

Federal Contractor Compliance Update: New OFCCP Regulations on Veterans and Individuals with Disabilities

Legal Alert
September 25, 2013

Garvey Schubert Barer Legal Update, September 2013.

The Office of Federal Contract Compliance Programs (OFCCP) has announced publication of new rules for federal contractors. The new rules expand the affirmative action, non-discrimination, and related record keeping obligations for contractors regarding covered veterans and individuals with disabilities.

Do the OFCCP rules apply to me?

If your business does any work pursuant to a federal or federally-assisted contract—including construction contracts and Department of Veterans' Affairs or Department of Defense contracts for the provision of medical services to active or retired military personnel—you are likely subject to regulatory requirements under one or more of the laws enforced by OFCCP. Contracts of less than \$10,000 do not generally trigger OFCCP enforcement. Contracts of \$50,000 or more generally require that each contractor/subcontractor with 50 or more employees develop a written Affirmative Action Program or Plan (AAP). Requirements vary depending on the industry and services involved in the contract.

Section 503 of the Rehabilitation Act (Section 503) prohibits discrimination against qualified individuals with disabilities. The Vietnam Era Veterans' Readjustment Act (VEVRA) prohibits discrimination against protected veterans. Both laws are administered and enforced by the OFCCP as they apply to federal contractors and subcontractors, and the new rules clarify and expand contractors' obligations.

What do the new rules require?

Noteworthy new provisions include the following:

Opportunity for self-identification. Contractors must invite all applicants to self-identify protected status at the pre-offer and post-offer stages of the hiring process, on a form to be published by the OFCCP. For disabilities, contractors can identify disabilities (visually or based on applicant disclosures) if the applicant does not self-identify as disabled, and the contractor must offer employees the opportunity to self-identify every five years.

Records collection and retention. Contractors must evaluate the effectiveness of their outreach and recruitment. The new rules require specific steps including measuring

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effectiveness of affirmative action efforts (e.g., comparing number of individuals with disabilities who apply to number hired) and determining necessary remedial actions. Contractors must retain certain documents for three years, including outreach and recruiting information, data collection analysis, and records regarding utilization and hiring benchmarks. OFCCP must be permitted to review documents either on-site or off-site, at OFCCP's option.

Specific Equal Opportunity (EO) Clause Reference. The new rules provide specific language to be used when the EO clause is incorporated into a subcontract so that subcontractors will be on-notice about their responsibilities as federal contractors.

Utilization goal under Section 503 set at 7%. Contractors must analyze the percentage of disabled individuals employed in each job group and compare their figure to the 7% goal. For contractors with 100 or fewer total workers, the analysis can be workforce-wide rather than by job group. If a contractor does not reach the 7% goal, the contractor must assess impediments to equal employment, and execute an appropriate program to reduce those impediments.

Hiring benchmarks under VEVRA. Contractors can either use the national percentage of veterans in the civilian work force (currently 8%), or develop their own custom benchmark by considering factors including average percentages in the civilian work force over the previous three years, veteran participation in the state's employment service delivery system over the previous four quarters, and the contractor's assessment of its external outreach and recruiting efforts.

The final rules were published in the Federal Register on September 24, 2013, and become effective on March 24, 2014.

If you have any questions about this development or how OFCCP-enforced laws impact your business, please contact:

Nancy Cooper at ncooper@gsblaw.com or 503.553.3174

Lucy Bisognano at lbisognano@gsblaw.com or 206.816.1427