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OFCCP has just issued new final rules covering "Internet Applicants" and is sending out the first wave of notices for 2005-06 audits.

UPDATE: New Applicant Rule & New OFCCP Audits Are Coming!

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New Applicant Rules

On October 7, 2005, OFCCP published final rules regarding who is an "Internet Applicant," including new rules on recordkeeping and data collection. 70 Fed. Reg. 58946 (Oct. 7, 2005). The new rule is effective February 6, 2006. "Frequently asked questions" issued by the OFCCP to clarify this rule are available at <http://www.dol.gov/esa/regs/compliance/ofccp/faqs/iappfaqs.htm>. According to the rules, individuals are "Internet Applicants" if they meet four criteria:

1. They express interest in employment;
2. They are considered for a particular position;
3. They possess the basic qualifications for the position in question; and
4. They remain interested in the job (i.e., have not removed themselves from consideration or otherwise indicated they are not interested).

There are several points to keep in mind regarding the new rule as to "Internet Applicants:"

1. The new rules can apply to all applicants. If the employer will consider applications through the internet or related electronic data technologies, like email, for a particular position, then all applicants for that position (even those

submitting hard copies traditionally through the mail or in person) will be treated under the new rules.

2. When faced with applications from very large numbers of basically qualified individuals (such as when sourcing a large external or internal data base), the employer may limit the number of individuals to be contacted and considered "applicants" by using data management techniques like random sampling so long as that process is neutral and appropriate.
3. While somewhat similar to the proposed rules published on March 29, 2004, there are significant differences that should cause employers to read the final rules carefully and consult with counsel. The rules formally go into effect February 6, 2006, to give employers time to adjust their procedures as needed.

New Audits Coming

On October 7, 2005, OFCCP began sending out a new wave of notices to over 225 multi-establishment companies (indicating that one or more of their establishments will be audited during this coming year) and to 600 single-office establishments (indicating that they will be audited). Unlike in prior years, these current notices are not just intended to inform the companies that they "might" be audited, but rather, it is expected that these establishments "will" be audited

this year. OFCCP plans to conduct about 1500 audits from these lists.

In addition, OFCCP officials have informally indicated that additional companies, not on these lists, will be audited during the year. This approach is designed to ensure that companies not on the initial lists do not incorrectly assume that they will not be audited solely because they are not identified on those lists.

Employers should keep two points in mind regarding OFCCP audits:

1. If you receive a notice that you will be audited during this year, consider that you will be audited, and start planning immediately to be in full compliance.
2. If you do not receive such a notice, do not become complacent. Unlike last year, this does not mean you will not be audited. It simply means that you are now eligible for one of the “surprise” audits that OFCCP expects to conduct this year. To avoid the “gotcha”, you should stay current with your AAP and related data gathering activities.

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