agreement not negotiated in English in the foreign language used during the negotiations.

- Employment Training Panel. (AB 1061 - Firebaugh) establishes 25 percent small business participation goal in Employment Training Panel contracts.

- Health Care Tax. (SB 2 - Burton & Speier) requires employers to provide health insurance to every employee in California and their dependents or pay a health care coverage tax into a state fund. Employers with 20 or more workers will be forced to comply. Employers with 200 or more employees will have to pay 80% of health care premiums for BOTH employee and dependents. The bill would require employees and dependents of large employers to be covered beginning January 1, 2006, while it would require employees of medium employers to be covered beginning January 1, 2007, subject to certain conditions. Small employers would be exempt from the requirement to provide coverage and from the fee.

- Health Insurance Counseling Fees. (SB 413 - Speier) increases annual fee assessed by Department of Aging on health care service plans to offset costs of counseling seniors on health maintenance organizations (HMO's).

- Life Insurance. (AB 226 - Vargas) prohibits the issuance of corporate-owned life insurance (COLI) on non-exempt employees.

- Privacy of Personal Information. (SB 590 - Speier) prohibits a seller from sharing any personal information about a consumer beyond what is necessary to complete the purchase, potentially limiting legitimate sharing.

- Internet Privacy. (AB 68 - Simitian) requires Internet operators to post privacy notices.

- State Contracting: Living Wage Mandate. (AB 1093 - Lieber) mandates all employers with 100 or more workers who enter into procurement contracts with the state pay minimum wage of at least $12 per hour if the company does not offer health insurance. Begins in 2004 and is indexed annually thereafter.

- State Contracting: New Barriers for Contractors. (SB 578 - Alarcon) enormously expands restrictions in all state procurement contracts by creating new state barriers that require all contractors and subcontractors to pay "living wages," and prohibits mandatory overtime, at-will employment, or verbal harassment or abuse of workers, among many other provisions.

- Unemployment Insurance (UI) Benefits: No Waiting. (AB 331 - Kehoe) unreasonably increases employer UI tax costs by providing immediate access to UI benefits to workers who are unemployed due to a trade dispute lockout by waiving the normal seven-day waiting period.

- Workers' Compensation: Safe Harbor from Penalties. (AB 1557 - Vargas) provides employers with a safe harbor from outrageous penalties if the employer follows new utilization process.

And, that's only a few of them.

Regardless of the state in which you operate, be sure you get a complete update on new laws that will impact you and your organization during the coming year. If you don't reach out, you may ignorantly stumble into an illegal action and pay a high price for the error.

Each year it takes more and more time for HR professionals to become acquainted with the new laws that impact them and their organizations. Perhaps that's why we see that more and more HR professionals are

attorneys. If you have no other resource, talk with your management attorney and ask for a private briefing. Be informed. Be professional.

For more information about these, or any other California legislation, go to http://www.leginfo.ca.gov/bilinfo.html .

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3. SAVE ON HOLIDAY PURCHASES FROM THE HR WEB STORE

Here's something special for you alone...just because you are one of our special subscribers. Between now and December 18, 2003, you can get 10% OFF ALL PURCHASES at the HR Web Store. That's our gift to you this holiday season.

We have added many new items during the past month. You owe it to yourself to take another look if you haven't visited in a while. Chose from:

- Labor Law Compliance Posters
- HR Management Software
- Employee Management Resources
- EEO/AAP/Diversity Resources
- Sales & Marketing Resources
- Health Care Resources
- Safety & Emergency Resources
- Police & Fire Resources
- Attorney Resources
- Gifts for Professionals

Order anything in the HR Web Store and you will be asked for a coupon code at checkout. Write in ... "Holiday Gifts" ... that's all there is to it. When you push "Recalculate" you will find your ENTIRE ORDER HAS BEEN DISCOUNTED BY 10%.

And, here's the rest of our special holiday deal:

FREE UPS GROUND SHIPPING ON ALL ORDERS OVER $200

You won't see these savings published anywhere else. They are not shown at the HR Web Store.

This is a holiday gift for you because you are a subscriber to our newsletter.

Remember, 10% off on EVERYTHING at www.hrwebstore.com when you input your coupon code: "Holiday Gifts."

AND ...

FREE SHIPPING on all orders over $200 ... just for you.

We hope we can make your holiday shopping just a little bit easier than it might otherwise be. We will ship directly to you, taking all the hassle out of your shopping.

Gentle Readers,

This week we announce new strategic business alliances with key HR service firms. No matter what you might need in the way of HR support, we can now offer that to you. And, by the way, California employers will have to prepare themselves and their employees to deal with the new Paid Family Leave program that begins on January 1st.

Bill Truesdell
Editor

IN THIS REPORT (Report #285, 11/21/2003)
---------- (Sent to over 1,500 subscribers)

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1. SENATE CONFIRMS EEOC COMMISSIONERS

On October 31, 2003, by a voice vote, the U.S. Senate confirmed the appointment of Leslie Silverman and Stuart Ishimaru as commissioners on the Equal Employment Opportunity Commission (EEOC).

Silverman fills the last of three Republican seats on the five-member panel and Ishimaru fills the second of two Democrat seats. Now, for the first time in many years, the EEOC is at its full strength of commissioners.

At the same time, the Senate confirmed what was a recess appointment of Naomi Churchill Earp who has been serving as vice-chair of the Commission since April.

Earlier this year a report from the National Acadamy of Public Administration called for a major restructuring of the EEOC staff organization. Cari Dominguez, EEOC Chair, has announced that the first steps will involve establishment of a national call center that will act as intake point for complaints. The call center is being established as a two-year trial to see if it can help accelerate the processing of complaints from employees around the country. It is expected the call center to be operational shortly after the first of next year.

And, in a separate issue, the EEOC released guidance questions and answers on the issue of accommodating employees with diabetes. They have attempted to answer questions such as: When is diabetes considered a disability under the Americans with Disabilities Act? What types of reasonable accommodations might employees with diabetes need on the job?

The American Diabetes Association reports that nearly 17 million people in the United States have the disease. EEOC has seen its volume of complaints about diabetes accommodation jump 13% during the past five years.

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2. CALIFORNIA EMPLOYERS GETTING READY FOR PAID FAMILY LEAVE

California will become the first state in the nation on January 1, 2004, to implement a Paid Family Leave (PFL) program.

Employers around the state are already receiving notification from the Employment Development Department (EDD) that they will have to deliver specific information about the program to employees.

Employers are required to provide a notice informing workers of their PFL rights and benefits. Notice is required for every employee hired on or after January 1, 2004. That notice is designated by EDD as form DE 1857A. A new employment poster will be required in every workplace in California beginning on January 1st. That poster has been designated by EDD as form DE 2511.

Beginning on July 1, 2004, employers must provide to every worker leaving the payroll, and all employees taking time off to care for an ill family member or bond with a new child, forms on the state's Disability Insurance Program and PFL benefits. They are called Disability Insurance Program Fact Sheet (form DE 8714C) and Paid Family Leave Fact Sheet (form DE 8714F).

All of these forms can be printed directly from EDD's web site. You will find them at www.edd.ca.gov/direp/dipub.htm . You may access all forms in either English or Spanish. The "Notice to Employees" is available in English and Spanish from the web site, and by special request to EDD, employers can get the notice in Chinese or Vietnamese.

Employees will begin paying an additional 0.08% deduction from their pay beginning January 1st to pay for the PFL program. The first applications for benefits will be accepted beginning on July 1. Leaves may begin on or after July 1, 2004.

The PFL program provides for a maximum of six weeks of paid family leave benefits for workers who take time off of work to care for a child, spouse, parent, or domestic partner who is seriously ill and unable to care for him/herself, or to bond with a new child.

HR professionals may or may not have these EDD materials directed to them. Be sure to check within your organization to locate the EDD mailings and, prepare your organization with the proper forms and postings to comply with the new requirements.

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3. NEW STRATEGIC BUSINESS ALLIANCES ANNOUNCED

We are excited to announce the finalization of three new strategic business partnerships that we think will offer greater value to you when seeking support for your human resource management objectives.

- MERIT RESOURCE GROUP - A full-service HR Consulting and Staffing organization. Begin with a complete HR Assessment to help develop long-range goals. You will find them ready to help with strategic planning, benefit and safety plans, compensation issues, policies and practices and staffing assistance for either interim assignments or regular full-time HR job openings, from Vice President to clerical. Contact principals Rod Hana or Brian Gauny at 925-828-4700.

- ELLIOTT BROWN & ASSOCIATES - Professional employee and customer surveys at their best. Do you know your employee survey can pay for itself if you retain just one middle management person

and avoid the cost of replacement? How long has it been since you've asked your employees what they think? Most managers who believe they know are significantly surprised by the truth. Contact principal Elliott Brown at 415-552-0810.

- COUDEN + ASSOCIATES - Professional training and organization development services at their best. Couden + Associates provides a variety of training and OD services ranging from training design and implementation to strategic planning, executive coaching, meeting planning and facilitation, performance management and employment systems design, change or transition management support, and 360 degree feedback. Contact principal Susan Couden at 925-935-8286.

This is the first time in over 17 years that we have formalized strategic business alliances with other firms offering professional HR management services. The reason why we've done it now is simple ... it offers us the opportunity to assure our clients of the broadest possible professional support, and we believe we owe our clients that.

Of course, we stand ready to continue working with you on your Affirmative Action Plans and Equal Employment Opportunity programs. When employers and federal contractors want the most knowledgeable support they always turn to us for that help. We appreciate your past business and look forward to serving you for many years to come.

Gentle Readers,

New legislation is coming to help employers in once again using outside counsel and consultants to conduct investigations of employee misconduct. And, you will want to know that you may lose up to 60% of your workforce in the next year or so. (That's a scary thought!)

Bill Truesdell
Editor

IN THIS REPORT (Report #286, 12/5/2003)
---------- (Sent to over 1,500 subscribers)

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1. CONGRESS EXEMPTS 3RD PARTIES FROM NEW VERSION OF CREDIT ACT

President George W. Bush has said he will sign legislation designed to continue the Fair Credit Reporting Act (FCRA) of 1970 that had been due to expire on December 31th this year.

Called the Fair and Accurate Credit Transactions (FACT) Act of 2003 (H.R. 2622) authorizes the permanent extension of the FCRA with some specific changes to update the legislation.

In 1999, the Federal Trade Commission (FTC) issued what is now known as the "Vail Opinion Letter." That letter was a response to questions posed by Judy Vail, an attorney based in Portland, Oregon, and stated that the notification and disclosure requirements of FCRA did apply whenever employers hired third-party organizations to investigate allegations of workplace sexual harassment.

The Vail Opinion Letter placed employers squarely between a rock and a hard place. On the one hand, the FTC says they can't use outside counsel or consultants to conduct an investigation of alleged wrongdoing without full disclosure of the investigation file to the accused individual, and on the other hand, Title VII of the Civil Rights Act of 1964 requires employers to conduct investigations of such allegations. The only reasonable way employers were able to respond to the conundrum was to conduct the investigations themselves using in-house resources. In small organizations, that was problematic because many didn't have human resource professionals that could conduct the investigations. Absent trained investigators, employers were stuck.

Now, the FCRA is being amended to allow outside (third-party) investigators to once again perform the tasks most folks agree is necessary and appropriate.

The new provisions read:

EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS

"...the communication must be made to an employer in connection with an investigation of (i) suspected misconduct relating to employment; or (ii) compliance with Federal, State, or local laws and regulations, the

rules of a self-regulatory organization, or any preexisting written policies of the employer;

"(C)the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and

"(D)the communication is not provided to any person except -- (i) to the employer or an agent of the employer; (ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government; (iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee; (iv) as otherwise required by law; or (v) pursuant to Section 608."

The requirements also include the employer's obligation, following any adverse (disciplinary) action, a disclosure to the accused of a summary containing the nature and substance of the investigation that led to the adverse action.

For a complete copy of the new legislation go to:
http://thomas.loc.gov/cgi-bin/query/C?c108:./temp/~c108XFww5q
Look for Title VI, Section 611.

There is no current implementation date for these new provisions. We will let you know as soon as we hear.

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2. NEW REPORT ON WORKER TRENDS AND JOB CHANGING PLANS

On November 17, 2003, released its latest report based on its survey, "At Work 2003: Past, Present and Future." Some very interesting points jumped out of the report that you should be aware of ... now.

Major Point: Nearly one-in-four workers say they are currently dissatisfied with their jobs, a 20% increase over 2001. Six-in-ten workers say they plan to leave their jobs for other pursuits in the next two years. (That's 60% folks!!!)

"While workers feel fortunate to have jobs in today's tight job market, job satisfaction levels are declining and new job plans are emerging in anticipation of an economic recovery down the road," said Matt Ferguson, President and COO of CareerBuilder.com.

Other Highlights of the Report:

- Less than half of workers today say they are satisfied with their career progress.
- 48% of workers feel their workloads are too heavy, slightly higher than in 2001. One-in-two workers say they work under a great deal of stress, the same as in 2001.
- In 2003, 53% of men said they are dissatisfied with their pay, a 23% increase over the 43% who shared this sentiment in 2001. Women have stayed relatively consistent in their perspectives with one-in-two expressing unhappiness with compensation.
- 70% of workers in sales and customer service plan to leave their jobs in the next two years.
- Of the job functions compared, workers in accounting/financial operations are the most satisfied with their career progress at 56% and workers in customer service are the least

satisfied at 32%.

To request a copy of CareerBuilder.com's study report, contact Jennifer Sullivan of CareerBuilder.com. She can be reached at 773-527-1164 or via email at jennifer.sullivan@careerbuilder.com .

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3. SUPREME COURT RULING ON ADA's SCOPE

On Tuesday this week (December 2, 2003), the U.S. Supreme Court issued its ruling in the case of Raytheon Co. v. Hernandez (No. 02-749, 12/2/2003).

It is important because if offers at least some small amount of guidance to employers about how to treat recovering addicts and whether or not they are protected by the Americans with Disabilities Act (ADA).

In this situation, Joel Hernandez worked for Hughes Missile Systems for 25 years. On June 11, 1991, Mr. Hernandez' appearance and behavior at work suggested that he might be under the influence of drugs or alcohol. Company policy called for a drug test in those circumstances, which Mr. Hernandez took. Results came back positive for cocaine and Mr. Hernandez admitted that he had been up late the night before the drug test drinking beer and using cocaine. The company told him he would have to resign or be terminated because of his violation of company policy. He resigned. The official written "Employee Separation Summary" indicated the reason for separation was: "discharge for personal conduct (quit in lieu of discharge)."

More than two years later, Mr. Hernandez applied to be rehired, stating that Raytheon had previously employed him, and attaching letters from his pastor about his active church participation and from an Alcoholics Anonymous counselor about his regular attendance at meetings and his recovery. The Raytheon employee who reviewed and rejected his application testified that the company had a policy against rehiring employees who are terminated for workplace misconduct and that she did not know that Mr. Hernandez was a former drug addict when she rejected his application.

In its opinion the Court said, "The Ninth Circuit improperly applied a disparate-impact analysis to respondent's disparate-treatment claim." In addition, it said, "... the Ninth Circuit improperly focused on factors that pertain only to disparate-impact claims, and thus ignored the fact that petitioner's no-hire policy is a quintessential legitimate, nondiscriminatory reason for refusing to rehire an employee who was terminated for violating workplace conduct rules."

What does it mean for other employers? Just this... If you need a policy for business reasons, prepare that policy in writing and adequately teach your management people how to apply it consistently, you can usually rely on it in defense of employee charges.

Don't forget, an annual review of your employee handbooks and/or policy manuals is appropriate in these days of rapidly changing state and federal laws governing employee management.

For a complete copy of the Court's opinion in this case go to:
http://www.supremecourtus.gov/opinions/03pdf/02-749.pdf

Gentle Readers,

What is a protected absence? And, "What do you mean employees can sue the employer for Labor Code violations?"

We wish each of you the very best that this special season has to offer. May you and your loved ones be blessed in the new year. Happy Holidays to each of you.

(Next week we will post our January 2004, quarterly newsletter THE ADVANTAGE. We will return in the new year with another edition of "Special Report for HR Professionals.")

Bill Truesdell
Editor

IN THIS REPORT (Report #287, 12/12/2003)
---------- (Sent to over 1,500 subscribers)

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1. EEOC PUBLISHES ITS STRATEGIC PLAN FOR 2004 - 2009

A new federal fiscal year began on October 1, 2003 ... FY 2004.

On that date, the Equal Employment Opportunity Commission (EEOC) published its strategic plan for the coming five years. You can find the entire document at www.eeoc.gov .

SUMMARY OF STRATEGIC OBJECTIVES

Our Strategic Plan identifies three Strategic Objectives: Justice and Opportunity, Inclusive Workplace and Organizational Excellence. Elements of the Five-Point Plan are incorporated under each Strategic Objective, as described in the chart below. Within the overall framework of the Strategic Objectives, the Five-Point Plan serves as a guide for staff to explore ways to make the best use of EEOC data, information and experiences.

Justice and Opportunity: Serve the public interest by obtaining justice for individuals who experience employment discrimination and by removing discriminatory barriers to create a level playing field. This strategic objective is designed to position the agency to continue to have a meaningful impact on discrimination in today's workplace and the workplace of the future. Our strategies for achieving this objective are founded on three points of the EEOC's Five-Point Plan:

* Proficient Resolution
* Promote and Expand Mediation/ADR
* Strategic Enforcement and Litigation

Inclusive Workplace: Strengthening America's workplace by preventing discrimination and promoting workplace policies and practices that foster an inclusive work culture. This strategic objective is designed to fashion more proactive approaches to preventing discrimination from occurring in the first place. Our strategies for achieving this objective are founded on one point of the EEOC's Five-Point Plan:

* Proactive Prevention

Organizational Excellence: Establish an organizational infrastructure that will set and implement the highest quality standards for equal opportunity, customer service, internal efficiency and fiscal responsibility. This strategic objective recognizes that the standards we promote to other employers should be readily apparent in our own operations. Our strategies for achieving this objective are founded on one point of the EEOC's Five-Point Plan:

* EEOC As A Model Workplace

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2. EMPLOYEE QUESTION ABOUT PROTECTED ABSENCE

Q: I have used my sick time which my employer calls managed time off. I have 5 days annually. I have already used more than the 5 days, and I have used all vacation and personal days off. My 13 month old recently got sick with an ear infection and needed to be taken to the doctor. I missed another day because of child illness and I am being written up. Can they hold this against me.

I can not guarantee that my kids will not be ill again.

A: Here is a short answer to your question.
(The long answer would take volumes.)

The state you are located in and the number of employees your employer has on its payroll govern the types of issues you raise. The federal Family and Medical Leave Act of 1993 (FMLA) covers employers with 50 or more people on the payroll for 20 or more calendar workweeks. Those 50 people (or more) must work within a 75 mile radius geographically. FMLA provides for unpaid leave of absence of up to 12 weeks in any 12-month period for the employee's personal serious health condition or to care for a relative with a serious health condition, or for the adoption or birth of a child. 39 states have their individual family leave laws in addition to this federal law.

A "serious health condition" is generally defined by courts to mean a condition for which medical treatment is on-going for three days or more. Absences to care for a child that last only one day or less would not generally be considered to fall within this definition. Therefore, you would not qualify for FMLA time off even if your employer would be required to give it to you based on the employer

qualifications cited above.

Most state programs operate in the same fashion. Some offer different amounts of total leave time available. Any time off for FMLA (or state leave plans) is protected and employees may not be disciplined for use of that time. Under the federal requirements, employee benefits must be continued during the leave, at the employer's expense, and employees can take the time in increments of one hour if necessary.

California has a new family leave program that will begin taking deductions from employee paychecks on January 1, 2004. Paid family leave will be available under the California plan beginning on July 1, 2004. California's "Kin Care" law provides that any employer who offers workers a sick leave program must permit the use of up to one-half of the time an employee has accrued in that plan to care for a sick parent, spouse or child. Since you have used all of your accrued sick leave, there is no protection afforded you by the Kin Care law.

If there are no state or federal leave programs that apply in your situation, and you have exhausted your vacation and sick leave time, your employer could well be correct in disciplining you for your continued absence. That would be governed by company policy. And, the discipline could eventually reach the point of dismissal if you continue being absent.

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3. CALIFORNIA EMPLOYERS...WATCH OUT!

That's right. There are scarry things lurking just around the corner. We've told you before about how the California Legislature and Governor Gray Davis created new and serious obligations for the state's employers. We want to spend another moment or two addressing two of the new requirements that we believe will prove to be extremely costly to employers.

While everyone has been turned in the direction of Workers' Compensation and the problems suffered by that system, employers have found themselves preoccupied with the costs associated with Workers' Compensation insurance. Just last week, the state's Insurance Commissioner forecast rapidly falling insurance premiums for Workers' Compensation policies. That announcement left everyone feeling good for a brief period.

What most employers don't yet realize is a runaway truck called SB 796 will start running over employers beginning in January. Clearly, some of those impacted by this surprise will find themselves out of business because of the costs of penalties associated with the "bounty hunter law." Starting next month, any employee can sue his/her employer for any Labor Code violation not pursued by state agencies.

We can't emphasize strongly enough that HR professionals should prepare special management training to deal with this disaster in the making.

An example: What if you don't have Industrial Welfare Commission Orders posted in the workplace as required, or your policy is to prohibit workers from seeing the content of their personal personnel

files, or you refuse to allow nursing mothers to have time off to nurse their babies?

Under SB 796 if one employee gets upset with your policy and goes to talk with an attorney about that upset, you could suffer a huge financial penalty. Here's how it might be computed...

You have 150 employees paid every two weeks. It is determined that you have not had the IWC Order posted for the past 29 pay periods. Your penalty will be $100 X 150 X 29 or $435,000 PLUS the fees you must pay on behalf of your employee to his/her attorney.

What makes this so onerous is the feature of this legislation that allows your employee to keep 25% of the penalty. In our example, your employee pockets $108,750. That's why employers will be writing lots of checks as a result of this new law. Employees have BIG personal gains to be made by filing such action. They don't even have to pay for their own attorney. The employer will be charged for that, too.

The second new law that will rise up to bite many employers beginning next month is the "Whistleblower Law," SB 777. Once an employee has filed a complaint about employer activities, alleging illegal activity, the employer must be able to PROVE justification for any disciplinary action taken against that employee. If proof isn't forthcoming, the employer will be presumed to have illegally discriminated against the worker and financial penalties can be assessed. This new law is one reason California employers must update their workplace posters next month. A new poster is required showing the "hotline" telephone number employees can use to contact the state Attorney General's office for reporting violations.

Be sure you have ordered your new California All-On-One poster for each of your work locations. Deliveries will begin on January 5th. If you have yet to order the updates, go to www.hrwebstore.com and put your order in now. It will be a lot cheaper for you in the long run.

And, get your managers trained in these new pitfalls and how to avoid them. The days of people managing by the seat of their pants are long gone. Today, managers need professional training in order to perform well and avoid making seriously bad decisions regarding their workforce.

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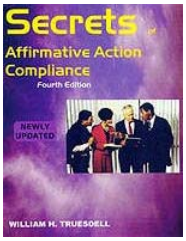

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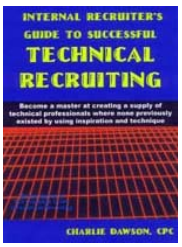

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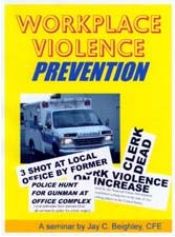

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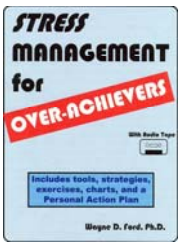

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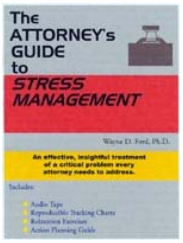

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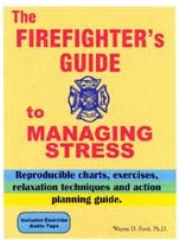

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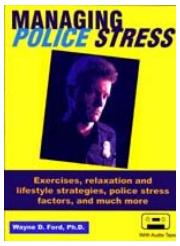

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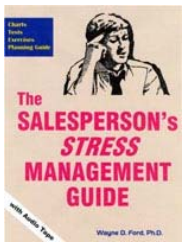

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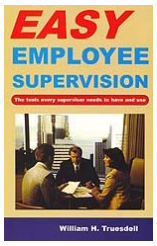

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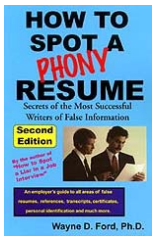

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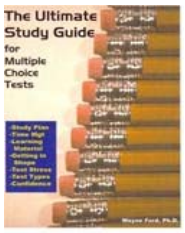

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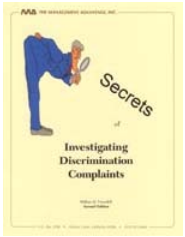

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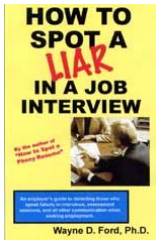

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