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Important Upcoming To-Do List for Federal Contractors: Certify AAP Compliance by June 29 and Implement Revised Disability Self-Identification Form by July 25

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Federal contractors should take note of two recent developments from the US Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). First, the agency's affirmative action plan (AAP) certification portal is open for this certification year. Contractors have until June 29, 2023, to certify in the portal that they are meeting the requirement to develop and maintain an AAP for each AAP establishment. Second, the agency recently issued a revised Voluntary Self-Identification of Disability Form, which contractors must implement by July 25, 2023.

Certification of AAP compliance

As we reported in March 2022, contractors who employ 50 or more employees and have a single federal contract or subcontract of $50,000 or more must certify whether they have developed and maintained an AAP for each establishment and/or functional or business unit that they currently maintain, under the Rehabilitation Act. In addition, new federal contractors must develop an AAP within 120 days of entering into a federal contract or subcontract.

Contractors must choose one of three certification statuses in the OFCCP Contractor Portal, which opened for 2023 certifications on March 31:

1. The entity has developed and maintained AAPs for each establishment and/or functional or business unit.
2. The entity has been party to a qualifying federal contract or subcontract for 120 days or more, and it has not developed and maintained an AAP at each establishment.
3. The entity became a covered federal contractor or subcontractor within the past 120 days and has not yet developed AAPs for each establishment.

Contractors selecting the third option have 90 days from the development of their AAPs to access the portal and update their certification. The OFCCP does not require that contractors upload their AAPs to the portal. Notably for this year, contractors now must provide the coverage period for their AAPs.

It is important to note that contractors must have a current AAP in place at the time of the certification – they cannot certify compliance if their most recent AAP has since expired.

Revised Voluntary Self-Identification of Disability Form

On April 25, 2023, the OFCCP issued a revised Voluntary Self-Identification of Disability Form to reflect "preferred language for disabilities and to include additional examples of disabilities." This revised form expires on April 30, 2026.

Federal contractors and subcontractors are required to invite each job applicant and employee to self-identify as an individual with a disability using the OFCCP's self-identification form, and they may not vary from this content. The form must be provided to applicants at the pre-offer and post-offer stages, and to employees at least every five years. In addition, at least once during this five-year period, employers must remind employees that they may voluntarily update their disability status at any time. The information gathered by the form responses can be

used to track progress toward utilization goals, assess outreach and recruitment efforts, and improve practices related to placement, retention and promotion of individuals with disabilities. Contractors must keep all self-identification information confidential and cannot compel individuals to self-identify.

Notably, the revised form makes changes in three areas, as outlined below.

Additional disabilities

The form includes several new categories of disabilities, such as substance use disorder, neurodivergence, partial or complete paralysis, short stature, mobility impairment, and disfigurement.

Existing disabilities

The form updates language describing existing disabilities. For example, “cancer” now includes past cancer, and “psychiatric conditions” has been eliminated in favor of “mental health conditions.”

Simplified explanatory introduction and response language

The introductory statement has been simplified to state the purpose and use of the form more plainly. The available responses also have been simplified. For example, the prior affirmative response of “Yes, I have a disability, or have a history/record of having a disability,” has been changed to “Yes, I have a disability, or have had one in the past.”

Next steps

Contractors should certify their AAP compliance before June 29 and replace their voluntary self-identification forms with the OFCCP’s revised version by July 25. Contractors who did not certify AAP compliance last year should heed particular caution, as the OFCCP noted in 2022 that such contractors will be more likely to appear on the agency’s scheduling list and thus more likely to be selected for audit.

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