



AFFIRMATIVE ACTION E-BULLETIN

January 2008

IMPLEMENTATION OF E-VERIFY DELAYED

Although in our experience, many contractors have already switched over to E-Verify without problem (and without many complaints), the rest of you federal contractors and subcontractors can breath a temporary sigh of relief and delay implementation of the use of the Department of Homeland Security's ("DHS") E-Verify system to check that new hires are eligible to work in the U.S. The final rule, issued pursuant to an Executive Order which was to have become effective on January 15, 2009 and would have required contractors to use E-Verify and to electronically re-verify employees working on existing contracts, has been suspended until February 20, 2009. The Department of Justice agreed to suspend the Rule on January 7, 2009 on behalf of the Federal Acquisition Regulations ("FAR") Councils.

The decision to suspend the rule was a result of a legal challenge to the rule filed by the U.S. Chamber of Commerce and four other associations. The lawsuit, *Chamber of Commerce of the United States of America, et al. v. Chertoff, et al.*, is pending in the U.S. District Court for the District of Maryland. It requests that the rule be declared invalid and that the court permanently enjoin it from going into effect on the grounds that neither the President nor DHS had the authority to mandate the use of E-verify for government contractors, as Congress specifically prohibited the mandating of the use of the E-verify system in the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Other grounds for the challenge include the burden of the rule on employers and the inaccuracy of the database used by DHS.

Although this decision has yet to be published in the Federal Register, the Department of Homeland Security's FAQs on e-Verify now state: "Federal contractors and subcontractors will be required to begin using the U.S. Citizenship and Immigration Services' E-Verify system starting February 20, 2009"

OFCCP ONCE AGAIN OBTAINS RECORD RECOVERIES FOR A RECORD NUMBER OF EMPLOYEES

Last week, the OFCCP issued a press release entitled "Higher And Higher: OFCCP Wins Record Annual Number Of Financial Remedies For More American Workers Than Ever Before." In fiscal year (FY) 2008 (October 1, 2007 - September 30, 2008), the OFCCP reports that it won a record \$67,510,982 in back pay, salary and benefits for an unprecedented 24,508 American workers who had been subjected to unlawful employment discrimination. For some context, here's how this year's numbers compare to past year's:



Fiscal Year	Financial Remedies Obtained	Workers Recompensed by OFCCP Agreement
2008	\$67,510,982	24,508
2007	\$51,680,950	22,251
2006	\$51,525,235	15,273
2005	\$45,156,462	14,761
2004	\$34,479,294	9,615
2003	\$26,220,356	14,361
2002	\$23,975,000	8,969
2001	\$28,975,000	9,093

The Agency reported that 99% of these dollars were collected in cases of systemic discrimination – those involving a significant number of workers or applicants subjected to discrimination because of an unlawful employment practice or policy. The more than \$67.5 million reflects a 133 percent increase over financial remedies obtained in FY 2001. The Agency also stated that, “OFCCP’s more strategic approach resulted in a 92 percent increase in the number of job applicants and employees (113,630) who financially benefited from OFCCP investigations and over \$50 million in additional back pay salary and benefits versus the prior administration.” Director Charles James stated: “We are proud of these results which demonstrate our commitment to enforcing the law. This is our fourth consecutive record-breaking year in the categories of workers helped and amounts recovered. Of all the changes of these eight years, the focus on systemic discrimination is by far the most significant for the mission of the agency.”

This update was prepared by Donna Brooks, an attorney with the law firm of Lehr, Middlebrooks, & Vreeland. Donna can be reached for questions/further information at dbrooks@lehrmiddlebrooks.com or at (205) 226-7120.

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