

LABOR & EMPLOYMENT

ALERT

OFCCP ANNOUNCES FINAL RULES REQUIRING FEDERAL CONTRACTORS AND SUBCONTRACTORS TO ADOPT HIRING GOALS FOR INDIVIDUALS WITH DISABILITIES AND HIRING BENCHMARKS FOR VETERANS

By Kenneth A. Rosenberg

On August 27, 2013, the U.S. Department of Labor Office of Federal Contract Compliance Programs (OFCCP) announced it will be publishing final regulations within the next 10 days that will require federal contractors and subcontractors to adopt quantifiable hiring goals for individuals with disabilities and hiring benchmarks for military veterans. The OFCCP indicated the final regulations will become effective 180 days after publication.

The OFCCP stated that under the new rules for Section 503 of the Rehabilitation Act (Section 503), federal contractors and subcontractors will be required to establish a nationwide seven-percent utilization goal for disabled individuals in each job group of its workforce. However, if a contractor employs less than 100 employees, the seven-percent goal will be applied to the contractor's entire workforce.

Additionally, the OFCCP stated that under the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) rules, federal contractors and subcontractors will be required to establish hiring benchmarks for veterans based on either "the current national percentage of veterans in the workforce," which currently stands at eight percent, or "their own benchmark based on the best available data."

Importantly, the OFCCP emphasized that these goals and benchmarks are aspirational and are neither ceilings nor quotas.

The OFCCP also stated that both sets of final rules contain a number of new data collection, outreach, recruitment and self-identification requirements regarding individuals with disabilities and veterans.

In particular, the OFCCP stated that under the new final rules, contractors will now be required to collect and maintain the following records for three years:

- Total number of job openings and jobs filled;
- Total number of job applicants for all jobs and the number of applicants known to be veterans or to have disabilities; and
- Total number of applicants hired and the total number of individuals with disabilities and veterans hired.

It also advised that under both sets of final rules, contractors will be required to invite job applicants to self-identify either as protected veterans or as individuals with disabilities, or both, at the pre-offer and post-offer phases of the employment process.

The OFCCP also advised that under the Section 503 final rule, contractors will be required to invite current employees to self-identify as an individual with a disability every five years.

Finally, the OFCCP indicated that the VEVRAA final rule provides clarification as to contractors' job-listing requirements with the appropriate state or local job services and states that contractors must provide job information in a "manner and format" permitted by those services.

Since these new OFCCP final regulations are "game changers," all federal contractors and subcontractors should immediately commence reviewing their: (1) workforce data to determine whether they are in compliance with these new goals for disabled individuals and benchmarks for veterans, and (2) data collection and retention policies to determine whether changes need to be made regarding affirmative action record-keeping.

Where federal contractors or subcontractors are unsure of their obligations under these new OFCCP regulations, they should immediately contact legal counsel for guidance as failing to do so could result in costly audits, debarment proceedings and/or backpay awards.

For more information about this alert or if you have any questions or concerns, please contact Kenneth A. Rosenberg at 973.994.7510 or krosenberg@foxrothschild.com or any member of Fox Rothschild's Labor & Employment Department.



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