



# **Gentle Readers**

## **Special Reports for HR Professionals 2004**

**Collection of email reports.**



**GENTLE READERS:  
Special Reports for HR  
Professionals - 2004**

**Collection of email reports.**

**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](mailto:info@management-advantage.com)

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Gentle Readers,

Happy New Year to each of you. Actions at the EEOC and the U.S. Small Business Administration are in this week's news. And, FINALLY, the Census Bureau releases the EEO File.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #288, 1/9/2003)  
----- (Sent to over 1,500 subscribers)

1. **THE NEW FREEDOM SMALL BUSINESS INITIATIVE AND THE DISABLED**
2. **EEOC APPROVES CALL CENTER FOR TWO YEAR PILOT**
3. **EEO FILE RELEASED BY CENSUS BUREAU WITH 2000 DATA**

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1. **THE NEW FREEDOM SMALL BUSINESS INITIATIVE AND THE DISABLED**

From DiversityOnLine.com comes the following announcement about a new alliance to assist people with disabilities...

"Janet Fiore, CEO of The Sierra Group, joined labor secretary Elaine L. Chao and administrator Hector V. Barreto of the U.S. Small Business Administration in Washington, D.C., for a ceremony that launched an initiative designed to assist small business owners looking to hire workers with disabilities. This strategic alliance is entitled, 'The New Freedom Small Business Initiative' and will also help individuals with disabilities who are looking to start their own small businesses. Founded in 1991, The Sierra Group is a national consulting firm that combines expertise in business and technology to overcome limits traditionally associated with disability. Ms. Fiore, whose firm's staff currently consists of 80 percent of people with disabilities, recalls her own need for technology and physical accommodations while working for a large insurance company. 'These simple accommodations were so unheard of in 1991 that I almost lost my job. What I lost instead was my tolerance. I realized if these straightforward accommodations were difficult for an otherwise great employer to deal with then how could people with more severe disabilities ever find and keep a job,' Ms. Fiore said."

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2. **EEOC APPROVES CALL CENTER FOR TWO YEAR PILOT**

On November 5, 2003, the Equal Employment Opportunity Commission (EEOC) approved a proposal from Chair Cari Dominguez to establish a national call center for intake of employee complaints. The experiment will last for 2-years and is designated a pilot project.

The call center is only part of a set of recommendations coming from a report made by the National Academy of Public Administration earlier this year. In that report, the Academy said EEOC should take several actions to improve its efficiency. Establishing a national call center was one of those actions.

The Commission expects that it will not actually open the new center until October 2004, which is the start of its 2005 fiscal year. The time between now and then will be used to search for vendors willing and able to manage the call center.

As envisioned, the call center would receive telephone calls from employees who wish to know if they have legitimate charges of illegal discrimination against their employers. Employees would receive counseling from the center and the center would set appointments in local EEOC offices around the country if appropriate. It is hoped that the center will lessen the amount of time local offices now spend on the complaint intake process.

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**3. EEO FILE RELEASED BY CENSUS BUREAU WITH 2000 DATA**

It has finally happened. Although we haven't seen any of the data yet, the Census Bureau has released its EEO file of occupational data. It happened on January 2, 2004. Compilation of that file was sponsored by four government agencies, each of which has need for its contents: 1) The Equal Employment Opportunity Commission (EEOC); 2) the Department of Justice (DOJ); 3) the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP); and, 4) the Office of Personnel Management (OPM).

You can order the data file on CD-ROM, for a fee, from the Census Bureau's Customer Services Center on 301-763-INFO. The CD-ROM contains data in either ASCII or SAS format, and technical documentation, but no software. This is NOT affirmative action preparation software. For that, you must go to a commercial vendor. The government doesn't publish such software.

For most of us, this release will not be greatly beneficial, except that it is a major milestone on the journey to AAP preparation software from vendors that will ultimately offer 2000 Census data.

Census 2000 EEO file reports on over 500 occupations from actors to veterinarians. Data cover gender, race, ethnicity, education, age, industry and earnings. Summary geographic levels include the nation, states, metropolitan areas, counties and places with populations of 50,000 or more.

Each state data center will be obtaining a copy of the EEO file and will make printouts of data available to interested parties after they have "run it through" their analysis software so it can be printed in an intelligent format. You can expect this to take from 2 to 6 months, depending on state budgets.

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*Gentle Readers,*

The newly released EEO Special File from Census 2000 must be used by federal contractors in building their AAPs starting on 1-1-2005. Plus, other fun requirements that are about to be brought to you by your federal government.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #289, 1/23/2004)  
----- (Sent to over 1,500 subscribers)

1. **EEO SPECIAL FILE RELEASED BY CENSUS BUREAU**
2. **EEOC EXPECTED TO DELAY NEW EEO-1 FORMAT UNTIL 2005**
3. **FLSA CHANGES EXPECTED TO BE ANNOUNCED BY END OF MARCH**

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1. **EEO SPECIAL FILE RELEASED BY CENSUS BUREAU**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has created another Catch 22 for federal contractors and affirmative action plan software vendors. On January 13, 2004, OFCCP posted on its web site a statement about the Census 2000 Special EEO File. You will find it at <http://www.dol.gov/esa/regs/compliance/ofccp/censuseo.htm>

In a full page of little tiny print, the government has said only one thing new ... that it will begin holding contractors accountable for using 2000 Census data as of January 1, 2005.

So, any affirmative action plans you develop during the 2004 calendar year should be based on 1990 Census data unless you have a means to extract the data you require from the new EEO Special File from Census 2000.

The Census Bureau will sell you the data on a CD-ROM. There is no software provided for extracting that data, however. You must be prepared to create your own extraction software.

If you aren't able to use the "raw" Census data from 2000, you will have to wait until the state data centers have extracted the reports necessary, or you purchase an AAP preparation software package from one of the vendors now working on the extraction process.

OFCCP has not answered many questions yet. It may never happen, since experts tell us the agency has no responsibility for explaining to contractors "how" to do an availability analysis as part of the AAP development process. Be sure, then, that you are able to

answer these questions for yourself before you begin using the new Census 2000 EEO Special File.

- o Will the new Hawaiian & Pacific Islander race category be used in every AAP, even though the representation percentages may fall into fractions of a percent?
- o Will "Hispanic" ethnicity override all race categories?
- o Will the new multiple-race category be used in every AAP, even though the representation percentages may fall into fractions of a percent?

Don't count on the Office of Federal Contract Compliance Programs (OFCCP) to tell you how to answer the questions. Our advice to contractors is to raise these and other questions with your AAP management colleagues in other organizations. Bring the questions to your Industry Liaison Group (ILG) meetings. Discuss them with your software vendor and find out how the vendor is dealing with the issues. At this point discussion is possible. Come 1-1-2005, there will be no discussion. You will have to use the new data one way or another.

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**2. EEOC EXPECTED TO DELAY NEW EEO-1 FORMAT UNTIL 2005**

The first major change in 30 years in the Standard Form 100 for private sector employers will likely be delayed until 2005. The Equal Employment Opportunity Commission (EEOC) is expected to announce shortly its decision to delay implementation of the changes.

Known as the EEO-1 report, it currently contains nine categories for occupational differentiation and race/ethnicity/sex breakdown of headcount. The proposed new form will add the Hawaiian & Pacific Islander race category, spinning Asian off as a separate race category. Expansion and rearranging of the occupational categories is also proposed by the Commission. The Officials & Managers category will be subdivided into three sub-categories, Executive, Mid-Level Managers, and Supervisors.

While we are waiting for this formal announcement from the EEOC, we continue to wait for an announcement from the task force chaired by EEOC concerning the definition of job applicant. The last deadline for their report passed as quickly as the New Year's celebrations. Now, we expect the Office of Management and Budget (OMB) to approve another extension until March 31, 2004. Frankly, we don't expect the task force report to come out this year because of the sensitivity of the issue and the fact we are in a presidential election year. It just wouldn't do for a new definition of job applicant to create political upset. Our best guess is that it will surface again in 2005.

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### 3. FLSA CHANGES EXPECTED TO BE ANNOUNCED BY END OF MARCH

You will recall that the U.S. Department of Labor (DOL) has proposed some changes to the regulations implementing the new Congressional changes to the 1938 Fair Labor Standards Act. Those proposals received a great deal of comment and criticism during the public comment period, although employers were generally supportive of the changes.

Since then, the DOL has been busy revising certain portions of the proposal and the result is expected in an announcement by the end of March.

Here are the portions of the regulations that are not likely to change, and employers can begin discussions on how they will adapt to these requirements:

(Remember, you must take your state laws into consideration as well. Some state requirements are more strict than even the revised FLSA requirements.)

- o "Safe Harbor" provisions for employers who implement a written policy that prohibits certain improper deductions from exempt employees' pay.
- o Increase of minimum salary requirements for exempt classifications is expected to go from \$155/week to \$425/week.
- o Highly compensated job exemption if compensation exceeds \$65,000 annually and the job requires at least one duty necessary to qualify as an executive, administrative, or professional employee.

At least employers can begin the analysis required before any firm decisions are made. For example:

- o Do you have a written policy that prohibits deductions from exempt employees' salary unless the employee is suspended for a full day or more due to workplace misconduct? (Current requirements is deductions for a full week or more.)
- o Do you have the necessary budget for 2005 and beyond to accommodate the overtime or increased salary expense due to the minimum salary requirement increase?
- o How many of your employees may fall into the "highly compensated" category because they earn \$65,000 or more?

Experts caution against implementing any changes in policy or practices until the final regulations have actually been issued. Even so, there are things we can do in HR to prepare ourselves for those changes that seem to be almost certain.

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## Gentle Readers

Recent changes in federal and state laws have created the need to replace employment compliance posters in many states. Be sure you have the current copy for your locations.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #290, 1/30/2004)  
----- (Sent to over 1,500 subscribers)

1. **OFCCP WILL END MANDATORY ON-SITE REVIEWS**
2. **SHRM RELEASES SURVEY RESULTS ON WORKPLACE VIOLENCE**
3. **ARE YOUR LABOR LAW COMPLIANCE POSTERS CURRENT?**

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1. **OFCCP WILL END MANDATORY ON-SITE REVIEWS**

The Office of Federal Contract Compliance Programs (OFCCP) has announced its intention to issue a final rule removing the obligation for Compliance Officers to perform an on-site visit as part of each federal contractor/subcontractor compliance evaluation. The action is expected in February 2004.

Up to now, 41 CFR 60-1.20(a)(3), 60-250.60(a)(3), and 60-741 have required compliance reviews include at least a brief on-site visit to confirm contractor's record keeping performance, inspect I-9 forms, etc.

As a matter of practice, the agency has been testing its ability to perform compliance evaluations with just a desk audit during the past year or so. Its performance has proven that 80 percent of compliance evaluations can be closed at the desk audit stage, without having to make a visit to the contractor's premises. Saving that time allows Compliance Officers to perform more desk audits and the total number of compliance evaluations has risen slightly as a result.

Look for the final regulations to be posted in the Federal Register before the end of February.

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2. **SHRM RELEASES SURVEY RESULTS ON WORKPLACE VIOLENCE**

The Society for Human Resource Management (SHRM) in Alexandria, Virginia, has released results of its recent survey on the subject of Workplace Violence.

SHRM is the largest organization of human resource professionals in the world with approximately 175,000 individual members. In this survey, 2,000 randomly selected HR professionals were invited to participate.

250 responses were received, representing the cross-section of demographics in the organization's general membership.

Almost two-thirds of HR professionals said there had been some sort of violence at their organization since January 2000. The most common forms of workplace violence were: inappropriate language (e.g., vulgarity), verbal abuse and verbal threats of violence. Extreme forms of physical violence such as shooting, stabbing and fatal assault were among the least-reported forms of workplace violence, occurring in only a handful of the organizations surveyed.

Assailants/aggressors of workplace violence were reported to be more often males than females. Victims, however, tended to be males and females in equal numbers.

MORE THAN ONE-QUARTER OF THE WORKPLACE VIOLENCE VICTIMS WERE HUMAN RESOURCE PROFESSIONALS.

It continues to be true that employees bring personal problems to work with them. Upset from home carries over into the workplace. If workplace problems increase the level of upset, violence can result.

For the organization that wants to try to manage the possibility of workplace violence, we have many resources available. For your own sake, and the sake of your employees, take the time to visit <http://www.HRWebStore.com/products/safetyresources.htm>

If you would like a copy of the SHRM survey, go to [www.shrm.org](http://www.shrm.org) and look for "SHRM Workplace Violence Survey." It is available to SHRM members only.

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**3. ARE YOUR LABOR LAW COMPLIANCE POSTERS CURRENT?**

Are your labor law compliance posters current? Many states and federal changes have recently gone into effect. If you don't have posters that match the dates shown below, you generally have 120 days to secure the updated versions before you are financially liable for fines if challenged.

**RECENT FEDERAL AND STATE CHANGES**

- o Federal Family and Medical Leave
- o Federal Employee Polygraph Protection Act
- o Federal OSHA poster
- o Federal Equal Employment Opportunity is the Law
- o California (effective 1/2004)
- o Louisiana (effective 12/2003)
- o Illinois (effective 1/2004)
- o North Dakota (effective 12/2003)
- o Oregon (effective 1/2004)
- o Rhode Island (effective 1/2004)
- o Vermont (effective 1/2004)
- o Washington (effective 1/2004)

Many states require employers with Spanish-speaking employees to post the State and Federal labor laws in Spanish. Others highly recommend posting in Spanish to ensure employees understand their rights and the labor laws. To fulfill the needs of many states, we have available Spanish posters for the following states:

- o Arizona
- o Nevada
- o Oregon
- o California
- o New York
- o Texas
- o Florida
- o North Dakota
- o Washington
- o Georgia
- o North Carolina
- o Utah
- o Minnesota

You will find all you need at:

<http://www.HRWebStore.com/products/posters.htm>

Why wait. Get all of your federal and state postings on one laminated sheet. You will discover the price for this complete display is the lowest available. Other vendors offer "compliance sets" for \$99.99. Our price is only \$29.95 per poster. For most employers the one sheet will satisfy all requirements. If you have 10 or more employees, you must also post the Federal Interview Room poster either in each employment interview room or in your lobby where job applicants can have access to its information. This additional requirement can be met for only \$17.95.

The HR Web Store can help you stay in compliance. And, don't forget, if you have multiple locations we can often help with quantity discounts. Just give us a call at 925-671-0404.

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## Gentle Readers,

What damages can the ADA provide? Is the Glass Ceiling Gone? Who sits in which OFCCP chair now? These questions are all addressed this week.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #291, 2/6/2004)  
----- (Sent to over 1,500 subscribers)

1. **DOES ADA ALLOW PUNITIVE & COMPENSATORY DAMAGES FOR RETALIATION?**
2. **IS THE GLASS CEILING GONE?**
3. **OFCCP SHUFFLES SENIOR EXECUTIVES**

- 
1. **DOES ADA ALLOW PUNITIVE & COMPENSATORY DAMAGES FOR RETALIATION?**

So far, federal District courts are split on the question of whether or not the Americans With Disabilities Act (ADA) allows compensatory and punitive damages for retaliation claims.

In a Seventh Circuit decision, the appellate court has said ADA does not allow anything other than equitable relief for retaliation. The case involves a former employee of Bank of America, Colleen Kramer. Just after the Bank of America merged with NationsBank in 1998, Kramer found herself reporting to a new boss, Mary Lynn-Moser. Shortly after the new job assignment took effect, Moser told Kramer her job performance needed to improve, and gave her a written notice with a 90-day deadline. She also removed Kramer as a team leader and assigned her to another position. Later, Moser gave Kramer another letter saying she had 30-days to improve her performance or risk termination.

Before the second letter was delivered to Kramer, she revealed to the Bank for the first time that she has multiple sclerosis. It was following the second performance deficiency letter that Kramer filed her complaint of illegal retaliation under the ADA. Some time later she was discharged.

The U.S. Court of Appeals for the Seventh Circuit has ruled that people claiming retaliation under the ADA may not recover compensatory and punitive damages, and therefore have no right to a jury trial. Kramer had asked for all those things in her suit.

This is another area of developing case law. HR professionals who face these types of discrimination complaints from employees would be well advised to work closely with their management attorneys in handling these cases.

(Kramer v. Banc of Am. Sec. LLS, 7th Cir., No. 02-3662, 1/20/04)

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## **2. IS THE GLASS CEILING GONE?**

There is mixed evidence in today's American workplace about the continuation of the Glass Ceiling. As you know that is the term used to describe an impenetrable executive level beyond which minorities and women may not be promoted.

In the November/December 2003 issue of Profiles in Diversity Journal, are featured over a dozen women who fill senior executive positions in their organizations, including Chief Executive Officer.

Meet Susan L. Bostrom, Senior VP, Cisco Systems Inc., and Linda Gooden, President, Lockheed Martin Information Technology, and Lurita Doan, President, New Technology Management, Inc., and Permillie Lopez, President, IKEA North America, and Ann Thomburg, Audit Partner, PricewaterhouseCoopers LLP. There are so many, we don't have space here to list every one, though they each deserve every recognition opportunity they receive.

These executives discuss the glass ceiling very frankly. They reveal their beliefs about succeeding in today's organizational world. They tell how they have risen to their positions and what others can do to follow in their footsteps.

If you haven't yet subscribed to Profiles in Diversity Journal, you must make that a high priority. No HR professional should be without this valuable job aid. To subscribe, go to [www.diversityjournal.com](http://www.diversityjournal.com) or call customer service at 800-573-2867 from 8 - 5 EST. One year only costs \$49.95 and if you are serious about your HR professional career, you will pay that gladly.

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## **3. OFCCP SHUFFLES SENIOR EXECUTIVES**

On January 30, 2004, the Office of Federal Contract Compliance Programs announced it will move three senior agency executives.

- 1) Jim Melvin moves from Director, Division of Policy, Planning & Program Development at headquarters to Northeast Region Director.
- 2) Joe DuBray moves from Director, Mid-Atlantic Region to Director, Division of Policy, Planning and Program Development in the national office.
- 3) Jim Turner becomes the Mid-Atlantic Region Director.

All assignments are effective on March 8, 2004.

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## Gentle Readers,

Have you ever wondered if you are in one of the most dangerous industries in the country? Take a look at the fatality rates we found at the Bureau of Labor Statistics. Then plan to help your employees learn how to fight back when identity theft strikes.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #292, 2/20/2004)  
----- (Sent to over 1,500 subscribers)

1. **WHAT CAN WE EXPECT FROM THE NEW SPECIAL EEO FILE?**
2. **IDENTITY THEFT IN THE WORKPLACE**
3. **EEOC REQUESTS 8 PERCENT INCREASE IN BUDGET FOR FY 2005**
4. **MOST DANGEROUS JOBS IN THE USA**

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1. **WHAT CAN WE EXPECT FROM THE NEW SPECIAL EEO FILE?**

Late last December, the US Bureau of the Census released the Special EEO File that federal contractors and subcontractors must have to identify representation of minorities and women by occupational category. Its release comes nearly four years after the census was taken in April 2000.

This file is really a compilation of data bases including the race and sex demographics by geographical center and occupational title. Another data base holds data on compensation by occupational title.

One might expect to find that Census 2000 data contains a higher representation of minorities and women across all occupational lines. It turns out, that is not universally true. Women, for example, lost ground in their representation in Information Technology jobs. The percentage of female data base administrators rose by nearly 11 percent, but female network and computer systems administrators dropped by almost 8 percent.

Minority representation in computer and mathematical operations jobs rose to 25 percent from 16 percent in 1990. Minority data base administrators jumped nearly 10 percent in the decade between national census gatherings.

As you could guess, the further away from the April 2000 data gathering process we move in time, the less reliable the data will be. It is already four years old. We can expect to be using it for the next eight to ten years. And, some major economic impacts occurred following the April 2000 census gathering...for example the DOT-COM

bust that threw the information technology and other high tech industries into a tail spin. Since then, these industries have shrunk and are now beginning to grow again. Those will represent distortions in using data from Census 2000. Yet, it is still better than 1990 data which time has distorted to the point of questionable usefulness.

The mandatory "cut-over" data for Census 2000 Special EEO File is January 1, 2005. If you have useable, unpacked data from 2000, you may begin using it at any time for AAP preparation.

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## 2. IDENTITY THEFT IN THE WORKPLACE

There are countless opportunities for employees to steal data about customers and other employees. Managers need to be alert to those possibilities and test data systems periodically to assure they are not open for dishonest employees to copy vital information such as social security numbers and credit card numbers.

What can be done to protect your workplace from such problems? There are many resources available to help you.

- o Federal Trade Commission (FTC) offers extensive information at their web site: [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft)
- o Federal Bureau of Investigation (FBI) maintains a Fraud Complaint Center at [www.ifccfbi.gov](http://www.ifccfbi.gov)
- o The Identify Theft Resource Center is at [www.idtheftcenter.org](http://www.idtheftcenter.org)
- o The Privacy Rights Clearinghouse is at [www.privacyrights.org](http://www.privacyrights.org)

The FTC publishes a booklet called, "ID Theft: When Bad Things Happen To Your Good Name." It is available for FREE from the FTC web site at [www.ftc.gov/bcp/online/pubs/credit/idtheft.htm](http://www.ftc.gov/bcp/online/pubs/credit/idtheft.htm) .

The AARP publishes a booklet entitled, "ID Theft, What's In It For You?" It is available from AARP at 1-888-687-2277. Ask for stock number D18052.

If you believe you have become a victim of identity theft, contact the credit reporting agencies and place a fraud alert on your accounts.

- o Equifax is at 1-888-766-0008 or [www.equifax.com](http://www.equifax.com)
- o Experian is at 1-888-397-3742 or [www.experian.com](http://www.experian.com)
- o TransUnion is at 1-800-680-7289 or [www.transunion.com](http://www.transunion.com)

Be sure to file a police report and if you wish, you can file a complaint with the FTC at 1-877-438-4338.

Help your employees understand their options and the resources available to them in the fight against identity theft. Post this information, or distribute it so they will have a personal copy. And, be sure to prosecute fully any employee who is guilty of stealing information about other employees or customers.

**3. EEOC REQUESTS 8 PERCENT INCREASE IN BUDGET FOR FY 2005**

The Equal Employment Opportunity Commission (EEOC) has submitted a budget request for Fiscal Year (FY) 2005 that would add \$26 million to its 2004 allotment. With that money, the agency would add 100 more enforcement agents.

Even in light of recent complaint processing short cuts, the EEOC says it will have a backlog of pending complaints of 12,000 by the end of 2005. Mediation has helped the agency reduce a massive inventory of unresolved cases from past years. Yet the workload continues to grow as time moves on.

The federal fiscal year 2005 will begin on October 1, 2004.

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**4. MOST DANGEROUS JOBS IN THE USA**

According to the National Institute for Occupational Health and Safety (NIOSH), the fatality rates for some industries and occupations far exceed the rest of the working population. Here are their figures from 2002.

Rank	Occupation	Fatality Rate (/100,000)
1	Timber Cutters	117.8
2	Fishers	71.1
3	Pilots & Navigators	69.8
4	Structural Metal Workers	58.2
5	Driver-Sales Workers	37.9
6	Roofers	37.0
7	Electrical Power Installers	32.5
8	Farm Occupations	28.0
9	Construction Laborers	27.7
10	Truck Drivers	25.0

(Source: Bureau of Labor Statistics)

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## Gentle Readers,

This week we tell you about one more way the "bad guys" are getting into organizations to cause technological grief. And, if you are a federal contractor, you will want to hear more about the OFCCP's most recent results.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #293, 2/27/2004)  
----- (Sent to over 1,500 subscribers)

1. **CYBER BLACKMAIL WAVE TARGETS OFFICE WORKERS**
2. **OFCCP DEVELOPMENTS**
3. **CORRECTION**

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1. **CYBER BLACKMAIL WAVE TARGETS OFFICE WORKERS**

In a Reuters news article authored by Bernhard Warner, it is revealed that European companies are suffering a new kind of Internet crime...Blackmail.

Cyber blackmail artists are shaking down office workers, threatening to delete computer files or install pornographic images on their work PCs unless they pay a ransom, according to police and security experts.

The extortion scam, is believed to have begun about a year ago, and indiscriminately targets anyone on the corporate ladder with a PC connected to the Internet. It usually starts with a threatening e-mail in which the author claims to have the power to take over a worker's computer through an exploit in the corporate network, according to the experts.

The e-mail typically contains a demand that unless a small fee is paid -- at first no more than \$20 or \$30 -- they will attack the PC with a file-wiping program or download onto the machine images of child pornography.

Officers advise against cooperating with the criminals. "If a person pays up, say it's just 20 euros, then they have identified a soft target. They may come back for more, next time demanding more money," according to a British detective specializing in cyber-crime.

Investigators acknowledge the racket is one of the most difficult to crack. Because the ransom is small, people tend to pay up and keep quiet. A Finnish computer security firm, F-Secure, reported that a large Scandinavian university was hit recently. Several university officials received an e-mail from a fraudulent source saying several

vulnerabilities had been detected on the university's network and that unless the e-mail recipient transferred 20 euros (\$25) to the author's online bank account, he would release a series of viruses capable of deleting a host of computer files.

These fraudulent email messages are sent out in large quantity. The scam works even if only a handful of the countless recipients follow through and pay up.

What's happening in Europe, could just as easily happen here. HR professionals may want to place this subject on the agenda of company issues to discuss with senior management.

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## **2. OFCCP DEVELOPMENTS**

After the first year, seemingly unable to gain traction, Charles James, Director of the Office of Federal Contract Compliance Programs (OFCCP), has given a report of significant progress in his second year at the agency.

As reported in BNA's "Affirmative Action Compliance Manual," Director James sees his agency's greatest success to be an improvement in the quality of compliance investigations and enforcement efforts. He says he wants OFCCP to "improve credibility, be more efficient, and more effective."

Here are some of the results posted during Fiscal Year (FY) 2003. Financial remedies garnered for victims of discrimination were \$26.2 million for the fiscal year. That was a \$2.2 million increase over the previous FY.

Compliance Officers completed 7,700 evaluations covering more than 2.5 million employees of federal contractors and a record 52 corporate management reviews. In FY 2002, OFCCP completed 6,500 evaluations and 42 corporate reviews.

Director James has set his sights on doing business differently from the way it was handled during the Clinton Administration. He believes that most compliance reviews can and should be completed at the desk audit stage. Sending a Compliance Officer out for an on-site visit at a contractor's facility is very costly and, most often, not necessary. The agency is currently closing about 80% of its audits at the desk audit stage.

When the enforcement officers do make site visits, they are looking for evidence of systemic discrimination. Compensation programs are one area of employee management that often attract the attention of OFCCP. The agency has recently hired its first statistician as part of its effort to understand how it can better analyze compensation data. Its plans include hiring additional statisticians as time goes on.

Pay Surveys - Late last year, OFCCP began mailing the latest group of 10,000 pay surveys to existing federal contractors. This is the mandatory data collection process contractors have been so critical of over the last two years. OFCCP has hired a private consulting firm to

analyze the data from this and other groups of survey responses to determine if the current form of the survey will help the agency select contractors for compliance audits.

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**3. CORRECTION**

In last week's edition of Special Report for HR Professionals we shared with you some comparative data analysis from the newly released Census 2000 EEO Special File. We inadvertently omitted the attribution for those analyses. They came from PeopleClick. If you have questions about that data analysis please contact Peter Skaylack at PeopleClick on 919-645-2971.

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## Gentle Readers,

This week there is information about new services from the federal EEOC, new regulatory change proposals that you may comment on if you wish, and a new technical assistance document for federal construction contractors. And, be sure to get your personal copy of our new 2004 product catalog from the HR Web Store.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #294, 3/5/2004)  
----- (Sent to over 1,500 subscribers)

1. **PROPOSED CHANGES TO FEDERAL ACQUISITION REGS OPEN FOR COMMENT**
2. **OFCCP POSTS NEW GUIDE FOR CONSTRUCTION CONTRACTORS**
3. **EEOC OFFERS MANY DOCUMENTS IN MULTIPLE LANGUAGES**
4. **NEW 2004 PRODUCT CATALOG NOW AVAILABLE**

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1. **PROPOSED CHANGES TO FEDERAL ACQUISITION REGS OPEN FOR COMMENT**

On January 15, 2004, the U.S. Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration (NASA) posted final regulatory changes to Federal Acquisition Regulations (FAR), asking for public comment. The comment period is open until March 15, 2004.

These changes will affect commercially available off-the-shelf (COTS) items. These changes are based on the Clinger-Cohen Act of 1996, 41 U.S.C. 431 dealing with federal agency purchases of commercially available off-the-shelf items.

The new rules propose to exempt purchases of COTS items from many government-unique requirements. Although the rule does not specifically propose different procedures for small versus large entities, existing preferences for small businesses, contained in FAR Part 19, remain unchanged.

There are several laws that are not involved in the acquisition of COTS items, and are exempt from this new change. They are:

- o 10 U.S.C. 2631, Transportation of Supplies by Sea
- o 19 U.S.C. 2501, et seq., Trade Agreements Act
- o 29 U.S.C. 2512, et seq., Trade Agreements Act
- o 31 U.S.C. 793, Affirmative Action for Handicapped Workers
- o 31 U.S.C. 3324, Restrictions on Advance Payments
- o 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions
- o 31 U.S.C. 1354(a), Limitation on use of appropriated funds

for contracts with entities not meeting veteran's employment reporting requirements

- o 38 U.S.C. 4212, Equal Opportunity for Special Disabled, Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- o 41 U.S.C. 10a, et seq., Buy American Act -- Supplies
- o 41 U.S.C. 43, Walsh-Healey Act
- o 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act
- o 41 U.S.C. 418a, Rights in Technical Data
- o 41 U.S.C. 253d, Validation of Proprietary Data Restrictions
- o 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition of Limiting Subcontractor Direct Sales to the United States
- o 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees
- o 41 U.S.C. 254d(c) and 10 U.S.C. 2513(c), Examination of Records of Contractor
- o 41 U.S.C. 701, et seq., Drug-Free Workplace Act of 1988
- o 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo
- o 49 U.S.C. 40118, Fly American Provisions

Lifting these requirements from COTS purchases is intended to give the government greater access to products made by small businesses than it might have had when these requirements were imposed on such transactions.

Of interest here, affirmative action requirements are among those to be lifted from vendors who sell COTS items to government agencies. That will relieve some companies that have avoided dealing with the government simply because they didn't wish to comply with regulations on affirmative action.

Comments on these proposed changes should be made in writing and sent to General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Be sure to cite FAR Case 2000-305 in all correspondence. Electronic comments may be submitted to [farcase.2000-305@gsa.gov](mailto:farcase.2000-305@gsa.gov).

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## 2. OFCCP POSTS NEW GUIDE FOR CONSTRUCTION CONTRACTORS

The Office of Federal Contract Compliance Programs (OFCCP) has finalized and posted its "Technical Assistance Guide for Federal Construction Contractors." You will find it at [www.dol.gov/esa/ofccp/TAGuides/ctaguide.htm](http://www.dol.gov/esa/ofccp/TAGuides/ctaguide.htm)

While construction contractors are treated differently for affirmative action purposes, they are still bound by the Equal Employment Opportunity (EEO) requirements of the Civil Rights Act of 1964.

Construction contractors are required to produce and implement what is commonly referred to as a "16-point Plan." They do not have to follow the rules at 41 CFR 60-2, that outlines requirements for all goods and services vendors with federal contracts. Rather, construction contractors are subject to 41 CFR 60-4.

You will find more about the requirements for federal construction contractors in our book "Secrets of Affirmative Action Compliance" (6th edition). It is located at [www.hrwebstore.com/products/AAP6.htm](http://www.hrwebstore.com/products/AAP6.htm) .

The new OFCCP Technical Assistance Guide is available in PDF format. It totals 114 pages of information, including the appendixes.

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### **3. EEOC OFFERS MANY DOCUMENTS IN MULTIPLE LANGUAGES**

The Equal Employment Opportunity Commission (EEOC) has posted on its web site many of its documents in multiple languages. Included in the translation program are such publications as:

- o Filing a Charge of Job Discrimination
- o Fact Sheet: National Origin Discrimination
- o Fact Sheet: Religious Discrimination
- o Questions and Answers for Small Employers on Employer Liability for Harassment by Supervisors
- o Fact Sheet: Age Discrimination
- o Fact Sheet: ADA
- o Fact Sheet: Sexual Harassment
- o Questions and Answers about Sexual Harassment
- o Fact Sheet: Race/Color Discrimination
- o Small Employers and Reasonable Accommodations
- o Fact Sheet: Pregnancy Discrimination
- o Fact Sheet: Family and Medical Leave Act, Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964
- o Get the Facts Series; Small Business Information

So far, these documents can be found in six foreign languages: Spanish, Arabic, Russian, Vietnamese, Korean and Haitian-Creole. You will find the language choices near the top of the EEOC web site welcome page at [www.eeoc.gov](http://www.eeoc.gov) .

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### **4. NEW 2004 PRODUCT CATALOG NOW AVAILABLE**

Over the past few weeks we have added many new products to the HR Web Store. We invite you to browse through our various departments to be sure you have all the references you need on your job.

To get your copy of this 41-page color catalog go to <http://www.management-advantage.com/products/products.htm> and select 2004 catalog from the list. While you're there, take a moment to look over the reference materials and job aids we have available for HR professionals and other managers. You'll be glad you did.

## Gentle Readers,

News for those of you who hire nonimmigrants on H-1B visas. The proposal for FLSA revision of overtime rules is still alive and may be published as a final rule later this month. And, the Supreme Court weighs in on the question of "relative age" under the ADEA. Quite a week we're having.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #295 3/19/2004)  
----- (Sent to over 1,500 subscribers)

1. **SUPREME COURT SAYS OLDER WORKERS CAN BE TREATED BETTER THAN YOUNGER WORKERS**
2. **WHATEVER HAPPENED TO THE WAGE AND HOUR REVISIONS TO FLSA**
3. **WHERE HAVE ALL THE H-1B VISAS GONE?**

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1. **SUPREME COURT SAYS OLDER WORKERS CAN BE TREATED BETTER THAN YOUNGER WORKERS**

The U.S. Supreme Court has issued a 6-3 decision saying the "Age Discrimination in Employment Act" (ADEA) does not prohibit employers from treating older workers better than younger workers.

The ruling came in the case of General Dynamics Land Systems, Inc. v. Cline (No. 02-1080), and the majority opinion written by Justice David H. Souter.

In 2002, the 6th U.S. Circuit Court of Appeals heard the case and said a group of 200 employees over the age of 40 could proceed with their age discrimination suit against the company. At issue was the claim that the company cut off rights to retiree medical benefits for everyone except those over 50 years of age on the qualifying date.

So, those people from age 40 to age 49 were treated unfairly compared to those 50 and over in the view of the 200 workers. After all, they reasoned, if the ADEA protected everyone over 40, it must protect them in this situation. The 6th Circuit agreed.

Now, the issue has been settled. Even within the protected group of workers over 40, there is relative protection from oldest to youngest. This flies in the face of the Equal Employment Opportunity Commission (EEOC) guidelines, which now, obviously, must be revised.

Before employers rush out to craft new retirement offerings or severance packages for older workers, they would be wise to consult with their legal advisors about the impact their newly designed program would have on the "Employee Retirement Income Security Act" (ERISA)

requirements. Just because the issue of compliance with ADEA has been settled, there is no guarantee that employers will avoid trouble from other corners of employment law.

You will find the 36-page opinion of the Court at:  
<http://www.supremecourtus.gov/opinions/03pdf/02-1080.pdf>

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## **2.           WHATEVER HAPPENED TO THE WAGE AND HOUR REVISIONS TO FLSA**

Remember when we were talking about the proposals made to revise the "Fair Labor Standards Act" (FLSA) in the area of white collar overtime provisions? The gears of change are still turning, albeit slowly.

It seems that arguments have been split nearly along political party lines. Democrats generally oppose the revisions proposed by the U.S. Department of Labor (DOL) as downgrading protections for white collar overtime rights. Republicans are generally in support of the changes because they will acknowledge reality in today's workplace and exempt from overtime payment those workers who fit expanded definitions of executive, administrative or professional exemptions. The proposals are generally thought to be "business friendly."

The DOL's Wage and Hour Division have said we should expect the final version of the revised overtime exemption rules sometime this month.

Once the final rules are published in the Federal Register, the Democrats have vowed to wage all out war against their implementation. They see the changes as literal overtime pay cuts.

Keep watching the news and reading Special Reports for HR professionals. We will update you as things change on this issue.

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## **3.           WHERE HAVE ALL THE H-1B VISAS GONE?**

They are gone, gone, gone. The Department of U.S. Citizenship and Immigration Services (USCIS) has announced it will not accept any new petitions for this fiscal year for H-1B visas. The announcement was published in the Federal Register on February 25, 2004. You will find it at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr25fe04-95](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25fe04-95)

An H-1B nonimmigrant is an alien employed in a specialty occupation or as a fashion model of distinguished merit and ability. A speciality occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States.

The "Immigration and Nationality Act" (INA) provides that the total number of aliens who may be issued H-1B visas during fiscal year 2004 may not exceed 65,000. The current fiscal year ends on September 30, 2004. Effectively, in only half of the year, all of the slots have been filled.

Congress has set aside 1,400 of the 65,000 H-1B spaces for nonimmigrants from Chile and 5,400 for nonimmigrants from Singapore. That effectively lowers the cap to 58,200.

The H-1B program has been controversial for years. Opponents claim that each visa issued in this program takes away one job from an American. Further, they say, the visa program is fueling the fire of offshore contracting which has also lowered the demand for American workers.

Proponents say the law is clear about requiring employers to prove that American workers are not available to do the type of technically specific work permitted under the H-1B program. And, as soon as the work period has ended, the employer is responsible for assuring that the nonimmigrant worker is returned to their own country.

Whoever may be right, the fact remains, this year's quota has been filled. If you are an employer looking for H-1B qualified workers, you will have to wait until at least October to begin the process of seeking approval.

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Gentle Readers,

We have only one item of news this week. That is, there will be a few weeks before we publish another Special Report for HR Professionals.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #297, 4/02/2004)  
----- (Sent to over 1,500 subscribers)

**1. SPECIAL REPORT FOR HR PROFESSIONALS WILL NOT BE PUBLISHED FOR A FEW WEEKS.**

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**1. SPECIAL REPORT FOR HR PROFESSIONALS WILL NOT BE PUBLISHED FOR A FEW WEEKS.**

After many years of nearly weekly publication, the Special Report for HR Professionals will not be published again for a few weeks.

Bill Truesdell, SPHR and editor of the Special Reports, has undergone heart surgery this week. The problem was discovered quite by accident and good fortune. After a rapid series of tests, he was operated on this past Tuesday. We're happy to report the operation was successful. Now recovery will take a few weeks.

All of our consulting and training contracts have either been cancelled or postponed. The HR Web Store is well stocked and will continue to operate 24/7 as it has in the past.

We hope you will understand the need for our suspending the newsletter. As always, we invite your input about areas of your interest for future issues.

We look forward to the next issue of Special Reports for HR Professionals.

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Gentle Readers,

Affirmative action plan availability analysis, and job classification for overtime purposes are the two topics for this week. New federal rules make it imperative that every employer review their "exempt" and "non-exempt" classifications. You don't want to become the focus of the federal Department of Labor with financial penalties because you didn't make the appropriate payroll changes.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #299, 6/18/2004)  
----- (Sent to over 1,500 subscribers)

1. **WHY DOES THE 2-FACTOR AVAILABILITY ANALYSIS IN AAP DEVELOPMENT REALLY INVOLVE 4 OR 5 FACTORS?**
2. **OVERTIME EXEMPTION SPECIAL REPORT**

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1. **WHY DOES THE 2-FACTOR AVAILABILITY ANALYSIS IN AAP DEVELOPMENT REALLY INVOLVE 4 OR 5 FACTORS?**

For over 20 years, this part of the affirmative action plan development process was referred to as the 8-factor analysis. In reality, most contractors actually used only two or three of the eight factors in their analysis. In the same way, the current 2-factor approach is equally ill-named because contractors often use three or four contributing data sets rather than only two.

Since federal regulations changed on December 13, 2000, contractors are only now required to consider those sources actually used in recruiting job candidates. That may embrace information describing more than two sources.

Availability Analysis is the tool used to determine what our workforce should look like if it mirrored the demographics of qualified people within our recruiting territory. Recruiting territory may differ for each segment of our workforce, a fact we have to accommodate during our computations in the Availability Analysis process.

We may only use a national recruiting territory for executive positions, while we could look more locally when recruiting Office & Clerical candidates. The problem arises when we have more than one external source of candidates (e.g., local and extended areas) and/or more than one internal feeder group.

We might do college recruiting for professional job openings. That would mean a data set representing the college demographics for the engineers we are after and a different data set from Census counts of engineers already in the workforce within our recruiting area. Likewise, we could have multiple job groups feeding candidates through

promotions and transfers.

Each individual source of candidates can be thought of as a subset of either Factor #1 or Factor #2. Those subsets must be weighted according to their contribution and then the final internal factor and final external factors are weighted according to their contributions and combined in the same type of arithmetic process. The result is a demographic called final availability for that job group.

Don't be afraid to use more than one set of data on each factor. The more accurate your availability computations, the more realistic will be any placement rate goals you set based on those availability computations. And, for most of us, being held accountable for goal achievement when the goal is realistic is preferable to striving for goals that are unrealistic.

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Some Possible External Sources Include: Census data for local recruiting area; Census data for extended recruiting area; college or university demographics for specific occupational areas; external training programs run by the State Employment Service; union membership if candidates come from union hiring halls.

Some Possible Internal Sources Include: Job groups providing promotions; job groups providing transfers; apprenticeship programs; special internal training programs that prepare participants for specific job titles or types of work.

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**2. OVERTIME EXEMPTION SPECIAL REPORT**

There is precious little time between now and August 23, 2004, if you have yet to study the new federal overtime rules that will become effective on that day.

The HR Web Store now offers a special report on these changes in the "Fair Labor Standards Act" overtime rules.

Published by J. J. Keller & Associates, Inc., this 100-page report gives you all you need to know to re-study your jobs for classification as "exempt" or "non-exempt" from overtime requirements. You will find the following information:

- o Introduction - What does this mean to me?
- o What's old and what's new?
- o Scope of exemptions - blue collar, public safety
- o Exemption tests - salary level test, salary basis test, standard duties test
- o What to do to comply
- o The regulations
- o Enforcement
- o State laws affecting the final rule
- o Economic impact of the final rule
- o Model overtime exemption policy
- o Glossary

- o Index

If you aren't already an expert in state and federal overtime requirements, you will need this job aid. Keep it handy on the top of your desk so you can refer to it as often as will become necessary. There will be lots of questions from your employees.

Go to [www.hrwebstore.com/products/OvertimeExemption.htm](http://www.hrwebstore.com/products/OvertimeExemption.htm) to find this new product and place your order. It wouldn't be a bad idea to order a copy for each of your Department heads so they will understand why you will have to make some changes in August. Compared to the potential penalties for failure to comply, the report is a truly small investment. It can even be used as a training aid.

Don't hesitate and be caught without proper overtime payments. Order your copy today.

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## Gentle Readers,

It seems fitting for our 300th edition of Special Report that we tell you about a brand-new book we have just published entitled "Your Diabetes Control Handbook." If you have diabetes or know someone who does, you will want a copy. And, you will learn that the U.S. Supreme Court has offered up another opinion about sexual harassment in the workplace.

Here's an advance notice only for our subscribers: IN JULY 2004 YOU WILL GET FREE SHIPPING ON ANY PRODUCT ORDERED FROM THE HR WEB STORE!!! IT'S OUR JULY BONANZA!!! TELL YOUR FRIENDS AND COLLEAGUES.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #300, 6/25/2004)  
----- (Sent to over 1,500 subscribers)

1. **"YOUR DIABETES CONTROL HANDBOOK" NOW AVAILABLE**
2. **JUSTICES CLARIFY STANDARDS ON SEXUAL HARASSMENT SUITS**

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1. **"YOUR DIABETES CONTROL HANDBOOK" NOW AVAILABLE**

On June 10, 2004, we were attending an autograph session with Dr. Marshall Chazen, author of our latest book, "Your Diabetes Control Handbook." We were at the Borders book store in Elk Grove, CA.

After some brief comments about how he happened to write this new guide to surviving diabetes and its treatment, Dr. Chazen autographed copies of his book for those who wanted to buy a copy. Off to the side, in Borders' cafe sat a woman with a laptop and a tablet of paper, working on a research project.

When Dr. Chazen finished his book-signing tasks, he was walking through the cafe on his way out and noticed this woman silently sobbing, with tears rolling down her cheeks. She looked up at him with a sadness that could have broken the hardest heart. He asked her what was wrong and she explained that she had been listening to his comments about his struggle with diabetes and that her older sister had just died from the disease a few months earlier.

They talked for another half hour. His experience as a therapist made the conversation easy for them both. At the end, the woman said, "I hope everyone with diabetes will read your book so others won't have to lose their sisters."

"Your Diabetes Control Handbook," tells readers how to manage their disease and its treatment. It helps people understand that no one knows the physical and mental fluctuations experienced by diabetics as well as the patients themselves. With due respect toward the modern

medical community, Dr. Chazen points out that only the patient can monitor things on a minute-to-minute basis and guide medical advisors in treatment. Knowing how to do that is critical for diabetic patients.

If you have diabetes, or have a loved one with diabetes, or even know someone experiencing this disease, the kindest gift you could give them is a copy of this book. It could save them having a limb amputated or worse. For care givers, it could help save other older sisters.

You will find it in the HR Web Store at [www.hrwebstore.com/products/DiabetesControl.htm](http://www.hrwebstore.com/products/DiabetesControl.htm) .

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## 2. JUSTICES CLARIFY STANDARDS ON SEXUAL HARASSMENT SUITS

According to the Houston Chronicle ([www.chron.com/cs/CDA/ssistory.mpl/business/2627040](http://www.chron.com/cs/CDA/ssistory.mpl/business/2627040)) the U.S. Supreme Court ruled this month that workers who quit over intolerable sexual harassment are protected by a federal civil rights law, but the court made it difficult for them to sue and win damages from their former employers.

Justices said that like discrimination victims who are fired, those who flee an abusive work environment are covered by the <Civil Rights Act of 1964.>

The decision was a follow up to a Supreme Court ruling that companies can be liable for workplace harassment, even if top managers didn't know about the behavior, when it results in "tangible employment action" like a firing. If a worker quits but can show that they were demoted, transferred to a worse assignment or had their salary cut, the same protections would ensue.

However, if a worker quits without facing specific punishment, the Supreme Court said that the employer must be given a chance to defend itself in a sexual harassment case. Justice Ruth Bader Ginsburg, writing for the court, said the company must prove it had a sincere and effective policy aimed at preventing and responding to harassment, and that the employee did not take advantage of the policy.

The 8 - 1 decision was a mixed victory for the Pennsylvania State Police, sued by a former communications operator who claimed her male bosses told her dirty jokes and urged her to perform sex acts. She said she quit to escape harassment. Justices overturned a ruling in the woman's favor, but sent the case back to a lower court for review.

In the lone dissent, Justice Clarence Thomas said employers should be liable only if they are proven to be negligent in permitting harassing behavior to occur.

Susan Grover, a law professor at College of William and Mary who represented groups like the AARP in supporting the plaintiff, said the ruling makes it hard for sexual harassment victims to sue if they have no "paper record" of harassment.

You will find the full case ruling at [www.supremecourtus.gov](http://www.supremecourtus.gov) . Look in the "Opinions" category.

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Gentle Readers,

Both the EEOC and OFCCP are in this week's news. Don't forget...

FREE UPS GROUND SHIPPING ON ALL HR WEB STORE ORDERS IN JULY!!!

Bill Truesdell  
Editor

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IN THIS REPORT (Report #301, 7/2/2004)  
----- (Sent to over 1,500 subscribers)

1. **OVER SITE OF FEDERAL CONTRACTORS CALLED GOVERNMENT ROLE**
2. **BATTLE LOOMING AT EEOC OVER RETIREE HEALTH BENEFIT RULE**
3. **WHAT IS A "CURRENT" AAP WHEN A CONTRACTOR RECEIVES A SCHEDULING LETTER ANNOUNCING AN AUDIT?**

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1. **OVER SITE OF FEDERAL CONTRACTORS CALLED GOVERNMENT ROLE**

In a recently passed bipartisan amendment to a Defense Department spending bill, the Senate effectively drew a new line in the debate over what is an "inherently governmental function" -- and thus, one that shouldn't be subject to contracting-out. The amendment to S-2400 restricts the situations in which a contract can be overseen by another contractor and creates a presumption that in-house employees should do that work.

The amendment arose in part because of concerns about certain contracts for Iraqi rebuilding, in which contractors were responsible for keeping an eye on other contractors. The language states that oversight is a government responsibility, bars renewing existing oversight contracts and bars the Pentagon from issuing new ones. "It seems to me we have to get the oversight back where it belongs, and that is in the hands of the Department of Defense and not in the hands of private contractors, Sen. Ron Wyden, D-Ore., said during the debate. "Oversight is inherently a governmental function because accountability must be first and foremost to taxpayers."

Said Sen. Byron Dorgan, D-N.D., "I happen to think oversight is a responsibility of the government, of the federal agency that is going to spend the money. It is their responsibility to provide oversight, not someone else's responsibility."

Sen. Carl Levin, D-Mich., noted that over the past several years there have been reductions in the Defense Department acquisition workforce and that the Senate earlier passed a separate amendment to increase that workforce by 15 percent over three years. Both amendments will be subject to a conference with the House.

(Source: "Federal Manager's Daily Report," Monday, June 21, 2004,

## **2. BATTLE LOOMING AT EEOC OVER RETIREE HEALTH BENEFIT RULE**

Some weeks ago we told you that AARP was preparing for serious opposition to the Equal Employment Opportunity Commission's (EEOC) announcement that it intends to change its position on retiree health benefit administration.

In the past, EEOC has said employers could not legally reduce retiree coverage once the retiree became eligible for Medicare health coverage. Now, EEOC has reversed its position and said it will permit employers to reduce retiree health coverage without charging the employers with violation of the Age Discrimination in Employment Act (ADEA).

AARP has testified before the Senate Special Committee on Aging, saying that the EEOC rule change is not in the public interest. AARP contends that retirees would lose health benefits as a result of the rule change.

AARP has said it believes that employers will drop coverage for older workers and leave them dependent on Medicare without the support of supplements now provided by some employers to both older and younger workers. AARP claims that any reduction in retiree benefits compared to those received by younger workers is a threat to retiree status and a violation of the ADEA.

The argument places EEOC in the position of having to enforce ADEA requirements while not dictating benefit coverage to employers. Spiraling cost of benefit coverage has made this issue one of serious economic consequence to many employers.

Employees and retirees, on the other hand, are seeing the possibility of some coverage evaporate if employers are permitted to reduce health insurance programs once retirees are Medicare eligible.

As of this writing, it may take federal court action to resolve the impasse. For a copy of the proposed final rule go to [http://www.eeoc.gov/policy/regs/retiree\\_benefits/retiree\\_benefits.html](http://www.eeoc.gov/policy/regs/retiree_benefits/retiree_benefits.html)

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## **3. WHAT IS A "CURRENT" AAP WHEN A CONTRACTORS RECEIVES A SCHEDULING LETTER ANNOUNCING AN AUDIT?**

Enough contractors have asked for an explanation that the Office of Federal Contract Compliance Programs has posted the following information on its web site's frequently asked questions section. Don't attempt to find it by working your way through the FAQ menu, however. It isn't there. Rather, use this link: <http://www.dol.gov/esa/regs/compliance/ofccp/faqs/polfaqs.htm>

Here is the concern...

What does OFCCP consider to be a "current" Affirmative Action Program

and support data when a contractor must respond to an audit scheduling letter?

The OFCCP says...

"Contractors are obligated to update their AAPs on an annual basis. When a scheduling letter is received, there is an expectation that a contractor will submit "current" AAPs. When a scheduling letter has been received just prior to, or just after, the annual update, questions have arisen concerning which AAPs should be submitted as the "current" AAP(s). Contractors should submit to the agency the AAP(s) that are current as of the date the scheduling letter is received. The date of receipt will be considered to be the date that the Certified Mail Return Receipt is signed by a representative of the contractor. If the scheduling letter is received within 30 days of the annual update of a contractor's AAP(s), the contractor may, at its own option, submit the updated AAP(s) for desk audit. In the event the contractor decides to submit the AAP(s) that have not yet been updated, then support data for the eleven (11) month period preceding the updating of those AAP(s) must be provided, in addition to information on the preceding AAP year.

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Gentle Readers,

Federal contractors are the focus of Congressional investigations.

FREE UPS GROUND SHIPPING ON ALL HR WEB STORE ORDERS IN JULY!!!

Bill Truesdell  
Editor

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IN THIS REPORT (Report #302, 7/9/2004)  
----- (Sent to over 1,500 subscribers)

1. **FEDERAL AGENCIES ASKED TO DISCLOSE OUTSIDE AGREEMENTS**
2. **NEW VIDEO POSTED SHOWING COMMENTS FROM DIABETES BOOK AUTHOR**

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1. **FEDERAL AGENCIES ASKED TO DISCLOSE OUTSIDE AGREEMENTS**

Leaders of the House Energy and Commerce Committee have asked numerous federal agencies to reveal the extent of awards, contracts and other agreements between their employees and outside entities. The request is a follow-up to an ongoing investigation into the management and ethics at the National Institutes of Health, involving arrangements between agency employees and outside interests.

"We hope that the disturbing practices discovered at NIH are not commonplace," said Rep. Joe Barton, R-Texas, the committee chairman.

The letters went to the departments of Commerce, Energy, and Health and Human Services, as well as to many regulatory and health and safety agencies.

(Source: Federal Manager's Daily Report" June 29, 2004  
<http://www.fedweek.com/subscribepopup.htm> )

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2. **NEW VIDEO POSTED SHOWING COMMENTS FROM DIABETES BOOK AUTHOR**

Marshall H. Chazen, Ed.D., author of "Your Diabetes Control Handbook," recently attended a book-signing event in honor of his new book. During that time, he made some comments about the content of his book and why he wrote about the importance of managing treatment for diabetes.

Now, you can hear his comments by going to the HR Web Store at  
<http://www.management-advantage.com/products/DiabetesControl.htm>

The program lasts for 5 minutes.  
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Gentle Readers,

Two court opinions capture our attention this week.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #303, 7/23/2004)  
----- (Sent to over 1,500 subscribers)

1. **COURT OF APPEALS VACATES TRUCKING HOURS-OF-SERVICE REGS**
2. **EMPLOYERS MAY FAVOR OLDER WORKER OVER YOUNGER EMPLOYEES**

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1. **COURT OF APPEALS VACATES TRUCKING HOURS-OF-SERVICE REGS**

Many things have changed in the motor carrier industry since 1939 when the original hours-of-service (HOS) regulations were prescribed for truck drivers. Our roads are better designed, constructed, and maintained in a nationwide network to provide greater mobility, accessibility, and safety for all highway users. Vehicles have been dramatically improved in terms of design, construction, safety, comfort, efficiency, emissions, technology, and ergonomics. These factors, combined with years of driver fatigue and sleep disorder research, have led to a revision of the HOS regulations for drivers, the most important component of trucks operating on the highway.

Reform of the HOS regulations had been under consideration by the Federal Motor Carrier Safety Administration (FMCSA) for several years. In 1995, Congress, concerned about the effect of fatigue as a contributing factor in commercial motor vehicle crashes, directed the FMCSA to begin a rule making to increase driver alertness and reduce fatigue-related incidents.

In response to the Congressional directive, FMCSA analyzed the scientific research, convened expert panels, held hearings and roundtable discussions, and reviewed over 53,000 individual comments submitted during the rule making process. In April 2003, FMCSA issued the first significant revision to the HOS regulations in over 60 years. The new regulations provide an increased opportunity for drivers to obtain necessary rest and restorative sleep, and at the same time reflect operational realities of motor carrier transportation.

In the months preceding the compliance date of January 4, 2004, the FMCSA has worked with its partners and stakeholders to assure a smooth transition to the new regulations.

You will find a copy of the regulations at  
[http://www.fmcsa.dot.gov/Home\\_Files/revised\\_hos.asp](http://www.fmcsa.dot.gov/Home_Files/revised_hos.asp)

On July 17, 2004, the United States Circuit Court of Appeals for the District of Columbia ruled that the new regulations should be vacated

and the Federal Motor Carrier Safety Administration (FMCSA) should be directed to reissue them after making adjustments as directed by the Court.

In its opinion, the Court said, "While the agency's explanation seems sound enough as far as it goes, it does not even acknowledge, must less justify, that the rule,... dramatically increases the maximum permissible hours drivers may work each week. That increase is likely an 'important aspect of the problem.' (State Farm, 436 U.S. at 43) And the agency's failure to address it, accordingly, makes this aspect of the rule's rationality questionable."

These new rules originally went into effect on January 4, 2004. Now, the agency has 45 days to review the decision and decide if it will seek other legal remedies. During that period of time, the current hours-of-service regulations will remain in effect.

For a PDF copy of the 22-page opinion, go to <http://pacer.cadc.uscourts.gov/docs/common/opinions/200407/03-1304a.pdf>

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## **2. EMPLOYERS MAY FAVOR OLDER WORKER OVER YOUNGER EMPLOYEES**

In an opinion filed on February 24, 2004, the U.S. Supreme Court said "The ADEA's (Age Discrimination in Employment Act) text, structure, purpose, history, and relationship to other federal statutes show that the statute does not mean to stop an employer from favoring an older employee over a younger one." The case was General Dynamics Land Systems, Inc., v. Cline (S.Ct. 02-1080, 2/24/2004)

The case involved a collective-bargaining agreement between the Company and a union that eliminated the Company's obligation to provide health benefits to subsequently retired employees, except as to then-current workers at least 50 years old.

The employees, represented by Cline, were over 40 years of age, but under 50 years old. They charged that the Company illegally discriminated against them because they were not provided the same benefits as those retirees who were over 50. The fact is, they were members of a protected group...over 40 years old.

The Court has made it quite clear now that favoring older workers, even at the expense of others in the protected class, is OK as long as those favored are the oldest.

For a copy of the 36-page opinion go to <http://www.supremecourtus.gov/opinions/03pdf/02-1080.pdf>

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Gentle Readers,

We have for you this week a superb Internet resource from the US Department of Labor, and two announcements you may find of interest.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #304, 7/30/2004)  
----- (Sent to over 1,500 subscribers)

1. **FEDERAL REGISTER DOCUMENT AIDS SMALL BUSINESS COMPLIANCE**
2. **MOVE TO DEVELOP NATIONAL POLICY ON WORKPLACE FLEXIBILITY**
3. **EEO-1 CHANGES PUT ON HOLD**

- 
1. **FEDERAL REGISTER DOCUMENT AIDS SMALL BUSINESS COMPLIANCE**

On June 26, 2004, the Office of Management and Budget (OMB) published in the Federal Register a list of "Compliance Assistance Resources and Points of Contact Available to Small Business." It lists dozens of agencies and their Internet contact points. If the federal government has gone to the extent to publish resources on the Internet, can state governments be far behind? (Maybe we should just take it one step at a time, and be grateful for small favors.)

If you are like most of us, changes in the federal government administrative structure have been moving too quickly to always follow accurately. After September 11, 2001, the Bush Administration set about the task of restructuring the Executive Branch to better meet the needs of the country. What has happened as a result has not always been clearly identified or easy to follow...even for those of us who are in the business of following such changes.

Now, there is a list of resources available to help small businesses meet their compliance requirements under federal rules. We recommend all employers take a look at this document to be sure they aren't missing some compliance requirement ...  
<http://edocket.access.gpo.gov/2004/04-14659.htm>

Finding a consolidated list of government requirements is not always easy. Here, at last, is something that will make your job easier...and it comes from the federal government. Well done, folks.

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2. **MOVE TO DEVELOP NATIONAL POLICY ON WORKPLACE FLEXIBILITY**

On July 19, 2004, the Georgetown University Law Center announced creation of a new project to identify viable flexibility options for

employers and employees. Called "Workplace Flexibility 2010," the project will be headed by professor Chai Feldblum, one of the architects of the Americans with Disabilities Act (ADA).

"Today's laws and policies do not meet the needs of today's workers," Feldblum said. "We envision a flexible workplace that meets the needs of employers and employees given the reality of today's workforce: One in which mothers and fathers both work, while having caregiving responsibilities for their children and often their aging parents. We also have older workers who wish to work -- at least part time -- after they reach conventional retirement age. And, some workers simply wish to learn new skills or volunteer in the community."

Workplace Flexibility 2010 is funded by a grant of more than three-quarters of a million dollars from the Alfred P. Sloan Foundation. "This initiative will provide the critical legal analysis needed to understand how to ensure genuinely flexible workplaces," said Sloan Foundation program director Kathleen Christensen. "We can now build on years of academic research documenting the needs of American workers and families for workplace flexibility that will make a difference in people's lives."

Workplace Flexibility 2010 will provide objective and reasoned analysis of existing laws and practices in areas such as labor, employment, anti-discrimination, tax, health and benefits to explain how the existence or absence of laws and practices hinder or support workplace flexibility. It will also engage leaders from business, community groups, unions, family groups and other potential stakeholders to define the contours of a comprehensive national policy on workplace flexibility and to form new alliances.

Contributing to Workplace Flexibility 2010 will be six lawyers and six students at the Georgetown Federal Legislation Clinic; Robert Raben, Nancy Buermeyer and Julia Sessoms of The Raben Group, a Washington, DC-based consulting firm; Professor Jean McGuire, Lorraine Snell Visiting Professor, at Northeastern University in Boston, Massachusetts; and Patricia Kempthorne of the Center for Emerging Futures, an innovative, community-based organization located in Boise, Idaho.

The Alfred P. Sloan Foundation is a philanthropic nonprofit institution. Its program area on Workplace, Workforce and Working Families has spent a decade documenting the needs of American workers and families for workplace flexibility as well as the social, economic, psychological, and health consequences on individuals and communities of inflexible workplace structures.

If you wish more information, please contact Elissa Free at 202-662-9500 or Patti Giglio at 202-903-7869.

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### **3. EEO-1 CHANGES PUT ON HOLD**

More than a year ago, the Equal Employment Opportunity Commission (EEOC) proposed making some significant changes to the EEO-1 report form all employers must file each year if they have 100 or more workers on the payroll. Federal contractors with 50 or more employees are also

required to file the form.

EEO-1 is one of a series of reports called Standard Form 100s. They are designed to gather data from employers in various sectors of employment. EEO-1 is designed for private sector employers. EEO-4 is designed for public sector employers. EEO-2 is for labor unions. The EEO-5 and EEO-6 reports for educational employers have been folded into other educational reports and are no longer required as stand-alone submissions.

EEOC spent more than a year studying the question of how to change the EEO-1 report form. In the end it recommended increasing the number of job categories and also increasing the number of race/ethnic categories. One of the changes involved adding the new "two or more races" category.

Objections to the proposed changes were not as strong as expected initially. Yet, it was objection from a coalition of about 180 civil rights organizations that caused the proposed changes to be placed on hold. No further action is expected until after this fall's presidential election. The coalition has apparently objected to the prohibition of any Hispanic or Latino identifiers to also identify as a minority race. Instructions for the proposed new form would have had employers stop the inquiry after someone identified themselves as Hispanic or Latino in ethnicity. Only non-Hispanic identifiers would be asked to further identify a race or multiple races. Races for the new form would have included White, Black, Asian, Hawaiian, Native American, and "two or more races."

We will have to wait to see what additional changes will be made by the EEOC. Whatever happens, the Commission will have to republish its proposal for further public comment. That is now likely to happen in 2005.

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Gentle Readers,

EEOC loses a Commissioner and the federal government will be undergoing some changes in hiring practices. Oh, and, the EEOC has issued a new fact sheet about epilepsy as it relates to the Disabilities Act.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #305, 8/6/2004)  
----- (Sent to over 1,500 subscribers)

1. **FEDERAL HIRING PRACTICES TO BE UPDATED BY OPM**
2. **COMMISSIONER MILLER LEAVES EEOC AFTER TEN YEARS**
3. **NEW FACT SHEET AVAILABLE ADDRESSING EPILEPSY UNDER ADA**

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1. **FEDERAL HIRING PRACTICES TO BE UPDATED BY OPM**

The federal Office of Personnel Management (OPM) plans to re-engineer agency hiring practices. OPM has announced that it intends to build on its work with the Department of Housing and Urban Development (HUD) by re-engineering agency-specific hiring practices at other departments and agencies.

In the same testimony before the House Subcommittee on Civil Service and Agency Organization, OPM announced plans to develop HR competency models and manage a "community of practice," to share information on GoLearn.gov.

OPM has said agencies do not use hiring flexibilities enough and has stepped up efforts to educate federal managers about them. Agencies say there is a lack of guidance for using the flexibilities.

At the same hearing, the Department of Defense announced plans to begin using category-rating authority, which is designed to widen the pool of applicants available for hire by assigning them to quality categories such as "best qualified," or "highly qualified."

(Source: Federal Manager's Daily Report, July 30, 2004.  
[www.fedweek.com](http://www.fedweek.com))

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2. **COMMISSIONER MILLER LEAVES EEOC AFTER TEN YEARS**

Paul Steven Miller, the second-longest serving Commissioner in the 40-year history of the U.S. Equal Employment Opportunity Commission (EEOC) will end his decade-long tenure effective August 15, 2004, and join academia as a faculty member at the University of Washington School of Law in Seattle.

"Our nation has been enriched by having Paul Miller's intellect and passion devoted to furthering the mission of equal employment opportunity," said Commission Chair Cari M. Dominguez. "He has served his country well. We have been privileged to work with him and look forward to his continued contributions to our society."

As a member of the Commission, he played an instrumental role in the development and approval of EEOC enforcement and litigation policy. Additionally, as one of the nation's leading experts in the area of disability law, Mr. Miller has been involved in every aspect of the agency's enforcement of the Americans with Disabilities Act (ADA) and has been actively engaged in international civil rights issues.

Mr. Miller's departure will leave one vacancy at the EEOC. In addition to Chair Dominguez, the current Commission members include Vice Chair Naomi C. Earp and Commissioners Leslie E. Silverman and Stuart J. Ishimaru.

The full notice about Mr. Miller's departure can be found at [www.eeoc.gov/press/7-27-04.html](http://www.eeoc.gov/press/7-27-04.html) .

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### **3. NEW FACT SHEET AVAILABLE ADDRESSING EPILEPSY UNDER ADA**

The Equal Employment Opportunity Commission (EEOC) has published a new fact sheet addressing the workplace rights of people with epilepsy under the Americans with Disabilities Act (ADA). Title I of the ADA, which is enforced by the EEOC, protects qualified individuals with disabilities from discrimination by private and state and local government employers with 15 or more employees.

"Epilepsy does not hinder a person's ability to be a productive employee or compromise safety in the workplace," said Commission Chair Cari M. Dominguez. "Too often, however, individuals with epilepsy are still denied job opportunities because of misconceptions and fears about this condition. The EEOC's fact sheet dispels some of these myths and answers frequently asked questions about how people with epilepsy are covered by the Americans with Disabilities Act."

This publication is the second in a series of EEOC fact sheets focusing on particular disabilities in the workplace. Last October, the Commission released a fact sheet on the ADA and people with diabetes.

You can find the fact sheet on the EEOC web site at <http://www.eeoc.gov/facts/epilepsy.html> .

## *Gentle Readers,*

We share some information about new products to help you in your compliance efforts. And, there is some hope that the OFCCP will be able to perform quality, accurate statistical analyses in the near future. Read on.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #306, 8/13/2004)  
----- (Sent to over 1,500 subscribers)

1. **NEW CALIFORNIA POSTER REQUIRED AS OF AUGUST 1st**
2. **NEW COBRA NOTICE REQUIREMENTS NOW EFFECTIVE**
3. **THE BATTLE OF STATISTICS: IS THE OFCCP STARTING TO CATCH-UP?**
4. **NEW DOWNLOADABLE PRODUCT: MODEL AAP NARRATIVES**

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### 1. **NEW CALIFORNIA POSTER REQUIRED AS OF AUGUST 1st**

After a long battle in the state legislature, proponents of workers' compensation reform were successful in obtaining some changes to the state's extremely expensive worker protection program.

As a result of the new law, the Division of Workers' Compensation is requiring that all California employers post an updated workers' compensation notice and distribute to all employees an updated workers' compensation pamphlet.

You can order your new California All-on-One labor law compliance poster through the HR Web Store. Go to <http://www.management-advantage.com/products/posters/CA-allonone.htm>

You can also order your mandatory pamphlets at the same location or at <http://www.management-advantage.com/products/WCPamphlet.htm> .

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### 2. **NEW COBRA NOTICE REQUIREMENTS NOW EFFECTIVE**

If you have a health insurance plan that will become effective or renew after November 26th this year, or in the coming year, you will want to get a copy of the new federal rules governing notice to employees who are eligible for COBRA continuation coverage.

The U.S. Department of Labor has recently issued a new set of rules governing the notice to employees and its content. In that federal register publication, the agency also made available a model notice

that employers can use if they choose.

You will find a copy of the notice at the HR Web Store in the "What's New" department. Go to <http://www.management-advantage.com/products/whatsnew.htm> .

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**3. THE BATTLE OF STATISTICS: IS THE OFCCP STARTING TO CATCH-UP?  
by Patrick M. Nooren, Ph.D.**

"It's like bringing a knife to a gunfight." These words were uttered by Charles James, Deputy Assistant Secretary of the Office of Federal Contract Compliance Programs (OFCCP) in a recent San Francisco bay area Industry Liaison Group (ILG) meeting when describing the dynamics between his agency's auditors and the statistical and legal experts an organization will employ to defend itself in the event of an audit. For years, largely due to the relative ease in which they are calculated, the OFCCP has relied on outdated and only somewhat accurate statistical analyses to support allegations of discrimination, only to have those analyses rebutted by more sophisticated, legally defensible analyses generated by contractors and their experts. But these days are coming to an end.

At the April 2004 ILG meeting in Sacramento, Woody Gilliland, Director of the Western Region, announced that the OFCCP had hired a statistical expert at the National Office, and that the OFCCP will be looking to hire statistical experts in each of the regions. As of the date of this publication, the OFCCP has made significant progress in achieving this goal. What this means to the contracting community is that the OFCCP is "stepping-up" its ability to statistically analyze adverse impact and compensation by using the same types of analyses employed in EEO discrimination litigation. In defense of the OFCCP, they have been conducting these sophisticated analyses at the national office for some time, but their recent efforts indicate a desire to extend that ability to the regional and district offices. How long this initiative will take to disseminate nationwide is unknown, but if their progress in the past year is indicative, it appears as though it may be sooner than later. It is clear; however, that employers should proactively analyze their own workforce to identify, and rectify, problem areas before they are uncovered during an audit, or worse yet, litigation.

(Patrick M. Nooren, Ph.D. is a principal with Biddle Consulting Group in Sacramento, CA. He can be reached at [pnooren@biddle.com](mailto:pnooren@biddle.com) .)

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**4. NEW DOWNLOADABLE PRODUCT: MODEL AAP NARRATIVES**

For years our customers and clients have been asking us for easy to customize narratives for affirmative action plans. We have finally completed the work and offer them to you as a downloadable ZIP file.

You will find them in the HR Web Store at <http://www.management-advantage.com/products/ModelAAPNarratives.htm>

There are three Rich Text Format (RTF) files in the ZIP package.

They can be imported and modified by any word processor. One of the files contains the instructions for how to modify the narratives so they are truly customized for your organization.

A second RTF file contains a table of the terms you can search and replace within the third file, the model narratives themselves.

Three Affirmative Action Plan narratives are required by federal regulations. One is for Minorities and Women, another is for Disabled and the third is for Veterans.

Now, you can customize these documents in minutes using only the search and replace feature of your word processor. Combine the result with your statistical analysis reports for Minorities and Women, and you will have met your obligation for AAP development.

Best of all, the price is only \$49.95! Others are charging hundreds of dollars and our product is every bit as good as theirs. We've seen them. We know.

If you have to prepare a set of Affirmative Action Plans for your organization, why not give yourself a break and make the project easier. Order your copy of this downloadable file today.

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Gentle Readers,

Efforts to block implementation of the new FLSA overtime regulations have fallen short. The OFCCP has admitted the need for statistical validity for a finding of illegal discrimination and we have some wonderful, new products in the HR Web Store to help you.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #307, 8/20/2004)  
----- (Sent to over 1,500 subscribers)

1. **IT'S ABOUT TIME: THE OFCCP IS FINALLY TAKING INTO ACCOUNT VALIDITY WHEN CLAIMING DISCRIMINATION**
2. **FLSA REGULATIONS WILL BECOME EFFECTIVE AUGUST 23, 2004**
3. **NEW PRODUCTS IN HR WEB STORE**

- 
1. **IT'S ABOUT TIME: THE OFCCP IS FINALLY TAKING INTO ACCOUNT VALIDITY WHEN CLAIMING DISCRIMINATION**  
**by Patrick M. Nooren, Ph.D.**

Adverse impact occurs when there is a statistically significant difference in rates (e.g., hiring, promotion, termination) between members of a protected class and the appropriate comparison group. However, according to the 1991 Civil Rights Act, this difference only amounts to discrimination if the tools causing the difference are invalid and not consistent with business necessity. In other words, numerical differences between groups, even differences that are statistically significant, are allowed as long as the tools responsible for those differences have been developed by following a rigid and legally defensible validation strategy. Unfortunately, all too often employers "believe" the components in their hiring or promotional processes are valid simply because they are loosely based on an aging job description or "seem to make sense." This belief couldn't be further from the truth.

At the April 2004 ILG meeting in Sacramento, Woody Gilliland, Director of the Western Region, announced that the OFCCP will be hiring test development and validation experts. If adverse impact is discovered during an audit, and the contractor attempts to use a validity argument as their defense, these experts will be responsible for evaluating whether the at-issue practice, procedure, or test (PPT) is job-related and consistent with business necessity. Typically this evaluation includes (at a minimum) a thorough review of the underlying job analysis in which the knowledge, skills, abilities and personal characteristics (KSAPC's) of the job are identified as well as a linkage study "mapping" those KSAPC's to each item in the selection process. As you can see, this goes well beyond a simple job description. Generally speaking, if adverse impact exists AND the PPT

responsible is not valid, then the employers could be facing an uphill battle in their own defense. Because of this, it's important that employers review the validity of the PPT's used for selection decisions prior to an audit and/or litigation.

(Patrick M. Nooren, Ph.D. is a principal with Biddle Consulting Group in Sacramento, CA. He can be reached at pnooren@biddle.com .)

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## **2. FLSA REGULATIONS WILL BECOME EFFECTIVE AUGUST 23, 2004**

As you know, there has been much political upset about the new regulations governing definitions of overtime exemption categories. There were many calls for Congressional action to block the Department of Labor (DOL) regulatory changes. Some thought that Congress would act to block the new definitions before it adjourned for the summer.

Neither Congressional House will be back in session until September 7, 2004, which means the implementation of the new regulations will take effect as planned on August 23rd, this coming Monday.

All employers are expected to be in compliance with the new regulations on that date. If you have not yet reviewed your classification of jobs into exempt or non-exempt from FLSA requirements, you have until Monday to complete the task.

If you need help, we have a special report on overtime exemptions that will help you stay in compliance. You will find it in the HR Web Store at: <http://www.management-advantage.com/products/OvertimeExemptionReport.htm>

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## **3. NEW PRODUCTS IN HR WEB STORE**

We've been busy looking for more products that will help you with your job as an HR professional. Reference materials are important, and we know from experience, that gifts are important for employee events like birthdays, anniversaries, etc. We try to help you with both.

This month we have introduced two new manuals to the lineup of HR publications available in the HR Web Store.

1) "The HR Practitioner's Manual" by J.J. Keller is the latest in professional desk references to help you with the things you do every day. It lists by subject area, relevant laws, regulations, court decisions and other legal information. There are over 650 pages in a 3-ring binder so it is easily updated. An update service is available for a modest fee. Review this product at <http://www.hrwebstore.com/products/HRPractitioners.htm>

2) For those of you in the business of trucking, we have another J.J. Keller reference tool available to you. "HR for Motor Carriers" is a 650 page 3-ring binder filled with information that will help any HR professional who must meet federal Department of Transportation regulations for employee management in the trucking industry. Included

is information on transportation-specific issues, such as CDLs, DQ files, owner/operators, and drug and alcohol tests and exams. An update service is available for a modest fee. Review this brand new product at <http://www.hrwebstore.com/products/HRforMotorCarriers.htm>

3) For those of you with a sweet tooth, or just interested in having special gifts for your employees, professional associates and others, we are pleased to announce the addition of three Jelly Belly gift boxes to the Gift Department at the HR Web Store. Choose from selections of 10-flavor, 25-flavor, or 50-flavor gift boxes. Find these and other fine gifts at: <http://www.hrwebstore.com/products/gifts.htm>

And, don't forget you get...

10% OFF ALL PRODUCTS IN THE HR WEB STORE DURING AUGUST!

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*Gentle Readers,*

OSHA has published its final whistle-blower complaint process and DOL has made available an automatic notification service for changes its agencies make or propose to make. You may find it helpful.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #308, 8/27/2004)  
----- (Sent to over 1,500 subscribers)

1. **US DEPARTMENT OF LABOR OFFERS E-MAIL SUBSCRIPTION SERVICE**
2. **DOL OFFERS DOWNLOAD SEMINAR FOR NEW OVERTIME REGULATIONS**
3. **OSHA PUBLISHES FINAL RULE ON WHISTLE BLOWER PROCEDURES**

- 
1. **US DEPARTMENT OF LABOR OFFERS E-MAIL SUBSCRIPTION SERVICE**

The U.S. Department of Labor (DOL) has begun offering an E-mail subscription service that employers can use to remain current on swiftly moving regulatory changes and compliance requirements.

When you visit [www.dol.gov](http://www.dol.gov) you will see on the right hand menu a selection called "Subscribe to E-mail Updates." Click on that option and you will be taken to a page where you can enter your email address and make your selection for the types of updates you wish to receive. There is no need to accept all of the Department's announcements and updates. You can check only those you wish to have in your mail box.

In its announcement about the expanded service, the Department's Chief Information Officer, Patrick Pizzella, said, "President Bush has asked federal agencies to use technology and the Internet to make government more accessible and user friendly for the public and its customers, and this new e-mail subscription service is one of many ways the Department of Labor is doing that." He continued, "Our new system automatically lets those who sign up know when new information or updated information is available on-line."

There are 99 initial subscription options in 15 categories. You might want to give it a try.

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2. **DOL OFFERS DOWNLOAD SEMINAR FOR NEW OVERTIME REGULATIONS**

The new "white collar" overtime regulations went into effect on Monday of this week. All employers must now be fully implemented.

Here's what you should have done:

- a) Identify all jobs paid less than \$455 per week. Those are guaranteed overtime payment.
- b) Be sure you have properly identified any legitimate exemptions for remaining job titles. Exemption categories are:
  - o Executive
  - o Administrative
  - o Professional
  - o Some Computer-Related Occupations
  - o Outside Sales
  - o Highly-Compensated Workers

The US Department of Labor (DOL) has now made available on its web site a downloadable training seminar including video with a synchronized transcript and slide presentation. The seminar is searchable by topic.

To get a copy of the training materials go to:  
<http://www.dol.gov/esa/regs/compliance/whd/fairplay/>

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### **3. OSHA PUBLISHES FINAL RULE ON WHISTLE BLOWER PROCEDURES**

The Occupational Safety and Health Administration (OSHA) has published its final rules on whistle blower procedures under the Sarbanes-Oxley Act of 2002.

You will find the announcement in the Federal Register at  
<http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=38935322655+0+0+0&WAISaction=retrieve>

Technically, they are "procedures for handling of discrimination complaints under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002.

These are final rules, so they are no longer open for discussion or comment. Be sure you are clear about the complaint process in case you have an employee who chooses to use that process.

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Gentle Readers,

EEOC trends, cyber crime and pay-for-performance are this week's subjects.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #309, 9/3/2004)  
----- (Sent to over 1,500 subscribers)

1. **FIGHTING CYBER CRIME - A NEW RESOURCE FOR COMPANIES**
2. **COALITION FOR EFFECTIVE CHANGE ENDORSES PAY FOR PERFORMANCE**
3. **EEOC TRENDS**

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1. **FIGHTING CYBER CRIME - A NEW RESOURCE FOR COMPANIES**

Identity theft, hacking, viruses, worms, credit card theft, and all the variations thieves have devised. These are current and future challenges to business organizations world wide.

Well, in Walnut Creek, California, they decided to take action and do something about the problem. A community task force was formed to determine specific actions that can combat these cyber crime and identity theft problems.

For over a year the task force worked to create specific recommendations for action steps employers and individuals can take to reduce the threats in their computer systems and operational procedures.

The result is a CD-ROM that contains specific information to help you address

- o Identity Theft
- o Child predators
- o Home office security
- o Spam & viruses
- o Document destruction
- o Laptop security
- o Shopping security
- o Computer back-up
- o Wireless security

The Walnut Creek Chamber of Commerce spearheaded the task force. The CD has been endorsed by the US Department of Homeland Security and the US Secret Service. It is sponsored by Cisco Systems, Microsoft, McAfee Security, SBC, Wells Fargo, Evault, James Brian Studios, Contra Costa Times, John Muir/Mt. Diablo Health Systems, Pest Patrol, Bank of Walnut Creek and the City of Walnut Creek.

The CD costs \$5.00 which covers the cost of production. You can order it by sending an email request to TSF\_CD@hotmail.com .

The HR Web Store also features a special product called Identity Theft Protector software. It is on sale now... regularly \$49.95 on sale for only \$39.95. Find it at <http://www.management-advantage.com/products/IDTheft.htm>

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## **2. COALITION FOR EFFECTIVE CHANGE ENDORSES PAY FOR PERFORMANCE**

The Coalition for Effective Change and its 30 or so executive, professional and managerial associations have come out in favor of pay for performance in the federal government, and the stated intention of current reforms underway including a possible further departure from the general schedule system.

It reached a consensus over a mercifully short paper that Chair Roz Kleeman says, "demonstrates that federal managers and other professionals are quite willing to be held accountable for their performance and are committed to improving government operations."

The paper qualifies many of the Coalition's views on design and implementation and agrees with a recent report from the Government Accountability Office stating that the importance of timing and methodology to success of such a system. It also notes that pay should not be the sole focus of employee and organizational performance.

"Other factors that drive performance, in some cases more than pay, include the strong public service motivation of most government employees, good management and leadership, the importance of the work, the opportunity to have responsibility and to make good use of one's skills and ability, the prospects for personal growth and career development, the support of superiors and co-workers, and the nature of the work environment," said the report.

The Coalition also said it favors recent statutory requirements related to the need to train and retrain supervisors, managers and employees in the implementation of a pay for performance system and outlined what it called essential design elements including a flexibility in the amount and distribution of awards to be controlled by budget allocations rather than arbitrary quotas and forced distributions.

Other design elements it considers essential would establish a means for ratings officials to exercise reasonable judgment, provide for third party review and a rational and reasonable process for the appeal of actions materially affecting employees, and a minimum cost of living annual pay increase for employees deemed satisfactory. A copy of the report can be accessed at [www.effective-change.org](http://www.effective-change.org)

(Source: Federal Manager's Daily Report, Friday, August 27, 2004, fedweek@fedweek.com)

### 3. EEOC TRENDS

Equal Employment Opportunity Commission (EEOC) Chair, Cari Dominguez, spoke to the annual National Industry Liaison Group (NILG) meeting in St. Louis, MO on August 11th. In her presentation she said that more than half of the 80,000 complaints the Commission receives each year come from employees of small and mid-sized organizations. Her reaction to that development is to say the EEOC is performing more detailed statistical analysis of complaints and is pro-actively offering training programs to employers around the country. Anyone can access the training schedule and make reservations to participate by visiting the agency's web site at [www.eeoc.gov](http://www.eeoc.gov) .

Greatest among complaint reasons are:

- o Sexual harassment
- o Pregnancy discrimination
- o Accent discrimination (National Origin)

Retaliation claims are also experiencing a sharp increase in volume.

Complaints of illegal discrimination against large employers appear to be diminishing. Dominguez attributed that trend to the nation's largest businesses making "diversity part of business and not just compliance."

Overall, complaints based on race and national origin appear to be falling off, both in raw numbers and in percentage of total complaints.

If you are interested in seeing more statistical reports from the EEOC go to <http://www.eeoc.gov/stats/enforcement.html>

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## Gentle Readers,

Some thoughts about statistics and politics, and OSHA announces a new set of industry-specific guidelines for folks in poultry processing.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #310, 9/10/2004)  
----- (Sent to over 1,500 subscribers)

1. **THOSE PESKY JOB STATISTICS**
2. **THE JOBS OF THE FUTURE**
3. **OSHA ANNOUNCES ERGONOMICS GUIDELINES FOR POULTRY PROCESSING**

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1. **THOSE PESKY JOB STATISTICS**

Hardly a week goes by without the media reporting some new labor statistic. These days, most of the emphasis, at least in political terms, has been on the number of jobs created or lost in our nation.

According to the National Federation of Independent Business (NFIB), "late last week, the Bureau of Labor's payroll survey reported the economy gained 144,000 jobs, the strongest monthly reading since May, for a total of 131.5 million jobs. But Democrats on the campaign trail tell Americans that's 900,000 fewer jobs than when President Bush took office in 2001."

"In recent months, Republicans have been quick to point to an entirely different survey, albeit one that is released by the same department as the payroll survey. The household survey shows that 21,000 new jobs were added in August and that 3.4 million have been created since the recession ended in November 2001."

What is it with the statistics? Who is right? Are both political parties telling us untruths?

According to Bill Dunkelburg, NFIB's chief economist, "The payroll survey omits employment in agriculture - which is very strong - the self-employed, consultants and 1099 employees - in essence, workers who are 'entrepreneurial' and who figure out how to get a job and earn an income."

NFIB's own Small Business Economic Trends survey is frequently quoted by Federal Reserve Chairman Alan Greenspan and the national media. It has shown job creation at a fairly steady pace and that plans to create new jobs are higher now than at any time during the 1980s expansion which produced more than 20 million jobs.

For the complete story, go to [http://www.nfib.com/object/IO\\_17628.html](http://www.nfib.com/object/IO_17628.html)

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## 2. THE JOBS OF THE FUTURE

As you know the US Department of Labor (DOL) is always analyzing data of one sort or another. It usually makes a point of forecasting changes in our workforce on several different parameters.

One such forecast focuses on the future of jobs in our country. Their most recent report can be found at

<http://www.dol.gov/asp/media/reports/workforce/chapter8.pdf>

"The nation's predominant industries and occupations have drastically changed over the course of the last century and even the last decade," according to the report.

- o At the turn of the last century, 40 percent of all US workers were employed in agriculture. Today, fewer than 2 percent work in that industry.
- o At its height during World War II, manufacturing employed nearly four of every ten workers in the country. By 2002, the figure had fallen to one of every nine workers.
- o In 1994, there were a reported 916,000 computer systems analysts and scientists. By the end of the decade, that number had nearly doubled, rising to 1.8 million workers.
- o Over the 2002-12 decade, BLS projects that employment in healthcare occupations will grow by 2.9 million, an increase of more than 28 percent.

The entire report consists of several chapters. This economic/jobs forecast can be found in Chapter 8, which comprises 13 pages.

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## 3. OSHA ANNOUNCES ERGONOMICS GUIDELINES FOR POULTRY PROCESSING

The Organizational Safety and Health Administration (OSHA) effort to implement general ergonomic guidelines has suffered serious to major setbacks over the past few years. Yet, according to the agency, the battle isn't over.

OSHA has regrouped and refocused on just one industry in its latest attempt to create ergonomics guidelines that will be both realistic and enforceable. The focus of this effort is on the poultry processing industry.

The objective of these guidelines is to reduce the number of musculoskeletal disorders (MSDs) throughout the industry according to OSHA Administrator John Henshaw.

This is the third set of industry-specific guidelines OSHA has published. The others are for the nursing home and retail grocery store industries. The complete announcement can be found at <http://www.dol.gov/opa/media/press/osha/OSHA20041737.htm>

## Gentle Readers,

This week we are announcing an exciting new book about police experiences in the 1960s and 1970s. Pre-publication orders will receive a nice discount. And, next year's calendars are now available. Get your request in quickly. They always go fast.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #311, 9/17/2004)  
----- (Sent to over 1,500 subscribers)

1. **VOTING TIME OFF - CALIFORNIA POSTER REQUIREMENT**
2. **SOLDIER OF THE CITY**
3. **2005 CALENDARS NOW AVAILABLE**

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1. **VOTING TIME OFF - CALIFORNIA POSTER REQUIREMENT**

California state law requires every employer to post a notice about voting time off at least 10-days before every statewide election. The November 2nd election will qualify as one of those events.

If you don't have one of our All-On-One posters, you may need to put up a copy of the Voting Time Notice. You can print it for FREE by going to "FREE Stuff" in the HR Web Store. Look at <http://www.management-advantage.com/products/free-voteposter.htm>

Don't forget.

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2. **SOLDIER OF THE CITY**

For anyone in law enforcement, we offer a new book, "Soldier of the City." It is going to begin shipping around the end of October. It is a "true police journey of humor, tragedy and courage."

There are dozens of stories about police work in the 1960s and 1970s in Oakland, California and other locations. It was a tumultuous time in the history of law enforcement. Even in the midst of those stressful conditions, there were humorous experiences.

Here's what some of the early readers have had to say:

- o "Fast and interesting reading - realistic!" - Chris Rye, Oakland Police Officer, Retired

- o "Laughed out loud. Funny and factual - enjoyed it very much!"  
- Bob Thorp, Oakland Police Sergeant, Retired
- o "Fun reading. Couldn't put it down!" - Jim Datzman, South San Francisco Chief of Police, Retired
- o "Enjoyed it - Wayne has a gift of words!" - John McKenna, Oakland Police Sergeant, Retired
- o "Great stories - takes me back to my time in police communications!"  
- Ted Klakoff, Santa Clara County Communications Dispatcher, Retired
- o "Brings back floods of memories of instances from my own career!"  
- Bob Gentry, Newark Police, (also Concord & Menlo Park) Retired

The positive feedback just keeps rolling in day after day.

If you are a former police officer, or know someone who is, this is a perfect gift. They will thank you over and over.

Our pre-publication offer is for \$2.00 off the list price of \$19.95. If you order before the end of October 2004, you will get your copy for only \$17.95. Order your copy now at this special price.

<http://www.hrwebstore.com/products/Soldier.htm>

Remember, this introductory, pre-publication price will end on October 31, 2004. Get your copy ordered today.

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### 3. 2005 CALENDARS NOW AVAILABLE

It's the time of year when we begin thinking about the coming year and organizing our activities. For many years we have offered FREE calendars to our clients and friends. We do so again this year.

For 2005, our fourteen beautiful photos include

- o Portland Head Lighthouse, ME
- o Picture Lake, Mt. Shuksan, WA
- o Aqua Canyon, Bryce National Park, UT
- o Jefferson Memorial, Washington, DC
- o Hamoa Beach, Maui, HI
- o Hodgson Water Mill, Sycamore, MO
- o Bureau County, IL
- o Jasper National Park, Alberta, Canada
- o and four more equally spectacular locations

Track the special days in your life, upcoming events, financial data, auto maintenance schedules, memories of your personal experiences during the year.

This year, the calendars are larger, 10" X 10.5" but still have the same type of inspirational thoughts for each month. We know you will enjoy them.

To get your copy, please send an email message to

[calendar@hrwebstore.com](mailto:calendar@hrwebstore.com) with the following information:

- o Your Name
- o Your Organization
- o Your Title
- o Your Mailing Address
- o Your City, State, Zip

We're sorry, calendars can be sent to U.S. addresses only. And, they will be mailed on a first-come, first-served basis. Don't miss out. Once they are gone, we will be unable to fill your request.

Do it today, before you forget or supplies are gone.

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## Gentle Readers,

The EEOC has developed a proposal for its National Call Center, the OFCCP posts its accomplishments and the government gives you easier access to federal regulatory proposals.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #312, 9/24/2004)  
----- (Sent to over 1,500 subscribers)

1. **OFCCP ACHIEVEMENTS IN FY 2003**
2. **FIND GOVERNMENT REGULATORY PROPOSALS MORE QUICKLY**
3. **EEOC APPROVES NATIONAL CONTACT CENTER**

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1. **OFCCP ACHIEVEMENTS IN FY 2003**

Go to <http://www.dol.gov/esa/> and you will discover a condensed list of achievements recorded by the Office of Federal Contract Compliance Programs (OFCCP) during Fiscal Year (FY) 2003. As you know the new fiscal year for the federal government begins on October 1st. We will be going into FY 2005 in another week.

Here's that list:

- o In FY 2003, OFCCP completed 7,709 compliance evaluations covering over 2.5 million workers - more reviews and more covered workers than any year since 1991.
- o OFCCP completed 52 Corporate Management Reviews during FY 2003, a record number. Corporate Management Reviews ensure that workers have an equal opportunity to rise to management and executive positions.
- o OFCCP focused on systemic discrimination cases in FY 2003, obtaining settlements which provided \$26,220,356 in financial remedies to 14,361 minority and female workers.
- o In FY 2003, OFCCP referred 12 systemic discrimination cases to the Office of the Solicitor for enforcement litigation, involving \$27.3 million in estimated liability and over 1,500 workers. The Solicitor's Office filed enforcement litigation in 5 OFCCP cases this year, with estimated liability of more than \$6.2 million and involving more than 2,400 workers.

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2. **FIND GOVERNMENT REGULATORY PROPOSALS MORE QUICKLY**

The Federal Register is the place all regulatory proposals are

published. Actually, each proposal is published more than once, based on how many changes are made before the final copy is adopted.

Yet, getting to the list of items you are interested in can be a daunting task. There is an easier way, if you wish to use it.

Go to [www.regulations.gov](http://www.regulations.gov) and you will discover a search engine that gives you instant access to regulations that are published for comment. You can search by topic or by due date. You can pick a specific agency and input key words or phrases that will narrow your selection.

Try it when you have time. You will find it to be a good tool, we're sure.

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### **3. EEOC APPROVES NATIONAL CONTACT CENTER**

The U.S. Equal Employment Opportunity Commission (EEOC) today voted 3-1 to authorize funds for a contract award that will establish a two-year pilot National Contact Center to handle unsolicited calls for general information.

"A National Contact Center is urgently needed to give the public what we do not and cannot now provide as we labor under inherent limitations of our technology and staffing structure an open door to the EEOC," Commission Chair Cari M. Dominguez said during a public meeting culminating in the vote. "Public access is essential to our mission. The public's information about 'real world' workplace concerns, issues and problems is crucial to our enforcement of the nation's laws against discrimination, and we need the public to be able to reach us in real time.

"To protect the American workplace," she added, "the Commission must have in place the best system possible for gathering and securing meaningful intelligence about equal employment opportunity issues and trends."

The establishment of a National Contact Center will provide for a centralized point of access to the Commission and will allow EEOC staff to focus more on mission-critical duties such as charge intake, investigations, mediation, litigation, and outreach to employers and employees. The National Contact Center will respond to public inquiries through two toll-free numbers, one for voice and one for TTY (used by individuals with hearing and speech impairments), as well as via electronic mail. The center will provide immediate access to customer service representatives between 8:00 a.m. and 8:00 p.m. Eastern Time. An automated system with answers to frequently asked questions will be accessible on a 24-hour basis. The center will be able to provide customer support in multiple languages.

For the complete announcement go to: <http://www.eeoc.gov/press/9-17-04.html>

Gentle Readers,

Best employers for workers over 50, a request for proposals to the Silicon Valley Partnership and a new OFCCP pre-scheduling letter all capture our attention this week.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #313, 10/1/2004)  
----- (Sent to over 1,500 subscribers)

1. **AARP BEST EMPLOYERS FOR WORKERS OVER 50 IN 2004**
2. **SILICON VALLEY PARTNERSHIP ASKS FOR PROJECT PROPOSALS**
3. **OFCCP ISSUES NEW PRE-SCHEDULING ANNOUNCEMENT LETTER**

- 
1. **AARP BEST EMPLOYERS FOR WORKERS OVER 50 IN 2004**

Once again, AARP, that bastion of retirement and older workers, has posted its list of best employers for workers over the age of 50.

There are 18 states represented with the following number of company headquarters in each as shown below. AARP didn't explain why it only posted 35 of the 50 honored employers.

AZ 1	MN 3
CA 1	NJ 1
CT 1	NY 3
FL 3	PA 3
IA 2	SC 1
IL 3	TN 1
MA 2	TX 1
MI 2	VA 3
MO 2	WV 2

Perhaps your company is on the list.

For the complete list, and description of the judges, go to <http://www.aarp.org/money/employerresourcecenter/bestemployers/Articles/a2004-07-23-50honorees.html>

There is also a link you can use to apply for "Best Employers 2005."

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## **2. SILICON VALLEY PARTNERSHIP ASKS FOR PROJECT PROPOSALS**

Silicon Valley, as you know, is that 40-mile-long chunk of land south of San Francisco between the Bay and the Coast Mountain Range. It is the home to a great many high-tech organizations, and all of the support functions it takes to make high-tech commerce actually work. Bill Hewlett's one-car garage is still in Palo Alto where he and his partner, David Packard, created the company's first product, an audio oscillator.

As you might expect, many high-tech companies are either prime- or sub-contractors to the U.S. government. The federal government is a large consumer of technology. In that environment, then, is an effort to provide some unique support to the community in which these organizations flourish.

Silicon Valley Partnership (SVP) has as its mission an offering of leadership in workplace issues like education, people development, inclusion, upward mobility and retention of groups such as women, people of color, veterans, and people with disabilities. It brings together community groups, government representatives such as the Office of Federal Contract Compliance Programs (OFCCP) and business representatives.

In the past, SVP has launched a professional organization for people with disabilities, developed a program guide listing outstanding youth-focused programs in employment, and has provided information at Digital Connections conferences to involve senior management in outreach.

You can find organizations like Adobe Systems, Agilent Technologies, Hewlett-Packard, Intel, Microsoft, National Semiconductor, the National Association of African Americans in Human Resources (NAAHR), Project HIRED, Rainbow PUSH, Society of Women Engineers, and many others involved in SVP.

Proposals for the 2005 SVP project are now being solicited and should be delivered to [proposals@siliconvalleypartnership.org](mailto:proposals@siliconvalleypartnership.org) by 11/15/2004. Guidelines for proposal development and formatting can be found at SVP's website at [www.siliconvalleypartnership.org](http://www.siliconvalleypartnership.org). Finalists in the competition will be invited to present their proposals at the January SVP meeting and a winner will be decided by the end of February.

For additional information, contact Edgar Collins, at OFCCP, by calling 415-848-6990.

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## **3. OFCCP ISSUES NEW PRE-SCHEDULING ANNOUNCEMENT LETTER**

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has announced to the Federal Contractor Community that it intends to use a new Corporate Scheduling Announcement Letter to provide advanced compliance evaluation notification when a contractor's establishment(s) have been selected for audit during the year. Specifically, this letter will be provided to Corporate Headquarters along with a listing of potential federal contractor establishments

that have been selected for evaluation under the OFCCP's Federal Contractor Selection System (FCSS). Please click on the link provided below to view the entire letter.

FCSS has now replaced the old EEDS (Equal Employment Data System) that had been used for more than 30 years to select contractor establishments for audit by the OFCCP. We have yet to discover what methodology FCSS uses in its selection process. As soon as we have that information, we will share it with you.

For a copy of the new pre-scheduling announcement letter signed by Charles James, head of the OFCCP, go to our "What's New" page in the HR Web Store.

(<http://www.management-advantage.com/products/whatsnew.htm>)

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*Gentle Readers,*

Employee reemployment accounts, an easy way to verify Social Security Numbers, and a bit of encouragement to all readers on voter registration.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #314, 10/8/2004)  
----- (Sent to over 1,500 subscribers)

1. **FEDERAL SUPPORT FOR PERSONAL REEMPLOYMENT ACCOUNTS**
2. **EMPLOYERS CAN VERIFY SOCIAL SECURITY NUMBERS TOLL-FREE**
3. **ENCOURAGE YOUR EMPLOYEES TO REGISTER AND VOTE**

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1. **FEDERAL SUPPORT FOR PERSONAL REEMPLOYMENT ACCOUNTS**

U.S. Secretary of Labor Elaine L. Chao announced on September 28, 2004, that her Department has allocated \$9 million for a demonstration project involving Personal Reemployment Accounts (PRAs) that will help unemployed workers find new jobs.

"Personal Reemployment Accounts will empower unemployed and dislocated workers with more control over selecting their own training and career paths," said Ms. Chao. "...we trust individual workers to know what training courses to choose and to decide what job options they prefer."

Personal Reemployment Accounts are personally managed funds that eligible unemployed workers use to purchase job training and supportive services and products from either the marketplace or public One-Stop Career Centers.

States that take part will be able to offer individual accounts of up to \$3,000 to unemployed workers most likely to exhaust their unemployment insurance benefits before finding employment. Personal Reemployment Accounts are additional benefits and will not affect UI benefits.

Under the demonstration announced by Secretary Chao, states wanting to make use of Personal Reemployment Accounts must send a letter of commitment to qualify for the pilot program. Up to nine states will be selected to participate.

States participating also will offer a reemployment bonus feature. Workers who find employment within 13 weeks of receiving a Personal Reemployment Account will receive a bonus payment of 60% at the time of

employment and 40% after staying employed for six months.

See the announcement at [www.dol.gov/opa/media/press/eta/ETA20041912.htm](http://www.dol.gov/opa/media/press/eta/ETA20041912.htm)

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## **2. EMPLOYERS CAN VERIFY SOCIAL SECURITY NUMBERS TOLL-FREE**

The Social Security Administration (SSA) makes available a special service to employers who need to perform background checks on their employment candidates.

Since it is the employer's responsibility to obtain an applicant's Social Security Number (SSN), verify the SSN card by inspection, and get additional proof of identity, confirming validity of the SSN is an important voluntary step the employer can take. Every new hire must be documented on Form I-9, and that information retained for the life of the individual's employment.

There is no charge for this service.

To verify up to 5 names at one time, employers can call the SSA at 1-800-772-6270 weekdays from 7:00 a.m. to 7:00 p.m. Eastern Time. When you call, you will be asked for your company name and Employer Identification Number (EIN). That's the same as your taxpayer ID. Then you will be asked to provide the following information for each person's SSN you wish to verify:

1. SSN
2. Last Name
3. First Name
4. Middle Initial (if applicable)
5. Date of Birth
6. Gender

The program allows employers to verify more than five names at a time using different procedures.

The SSA also lists on its web site SSN area and group numbers that have been issued for each month during the past year.

For more information visit [www.ssa.gov/employer/ssnv.htm](http://www.ssa.gov/employer/ssnv.htm)

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## **3. ENCOURAGE YOUR EMPLOYEES TO REGISTER AND VOTE**

Who can forget the narrow margins by which the last national election was decided? That alone should be enough to convince people that every vote counts...even among millions.

It is important for every Human Resource manager in America to actively encourage employees in their organizations to register and then vote on election day.

Registering is easier than ever with the national registration form. One simple PDF file download and a couple minutes entering information

is all it takes. Put a stamp on the document and mail it to the address designated in your state. That's all there is to it.

For more information and to get a copy of the registration form PDF file, go to <http://www.fec.gov/votregis/vr.htm>

New Hampshire, North Dakota and Wyoming are the only problematic states.

There is no finer way to support this country and our freedoms than to register and vote! Provide this information to your employees today!

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## Gentle Readers,

Emergency preparedness, mine safety and the new EEOC call center vendor are items on this week's menu.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #315, 10/15/2004)  
----- (Sent to over 1,500 subscribers)

1. VIDEO OF EMERGENCY PREPAREDNESS SEMINAR IS AVAILABLE ONLINE
2. EEOC PICKS FIRM TO RUN CONTACT CENTER
3. NEW HISTORY OF MINE SAFETY AGENCY NOW AVAILABLE

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1. VIDEO OF EMERGENCY PREPAREDNESS SEMINAR IS AVAILABLE ONLINE

Video clips from ODEP's Emergency Preparedness for People with Disabilities Seminar of Exchange are now available online. The December 2003 event brought together more than 200 federal managers and experts representing nearly 90 agencies and offices in the areas of disability, emergency preparedness, and workplace safety. Attendees had the opportunity to exchange ideas and share information related to the development, implementation and maintenance of emergency preparedness plans that involve people with disabilities.

For a copy of the report go to [www.dol.gov/odep/pubs/ep/index2.htm](http://www.dol.gov/odep/pubs/ep/index2.htm)

To select from various conference videos, and even view them on-line, go to [63.241.135.3/goto/departement/labor/odep/emp.asp](http://63.241.135.3/goto/departement/labor/odep/emp.asp)

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2. EEOC PICKS FIRM TO RUN CONTACT CENTER

The Equal Employment Opportunity Commission (EEOC) has awarded a two-year \$4.9 million contract to Virginia-based Pearson Government Solutions to handle the over one million or more unsolicited inquiries it receives each year, through a national contact center.

Slated to open next spring, the national contact center 'will be invaluable to the Commission in identifying and responding to workplace trends and emerging patterns of employment discrimination," according to EEOC.

It said more involved requests would be referred to its own staff for counseling, guidance and action, and that the contact center would allow it to focus more on "charge intake, investigations, mediation,

litigation, and outreach to employers and employees."

It said the Lawrence, Kansas based center would monitor and track demographics, issues and concerns to help EEOC develop future policy.

EEOC said its former director of field programs, Elizabeth Thornton, has come out of retirement to head the project.

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**3. NEW HISTORY OF MINE SAFETY AGENCY NOW AVAILABLE**

The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) released a new publication titled "Mine Safety and Health Administration: 25 Years of Success," which celebrates the first 25 years of the agency's existence, chronicling its history and influence on the U.S. mining industry.

"MSHA's story is one of professionalism and commitment to safer and healthier mines beginning with the first days in 1978 to the dramatic rescues at Quecreek," wrote U.S. Secretary of Labor Elaine L. Chao in the publication's introduction. "There are many heroes in the collective experience of MSHA, most of whom quietly dedicate their careers to ensuring a better working environment for miners."

MSHA and its predecessors have a long, honorable history of working to improve safety and health for the miners who helped build this country. As early as 1865, Congress created a federal mining bureau. One hundred years later, safety problems though vastly improved were still prevalent in the mining industry. In 1977, Congress passed the Federal Mine Safety and Health Act to establish an agency to oversee mining issues in America. MSHA was created at the U.S. Department of Labor on March 9, 1978, with the mission of reducing injuries, illnesses and fatalities nationwide in the mining industry.

MSHA has had great success thus far in fulfilling its mission to promote and protect the safety and health of America's miners. In 2003, for a third consecutive year, the U.S. mining industry set its best safety record since statistics were first kept in 1910.

To view "25 Years of Success" online, visit MSHA's Web site at [www.msha.gov](http://www.msha.gov).

Gentle Readers,

Job Sharing is once again a hot item, and government resources have expanded Internet information about disabilities. And, learn about seven California firms that made the top 20 list of commuter-friendly employers. You'll recognize their names.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #316, 10/22/2004)  
----- (Sent to over 1,500 subscribers)

1. **CALIFORNIA EMPLOYERS ON EPA'S COMMUTER-FRIENDLY LIST**
2. **GOVERNMENT PROVIDED DISABILITY RESOURCES FOR EMPLOYERS**
3. **JOB SHARING GAINS ACCEPTANCE IN THE WORKPLACE**

- 
1. **CALIFORNIA EMPLOYERS ON EPA'S COMMUTER-FRIENDLY LIST**

Seven California companies have been recognized in the top 20 of Fortune 500 employers as contributing significantly to cleaner environments. The "Best Workplaces for Commuters" list is compiled by the organization sponsored jointly by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation (DOT).

The Commuter Choice Leadership Initiative is a business-government partnership that is making it easier and cheaper for employers to provide commuter benefits to their employees. EPA and DOT encourage employers to give commuters a meaningful and environmentally responsible choice for getting to work without driving alone. The partnership helps reduce the impact of cars on the environment, while saving time and money.

According to the EPA Newsroom, three-quarters of all trips made to and from work in the United States are by vehicles driven alone. Nine billion gallons of gasoline are wasted in traffic jams each year, about 800 times the amount of oil spilled by the Exxon Valdez. If half of all U.S. commuters worked for Commuter Choice Employers, air pollution and traffic would be cut by the equivalent of taking 15 million cars off the road.

Among the top 20 commuter-friendly companies were: #1 - Intel; #3 - Cisco Systems; #5(tie) - Sun Microsystems; #5(tie) - Oracle; #7 - Advanced Micro Devices; #11 - Hewlett-Packard; and, #12 - Apple Computer.

For more information about the program, go to  
<http://www.commuterchoice.gov/>

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## **2. GOVERNMENT PROVIDED DISABILITY RESOURCES FOR EMPLOYERS**

Have you ever wondered what government help you might find for managing job applicants and employees with disabilities? To answer that question, the Executive Branch of the government created an inter-agency Web portal to bring all those resources together in one spot.

Go to <http://disabilityinfo.gov/digov-public/public/DisplayPage.do?parentFolderId=5066> and you will discover an amazing amount of information on the subject of employer support. For people who have disabilities it offers the knowledge they need to pursue their personal and professional ambitions. The site reflects the government's acknowledgement that it must deliver on America's promise of equal access to opportunity for all citizens.

Once at the Internet site you will find information tabs for Employment, Education, Housing, Transportation, Health, Income Support, Technology, Independent Living and Civil Rights.

For employers there is information about:

- Accommodating Employees with Hidden Disabilities
- Americans with Disabilities Act (ADA) Primer for Small Business
- Cost and Benefits of Accommodations
- Department of Homeland Security Highlights Policy Initiatives for Inclusion of People with Disabilities in Emergency Preparedness
- Department of Transportation (DOT) Disability Resource Center
- Disabilities Accessibility Checklist for Training Classes/Events
- Disability & Business Technical Assistance Centers (DBTACs)
- Empowering Through the New Freedom Initiative
- Federal CapTel
- Federal Employment Vacancy Announcement Statement
- Federal Relay Conference Captioning (RCC)
- and, dozens of other topics

Give it a scan. You may wish to add the page to your personal bookmarks.

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## **3. JOB SHARING GAINS ACCEPTANCE IN THE WORKPLACE**

(From National Federation of Independent Business E-News, 10/19/2004, by Charles R. McConnell)

"Job sharing is the name commonly given to the practice of having one full-time position shared by two workers, each of whom work part time and divide the responsibilities of the job between them. Along with flextime, job sharing is one of the so-called "non-traditional" scheduling practices that has seen increasing use in recent years. The most common job-sharing arrangements involve two employees evenly dividing a single full time position. Typical arrangements might consist of one person working mornings while the other works afternoons, or both working full days with each working two days one week and three days in alternate weeks.

"In judging whether job sharing is appropriate for your situation, it's necessary to examine three dimensions of the practice: the benefits available to the company; alternatives that might be considered; and the attitudes that the job-sharing employees bring into the arrangement.

"It should be recognized initially that most of the advantages of job sharing accrue to employees and most of the disadvantages attach to the employer. A major disadvantage for the employer is that a job sharing situation potentially doubles the supervisory attention necessary to oversee the position; when a job is shared, the supervisor then has two people to supervise, two possible sources of problems and two evaluations to do. There is also a ripple throughout the organization, with certain other departments subject to incremental increases in workload. Depending on the kind of position shared, there can also be some loss of productivity as two people go through start-up and shut down each day. And if a shared job involves customer contact, customers will have to relate to two persons rather than one."

On the other side of the coin, employers can gain some benefit from having employees share jobs. If it prevents employees from leaving, employers can see lower turnover. Coupled with a potential savings in benefits expenditures because the part time employees may not qualify for coverage, company support for job sharing systems can sometimes be cost-justified.

For more information, and other related articles online, go to [http://www.nfib.com/object/IO\\_18510.html](http://www.nfib.com/object/IO_18510.html) .

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## Gentle Readers,

Take a few minutes to look at the new additions in the Gift Department at the HR Web Store. You may discover just what you need for the upcoming holidays. And, government demand for ethical behavior from employees is again in the news.

Don't forget that some employees may need time off to vote next Tuesday.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #317, 10/29/2004)  
----- (Sent to over 1,500 subscribers)

1. **NEW GIFTS FOR PROFESSIONALS**
2. **OFFICE OF GOVERNMENT ETHICS ISSUES MEMO ON SEEKING OUTSIDE EMPLOYMENT**
3. **EMPLOYEE TIME OFF WORK TO VOTE**

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### 1. **NEW GIFTS FOR PROFESSIONALS**

Do you struggle with the problem of finding just the right gift for a colleague, a friend or your boss? The holidays are fast approaching and we would like to suggest you make it easy on yourself by visiting the Gift department at the HR Web Store.

There are many items to choose from. Get an overview of them all at <http://www.management-advantage.com/products/gifts.htm>

Recently added to the offerings are these exciting items:

- o Set of 3 Candy Cane Candles  
<http://www.management-advantage.com/products/CandyCaneCandles.htm>
  - o Set of 3 Red Berry Candles  
<http://www.management-advantage.com/products/RedBerryCandles.htm>
  - o Jelly Belly 10 Flavor Assortment Box  
<http://www.management-advantage.com/products/JB10FlavorBox.htm>
  - o Jelly Belly 25 Flavor Assortment Box  
<http://www.management-advantage.com/products/JB25FlavorBox.htm>
  - o Jelly Belly 50 Flavor Assortment Box  
<http://www.management-advantage.com/products/JB50FlavorBox.htm>
-

**2. OFFICE OF GOVERNMENT ETHICS ISSUES MEMO ON SEEKING OUTSIDE EMPLOYMENT**

Prompted by Congressional and media scrutiny on federal employees working with prospective employers, the Office of Government Ethics has reissued a summary of the post-employment restrictions in 18 U.S.C 207 emphasizing their applicability to employees seeking new jobs.

The provisions covering job seeking are in subpart F, Standards of Ethical Conduct, which state that an employee "shall not participate personally and substantially in any particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment."

In this case seeking employment includes expressing interest, "unsolicited communications by the employee, and any response by the employee, other than rejection, to an unsolicited overture from a prospective employer," even if it is through a headhunter or other intermediary, according to OGE's summary.

It warned that employees should be aware that "just testing the waters," is not justification for disregarding their recusal obligations -- and cited a case where the Department of Justice proceeded against an employee that wound up declining the employer's offer. DAEOgram DO-02-003.

To communicate rejection, employees are supposed to say something along the lines of "all my time and attention right now are devoted to my government job, and I am not in a position to discuss employment," or "I am not really planning on leaving government in the near future but I will keep you in mind in case I ever change my mind," said OGE.

(Source: Federal Manager's Daily Report: Wednesday, October 27, 2004)

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**3. EMPLOYEE TIME OFF WORK TO VOTE**

Attention California Employers! California Elections Code Section 14000 provides for employees to receive paid time off to vote in statewide elections. (If you are outside California, check on your state's requirements. They may have similar provisions.)

The provision in California is for up to two hours of paid time off at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift.

This is required only if the employee would not have time enough to vote outside of regular working hours. Since polls are going to be open from 7:00 a.m. until 8:00 p.m., most people should have enough time outside working hours to visit their polling place and vote.

If that is not the case, be sure you arrange for their paid absence of up to two hours. This is not an automatic requirement for workers to receive two hours of paid time off. If commute distances and work

schedule prevent employees from getting to their polling place while the polls are open, the employer is required to provide UP TO the two hours off. If one hour will suffice for a given individual, that's what you should provide.

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Gentle Readers,

Many California employers will have to provide training to all supervisors on the subject of sexual harassment prevention beginning in 2005.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #318, 11/5/2004)  
----- (Sent to over 1,500 subscribers)

1. **NEW CALIFORNIA MANDATE FOR SUPERVISOR TRAINING**
2. **AUTOMATED HIRING SYSTEM WITHIN THE FEDERAL GOVERNMENT**
3. **EEOC REPORT TELLS BEST PRACTICES FOR EMPLOYING DISABLED IN STATE GOVERNMENT**

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1. **NEW CALIFORNIA MANDATE FOR SUPERVISOR TRAINING**

At least one more task will be added to the duties of HR and Training Managers starting in January 2005. That, of course, is the new California mandated training for supervisors and managers in sexual harassment prevention.

The new law (AB 1825 - Reyes, Section 12950.1 California Government Code) will impact employers of 50 or more workers. Those with fewer employees are not captured by this new requirement.

If you have more than 50 employees and are a California employer, you must make arrangements before the end of next year to provide a minimum of 2 hours training and education to each of your supervisors and managers in the subject of sexual harassment prevention. You don't have to do the training in 2005 if you have conducted such a program for every supervisor since January 1, 2003.

Starting in 2006, this 2-hour training requirement will have to be satisfied every two years.

There are basically two ways to satisfy the new mandate if you must. One is to hire a consultant or trainer to conduct the program for your supervisory personnel. The other is to conduct the training programs yourself, in-house. You can guess which is cheaper.

We are offering a self-contained training program with video scenarios and pre-printed training materials that will allow you to meet your obligations under this new California law. You will find it in the HR Web Store at <http://www.hrwebstore.com/products/SexHarTraining.htm>

There are two versions available...DVD and VHS. You select the one

that is better for you.

For a copy of the legislation go to  
[http://www.leginfo.ca.gov/pub/bill/asm/ab\\_1801-1850/ab\\_1825\\_bill\\_20040930\\_chaptered.html](http://www.leginfo.ca.gov/pub/bill/asm/ab_1801-1850/ab_1825_bill_20040930_chaptered.html)

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## **2. AUTOMATED HIRING SYSTEM WITHIN THE FEDERAL GOVERNMENT**

The introduction of an automated hiring system is labor intensive and requires transitional work, new skills, and changes to the roles of managers and HR professionals, according to a Merit Systems Protection Board (MSPB's) report.

It said it is "unrealistic to expect immediate gains in efficiency" from initiating these systems, especially if they result in a reduction to HR staff, and pointed out that managers would continue identifying assessment criteria, selecting and using assessment tools and exercising informed judgment throughout the hiring process.

While automation does not relieve managers and HR professionals of having to conduct interviews and reference checks, and recommend and select new employees, it can support those tasks and eliminate repetitive work, said MSPB.

It said automation actually increases the importance of these tasks because systems cannot "work around" poor job analysis or rating procedures, nor can they handle misstated or falsified applicant statements.

The report recommended treating hiring as a "critical business process" rather than as an "administrative function," and managing the introduction of such a system not as an IT or HR office initiative, but as an organizational change.

It said successful hiring not only depends on valid selection criteria and assessment methods, but relies on managers and HR professionals whose roles in the hiring process will be changed.

Agencies need to "communicate roles and expectations to line managers, HR professionals, and applicants," as well as "clearly define these roles and expectations," according to the report.

It said that line managers in particular, need to recognize that these hiring systems do not relieve them of their responsibilities, including their active participation in job analysis and applicant assessment.

The report further cautioned that HR professionals, while they may perform adequately in a paper-based context, may not be prepared for an IT intensive process with new demands on knowledge and judgment - thus, ensuring the competence of HR professionals is central to making automated hiring work, said the report.

Federal agencies are increasingly using automated hiring systems with the potential to "streamline the application process, assess applicants fairly and thoroughly, and reduce hiring time," but only "when used

wisely," according to a new report from the Merit Systems Protection Board.

Automation of hiring is being driven by evolving IT, the desire to accelerate the process, and the prospect of greater efficiency, said the report -- adding that such systems "are much more than electronic filing cabinets," for resumes.

It said that while these systems can help identify promising candidates, people still must determine what the systems would look for, decide how, and manage the process, so rather than full automation, these systems are far from "hands off."

"There is no realistic alternative; manual, paper-based hiring processes are too burdensome, labor-intensive, and costly to be practical on a large scale," said MSPB, insisting that an effective hiring process is a requirement rather than merely a plus.

It said the systems should be used to improve applicant sorting, but that they do not go beyond the limitations of any initial applicant assessment, so they are best suited to making broad distinctions among applicants, such as not qualified, or highly qualified.

However, they can also be used to administer support for "other types of assessment such as objective tests and structured interviews," said the report.

(Source: Federal Manager's Daily Report, [fmdr@fedweek.com](mailto:fmdr@fedweek.com), October 29, 2004)

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### **3. EEOC REPORT TELLS BEST PRACTICES FOR EMPLOYING DISABLED IN STATE GOVERNMENT**

On October 29, 2004, the Equal Employment Opportunity Commission (EEOC) released a report describing efforts being made to employ more people with disabilities in state government jobs. You can get a copy of the report at [http://www.eeoc.gov/initiatives/nfi/int\\_states\\_best\\_practices\\_report.html](http://www.eeoc.gov/initiatives/nfi/int_states_best_practices_report.html)

One of the Commissions key reasons for developing this report is to disseminate nationwide best practices that other states, as well as local governments and private employers, can learn from and replicate.

In addition, the EEOC is offering free, informal technical assistance to participating states in order to enhance voluntary compliance with the Americans with Disabilities Act.

Some of the best practices highlighted in the report include:

- o Targeted outreach to organizations of and for people with disabilities as part of states' diversity programs
- o Hiring and training programs specifically designed to bring people with disabilities into state's workforce
- o Mentoring and internship programs that give people with disabilities practical work experience and provide them with

- information about career opportunities
  - o Training for hiring officials, managers, supervisors, and other state personnel on the ADA's requirements related to applicants and employees with disabilities
  - o Use of written procedures for providing reasonable accommodations and other measures that help ensure timeliness and fairness of that process.
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Gentle Readers,

Only one item this week, but it's a big one for federal contractors.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #319, 11/12/2004)  
----- (Sent to over 1,500 subscribers)

**1. OFCCP BEGINS SENDING FCSS LETTERS TO CONTRACTORS**

**1. OFCCP BEGINS SENDING FCSS LETTERS TO CONTRACTORS**

The Office of Federal Contract Compliance Programs (OFCCP) has begun mailing pre-scheduling notification letters to federal contractors. A few weeks ago, the agency announced it had created a new system for determining which federal contractors would be audited for affirmative action and non-discrimination compliance. Although the OFCCP has not explained what goes into the Federal Contractor Selection System (FCSS), it has begun the implementation process.

Charles James, head of the OFCCP, has said at a November 4, 2004, affirmative action briefing in Washington, DC that the first wave of more than 1,700 FCSS letters would be mailed to the contractors suspected to have the most serious problems with either affirmative action plan (AAP) compliance or Equal Employment Opportunity (EEO) compliance. The letters are simply notification to contractors that one or more of their establishments MAY be audited during the coming calendar year. Mr. James reported that his agency has identified more than 3,600 establishments for compliance reviews during the current fiscal year which began October 1, 2004.

Mr. James has imposed a limit of 25 compliance reviews for any one contractor in any single year. For smaller contractors with only one establishment, that will not be much of a help. At least, the theory is, if your establishment(s) is/are not on the FCSS list you shouldn't have to worry about getting a compliance review scheduling letter during that year. We'll have to wait and see if it really works that way. If it does as it is intended, the process will be an enormous aid to contractor managers who have to steward the OFCCP's presence in their organizations.

What you need to do now is this...

Make sure EVERY possible point of contact the OFCCP may mail the FCSS letter to is aware that such correspondence might arrive and what to do about it. All OFCCP correspondence should be RED FLAGGED for speedy delivery to the internal point which will manage government oversight in your organization. The last thing you want is for a letter from the OFCCP to sit around for a few days or weeks while someone tries to

determine who it should be forwarded to internally.

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*Gentle Readers,*

OFCCP has released its new Employment Resource Referral Directory. And, California employers have a new risk due to mis-classifying overtime exemptions.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #320, 11/19/2004)  
----- (Sent to over 1,500 subscribers)

1. **DOL REPORT ON FY 2004 ACCOMPLISHMENTS**
2. **CALIFORNIA EMPLOYERS HAVE HIGHER RISK OF UNPAID OVERTIME CHARGES**
3. **OFCCP'S EMPLOYMENT RESOURCE REFERRAL DIRECTORY**

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1. **DOL REPORT ON FY 2004 ACCOMPLISHMENTS**

The U.S. Department of Labor (DOL) has released its report on its accomplishments during Fiscal Year 2004 (FY 2004). During the year various audits were performed on the agency's departments and the results of those audits are included in this report.

If you would like a copy of the entire report, go to  
[http://www.dol.gov/\\_sec/media/reports/annual2004/main.htm](http://www.dol.gov/_sec/media/reports/annual2004/main.htm)

If you just want to look at the report of "Significant FY 2004 Audits and Evaluations" to to  
[http://www.dol.gov/\\_sec/media/reports/annual2004/auditsevaluations.pdf](http://www.dol.gov/_sec/media/reports/annual2004/auditsevaluations.pdf)

Of the 27 items included in the report, we were drawn to two.

Item #13) Occupational Safety and Health Administration (OSHA)  
Voluntary Compliance Strategies Show Promising Results,  
But Should Be Evaluated Before They Are Expanded.

Findings: "OSHA's voluntary compliance programs appear to have yielded many positive outcomes, but OSHA does not yet have adequate data to assess their individual and relative effectiveness."

Recommendations: "GAO recommended that OSHA: (1) identify cost-effective methods of assessing the effectiveness of OSHA's voluntary compliance programs; and (2) develop a strategic framework that articulates the priorities and resource allocations for the agency's voluntary compliance programs before further expanding the use of these strategies." For additional information go to:

<http://www.gao.gov/new.items/d04378.pdf>

Item #19) Employment Standards Administration: Evaluation of Office

Findings: "The Westat research findings suggest that OFCCP's effect on the employment growth of non-favored groups is primarily through the review process, and not through the threat of review among all contractors. Because reviewed establishments were more likely to be discriminators (OFCCP targeted establishments based on expectations for finding discrimination), the results suggest that the OFCCP review process was highly effective."

Recommendations: "Of the 11 report recommendations, the most substantive was that OFCCP should use a model to predict discrimination among reviewed contractors and estimate predicted rates of discrimination for contractor establishments to rank them for the review process based on their predicted rate of discrimination. In addition, Westat advised OFCCP to consider: (1) defining labor markets by taking into consideration the most commonly used industry and occupation hiring practices; (2) improving the process of targeting contractors for review by tracking the history of establishments' utilization of non-favored groups and findings of compliance reviews; (3) how the review process can be incorporated into the model to estimate the probability of discrimination because it is the review process that determines discrimination; (4) further research on the effect of equal employment opportunity and OFCCP review on changes in employment shares of non-favored groups; and (5) other measures to determine the effect of equal employment opportunity and OFCCP review."

Copies of the report may also be obtained by calling the OFCCP at 202-693-0101.

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## **2. CALIFORNIA EMPLOYERS HAVE HIGHER RISK OF UNPAID OVERTIME CHARGES**

The California Supreme Court has reinstated a class action lawsuit against Sav-On Drug Stores, Inc. The suit involves charges that the chain failed to pay overtime correctly and may involve as many as 1,400 workers who say they were incorrectly classified as exempt from overtime pay requirements.

At the heart of the situation is the accusation that the company gave job titles like "operations manager" and "assistant manager" even though people in those titles spent more than 50 percent of their time stocking shelves and running cash registers. The suit also claims that Sav-On reclassified these positions as non-exempt shortly before the lawsuit was filed, therefore admitting it had underpaid employees in those jobs prior to the reclassification.

This recent ruling from the California Supreme Court simply allows the case to proceed as a class action case rather than requiring each worker to file individual and separate lawsuits. Since it involves so many employees, the case offers a risk to Sav-On that any award or settlement will be a large one.

What does this mean to California employers? Simply this...

Do not make decisions about overtime exemption based on JOB TITLE. Rather, examine the content of each job and thoroughly inspect each exemption test under the Fair Labor Standards Act and California requirements. Simply calling someone an "assistant manager" is not sufficient to justify classification as exempt from overtime requirements.

Another common error made by employers is to classify people as exempt simply because they are paid by salary rather than hourly wage. Salary status alone is not justification for exempt job status.

If you have questions about how to classify jobs for overtime requirements in California we invite you to read our FREE report at <http://www.management-advantage.com/products/overtime-exempt.html>

If you still have questions, call us for a consulting appointment. Better to pay a few dollars now rather than face a lawsuit and large award in the future. Call 1-888-671-0404.

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### **3. OFCCP'S EMPLOYMENT RESOURCE REFERRAL DIRECTORY**

In keeping with its compliance assistance thrust, the Office of Federal Contract Compliance Programs (OFCCP) has developed an Employment Resource Referral Directory that lists governmental and non-governmental not-for-profit organizations as references to assist hiring of qualified applicants by contractors. Announced on November 16, 2004, this directory is intended to enhance access to various programs that assist in providing job referral services to veterans, individuals with disabilities, women and minority groups. The purpose is to facilitate contractor compliance, increase the usefulness of resource organizations to the contractor community and reinforce the Linkage Program.

OFCCP hopes that corporate EEO Directors and their staffs will have at their disposal a wide spectrum of not-for-profit organizations that provide a steady stream of qualified applicants while also assisting to fulfill contractors' affirmative action and EEO obligations.

#### Procedures for Getting on Referral List

OFCCP recognizes that this directory may not be all-inclusive of job referral resources and therefore invites entities wishing to be included in this list. This will assist OFCCP to keep the directory current and reflective of the total mix of organizations. Any organization that wishes to get on the Referral List should submit its name, address and brief description of its goals and activities to the OFCCP National Office. The address is:

U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue, NW  
Room C-3310  
Washington, DC 20210

You may also contact OFCCP by sending an e-mail message to: OFCCP-Public@dol.gov or by sending a fax. The Fax telephone number is (202) 693-1304.

Here are the links to each OFCCP Region's portion of the Directory: (These are PDF documents, so you will need to have Adobe's PDF Reader installed on the machine you use to access the documents.)

- \* Mid-Atlantic Region  
<[http://www.dol.gov/esa/ofccp/ERRD/errd\\_mdatl.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_mdatl.pdf)>
  - \* Midwest Region <[http://www.dol.gov/esa/ofccp/ERRD/errd\\_mw.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_mw.pdf)>
  - \* Northeast Region  
<[http://www.dol.gov/esa/ofccp/ERRD/errd\\_ne.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_ne.pdf)>
  - \* Pacific Region <[http://www.dol.gov/esa/ofccp/ERRD/errd\\_pac.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_pac.pdf)>
  - \* Southeast Region  
<[http://www.dol.gov/esa/ofccp/ERRD/errd\\_se.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_se.pdf)>
  - \* Southwest Region  
<[http://www.dol.gov/esa/ofccp/ERRD/errd\\_sw.pdf](http://www.dol.gov/esa/ofccp/ERRD/errd_sw.pdf)>
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## Gentle Readers,

This week we announce the addition of several key products to the HR Web Store. These are items every HR professional should have available. And, you will want to know about last week's Congressional action to increase the ceiling on H-1B visas. Federal Contractors will also want to be aware of the new OFCCP proposed standards for statistical compensation analysis.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #321, 12/3/2004)  
----- (Sent to over 1,500 subscribers)

1. **NEW SOFTWARE TO ASSIST EEO MANAGEMENT**
2. **H-1B VISA CEILING IS RAISED**
3. **NEW HR WEB STORE PRODUCTS AND DISCOUNTS IN TIME FOR HOLIDAYS**
4. **EMPLOYERS HAVE UNTIL 12/16/2004 TO COMMENT ON OFCCP PROPOSALS**

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1. **NEW SOFTWARE TO ASSIST EEO MANAGEMENT**

Just in time for your year-end analysis activities, Biddle Consulting Group has announced its latest software offerings to help you with the tasks.

In alphabetical order they are:

o **ADVERSE IMPACT TOOLKIT**

Adverse Impact testing is a complex process that most of us are ill-equipped to slog through on our own. If it has been a while since your last statistics class, you may have forgotten what formulas to use for statistical significance and probability testing.

If that's the case, you don't have to be concerned any longer.

The Biddle Consulting Group has created a very easy-to-use tool that has all the formulas built into Excel(tm) spreadsheets so the analysis is run without you having to even think about formulas. All you do is input your data about sex and race mix in hiring or some other employment action you must run tests on.

The program does not require advanced statistical or EEO training to interpret the results. After you enter your data, the program color codes the output to reveal areas of concern. Results are expressed in very easy-to-understand terms like, "The odds of the passing rate difference is 1 chance in 47."

There are four types of analysis *Adverse Impact Toolkit* will complete for you.

- Selection Rate Comparison
- Availability Comparison
- Combined Data-Passing Rate Comparison
- Combined Data-Availability Comparisons

Get more information about these tests and the CD at <http://www.management-advantage.com/products/AdverseImpactCD.htm>

You will receive a CD-ROM containing all the formulas and tests discussed above. They will be imbedded in formatted Excel spreadsheets so you have an easy visual display of your input and the output. It is also easy to print your results.

Each CD-ROM carries a license for unlimited use of its content on one computer (PC) at one location (site).

#### o GUIDELINES ORIENTED JOB ANALYSIS

Since the mid-1970s, this product has been used by hundreds of employers. The **Guidelines Oriented Job Analysis** process is designed to help build customized job analysis and selection components that are fair, valid, effective and defensible.

It is more than a job analysis method. It is a methodology for developing content valid employment selection tools including job analysis, selection plans, job-specific supplemental application forms, assessments of promotability, structured interviews, and job-related performance appraisals to address the requirements of the Federal *Guidelines* with content validity. Through its design it is tailored to address the technical requirements of Sections 14C(1)-(4), (6)-(9) of the *Guidelines*.

Using this binder's content to analyze your jobs will enable you to develop validated selection procedures for any position and to determine the job duties that should be classified as "essential functions" under the *Americans with Disabilities Act* (ADA).

Get more information about this test and the CD at <http://www.management-advantage.com/products/jobanalysis1.htm>

#### o TEST VALIDATION AND ANALYSIS PROGRAM

If you are an employer with 15 or more workers on the payroll, you are subject to *Title VII of the Civil Rights Act of 1964* and the *Uniform Guidelines on Employee Selection Procedures* (41 CFR 60-3). The *Uniform Guidelines* require employers to test their employment data to assure themselves that they are not illegally discriminating against a group of people based on race, sex, age, religion, or some other protected category.

Furthermore, employers are required to "prove" that their employment

processes do not illegally discriminate. Any employment selection device such as a written test or job interview is subject to scrutiny under the *Uniform Guidelines*.

**For Novice Users:** The Test Validation & Analysis Program™ (TVAP™) includes a step-by-step walk through the test validation and analysis process. Complex statistical calculations are reduced to color-coded cells making interpretation simple.

**For Advanced Users:** TVAP seamlessly integrates the entire process into one program and, because the program operates in Microsoft® Excel®, integrating custom features is a simple process.

**TVAP Program Includes:**

- Installation CD with Highly-Integrated TVAP Excel Workbook Programs
- Test Validation Survey (for SMEs to rate test items)
- Instruction Manual for Completing the Test Validation Survey
- Test Item writing Guidelines
- Instructions for Conducting an Effective Angoff Panel for Setting Cutoff Scores

Get more information about this program at:

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

Since the Office of Federal Contract Compliance Programs (OFCCP) has made significant progress in hiring PhD statisticians at headquarters and in each region office, you will find the need for these tools has strongly increased. If you receive an audit notice for your Affirmative Action Plan in any of your establishments you will need to use these types of tests to confirm your status on compensation and other employment treatments before sending your data to the OFCCP.

Don't wait until it is too late. Get your assurance now.

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**2. H-1B VISA CEILING IS RAISED**

On November 23, 2004, the Department of Homeland Security posted in the Federal Register (Volume 69, Number 225, Pages 68154-68156) notice that the cap of 65,000 H-1B visas has been reached for 2005.

The cap for 2004 was reached on February 17, 2004. The 2005 cap was actually reached on the first day of the government's 2005 fiscal year. That was October 1, 2004. As of this week, the government is no longer accepting applications for H-1B visas under the 2005 cap.

On the same day, Congress raised the limit for H-1B visas by 20,000 following complaints from employers that they would lose valuable talent to overseas firms if that increase were not forthcoming. As part of the \$388 billion spending bill passed by Congress and waiting on President Bush's signature for approval, 20,000 foreign students

with masters or doctorate degrees from U.S. universities would be exempted from the 65,000 H-1B visa cap.

For further information, contact Kevin J. Cummings, Business and Trade Services Branch/Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529, 202-305-3175.

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### **3. NEW HR WEB STORE PRODUCTS AND DISCOUNTS IN TIME FOR HOLIDAYS**

From now until December 31, 2004, you can SAVE 10% off ALL PRODUCTS at the HR Web Store. That means you can save even more by doing your holiday shopping at the HR Web Store.

As you already know, we are constantly adding products to our various departments. There are two new books in the store this week.

- o The New Workforce: Five Sweeping Trends that Will Shape Your Company's Future

This is for HR professionals, corporate decision-makers and business owners.

- o Tell Me How I'm Doing: A Fable About the Importance of Giving Feedback

Just how important is feedback? And how good are you at delivering it? Learn how important feedback is to your business and personal relationships.

And, don't forget the new software programs for data analysis.

EVERYTHING in the HR Web Store is discounted 10% this month! Discount applies to inventory only. Limited to stock on hand. Order early, while supplies last.

Why not pay us a visit now? [www.hrwebstore.com/products/products.html](http://www.hrwebstore.com/products/products.html)

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### **4. EMPLOYERS HAVE UNTIL 12/16/2004 TO COMMENT ON OFCCP PROPOSALS**

The Office of Federal Contract Compliance Programs (OFCCP) has published proposals for public comment. They involve guidelines for discovering systemic discrimination in compensation systems. If you are a federal contractor, these proposed guidelines will impact you.

You will find these notices in the Federal Register on November 16, 2004, (Volume 69, Number 220, Pages 67245-67255).

Up until now, the OFCCP has not issued significant interpretive guidance on Systemic Compensation Discrimination under Executive Order 11246 and its 1970 Sex Discrimination Guidelines (SDG). These proposed standards have two major characteristics:

- 1) The determination of employees who are "similarly situated" for purposes of comparing contractor pay decisions will focus on the similarity of the work performed, the levels of responsibility, and the skills and qualifications involved in the positions, and
- 2) The analysis will rely on a statistical technique known as multiple regression analysis.

(This is even more reason for contractors to have tools for self-examination. See story #1 in this issue.)

According to the proposal, "The multiple regression model must include those factors that are important to how the contractor in practice makes pay decisions. Such factors could include the employees' education, work experience with previous employers, seniority in the job, time in a particular salary grade, performance ratings, and others."

OFCCP says it will "generally ... attempt to build the regression model in such a way that controls for the factors that the investigation reveals are important to the employer's pay decisions, but also allows the agency to assess how the employers' pay decisions affect most employees. One factor that must be controlled for in the regression model is categories or groupings of jobs that are similarly situated based on the analysis of job similarity noted above... This will ensure that the analysis compares the treatment of employees who are in fact similarly situated."

Any member of the public, including employers, may comment on these proposed guidelines. Comments must be in writing and are due to the Department of Labor by December 16, 2004. They should be submitted to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C-3325, 200 Constitution Avenue, NW, Washington, DC 20210. They may also be emailed to [ofccp-public@dol.gov](mailto:ofccp-public@dol.gov) or FAXed to 202-693-1304. Questions may be directed to Mr. DuBray at 202-693-0102 or on TTY at 202-693-1308.

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Gentle Readers,

EEOC, OFCCP and SHRM all figure into this week's list of interesting items.

Bill Truesdell  
Editor

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IN THIS REPORT (Report #322, 12/10/2004)  
----- (Sent to over 1,500 subscribers)

1. **EEOC ISSUES Q&A ON INTELLECTUAL DISABILITIES**
2. **OFCCP PUTS OUT CALL FOR EVE & EPIC AWARD NOMINATIONS**
3. **SHRM RESEARCH UNCOVERS 10 TRENDS FOR FUTURE IN THE WORKPLACE**

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1. **EEOC ISSUES Q&A ON INTELLECTUAL DISABILITIES**

The Equal Employment Opportunity Commission (EEOC) has released its latest guidance for employers and others who deal with disability based on intellectual limitations.

Any employer with 15 or more workers on the payroll is subject to the federal Americans with Disabilities Act (ADA), a law enforced by the EEOC. Title I of the ADA makes it unlawful for any employer subject to the ADA to discriminate against a qualified applicant or employee because of a disability in any aspect of employment.

The new Questions and Answers (Q&A) discusses such subjects as:

- o When a condition qualifies as a disability under the ADA;
- o Under what circumstances an employer may ask an applicant or Employee or a third party (such as the family member of an applicant or employee) questions about an intellectual disability;
- o What types of reasonable accommodations may be needed by applicants and employees with intellectual disabilities;
- o How to address safety concerns and conduct issues in the workplace; and,
- o How an employer can prevent harassment of employees with intellectual disabilities.

The package is 12 pages long and can be found at  
[http://www.eeoc.gov/facts/intellectual\\_disabilities.html](http://www.eeoc.gov/facts/intellectual_disabilities.html)

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2. **OFCCP PUTS OUT CALL FOR EVE & EPIC AWARD NOMINATIONS**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has once again issued a call for nominations in its two primary award programs.

Each year, the Secretary of Labor, Assistant Secretary for the Employment Standards Administration, and the Deputy Assistant Secretary for Federal Contract Compliance Programs present these awards at a ceremony honoring federal contractors and non-profit organizations that exemplify best corporate practices. This furthers the OFCCP mission of nondiscrimination and equal employment opportunity. It is also consistent with the agency's efforts to form alliances with corporations and public interest organizations.

o EVE Awards

Exemplary Voluntary Efforts Award - Presented to the federal contractor who displays commitment to affirmative action and equal employment opportunity.

o EPIC Awards

Exemplary Public Interest Contribution Awards - Presented to non-profit community organizations for high levels of contribution to improvement of affirmative action and equal employment opportunity in their communities.

While the 2004 award winners have still to be announced, OFCCP is asking the contractor community to begin considering nominations for its 2005 awards. Talk with your regional OFCCP office if you have questions about the awards or the nomination process. Ed Collins in the Pacific Region OFCCP office can answer any questions you have. He can be reached at 415-848-6990.

For more information go to: <http://www.dol.gov/esa/ofccp/ofawards.htm>

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**3. SHRM RESEARCH UNCOVERS 10 TRENDS FOR FUTURE IN THE WORKPLACE**

The Society for Human Resource Management (SHRM) just released its published report on "2004-2005 Workplace Forecast: A Strategic Outlook" which was completed in June of this year.

It has identified 10 trends in the workplace...

1. Rise in health care costs
2. Focus on domestic safety and security
3. Use of technology to communicate with employees
4. Growing complexity of legal compliance
5. Use of technology to perform transactional HR functions
6. Focus on global security
7. Preparing for the next wave of retirement and labor shortage
8. Use and development of e-learning
9. Exporting of U.S. manufacturing jobs to developing countries
10. Changing definition of family

The study was completed by Jennifer Schramm and Mary Elizabeth Burke both of SHRM.

It is no surprise that health care costs rise to the top of the list.

To combat ever increasing expenses, employers are looking to technology to lower their expenses in other areas to compensate and hopefully hold a firm grip on the bottom line financially.

If you need help with your legal compliance issues, or need to gain a few more hours toward your PHR or SPHR certification or recertification, consider visiting the HR Web Store. You will find many tools that can address your needs. There are fine gifts and other products for professionals available as well.

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Gentle Readers,

OFCCP logs one of largest recovery years on record. And, we wish you all ... "HAPPY HOLIDAYS!"

Bill Truesdell  
Editor

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IN THIS REPORT (Report #323, 12/17/2004)  
----- (Sent to over 1,500 subscribers)

1. **HAPPY HOLIDAYS**
2. **NEW OFPP HEAD CONFIRMED**
3. **OFCCP COLLECTS \$34.5 MILLION IN FISCAL 2004**

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1. **HAPPY HOLIDAYS**

We want to wish each of you the very best and most joyous holiday. Please keep our military men and women in your thoughts and prayers as you celebrate. Our freedom of religion and freedom of expression are wonderful blessings. We can be thankful for their existence.

Special Report for HR Professionals will not be published for the next two weeks. We will be back with you on January 7th.

Happy New Year everyone!

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2. **NEW OFPP HEAD CONFIRMED**

The Senate has confirmed David Safavian to be head of the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), a position that makes him the administration's point person for the "competitive sourcing" initiative that has drawn significant opposition from federal unions and some members of Congress.

It was those controversies that kept the nomination on hold for about a year, a period in which Congress and the White House continued a back-and-forth over revisions that OFPP issued in 2003 to Circular A-76, OMB's contracting-out guidance. Many of the same battles are expected to recur in 2005.

Safavian previously was chief of staff at the General Services Administration and for Rep. Chris Cannon, R-Utah.

(Source: Federal Manager's Daily Report: Monday, December 13, 2004)

**3. OFCCP COLLECTS \$34.5 MILLION IN FISCAL 2004**

The Office of Federal Contract Compliance Programs (OFCCP) collected financial remedies of \$34.5 million for victims of employment discrimination during fiscal year 2004, an increase of 31 percent over the previous year.

The financial remedies, which included \$10.7 million in back pay and interest, benefited some 10,400 minority, female, disabled, and veteran workers, according to statistics released by the agency.

According to Charles James, Director of OFCCP, "We set out to go after the worst of the worst and to help the most people -- and we achieved that goal. From an enforcement perspective, we had a great year."

The agency conducted 6,529 compliance evaluations during the last fiscal year, ended September 30th. The number of evaluations of federal contractors was down from 7,700 a year earlier. However, the evaluations covered 3 million workers -- up from 2.5 million a year earlier and more than any in at least the past decade. "We had a focus on larger cases and getting more people covered," James said.

The agency continued an effort, initiated by James last year, to work more closely with the solicitor of labor's office. Some \$11 million in financial remedies was obtained through litigation efforts of the solicitor.

(Source: BNA Affirmative Action Compliance Manual, November 30, 2004)

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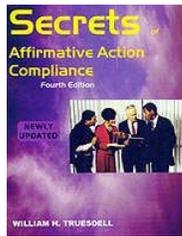
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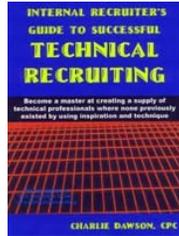
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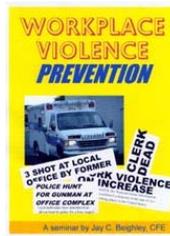
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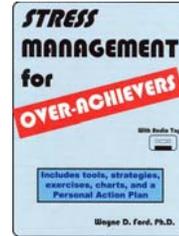
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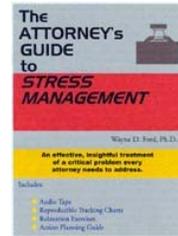
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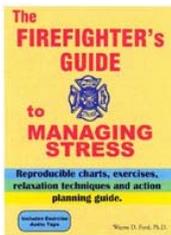
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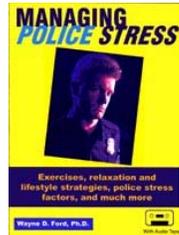
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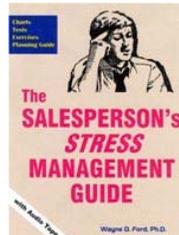
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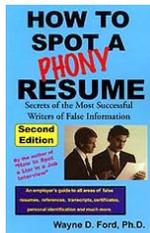
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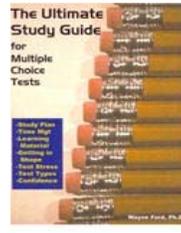
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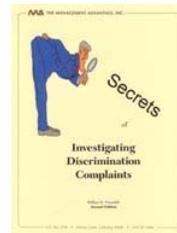
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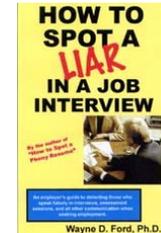
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