

Publications

Labor and Employment Alert: OFCCP Releases Final Regulations Regarding Disabled And Veteran Workers

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On August 27, 2013, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issued final rules interpreting Section 503 of the Rehabilitation Act (Section 503) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).

The final rules, which become effective in 180 days, are intended to improve hiring and employment opportunities for disabled and veteran workers. The rules alter the current compliance environment for covered federal contractors, create hiring benchmarks for disabled and veteran workers, and increase recordkeeping requirements for covered federal contractors.

Changes to Self-Identification Process

Under the new rules, employers are required to solicit self-identification from applicants regarding disability and veteran status at both the pre-offer and post-offer stages of the application process. Furthermore, employers are required to survey their incumbent workforce for disability status on the effective date of the new rules, and every five years thereafter. Employers are also required to "remind" employees to update their disability status at least once during the five-year period.

Hiring Benchmarks for Disabled and Veteran Workers

The final rules retain a 7% hiring goal for individuals with disabilities. The new rules now require employers to collect and maintain data related to the hiring and employment of disabled workers and compare representation in each job group to the 7% goal. Additionally, the final rules establish benchmarks for the hiring of veterans. Employers must now develop an annual veteran availability benchmark, using either aggregate national data published by OFCCP (currently 8%) or state-specific data. The failure to meet these hiring goals will not result in a violation. Rather, if a goal is not met, then the employer is required to examine whether any impediments to equal employment exist. If the employer reasonably determines that no

impediments exist, then no further action is necessary. However, if impediments or "problem areas" are discovered, then the employer must design and implement a corrective action program.

Recordkeeping Requirements

The final rules require employers to maintain disability self-identification information in confidential "data files" separate from the employee's personnel file or medical file. Furthermore, employers must maintain the following data: (i) number of job openings; (ii) number of applicants; (iii) number of applicants who self-identified as disabled or veteran; (iv) number of applicants hired; and (v) number of disabled or veteran applicants hired. This data must be reviewed annually and retained for three years.

Best Practices for Compliance

Compliance with the new rules will not be required until early spring 2014, and employers do not need to update AAPs until the following year. However, given the significant changes necessary to bring hiring and recordkeeping practices – along with recruiting materials, job postings, policy statements, subcontracts, vendor agreements, and training platforms – into compliance with these new rules, employers should start planning now.

If you have any questions, please contact your Vorys attorney.