



INTERNET APPLICANT RULE UPDATE

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OFCCP Offers Additional Interpretative Guidance

Last Wednesday, November 1, the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) updated a series of "frequently asked questions" regarding its Internet Applicant regulations which became effective last February. This is the second question-answer formatted guidance attempted by the agency to aid federal contractors in interpreting this new definition of Internet Applicant and complying with the equal employment and affirmative action requirements of Executive Order 11246 and other laws. As a service to our customers, CareerBuilder is providing the highlights of these updates to you in partnership with DLA Piper. The full text of the guidance is available on the Labor Department Web site at <http://www.dol.gov/esa/ofccp>.

The Internet Applicant rule was enacted due to the increasing difficulty experienced by employers while determining which communications were real applications that needed to be tracked for EEO and AA compliance reasons, and which were not. The latest update advises contractors on issues involving searches of external databases, retention of records, and other issues. We've highlighted selected clarifications below that may be of particular interest to CareerBuilder.com customers:

(1) DATA MANAGEMENT: When contractors use software to search large resume databases for job seekers who "best fit" the qualifications required, a "hit" feature often identifies and ranks the candidate. OFCCP informs contractors that a job seeker is "considered" for employment in a particular position if the contractor assesses the substantive resume information with respect to any qualification involved with the particular position. Where the software not only reviews job seekers' qualifications, but also compares the extent to which they possess those qualifications vis-à-vis other candidates, the resumes reviewed by the software have been considered under the Internet Applicant rule. Accordingly, such resumes must be retained by the employer as provided by OFCCP regulations.

Section 60-1.3(3) of the Internet Applicant, however, provides that search results generated through "data management techniques," such as random sampling or the use of search protocols which limit search results to those job seekers who have expressed an initial interest in the position (as determined by type of position, location or salary sought by the job seeker), do not fall under the Internet Applicant rule. Data



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management techniques do not depend on an assessment of a job seeker's qualifications and, therefore, resumes discarded through the use of data management techniques need not be retained by the employer.

CareerBuilder's powerful resume database search tools, which can easily be configured to use the record-reducing search protocol data management technique, can achieve the same data management benefits of random sampling, while giving our customers the most relevant applicants for each job's unique objective search criteria. If you have questions about how to best use CareerBuilder's search capabilities to minimize the results returned without affecting relevancy, please contact your account manager.

(2) RECORDKEEPING: The agency also emphasizes and clarifies that contractors are responsible for ensuring that the employment agencies and recruiting firms they use also maintain sufficient records to satisfy the Internet applicant regulations. The same is true for contractors who search large, external resume databases that will maintain for the contractor resumes identified as meeting the required basic qualifications. In that situation, however, the contractor has the option of maintaining the records in its own database and using data management techniques to reduce the numbers to a manageable level. Further, paper resumes received at a job or career fair do not need to be retained, if applicants are told that the company only reviews the applications it receives online, and that is the contractor's standard practice. However, if a contractor considers both paper and online applications, then OFCCP counsels that the paper applications must be retained as well.

(3) WITHDRAWAL FROM CONSIDERATION: Also in the FAQs, OFCCP addressed the issue of applicant "withdrawal of interest" By quantifying what was previously described as "repeated attempts to contact." A contractor may conclude that an individual has shown disinterest in pursuing a particular position either:

(a) After two or more non-responses to contractor's inquiries; or

(b) Based on information the individual provided, such as salary requirements or preferences as to type or location of work, which do not match up with the specifications of the available position.

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