

May 4, 2011

On April 26, 2011, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") published proposed regulations that would impose additional affirmative action obligations on federal government contractors under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). If finalized, the regulations would require contractors, among other things, to establish annual hiring benchmarks to track the effectiveness of their affirmative action programs, to request disclosure information from applicants, and to collect data concerning job referrals.

Changes to affirmative action obligations

The proposed rule would make what OFCCP characterizes as "*significant, substantive*" changes to contractors' affirmative action obligations for covered veterans, including those with disabilities. The regulations would require contractors to invite applicants to self-identify *prior to* an offer of employment. The regulations would also clarify the requirement that contractors "periodically" review their hiring and accommodation practices. Under the proposed rule, contractors would be required to take the following steps on an annual basis: (1) identify vacancies for which protected veterans were considered; (2) explain why any protected veterans were rejected; (3) describe any accommodations that were considered for protected veterans, but ultimately rejected; and (4) describe the nature of any accommodations that were provided.

Under the proposed rule, contractors would also be required to engage in the following *outreach and recruitment efforts* for veterans, including those with disabilities:

- Enter into a linkage agreement with the Local Veterans' Employment Representative;
- Enter into a linkage agreement with at least one of several listed recruitment organizations and agencies, which now includes the Defense Transition Assistance Program (TAP); and
- Consult the Employer Resources section of the National Resource Directory.

Each year, contractors would be required to analyze the effectiveness of their *outreach efforts* against these established benchmarks. In undertaking this analysis, contractors would be required to maintain and update data on the total number of referrals, the number of priority referrals of veterans, and the ratio between them. The same data would be required for applicants, hires, and the total number of outstanding and filled job openings.

Changes to job listing procedures

Under the existing regulations, contractors are required to list all open positions with local and state employment delivery services. The proposed rule clarifies that, to satisfy the veterans job listing requirement, contractors must provide information to the employment service "in the manner that the employment service requires." The contractor must also provide to the employment service notice of its status as a federal contractor, provide contact information for the hiring official at each location in the state, and request priority referrals of protected veterans.

Changes to accommodation obligation

To qualify for an accommodation, an applicant or employee must be able to perform, with reasonable accommodation, the essential functions of the job. Contractors have an obligation to provide reasonable accommodations unless they would impose an undue burden. The proposed regulations recognize that, in situations where a contractor claims an undue burden, if an employee provides his own accommodation and/or pays for a portion of the costs of an accommodation, the employee does not lose his status as a *qualified disabled veteran*.

Our attorneys have deep experience in OFCCP issues. If you have any questions about this *Alert* or OFCCP questions generally, please contact one of the attorneys listed above.

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