



### **AFFIRMATIVE ACTION UPDATE: APRIL 2006**

*This bulletin provides an update on issues for Affirmative Action subscribers. Please contact us if you have any questions about the issues raised in this e-Bulletin or about their effects on your business.*

### **DON'T FORGET DISPOSITION CODES**

Just a gentle reminder, based on Plans we've been preparing for 2006 and recent audits we've seen: it is so important for contractors to, first, maintain disposition codes on their applicant flow logs and, second, make sure that those codes are maintained *accurately*. This is especially important in preparing Adverse Impact Analysis, which is one of the areas attracting the OFCCP's attention in its search for systemic discrimination.

Truth be told, we do not always use the disposition code information in preparing Affirmative Action Plans and Adverse Impact Analysis. If the results of the statistical analysis look fine without getting that specific, we may just stick with the gross numbers and not pull out those applicants who were taken out of the pool of applicants. But, many times, the gross statistical results look alarming – even when there's no real problem – and we have to take a closer look to see what could be sounding that alarm. Frequently, when we pull out applicants based on information from the disposition codes, we can fix the problem.

Recently, we've seen that either employers are not consistently entering disposition codes or they are not maintaining them accurately. In the last page of this e-Bulletin, we're including some sample disposition codes that we recommend; you do not have to use our codes, but they may help you fine tune your current system. You may well find this information vital if you are faced with an audit (or with Adverse Impact numbers that don't reflect well on your compliance efforts). Don't take this important tool out of your OFCCP tool box – you may find you're not happy with the end results if you do.

## **DON'T BASE EMPLOYMENT DECISIONS ON PROTECTED CHARACTERISTICS**

I know you've heard us say time and again that you should not set numerical goals for improving your affirmative action statistics. Except in a few **very** limited circumstances, it is illegal to take into account a person's gender or ethnicity (and, while we're at it, their age, religion, national origin, etc. etc.) in making employment decisions. All affirmative action policies are based on the premise that you should **only** hire the **most qualified** applicant for each job.

Last month, a federal judge in Indiana ruled that a male applicant for a position with Alcoa could sue the company for its decision to select a female applicant over him. Brian White was among four qualified applicants for a protection officer/paramedic position. He was rated lower than the female candidate who was ultimately selected for the position, so you would think that might end the inquiry.

However, during the hiring process, an HR specialist determined that females were "underutilized" at the plant in the service worker job group (which would have included the protection officer/paramedic position). She apparently informed the hiring manager, prior to the interviews, that if all of the candidates were qualified, they "would have to be seriously looking" at the female candidate. The interviewing team unanimously ranked one male as their top choice; the female candidate was their second choice, White was in the third position, and another male candidate ranked lowest. After these rankings were finalized, the hiring manager apparently received more pressure from the HR manager to hire the female candidate, and she was ultimately selected for the position.

The judge in the case said that Alcoa had failed to show any non-discriminatory reason for not hiring White. You might wonder how White even had a case, since he was ranked below the female candidate, and another male would have been offered the job had the offer not gone to her. However, the Court decided that since HR so quickly ignored the rankings, the rankings ultimately meant nothing. Therefore, Alcoa couldn't use those rankings – and White's relatively low placement on them – to defend its reasoning.

Who knows how this case will end up – it may settle, a jury may find in Alcoa’s favor, these rulings by the lower court might ultimately be overturned on appeal. But Alcoa has had to expend a great deal of time and money in litigating this matter. It’s a great reminder to us all: employment decisions must be color-blind, gender-blind, etc. and based only on your never-ending search to find the most qualified candidates for your positions.

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## Recommended Sample Disposition Codes For Candidate/Applicant Flow Log

(You can use abbreviation or a number on the log)

1. **NORE:**     **No Rehire** - Candidate not eligible for rehire.
2. **NMQ:**     **Not Minimally Qualified** - Candidate does not have previous work experience necessary to meet minimum job requirements.
3. **INA:**     **Insufficient Age** - Candidate did not meet minimum age requirement.
4. **ELIE (if discovered pre-offer):**   **Early Lie** - Information on application/resume proven false: i.e. reference, education, work experience, I-9 documentation.
5. **INC:**     **Incomplete** - Application is not complete: not signed, incomplete sections of application, especially employment history and position applied for.
6. **NOCI:**    **No Contact Interview** - Could not reach candidate to call in for interview.
7. **DECI:**    **Declined Interview** - Candidate declined interview.
8. **NOI:**     **No Interest** - At time of interview, candidate not interested in position for which interviewed, or no longer interested in working in facility.
9. **NOI-S/H:** **Not Interested Shift/Hours** - Candidate indicated s/he cannot work the required hours/shift for the open position.
10. **NSHO:**   **No Show Interview** - Candidate no-showed interview.
11. **NOPE:**    **No Openings** - There were no openings for the position for which the candidate applied at any time during the (\_\_\_) day consideration period.

12. **NBQ:** **Not Best Qualified** – Applicant was considered throughout the (\_\_\_) day consideration period, and although applicant possessed minimum qualifications, other applicants were more qualified. Applicant was no longer considered after expiration of (\_\_\_) day consideration period.
13. **DECJ:** **Declined Job Offer** – Applicant was offered position, but declined (for whatever reason: salary, working conditions, better competing offer, shift preference, “cold feet,” etc.) If reason given by applicant, keep record of it.
14. **LLIE (if discovered post-offer): Late Lie** – Information on application/resume proven false (i.e., reference, education, work experience, I-9 documentation).
15. **NORT:** **No Report** – Applicant was offered and accepted position, but failed to report for scheduled physical, orientation or training, or first day of scheduled work.
16. **NOD:** **No Drugs** – Applicant was offered and accepted position, but subsequently failed post-offer drug test.
17. **HIRED:** Applicant accepted offer and showed up for first day of work.