

**August 28, 2013**

## **OFCCP Issues Final Affirmative Action Rules Setting Hiring and Utilization Goals for Individuals with Disabilities and Veterans**

On August 27, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) announced two final rules substantially changing regulations and affirmative action requirements which apply to covered federal contractors and subcontractors. The new rules will become effective 180 days after their publication in the Federal Register which OFCCP expects within the next two weeks. Contractors with an affirmative action plan in place on the rules' effective date may maintain that plan until the end of the plan year and delay compliance with the rules until the start of their next plan cycle. A brief summary of the new compliance requirements appears below.

### **Revised Regulations Implementing Section 503 of the Rehabilitation Act of 1973, As Amended**

Section 503 prohibits covered federal contractors and subcontractors from discriminating in employment against individuals with disabilities, and requires affirmative action to recruit, hire, promote and retain such individuals. The rule creates the following new requirements:

- A 7% workforce utilization goal for individuals with disabilities. Covered contractors or subcontractors with a total workforce of 100 or fewer employees may apply the 7% goal to their entire workforce. Larger employers must apply the 7% goal to each job group.
- Applicants must be given the opportunity to self-identify at both the pre-offer and post-offer stages of the application process. Contractors must also now invite incumbent employees to self-identify every five years, and must remind employees that they may voluntarily update their disability status at least once during the years between these invitations. Language

### **Related Practices**

Employment Policies, Practices &  
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for voluntary self-identification will be posted on the OFCCP website soon.

- Quantitative measurements and comparisons must be made and retained regarding the number of individuals with a disability who apply and are hired, and the number of job openings. This data must be logged and the documentation retained for three years.
- Additional equal opportunity language must be included in subcontracts.
- Contractors must allow the OFCCP to review documents related to compliance. Contractors must also inform the OFCCP, upon request, of all formats in which it maintains its records, and must provide these records to the OFCCP in whichever format the OFCCP requests.
- The definition of “disability” has been revised, pursuant to the ADA Amendments Act (ADAAA) of 2008.
- Revise the affirmative action program to conform to the regulations including assessment of progress toward goals, identification of problem areas and affirmative actions taken.

### **Revised Regulations Implementing the Vietnam Era Veterans’ Readjustment Assistance Act, As Amended (VEVRAA)**

For 40 years, the VEVRAA has required Federal contractors and subcontractors to affirmatively recruit, hire, train and promote qualified veterans. The new rule requires covered federal contractors and subcontractors to take the following actions:

- Establish hiring “benchmarks” for protected veterans. Contractors may choose to establish either a benchmark based on the national percentage of veterans in the civilian labor force (currently 8%), or an alternative goal based upon data derived from published reports issued by a variety of federal agencies, including the Bureau of Labor Statistics and the Veterans’ Employment and Training Service/Employment and Training Administration.
- Document and update annually quantitative comparisons for the number of veterans who apply for available jobs, the number of veterans hired, evaluations of outreach and recruitment efforts, and records related to the hiring “benchmarks” requirement. This data must be logged and the documents retained for three years.
- Applicants must be invited to self-identify as protected veterans at both the pre-offer and post-offer stages of the application process.
- Incorporate additional equal opportunity language into subcontracts.
- Provide additional information when listing job openings with state or local job services.
- Insert a reference to “veteran status” in the EEO statement when listing vacant positions.
- Revise the affirmative action program to conform to the regulations including assessment of progress toward goals, identification of problem areas and affirmative actions taken.

- Contractors must allow the OFCCP to review documents related to a compliance check or focused review either on-site or off-site, at OFCCP's option, must inform the OFCCP, upon request, of all formats in which it maintains its records, and must provide these records to the OFCCP in whichever format the OFCCP requests.

Legal issues may well exist as to the scope and requirements of the new regulations, particularly with regard to OFCCP's hiring "benchmarks" for veterans. Once the regulations become effective, however, covered federal contractors and subcontractors should anticipate OFCCP compliance reviews and enforcement policies will treat the new rules as having the same force and effect as other affirmative action obligations. Affirmative action plans should be updated accordingly as soon as possible to come into compliance with the revised requirements of the rules, pending future developments and potential challenges.

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