



Pathway to Compliance

Monster's Response to the New OFCCP Rule

January 10, 2006

Disclaimer

This document provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues. Additional facts or information or future developments may affect the subjects addressed in this document. You should consult with a lawyer about your particular circumstances or any of this information because it may not be applicable to you or your situation.

Contents

Introduction	2
Summary of the New Rule	2
Changes to Monster's Products	3
How Can I Prepare?	5





Introduction

On October 7, 2005, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issued a final rule regarding the definition of an "Internet Applicant." As the leading global online career and recruitment resource, Monster has been closely monitoring these issues. Based on in depth discussions with industry experts, legal advisors, and the OFCCP itself, Monster has enhanced its offerings to make it easier for federal contractors to comply with the new rule. As with any system, mere use of the Monster system does not insure compliance with the new rule.

The following document provides a brief overview of the rule and the steps that Monster has taken to help customers comply.

Summary of the New Rule

The new rule, effective February 6, 2006, clarifies the definition of an "Internet Applicant" for whom federal contractors are required to maintain records of those individuals who must be solicited for race/ethnicity and gender data. According to the rule, an individual is considered an "Internet Applicant" if each of the following four criteria are met:

- The individual submits an expression of interest in employment through the Internet or related electronic data technologies
- The contractor considers the individual for employment in a particular position
- The individual's expression of interest indicates the individual possesses the basic qualifications for the position
- The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

Individuals who meet all four criteria of this definition must be solicited for race/ethnicity and gender information, and be included in an adverse impact analysis.

Record Keeping Requirements

The new regulations require that contractors retain various records pertaining to Internet Applicants, and, if the job is one where both Internet Applicants and potential applicants who apply through traditional (paper) application processes are accepted, to the traditional applicants for the job as well. The new regulations do not address record keeping obligations for jobs where only paper applications and resumes are considered; existing OFCCP regulations apply to such openings. In addition, the OFCCP established two different sets of rules for records that must be maintained; one for internal databases and another for external databases. With respect to electronic resume database searches, the rule requires that the following data be retained:

For internal resume databases:

- A record of each resume that was added to the database
- The date each resume was added
- The position for which each search of the database was made
- The substantive search criteria used for each search
- The date of the search

For external resume databases:

- A record of the position for which each search of the database was made
- The substantive search criteria used
- The date of the search, and the resumes of any job seekers who met the basic qualifications for the particular position who are considered by the company

Note: For an external database search, the contractor is only required to maintain the resumes of those who met the basic qualifications and were considered. For an internal database, the contractor must keep a "record" of every resume added to the database. Contractors must also retain records of job seekers contacted regarding their interest in a particular position (even those who reply that they are not interested).





Employment Tests

With regards to employment tests, the OFCCP states in the supplementary information to the new regulations that it does not deem employment tests to be basic qualifications under the final rule. In other words, a contractor cannot use the results of an employment test to determine that a job seeker fails to meet the basic qualifications for a job and that therefore he or she does not meet the definition of an "Internet Applicant." Contractors must continue to collect and maintain records related to the impact of employment tests that they use as employee selection procedures, even if the test taker, for whatever reason, does not qualify as an Internet Applicant.

For purposes of evaluating the contractor's Internet hiring procedures, the new regulations state that if, however, the test is not used as a selection procedure, the OFCCP will only evaluate the records relating to the analysis of the test's impact on Internet Applicants.

Practical Considerations

To ease the record keeping burden for contractors, the OFCCP stipulates that contractors are not required to consider expressions of interest for applicants that are not submitted in accordance with the contractor's standard practices. For example, a contractor may establish a policy that all job seekers must apply online through the contractor's website. Assuming this policy is advertised and practiced consistently, the contractor would not be required to consider resumes sent via the mail. The new rule also allows employers to establish "data management techniques" to help narrow their applicant pool. In situations where there are a large number of job seekers, the contractor can use random sampling or absolute numerical limits to reduce the number of resumes it considers. For example, an employer could decide it will expire a job posting after it receives 100 applications, or that it will only consider every 10th resume retrieved via an external resume search. To be acceptable to the OFCCP, these data management techniques should be facially neutral and non comparative, and should not depend on assessment of qualifications or cause an adverse impact based on race, ethnicity or gender.

Collecting Race, Gender and Ethnicity Data

The regulations have always required contractors to identify and retain records concerning the gender, race and ethnicity of their employees. The new regulations require contractors to (1) where possible, identify the gender, race and ethnicity of traditional (paper) applicants and Internet Applicants; and (2) retain those records. In an April 2004 Directive, the OFCCP stated that self-identification is the preferred method to solicit this information, however contractors are permitted to make visual observations when the job seeker appears in person.

Changes to Monster's Products

In response to the new rule, to make it easier for contractors to comply, Monster has made the following product changes available to federal contractors upon request:

New OFCCP Record Keeping Fields

Monster has added new fields to its Job Posting Wizard and Resume Search tools (figure 1) which allow recruiters to specify their data management techniques and basic qualifications. Contractors can enter this information manually, or reference existing information that may reside in an external system.

▶ FIGURE 1





Selecting a Folder Prior to Resume Search

To facilitate tracking of resume searches, contractors will be required to select a folder prior to conducting a resume search. These folders can be existing job folders (created automatically for jobs posted on Monster), or folders manually created by the recruiter. In either case, the exact search criteria, including keywords and structured data, will be automatically retained for each resume search.

Limiting the Number of Search Results

Monster has added a new field to its Resume Search tool which allows a recruiter to limit the total number of resumes returned via a resume search (figure 2). If used in conjunction with an OFCCP-approved data management technique, this setting can help reduce a contractor's record keeping requirements. In addition, existing functionality allows a contractor to search on the date that resumes have been added to the resume database (figure3).

Search Result Limit
Limit search results to: matching resumes. (1,000 maximum)

FIGURE 2

Search By Date
Limit results to resumes received from to

FIGURE 3

Applying a Disposition Status

To help customers account for the final determination of each applicant, a new Disposition Status field has been added to each job seeker's record (figure 4). Contractors can elect to use Monster's standard list of dispositions, or build a customized list. Contractors can update the disposition status of one or more resumes at a time, and can view a list of the disposition statuses of all job seekers in a given folder.

Update Priority/Round/Disposition - Track the status of applicants. [Learn More](#)

Update Priority:

Update Disposition:

- Pending
- Selected - Hired
- Selected - Declined Position/Offer
- Selected - Post Offer - Failed Drug Test
- Selected - No Report - Never Showed Up
- Selected - Hired Internal Candidate

FIGURE 4

Exporting and Reporting

Upon request, Monster can export a comprehensive set of data to assist customers with their OFCCP reporting needs.¹ Comprised of hundreds of data elements, this exported data includes:

- All data entered in Monster's Job Posting Wizard
- The resumes and cover letters of all individuals who applied to jobs on Monster
- A record of the search strings and corresponding search data (user name, date searched, position, etc.) for all resume searches
- An audit trail of each folder a resume has been copied to and from
- Race, ethnicity and gender information
- Screening questions, responses and scores
- A history of notes and actions performed on resumes residing in folders

In addition, within their Monster account, customers can view a snapshot of each resume and cover letter as it existed at the time it was submitted to a job posting by a job seeker, or copied to a folder by a recruiter performing a resume search.

All data will be exported in XML format, and will be retained by Monster for a period of two years from creation or last action, whichever is greater.²

Beginning in summer 2006, customers will also be able to generate a summary report of their OFCCP data, and optionally receive a set of premium or customized reports with additional details.³





How Can I Prepare?

To prepare for the new rule and Monster's upcoming product changes, contractors can take the following measures:

- Familiarize yourself with the regulations
- Review your recruiting policies and procedures as they pertain to the regulations
- Provide training to human resources and recruitment staff regarding the new requirements
- Seek outside legal advice where necessary
- Visit Monster's OFCCP website at <http://info.monster.com/ofccp> to learn more and opt in to our new OFCCP functionality (website available in January 2006)

1 Data exports will be available for an additional fee

2 Some exceptions may be made for contractors who are required to maintain data for shorter or longer periods.

3 Basic reports will be available for free. Premium and Customized reports will be available for an additional fee.

