

Action Required by Federal Contractors and Subcontractors to Comply with New Regulations Related to Individuals with Disabilities and Protected Veterans

by Heidi N. Hartman

March 24, 2014, is the effective date for the U.S. Department of Labor's Office of Federal Contract Compliance Programs' (OFCCP) new rules which modify the nondiscrimination requirements and increase the affirmative action requirements for federal contractors and subcontractors under Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Among other things, federal contractors and subcontractors will be required under these rules to begin:

- Collecting and maintaining more data related to the hiring and employment of individuals with disabilities and protected veterans;
- Establishing a 7% "utilization goal" for individuals with disabilities;
- Establishing specific "hiring benchmarks" for protected veterans;
- Increasing the level and quality of outreach efforts designed to encourage individuals with disabilities and protected veterans to apply for open positions; and
- Conducting a self-assessment of these efforts, making changes when the efforts are ineffective and maintaining detailed records related to this process.

While federal contractors and subcontractors who have written Affirmative Action Plans developed under the former rules and in place as of March 2014 are permitted to keep their current plan in place until the next plan initiation date, there are several other requirements that federal contractors and subcontractors must comply with immediately beginning on March 24, 2014. If your company is a federal contractor or subcontractor, you should make sure that you now are in compliance with the following requirements:

Inclusion of Equal Employment Opportunity Clauses in contracts and subcontracts (including purchase orders) that are modified, renewed or extended after March 24, 2014. In order to comply with the rules under Section 503, contractors and subcontractors must use the following language, verbatim, and in **bold** text, in contracts worth \$10,000 or more:

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758

- **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

In order to comply with the VEVRAA rules, contractors and subcontractors must use the following language, verbatim, and in **bold** text, in contracts worth \$100,000 or more:

- **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

If both of the above apply, the following clause, which includes all the required references and minimizes the language, can be used:

- **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

Job listings. Similar to the previous regulations, the new regulations require contractors and subcontractors to provide job listings to state employment service delivery systems. Each contractor and subcontractor must say on the listing that it is a federal contractor, by noting, for example, “VEVRAA Federal Contractor,” and indicate that it desires priority referrals from the state of protected veterans for job openings in the state. Referrals can include minorities, women, protected veterans and possibly individuals with disabilities, especially disabled veterans. In the listing, the contractor also must identify and provide contact information for the contractor official responsible for hiring at each hiring location.

Outreach and recruitment. The VEVRAA and Section 503 regulations also require contractors to take appropriate outreach and positive recruitment activities, to document these efforts and undergo an annual written assessment of their effectiveness. A list of outreach resources for veterans and individuals with disabilities is available on the OFCCP website.

Advertisements or EEO tag lines should be revised to include the following language: [Company Name] is an EEO/AA Employer M/F/Disability/Vet. This language should be included on all communications to which the OFCCP regulations apply, including on the company website.

Notice to labor unions (if applicable). If you have a union, the company should send a notice to the union regarding the company’s compliance. Language like the following can be used:

- [Company Name] is bound by the terms of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and VEVRAA, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, minorities, women, individuals with physical or mental disabilities or protected veterans. Therefore, in accordance with 41 C.F.R. § 60-300.5(a)(12) and 41 C.F.R. § 60-741.5(a)(5), this letter shall serve as written notification to your organization of [Company]’s obligations thereunder, and to enlist your efforts to assist [Company] in fulfilling these regulatory obligations.

This notice is only required to be sent once as long as the employer/union does not change, or it can be sent on an annual basis if your company prefers.

Bulletin boards. Federal contractors and subcontractors must post required notices of employees' rights in locations that are accessible to employees who are vision impaired, such as in Braille and/or in large print, and to individuals who use wheelchairs, such as lower on the bulletin board. The postings for applicants also should be accessible. The required postings also can be made accessible to employees through electronic transmission, or on the company's intranet, as long as all employees have access to a computer and the intranet.

If your company is a federal contractor or subcontractor with a written Affirmative Action Plan that begins April 2014 or after, compliance with the affirmative action requirements will be immediately required. The affirmative action requirements include invitations to self-identify both pre- and post-offer, invitation to self-identify to all employees during the first year, data collection and analysis, and utilization goals for the disabled and hiring benchmarks for protected veterans using the new definitions included in the regulations. We will follow with another article addressing the requirements in detail.

The OFCCP has an active enforcement agenda and projects that it will conduct 4,110 audits in 2014 and 4,290 audits in 2015. With the possibility of audits looming, you should devote time to ensuring compliance now. Please contact your experienced employment counsel at Eastman & Smith Ltd. with questions about OFCCP compliance.

If you have any questions regarding this or any other labor and employment law issue, please contact [Heidi N. Hartman](mailto:Heidi.N.Hartman@eastmansmith.com) or visit our web site at www.eastmansmith.com.

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