



OFCCP INTERNET APPLICANT CHECKLIST

The “grace period” for enforcement of the new internet applicant regulations issued by the Office of Federal Contract Compliance Programs (“OFCCP”) expired May 6, 2006. Are you prepared to show good faith compliance efforts? See the quick questionnaire below:

- Are you a federal contractor or subcontractor with 50 employees and a \$50,000 or greater government contract or subcontract, or do you have \$50,000 in government bills of lading, or are you a financial institution serving as a depository of government funds, are you an issuing or a paying agency for U.S. savings bonds? **[If no, then the OFCCP regulations may not apply.]**
- If you are not sure if you are a covered federal contractor or subcontractor, when did you last review your contracts?
- Do you accept applications or résumés electronically, e.g., via fax, e-mail, internet? **[If no, then the OFCCP internet applicant regulations do not apply.]**
- Do you establish basic qualifications for open jobs before you post the job openings? **[If no, then you must consider all candidates to be applicants. You cannot establish basic qualifications after the fact.]**
- Do you require a candidate to identify the particular position(s) for which he or she is applying? **[If no, then the candidate must be considered to have applied for all positions open at that time.]**
- Do you reject expressions of interest if a job is not open? **[If no, then you must consider all expressions of interest received about that same job.]**
- Do you have written hiring protocols in place, e.g., only accept applications for open positions, all applications must be completely filled out to be considered, require all applications to be completed on-line, etc.? **[If no, then it will be more difficult to exclude applications when a job posting receives a voluminous response. Hiring protocols must be established prior to the job posting.]**
- Do you have pre-established reasons for termination of consideration? **[If no, then it will be more difficult to show that a candidate has voluntarily withdrawn from the hiring process.]**
- Have you trained your managers and supervisors on your hiring processes, your applicant tracking system, and the importance of following the procedures? **[If no, then the managers may try to circumvent the system to obtain hiring preferences for friends or relatives, which increases the company’s exposure to discrimination charges and potential adverse impact issues.]**

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- Have you selected data management techniques, e.g., random sampling, review only the first 30 applications received, etc.? **[If no, then review the internet applicant regulations for possible ideas of acceptable data management techniques that may be used to limit an otherwise voluminous response from potential applicants.]**
- Have you decided how you are going to retain the applications of candidates you consider for a particular position? **[If no, then you need to establish a process to be sure you can access information if you need it, e.g., you may want to store the applications electronically so that you can conduct key word searches later (if you do, you must retain the search criteria, date, job titles, names generated, disposition).]**
- Have you reviewed your voluntary self-identification forms for compliance? **[If no, then this could result in an adverse finding during a compliance review.]**
- Have you decided at which point in the process you are offering the opportunity to self-identify? **[If no, then this could result in inconsistency that could, in turn, suggest discrimination. This decision should be made in advance of job posting and documented in writing.]**
- Have you considered whether your procedures cover every method by which you receive expressions of interest? **[If no, then you must establish and implement procedures in advance of job postings and you must ensure that the new regulations' requirements are met if any applications are received electronically.]**
- Have you met with your IT department about the new internet applicant regulations? **[If no, then it is important to schedule a meeting because your plan to implement the requirements must be technically feasible.]**

If you have not yet taken the steps described above, develop promptly a plan to implement the internet applicant regulations, using this checklist as guidance. For assistance in working with the new regulations, contact your regular Fisher Phillips attorney or one of these attorneys: Cheryl Behymer at 803-255-0000, cbehym@fisherphillips.com or Tom Rebel at 404-231-1400, trebel@fisherphillips.com.

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