



**STRATEGIES**

# Monthly Strategies

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## **OFCCP's Disability Self-ID Form Approved for 3 Years**

The OFCCP announced today that the Office of Management and Budget (OMB) released a **new disability self-I.D. form**. Federal Contractors need to start using the new form immediately and destroy the previous version.

This form is to be used when soliciting applicants at the pre-offer (applicant stage) and post-offer (on boarding) stage, as well as to survey your workforce for Disability status every five years. This has been the case since the VEVRAA and 503 regulation changes came into effect as of March 2014.

The only change made to the form is a new expiration date. In short, this form replaces the Disability Self-I.D. form that Federal Contractors have been using to obtain Disability Status of their applicants.

## **New Models of Work: Crowdsourcing**

Traditional employment models will always be with us; however, the rise of the Internet has facilitated a new way of working called crowdsourcing. New websites such as Gigwalk, Mechanical Turk and TopCoder have created online marketplaces where workers and those with project work can connect and transact business. Employees can do work for one company and, when work is slow, go work for another, entirely separate company. This practice avoids layoffs. Crowdsourcing is outsourcing from the crowd; it allows an organization to leverage the collective talent of the crowd to get work done, often in a more efficient and cost-effective ways than the traditional employment model. By using "reputation scores" similar to sellers on e-Bay, these platforms allow companies to quickly evaluate and tap into global talent outside their own workplace.

How can your organization prepare . . .

- Learn how crowdsourcing works. Explore crowdsourcing websites and think about whether these new work arrangements might be used successfully in your business.

- Identify alternative work arrangements (crowdsourcing, phased retirement, short-term projects, etc.) that might help your organization tap into new pools of talent such as retirees or people with disabilities.
- Before creating a new staff position, experiment with breaking down the job into a series of tasks that could be outsourced. This will help you determine whether crowdsourced work or other work arrangements might be a good alternative.
- Perform an analysis to examine whether crowdsourcing is an appropriate model for your organization before "jumping on the bandwagon." Identify how it should be managed both practically and ethically, and ask the tough questions about whether this arrangement is appropriate and how to do it legally. Then coach your managers on how to implement it.
- Recognize that using alternative work arrangements may require different competencies than traditional employment models. Develop yourself and coach others on needed skills, such as critical evaluation, new relationship management and communication skills, and risk management.
- Explore the specifics of different crowdsourcing options. For example, is this an employment / independent contractor relationship? How does one ensure fairness to the contributing individual while encouraging entrepreneurship? Does giving a company an idea or an opinion make someone an employee? Could the contributing individual be held liable if the person / company receiving the donated work product did something wrong or illegal? How do you evaluate the quality of a potential contributor's work? How does an organization ensure the material contributed does not infringe another's intellectual property?

## **AAP's are due by March 31st**

Reminder it's AAP Time – Employers should be preparing and submitting their 2017 Affirmative Action Plan to the Department of Labor during the first quarter of 2017. If you are unsure if your organization is required to have an AAP, please contact HR Strategies for a complimentary information session.

## ***Dealing with Employee Drug Use***

Employees who abuse alcohol and drugs (including illegal drugs, prescription drugs, and over-the-counter drugs), either on their own time or at work, can pose significant problems for their employers, managers, and co-workers. These problems can include:

- diminished job performance
- lowered productivity
- absenteeism
- tardiness
- high employee turnover
- increased medical and workers' compensation bills
- potential workplace violence issues

Employees who abuse drugs and alcohol can also make a workplace more volatile and dangerous, exposing employers to legal liability and other legal issues.

What do you do if you suspect an employee is under the influence of drugs or alcohol at work? There are specific steps that can and should be taken by management to properly execute and document any situation.

**Check Your Policy** - First and foremost, you must have a written drug and alcohol testing policy. It should include drug and alcohol testing for reasonable suspicion. A general policy statement is not enough to permit testing; if your policy does not include testing for reasonable suspicion, you may want to enlist the support of a consultant or legal counsel to help you implement one.

**Document** - Suspicions regarding an employee who may be under the influence may come from co-workers or clients, often before it is noticed by a supervisor. It's important to take these complaints seriously and document thoroughly any complaints, observed behavior patterns and the names of any witnesses to the behavior

**Observe** - It is important that management also observe the behavior. A second management person should also observe the behavior. Both observers need to document their observations in detail. This should include references to:

- odors
- speech
- eyes being dilated or constricted
- emotional issues such as agitation or irritability
- drowsiness
- excessive sweating
- other telltale signs

**Meet** - Once the situation is documented and everyone is in agreement, only then should you meet with the

employee for a discussion of what has been observed. Always have a second party at the meeting to act as a witness. You then have the options to follow whatever is stated in your company policy.

**Test** - Drug testing is a legal issue and may depend on your company policy and legal advisors. If your policy allows for it, contact your drug test facility to notify it that you have an employee on the way for reasonable suspicion testing.

If you send the employee for drug or alcohol testing always explain that in order to rule out the possibility that the employee is in violation of the company's drug and alcohol policy, you will be sending them for a drug and/or alcohol test. If you have not obtained a drug testing consent previously, you should have a consent form available at this meeting for the employee's signature.

Never allow the employee to drive themselves. Always provide transportation to and from the facility. If they refuse the test, refer to your drug and alcohol policy, especially if your policy states that refusing the test will be treated as a positive drug test result or will result in immediate termination of employment.

**Act on the Results** - If the drug or alcohol test results are negative, contact the employee and return them to their prior job as soon as possible. If it is positive, you have the option of sending them for counseling or treatment and returning to work.

Most policies offer return to work rights with a clause that allows for termination if the employee is found under the influence at work again. An employer does have the option to terminate immediately for positive test results.

## ***Post OSHA 300A by February 1<sup>st</sup>***

Covered employers must complete and post their 2016 annual summary of work-related injuries and illnesses by Feb. 1, 2017, and keep it posted in a common area until April 30, 2017. All employers required to keep Form 300, the Injury and Illness Log, must utilize the annual summary Form 300A to comply with posting requirements even if there have been no recordable injuries or illnesses, as the Occupational Safety and Health Administration (OSHA) will continue to focus on record-keeping violations in 2016. This year's summary must include the total number of job-related injuries and illnesses that occurred in 2016.

The summary Form 300A reports a business's total year-end number of fatalities, missed workdays due to injury or illness on the job, job transfers or restrictions, and injuries and illnesses as recorded on Form 300. It also

includes the number of employees and the hours they worked for the year.

### **Which Employers Must Track Injuries and Illnesses?**

Nonexempt employers with more than 10 employees must track injuries and illnesses and post the form. Certain low-hazard industries are exempt. Businesses that employ 10 or fewer workers or those that fall into an exempt category must also record injuries if they are required to by OSHA or the Department of Labor's Bureau of Labor Statistics for survey purposes. Only the summary must be posted; the log does not have to be displayed but must be available to employees, their representatives or OSHA inspectors. Companies with multiple jobsites should keep a separate log and summary for each location that is expected to be operational for at least a year.

**Executive Certification** OSHA requires that a company executive certify the 300A summary. Company executives are defined as: an owner or officer of the company or the highest-ranking company official working at the site or the immediate supervisor of the highest-ranking company official working at the site. This official must certify that he or she has reviewed the related records and that the posted summary is accurate and complete, to the best of his or her knowledge.

**Posting Period** The 300A summary must be posted at each jobsite from Feb. 1 to April 30, in a conspicuous area where notices to employees are customarily placed. Copies of the form should be provided to any employees who may not see the posted summary because they do not regularly work onsite. Employers have a duty to update and maintain records for five years plus the current year and provide them upon request for inspection by OSHA investigators. Employers must also ensure that the annual summary is not altered, defaced or obscured during the posting period. Employers who maintain these records in electronic form should still retain the signed posted summary after the Feb. 1 to April 30 posting period, to prove that it was properly signed.

**Reportable Injuries** Generally, only serious injuries resulting from workplace activity must be reported. A business should review an employee's activities to determine whether an injury is work-related. Businesses are not required to report injuries that stem from activities that are merely incidental to work responsibilities. A serious injury is one that results in a fatality, loss of consciousness, days away from work, a restricted work schedule or job transfer, or a significant injury or illness diagnosis by a health care provider, or that requires medical treatment beyond basic first aid. Employers should not report incidents that require only

basic first aid. If the injury is of a sensitive nature, such as sexual assault, then the employer should write "privacy case" in the box for the worker's name.

Before the annual summary is prepared, the OSHA record-keeping rule imposes an express duty to review the log to verify that entries are complete and accurate. Employers must review the records as extensively as necessary to ensure accuracy. OSHA requires companies to enter the average number of employees and the total hours they worked on the summary form. An employer can plug those figures into a formula to calculate injury and illness incidence rates and compare them with the data of other establishments in similar industries. OSHA scrutinizes the injury and illness record-keeping forms for even minor errors in descriptions and boxes checked. Take time to review the forms for technical errors as well as to review accident reports, first aid logs and other related materials to ensure that all recordable incidents have been included and that records are consistent.

**Reminder of Electronic Record-Keeping** The electronic record-keeping rule requires covered employers to submit injury and illness data electronically to OSHA that they already must record on forms they keep onsite (as described above). Some of the collected information will be available to the public on the agency's website.

The electronic record-keeping rule went into effect on January 1, and the reporting requirements will be phased in over a two-year period as follows:

- Businesses covered by the record-keeping regulation that have 250 or more employees must submit information from their 2016 Form 300A by July 1, 2017.
- Those businesses will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018.
- Businesses in certain high-risk industries (such as agriculture, construction and manufacturing) with 20-249 employees must submit information from their 2016 Form 300A by July 1, 2017, and from their 2017 Form 300A by July 1, 2018.
- Starting in 2019, the information must be submitted by March 2.

*If your organization would like to learn more about the items in this newsletter, please feel free to contact Tricia Clendenen at 302.373.1784 (cell) or 302.376.8595 (office) or [tricia@hrstrategies.org](mailto:tricia@hrstrategies.org). Please contact us if you would like to be removed from our Monthly Strategies mailing list or if you would like for us to add someone to our mailing list.*