



New Rules on Disability Inquiries

These regulations could be game-changers for federal contractors and subcontractors.

Significant changes are on the horizon for employers with construction, supply and service contracts or subcontracts with the federal government.

Starting on March 24, new rules amending the nondiscrimination and affirmative-action provisions of both the Vietnam Era Veterans Readjustment and Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act will take effect.

The new rules represent an aggressive move by the Office of Federal Contract Compliance Programs (OFCCP) and will require federal contractors and subcontractors to ask applicants and current employees whether they are individuals with disabilities. Such an inquiry is otherwise prohibited by the Americans with Disabilities Act.

What Is Changing?

The rules also impose significant new recordkeeping obligations on federal contractors and subcontractors, set high placement goals and hiring benchmarks for veterans and individuals with disabilities, and authorize the OFCCP to obtain more contractor information during compliance reviews. These new rules apply to supply, service and construction contractors alike.

The most burdensome sections of the new rules will be phased in for many contractors. For contractors with an Affirmative Action Plan year that predates the effective date of the rules on March 24, the AAP-related portions of the new rules will not be required until the following AAP year. This includes the goal-setting/benchmarking and self-identification provisions in Subpart C of the new rules. The nondiscrimination, enforcement and recordkeeping provisions of the rules, in Subparts A, B, D and E, apply to all contractors beginning on March 24.

Despite the partial phase-in, contractors should begin today to consider how they will need to modify their existing human resource information and hiring systems to capture new data on disability and veteran status. Because of conflicts between the ADA and these new rules, however, early implementation is not recommended.

Here are some of the significant provisions of the new rules.

Vietnam Era Veterans Readjustment and Assistance Act (VEVRAA)

- » Federal contract or subcontract must meet or exceed \$100,000 and contractor must have 50 or more employees for most sections of the new rules to apply.
- » Introduces a benchmark of 8 percent veteran employment.
- » Contractors must give a pre-offer invitation to self-identify as a “protected

veteran.” The OFCCP has issued a model form for these invitations.

- » Post-offer invitation to self-identify in specific veteran categories is still required. (Again, the OFCCP has a model form.)
- » No self-identification of current employees will be required.

Section 503 of the Rehabilitation Act

- » Contract or subcontract must meet or exceed \$50,000 and contractor must have 50 or more employees for most sections of the new rules to apply.
- » Introduces a placement goal of 7 percent for individuals with a disability (IWD).
- » Contractors must give a pre-offer invitation to self-identify as IWD using an official form from OFCCP. A post-offer invitation is also required.
- » All employees must be invited to self-identify as IWD every five years. Initial invitation must take place some time during the first year the rules are in place.

In addition, several OFCCP compliance-related forms have changed, and many of the model forms have been promulgated by OFCCP.

How to React

To ensure compliance with the new rules, consider taking the following steps:

- 1 Regularly evaluate the status of any government contracts or subcontracts to determine whether there is a contract or subcontract equal to or greater than the \$50,000/\$100,000 thresholds.
- 2 If a covered federal contractor or subcontractor, review the phase-in guidelines to determine whether the new AAP rules will apply for the 2014 or 2015 AAP year.
- 3 Begin to plan for increased human resources information system recordkeeping responsibilities associated with the new rules, including tracking the veteran and disability status of applicants and disability status of current employees. It is strongly advised that employers postpone asking about the disability status of applicants and employees until the new rules are effective on March 24. ■

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