

Federal contractors should prepare for new hiring burdens to take effect in early 2014

On August 27, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) announced Final Rules establishing new regulations under Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act. Under the new regulations, likely to go into effect by March 2014, federal contractors and subcontractors will be required to adopt tangible hiring goals for individuals with disabilities and devise new hiring benchmarks for qualified military veterans.

The new regulations require federal contractors to establish a nationwide 7 percent utilization goal for individuals with disabilities across each job group within their workforces. Federal contractors and subcontractors with 100 or fewer employees must apply the utilization goal across their entire workforces.

Additionally, contractors will need to establish hiring benchmarks for protected veterans. Contractors will have a choice of adopting the national percentage of veterans in the workforce, which currently stands at 8 percent, or by developing their own benchmarks based on state-specific data and other factors relevant to the contractor's particular hiring circumstances. Deviations from the 8 percent benchmark will need to be explained during an audit.

The new regulations will require contractors to implement self-identification procedures for individuals who claim disability and veteran status. The final rules require contractors to solicit disability and veteran self-identification during the application process, the first time the OFCCP has mandated such pre-offer solicitation of disability information. The OFCCP denies that such pre-offer solicitations conflict with the Americans with Disabilities Act's prohibitions on pre-employment health inquiries, and, the Equal Employment Opportunity Commission has agreed in principle. Contractors must also solicit post-offer self-identification of disability or veteran status, to ensure they capture data applicants may have hesitated to provide during the pre-offer stage.

Contractors will be required to survey their current employees to self-identify as disabled every five years. The OFCCP has stated that it will provide an approved self-identification form, which will be available on its website.

Finally, the new regulations will require contractors to develop data collection practices that ensure separation from personnel files and medical files. The additional data that contractors must maintain include:

- The total number of job openings;
- The total number of applicants for all jobs;
- The total number of applicants who self-identified as a veteran or as disabled;
- The total number of veteran or disabled applicants who were hired; and
- The total number of applicants hired.

Segments of the contractor community have expressed concerns that these regulations will ultimately result in a quota system. Opponents of the new regulations, including the Associated General Contractors of America, argue that the OFCCP has created an expensive way to resolve a problem that current data suggests does not exist. The HR Policy Association has even threatened legal action. Should any significant decisions alter the current course of these regulations, Thompson Coburn will notify you immediately.

In preparation for these changes, we suggest conducting a self-audit to determine the extent to which current hiring practices satisfy the new goals and benchmarks. Specifically, contractors may want to examine both their quantitative and qualitative hiring practices, job requirements, and accommodations as they relate to the disabled. Conducting self-audits now will better prepare contractors to meet the new regulations when they take effect in March 2014.



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