

Stan Koper

From: ofccppublic, [OFCCP-Public@dol.gov]
Sent: Friday, October 05, 2007 7:11 PM
To: stan@gaucherassociates.com
Subject: FW: Question re Internet Applicant Recordkeeping

Stan Koper

stan@gaucherassociates.com <<http://us.f514.mail.yahoo.com/ym/Compose?To=stan@gaucherassociates.com>>

Dear Mr. Koper:

Thank you for your October 2, 2007, email in which you asked whether contractors are required to maintain records regarding individuals who applied via the Internet or related technologies for a position that was subsequently cancelled for budgetary reasons.

The Office of Federal Contract Compliance Programs (OFCCP) administers and enforces three equal employment opportunity mandates: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA). These mandates prohibit Federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, national origin disability, or veterans' status. OFCCP also shares responsibility with the U.S. Equal Employment Opportunity Commission in enforcing Title I of the Americans' with Disabilities Act.

The recordkeeping requirements expressed in 41 CFR 60-1.12 (online at http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-1/41CFR60-1.12.htm <http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-1/41CFR60-1.12.htm>), state:

(a) General requirements. Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes.

Under OFCCP's general recordkeeping requirements, even when a contractor decides not to fill a particular job requisition, the contractor still has the obligation to maintain any records associated with the personnel action, such as the job advertisements, applications and resumes.

If, as in your example, the company accepted expressions of interest received via the Internet and related technologies for the particular position, the recordkeeping rules associated with the Internet Applicant Rule apply. Thus, generally speaking, the company should maintain records of internal and external database searches; records of all the basic qualifications used to consider expressions of interest; records regarding data management techniques used; all expressions of interest added to an internal database; any expressions of interest from an external database that met the basic qualifications and were considered by the contractor; and records relating to any individuals contacted by the company about the position. The company should consider as applicants for the position all those that met the four prongs of the Internet Applicant definition (i.e., expressed an interest, was considered for a particular position, had the basic

qualifications, and did not otherwise withdraw their interest). Demographic data solicited from any individuals that met all four prongs of the definition prior to the requisition being cancelled should be retained.

If you need more information pertaining to OFCCP or any other issue related to Federal contractors' equal employment opportunity and affirmative action obligations, please:

* Visit OFCCP's website at <http://www.dol.gov/esa/ofccp/index.htm>
<<http://www.dol.gov/esa/ofccp/index.htm>> ;

* Call OFCCP's toll free Help Desk at 1-800-397-6251; or

* Contact an OFCCP District or Area Office in your local area; a list of offices by State is available online at <http://www.dol.gov/esa/contacts/ofccp/ofnation2.htm>
<<http://www.dol.gov/esa/contacts/ofccp/ofnation2.htm>> .

This response is for informational purposes only and does not constitute an official communication of the U.S. Department of Labor. For an official response, please write: U.S. Department of Labor, Office of Federal Contract Compliance Programs, Division of Policy, Planning & Program Development, 200 Constitution Avenue. N.W., Room N-3422, Washington D.C. 20210.

Sincerely,

Lynn A. Clements

Acting Director

Division of Policy, Planning and Program Development

Office of Federal Contract Compliance Programs

Department of Labor

-----Original Message-----

From: Stan Koper [mailto:stan@gaucherassociates.com]

Sent: Tuesday, October 02, 2007 5:22 PM

To: ofccppublic,

Subject: Question re Internet Applicant Recordkeeping

Since the Internet Applicant Recordkeeping requirements are intended to synchronize internet application and hiring procedures with the requirements of the Uniform Guidelines on Employee Selection, I'd like to clarify a point.

If a contractor considers a group of individuals for a position, but the

position is not filled (the requisition is cancelled for budgetary reasons for example), then there is no selection decision. Are contractors obligated to retain copies of any of those applicants' resumes?

Thanks,

Stan Koper

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