

## Update on Recent OFCCP Regulations

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### **The OFCCP's New Regulations on the Definition of an Internet Applicant and Applicant Recordkeeping Requirements Will Take Effect February 6, 2006**

In October, the Office of Federal Contract Compliance (an agency within the Federal Department of Labor) released its final regulations regarding federal contractors' recordkeeping requirements with respect to Internet applicants. These new regulations have significant implications for government contractors in terms of data collection and designation of applicants to be included in adverse impact analyses, as well as recordkeeping duties. The regulations are effective as of February 6, 2006.

The new regulations, which were a long time in the making, create new rules for the ever-popular government contractor game--"find the applicant." The need for clarification for government contractors on whom is considered an applicant for recordkeeping and data analysis purposes has long been a topic of debate, especially in the changing technological world of recruitment.

In summary, to be considered an "Internet applicant," an applicant must meet the following four criteria:

- (1) The candidate "submits an expression of interest in employment through the Internet or related electronic data technologies"
- (2) The employer considers the candidate for a "particular position"
- (3) The application or resume indicates that the candidate possesses the "basic qualifications" for the "particular position"
- (4) The candidate "at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates he or she is no longer interested in the position"

Although the regulations target "Internet applicants," in practical terms, they have a much broader application for government contractors. Specifically, within the OFCCP's definition of an Internet applicant is the caveat that if both electronic means and more traditional methods of soliciting applicants are used to recruit for a particular position, then the new regulations will apply to all

applicants for that position.

For more information on this or other labor and employment matters, contact the authors listed above.