



### **GOVERNMENT CONTRACTOR UPDATE: FALL 2005**

*This bulletin provides an update on employment issues for government contractors. Please contact us if you have any questions about these decisions or about their effects on your business.*

#### **OFCCP Grants Limited Exemption and Waiver of Requirements for Hurricane Relief Efforts**

Deputy Assistant Secretary Charles James announced earlier this month that, due to the destruction caused by Hurricane Katrina, OFCCP will grant a limited exemption and waiver, lasting until December 9, 2005 (and subject to an extension) from some of the requirements of the laws enforced by the OFCCP. Federal contractors will continue to be subject to the nondiscrimination requirements under the laws enforced by the OFCCP.

The exemption and waivers relate to the requirement to develop written affirmative action programs. In the announcement, available at <http://www.dol.gov/esa/ofccp/pdf/Katrina1.pdf>, the OFCCP has set forth specific EEO clauses to be included in certain sections of covered contracts that are entered into for the purpose of providing Hurricane Katrina relief.

#### **Employees of Federal Contractors Cannot Look To Merit Systems Protection Board For Help**

**According to a recent decision by a federal court of appeals, employees of federal contractors cannot appeal employment decisions to the Merit Systems Protection Board.** Leon Thompson was employed by Apogen Technologies/ITS Services ("Apogen"), a company that contracted with the Department of Homeland Security, Customs and Border Protection ("Homeland Security"). Of course, in order to work for Apogen, Thompson had to get a government security clearance based on a background investigation. Ultimately, Homeland Security denied Thompson's security clearance, and Apogen fired Thompson. Thompson then sought to appeal his termination to the Merit Systems Protection Board (the "Board"). The Board dismissed

his appeal, finding that it had no jurisdiction over the matter since Thompson was not a federal employee. The dispute eventually ended up in the hands of the Federal Circuit Court of Appeals.

In deciding Thompson v. Merit Systems Protection Board, the Court noted that the Board could hear appeals from “employees” or “applicants for employment.” Thompson argued that since he had to complete a form “for Federal and Federal contract employment” in order to authorize the security clearance, he should be considered an applicant for employment. The argument didn’t fly, however; the Court clarified that the Board could only review decisions related to federal employees or applicants for federal employment. The review system simply doesn’t apply to employees who wish to appeal decisions made by federal contractors.

### **How The AFL-CIO Rift May Affect You**

**Organized labor? Not so much, these days.** The recent divide in the AFL-CIO highlights philosophical conflicts over the future of the labor movement. Four unions - the International Brotherhood of Teamsters, the United Food and Commercial Workers (UFCW), the Service Employees International Union (SEIU), and UNITE HERE - have officially left the AFL-CIO and formed an organization called the Change to Win Coalition. This brings the total number of employees represented by the Coalition unions to approximately 6 million and those represented by AFL-CIO unions to 8.5 million.

The Coalition views its mission less as preserving jobs in danger of disappearing, like the AFL-CIO, and more as boosting the prospects of people in low-paying and low-benefit jobs. At its founding convention in St. Louis on September 27, 2005, the Change to Win Coalition selected Anna Burger to serve as its first Chair, making her the first woman selected to lead a national labor movement.

The full impact of the rift in labor is uncertain at this time, but contractors should monitor changes in labor's structure and strategy that might affect them. It appears that labor activity may be on the rise, and employers should anticipate their vulnerability to labor campaigns. Secondly, if you have multiple labor unions representing members of

your workforce, you may be facing jurisdictional disputes if those unions are involved with different organizations.

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