



New Affirmative Action Plan Regulations in Effect March 24, 2014

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On August 27, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) announced a final rule making changes to the regulations implementing Section 503 of the Rehabilitation Act and to the Vietnam Era Veterans' Readjustment Act (VEVRAA). The changes, which go into effect on March 24, 2014, are intended to further the DOL's goal of increasing the amount of individuals with disabilities (IWDs) and veterans in the workforce. Contractors with an affirmative action plan (AAP) already in place as of March 24, 2014 may delay compliance with the new obligations until the start of their next AAP cycle

Both Section 503 and VEVRAA prohibit federal contractors and subcontractors from discriminating in employment against either IWDs or veterans and require employers to take affirmative action to recruit, hire, promote, and retain these individuals. Following are some of the highlights of the rule changes and new obligations.

Self-Identification: The regulations now require contractors to invite job applicants to self-identify at the pre-offer stage, in addition to the post-offer self-identification that is already required. The Section 503 pre-offer invitation must be separate from application. Contractors are required to regularly invite all employees to voluntarily self-identify as an IWD (at least once every five years). The VEVRAA invitation may be included with application materials. Completed pre-offer and post-offer self-identification forms should be kept confidential in a separate file, not in the employee's personnel file.

Hiring Benchmark: The new regulations put in place new hiring benchmarks for contractors. Hiring benchmarks are not quotas; they are yardsticks against which contractors can measure the success of outreach and recruitment efforts. There will be no fines, penalties, or sanctions for not meeting the benchmarks. Under Section 503, the utilization goal is 7% for IWDs, which applies to each job group individually; however, for contractors with 100 employees or less, contractors may apply 7% to entire the workforce. Contractors must annually analyze and assess problem areas and establish specific, action-oriented programs to address any identified problems.

Under VEVRAA, the hiring benchmark is set by using the benchmark equal to the national percentage of veterans in the civilian labor force. This benchmark will be published annually by the OFCCP. In the alternative, an employer may establish its own benchmark by using data from the following sources: the percentage of veterans in the civilian labor force in Ohio over the preceding 3 years, the number of veterans over the previous 4 quarters who participated in Ohio's employment services delivery system (Ohio Means Jobs), the applicant and hiring ratio collected by the employer, the employer's assessment of its effectiveness of its outreach and recruiting efforts, and any other factors that might affect the number of qualified protected veterans.

Data Collection Requirements: Contractors are also subject to several new data collection requirements. Contractors are required to record the total number of IWD/veteran applicants and total number of applicants; and record the total number of IWD/veterans hired, total job openings, and total jobs filled (this information must be documented and updated annually). This data must be maintained for three years in order to assess outreach efforts.

A main focus of the rule changes is to force contractors to annually assess their outreach and recruiting efforts for IWDs and veterans while at the same time allowing the contractor the flexibility to choose and utilize activities that are best suited to their particular business. All outreach and recruitment activities should be documented to assess effectiveness.

The rule changes are too numerous to completely cover here. Additional information is available on the Department of Labor's website or you may contact Eastman & Smith Ltd. with any compliance questions you may have.

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