



OFCCP Issues New Guidelines Regarding Internet Job Applications

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The Internet has become increasingly popular over the past few years, and many employers now solicit and receive job applications and resumes by e-mail, internal intranet job postings, and third-party internet sites such as www.monster.com and www.hotjobs.com. Effective February 6, 2006, new regulations issued by the United States Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") will govern the manner in which federal contractors must handle and maintain internet applications. All employers, even those not currently contracting with the federal government, should review the new regulations, as other government agencies, such as the EEOC, will likely adopt similar guidelines.

Under the new regulations, federal contractors which employ more than 150 employees or operate under government contracts for \$150,000.00 or more must maintain employment records for "internet applicants" for two years. Contractors which employ fewer than 150 employees or, alternatively, which have entered into contracts with the government for less than \$150,000.00, must retain employment records for only one year. Failure to maintain such documents constitutes noncompliance and can result in a presumption that the missing or destroyed documents were unfavorable to the federal contractor. That presumption could lead to fines or debarment as a federal contractor. The OFCCP has defined an "internet applicant" as an individual who meets *all* of the following criteria:

- *The job seeker submits an "expression of interest in employment" through the Internet or related electronic data technologies.* An "expression of interest" consists of any electronically-based submission, including, without limitation, a resume, job application, or internet job posting.

- *The contractor considers the individual for employment in a particular position.* A contractor "considers" an application only when it assesses a job seeker's qualifications "against any qualifications of a particular position, including a determination of whether a job seeker meets the basic qualifications for the position."

- *The job seeker's expression of interest contains information suggesting the individual possesses the basic qualifications for the position.* A position's "basic" qualifications are those communicated to job seekers through a variety of methods, including, without limitation, internal and third-party internet job postings. Qualifications must be "noncomparative" in nature; a contractor should evaluate one job

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seeker's experience and education subjectively, rather than by comparison to other job seekers.

▪ *The job seeker does not withdraw from consideration for the position before receiving an offer of employment.* A contractor may determine that an individual is no longer interested in a position and has, therefore, removed himself from consideration for the position based on either (i) the individual's *express* statement that he is no longer interested or (ii) a repeated "passive demonstration of disinterest," such as a consistent failure to respond to a contractor's attempted communications. A contractor may also determine that a job seeker is no longer interested in the position if the individual's desired salary, job position, or work location are incompatible with those offered by the contractor.

The new regulations apply whenever a contractor relies on internet technology to solicit or receive job applications or resumes. If, for example, a contractor welcomes information from job seekers through both electronic and traditional means such as the mail or in person, the contractor must adhere to the new internet-induced regulations for *all* applications and resumes.

As employers and employees continue to rely on Internet job searches and applications, regulations such as those imposed by the OFCCP will become more common. Eventually, similar regulations will affect all employers. For more information regarding the OFCCP's guidelines and their effect on your business, please contact the law firm of Seaton, Beck, & Peters, P.A. at (952) 896-1700 or www.seatonlaw.com and ask for any available attorney. We would be happy to assist you concerning the new guidelines, recordkeeping requirements, federal agency audits and hiring and screening procedures generally.

The News at Our Firm: Comings and Goings, Promotion and a Tenth Anniversary

Seaton, Beck, Peters, Bowen & Feuss is Seaton, Beck & Peters again. Additionally, we have hired 3 new lawyers and promoted another lawyer.

We are pleased to introduce our new lawyers: **Megan M. Cooper**, a graduate of Notre Dame and Creighton University School of Law and practiced labor and employment law with a large firm in Houston for 2 years; **Tana S. VanGoethem**, a University of Minnesota college graduate who also earned her law degree from the U of M in 2005 and, as a research assistant to several law professors, has conducted research in discipline and discharge arbitrations; and, **Sara G. Sidwell**, who received both her undergraduate and law degrees from the University of Iowa and has worked as a lawyer assisting the judges of the Minnesota Court of Appeals and a trial court judge. We are confident that these three lawyers will be effective counselors, analysts and advocates for employer clients. The firm has also recently promoted **Shareen R. Luze**, who has been with us since 2003, to Senior Attorney as recognition of her achievements, work ethic and commitment to quality and conscientious client representation.

While we will grow again in 2006 and 2007, we think we already have the right mix of experience and various backgrounds to provide the most effective labor and employment service. We founded the firm ten years ago and continue with the support of hundreds of employer clients, as "the lawyers for employers" in the Upper Midwest and throughout the country. We thank all of you for your business and your friendship. We intend to continue to earn both every day so please let us know if there is ever anything we can do to improve our service to you.

Fax, E-mail or "None of the Above?"

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