



## OFCCP Issues Final Rules Regarding Job Opportunities for the Disabled and Protected Veterans

09.12.2013

BY: SARA B. RAFAL & LAURA D. WINDSOR

The Office of Federal Contract Compliance Programs (“OFCCP”) recently issued final rules to improve job opportunities for individuals with disabilities (“IWDs”) and protected veterans. The new rules will be effective 180 days after they are published in the Federal Register, which is expected to happen shortly. One section of the new rules revises the regulations that implement Section 503 of the Rehabilitation Act, as amended (“Section 503”), and another new rule revises the regulations that implement the Vietnam Era Veterans’ Readjustment Assistance Act, as amended (“VEVRA”). Section 503 prohibits federal contractors and subcontractors from discriminating in employment against IWDs and requires them to take affirmative action in employment with respect to these individuals. VEVRA prohibits federal contractors and subcontractors from discriminating in employment against protected veterans and requires them to take affirmative action in employment with respect to these individuals.

### Section 503 Changes

The new Section 503 rule imposes dramatically different requirements on federal contractors and subcontractors than the previous regulations. For the first time, the new rule establishes a numerical utilization goal for qualified IWDs of seven percent. Contractors will have similar obligations under Section 503 with respect to affirmative action plans as they currently have under Executive Order No. 11246 (which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires contractors to take affirmative action to eliminate barriers).

Under the new Section 503 rule, contractors must collect and maintain data regarding the recruiting and hiring of IWDs. Contractors are required to ask applicants to voluntarily self-identify whether they are disabled during the application process. If an applicant does not self-identify, a contractor should make a visual identification based on either clearly observed disabilities (i.e., an applicant who is blind or wheelchair-bound) or based on disclosure made by the applicant during the application process (such as, if the applicant requests an accommodation for a disability during the hiring process). In addition to the pre-hire stage, federal contractors must ask employees to voluntarily self-identify IWD status at the

following times: (1) post-offer and prior to first day of work; (2) during the first plan year following the implementation of the new regulations; and (3) every five years thereafter. Finally, on an annual basis, contractors must remind all employees that they can voluntarily update their disability status at any time.

## **VEVRA Changes**

For the first time, the new VEVRA rule establishes an annual benchmark for the hiring of protected veterans. Contractors may choose to establish a benchmark equal to the national percentage of veterans in the civilian labor force, which will be published and updated annually by OFCCP. Alternatively, contractors may establish their own benchmarks using certain data from the Bureau of Labor Statistics (BLS) and Veterans' Employment and Training Service/Employment and Training Administration (VETS/ETA) that will also be published by OFCCP, as well other factors that reflect the contractor's unique hiring circumstances. Contractors must collect and maintain data regarding the application and hiring of protected veterans. Contractors must ask applicants to self-identify as protected veterans at both the pre-offer and post-offer phases of the application process.

Federal contractors should start taking proactive action now to audit their recruiting and hiring practices with respect to individuals with disabilities and veterans. In addition, contractors should review and update their data collection methods for applicants and new hires; promotion and training practices and recordkeeping; and record retention policies and practices in order to comply with the new rules.

## **Related People**

- Laura D. Windsor – 804.420.6466 – lwindsor@williamsmullen.com

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