

Update: November 2010

Tax Intelligence

The Equal Employment Opportunity Commission Informal Opinion to Form 8850

Situation

Recently, the federal Equal Employment Opportunity Commission (EEOC) responded to concerns of business leaders who felt that the questions asked on the federal Work Opportunity Tax Credit (WOTC) Form 8850 are inconsistent with anti-discriminatory statutes. The EEOC's informal opinion in the letter states that screening employees with the questions on Form 8850 for WOTC are not discriminatory within the federal guidelines and does not violate equal employment opportunity laws or the Americans with Disabilities Act of 1990 (ADA).

Solution

The EEOC addressed the following areas of concern in their information opinion to Form 8850:

Americans with Disabilities Act of 1990

The new question added to Form 8850 pursuant to the 2007 WOTC amendments focuses solely on whether the job applicant is a disabled veteran and, therefore, is likely to elicit information about a disability. Therefore, the question is subject to ADA's restriction, which bars employers from making pre-offer, disability-related inquiries. However, an employer may invite a job applicant to voluntarily self-identify for purposes of the employers affirmative action program as long as the job applicant is informed that the request is voluntarily and used for affirmative action purposes. The WOTC program works to support employment of service-connected disabled veterans and to increase the employment of persons with disabilities. Form 8850 clearly informs job applicants that completion is voluntary. The ADA exception applies since the form completion is voluntary and the collected information is held confidentially.

Title VII of the Civil Rights Act of 1964

The WOTC questions do not ask whether an applicant belongs to a particular group protected by *Title VII of the Civil Rights Act*, which prohibits employment discrimination on the basis of race, color, religion, national origin or sex.

Age Discrimination in Employment Act

The targeted groups include an age restriction in that the resident must also be 18 to 39 years old to qualify. Form 8850 requests this information in order to determine if applicants fit the eligibility requirements to be considered "summer youth employees" or "disconnected youth" for purposes of the WOTC. The *Age Discrimination in Employment Act* does not expressly prohibit an employer from asking an applicant's age and only prohibits employers from discriminating against those 40 or older.

Value

TALX consistently monitors all aspects of the WOTC program and will continue to provide guidance and updates to the program. If your company is interested in receiving more information on the EEOC informal opinion to Form 8850, please visit our corporate blog at <http://blog.talx.com/> or contact Pete Krieshok at 314-214-7325, or by e-mail at pkrieshok@talx.com.