Office of Federal Contract Compliance Programs

The New Section 503 of the Rehabilitation Act & VEVRAA Regulations

Laws OFCCP Enforces

- Executive Order 11246, as amended
  - Implementing regulations at 41 CFR Parts 60-1 through 60-5
- Section 503 of the Rehabilitation Act of 1973, as amended
  - Implementing regulations at 41 CFR Parts 60-741 and 60-742
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 4212)
  - Implementing regulations at 41 CFR Part 60-300

Overview

- Background
- Effective Date
- Key Changes to the Regulations
- Additional Information

Section 503

Section 503 prohibits employment discrimination on the basis of disability by Federal government contractors and subcontractors. Section 503 also requires that covered contractors take affirmative action to employ and advance in employment qualified individuals with disabilities.

OFCCP Mission Statement

The purpose of the Office of Federal Contract Compliance Programs is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.

VEVRAA

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), prohibits employment discrimination against protected veterans by covered Federal contractors and subcontractors, and requires that they take affirmative action to employ and advance in employment these veterans.
Why Change?

- Framework unchanged since the 1970's
- Unemployment rate of Individuals with Disabilities (IWDs) remains significantly higher.
- To implement changes made by the ADA Amendments Act (ADAAA) of 2008.
- Many veterans face substantial obstacles in finding employment in the civilian workforce.
- Revisions are intended to enhance contractor accountability for compliance and ultimately increase employment opportunities.

Equal Opportunity Clause

Providing Notices to Applicants & Employees
41 CFR 60-741.5
- Contractor can satisfy its posting obligation of notices of rights and obligations electronically for employees with telework arrangements or for those who do not work at the contractor's physical location.
- If contractor uses electronic or internet-based application processes, an electronic notice of employee rights and contractor obligations must be "conspicuously stored with, or as part of, the electronic application."

General Information

- Effective on March 24, 2014
- Phased in compliance of some provisions
- OFCCP's Website: WWW.dol.gov/OFCCP
- Help Desk: (800) 397-6261
  TTY: (877) 889-5627

Contractor Solicitations and Advertisements
41 CFR 60-741.5
New paragraph requires contractors to state in job solicitations and advertisements that it is an equal opportunity employer of individuals with disabilities.

Definitions

41 CFR 60-741.2
Revises definitions relating to "disability": including "major life activities," "major bodily functions," "regarded as" having a disability and "substantially limits" in accordance with changes made by the ADAAA.

Incorporating the EO Clause by Reference
41 CFR 60-741.5 (d)
Requires citation to EO Clause and the inclusion of specific mandatory language:

"This contractor and subcontractor shall abide by the requirements of 41 CFR 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."
Prohibitions

41 CFR 60-741.21
- Adds that reasonable accommodation need not be provided to individuals who are only "regarded as" having a disability, (6)(e)
- Adds that use of qualification standards, employment tests, or other selection criteria that are "based on an individual's uncorrected vision" are prohibited unless job-related and consistent with business necessity, (7)(ii)
- Adds that reasonable accommodation extends to contractors' use of electronic or online job application systems. Contractors must ensure that IWDs who cannot use the system have equal opportunity to apply and be considered for all jobs.

Data Collection Analysis

41 CFR 60-741.44(k)
- Requires contractors to document and update annually:
  - Number of IWD applicants;
  - Total number of applicants for all jobs;
  - Total number of job openings and jobs filled;
  - Number of IWDs hired; and
  - Total number of applicants hired.
- Maintain these records for 3 years.

Invitation to Self-Identify

41 CFR 60-741.42
- Pre-offer: invitation to self-identify as an IWD.
- Post-offer: invitation to self-identify as IWD.
- Employees: invitation to all employees in first year; and every five years thereafter; at least one reminder in intervening years.
- All invitations use form posted on OFCCP Web site.

AAP Elements

41 CFR 60-741.45
Establishes a nationwide 7% utilization goal.
- Apply goal to each job group annually, except if 100 or fewer employees, may apply goal to entire workforce.
- If goal not met, determine if impediments to EEO exist; take steps to correct any identified problems.
- Failure to meet goal is NOT a violation & will NOT carry penalties.

AAP Elements

Outreach and Recruitment
41 CFR 60-741.44(f)
- Requires outreach and recruitment; provides examples; and retains contractor flexibility.
- Requires documentation of activities and annual written assessment of the effectiveness of each of its activities.
- If totality of efforts not effective, must identify and implement alternative efforts.
- Retain these records for 3 years.

Key Changes

Rescission of 41 CFR Part 60-250
- Rescinds Part 60-250 in its entirety.
- Provision added to permit any "pre-JVA veteran" who would have been covered by Part 250 (but not by Part 300) to file discrimination and retaliation complaints.
Definitions

41 CFR 60-300.2

- Defines "protected veteran" as any veteran protected by VEVRAA.
- Replaces "other protected veteran" with "active duty wartime or campaign badge veteran."

Equal Opportunity Clause

Contractor Solicitations and Advertisements
41 CFR 60-300.5

- New paragraph requires contractors to state in job solicitations and advertisements that it is an equal opportunity employer of protected veterans and individuals with disabilities.

Equal Opportunity Clause

Mandatory Job Listing
(41 CFR 60-300.5)

Requires that contractors provide job listings "in a manner or format permitted by the appropriate employment service delivery system [ESDS]."

Information Provided to State Employment Services

Contractors must provide additional information including status as a federal contractor, contact information, and its request for priority referrals.

Equal Opportunity Clause

Providing Notices to Applicants and Employees
41 CFR 60-300.5

- Contractor can satisfy its posting obligation electronically for employees with telework arrangements or for those who do not work at the contractor's physical location.
- If contractor uses electronic or internet-based application processes, an electronic notice of employee rights and contractor obligations must be "conspicuously stored with, or as part of, the electronic application."

Equal Opportunity Clause

VEVRAA: Self-Identification

41 CFR 60-300.42

- The revised VEVRAA regulation eliminates the separate inquiry regarding disabled vet status.
- Pre-offer: invitation to self-identify as a protected vet.
- Post-offer: invitation to self-identify specific veteran category(ies) that the contractor is required to report to VETS on.
- Model invitations contractors may use in Appendix B.
Timing of Pre-Offer Inquiries

- Ask applicants to self-identify when applicants are asked for other demographic information under EO 11246.
- Harmonizes VEVRAA with the EO 11246 Internet Applicant Rule.
- "Basic qualification" screens may not screen out on the basis of disability unless job-related and consistent with business necessity.

Benchmarks

Contractors Must Set an Annual Hiring Benchmark
41 CFR 60-300.45

- Is the benchmark a goal?
- Two methodologies for setting the benchmark
  - National percentage of veterans in the civilian labor force.
  - OR
  - Establish an individual benchmark using five-factors identified in the revised regulations.
- 3 year recordkeeping requirement

AAP Elements

Outreach and Recruitment 41 CFR 60-300.44 (f)

- Requires outreach and recruitment, provides examples, and retains contractor flexibility.
- Requires documentation of activities and annual written assessment of the effectiveness of each of its activities.
- If totality of efforts not effective, must identify and implement alternative efforts.
- Retain these records for 3 years.

Additional Information

- OFCCP's Web Site:
  - www.dol.gov/ofccp/regs/compliance/section503.htm
  - www.dol.gov/ofccp/regs/compliance/VEVRAA.htm
- New Regulations took effect March 24, 2014
- Frequently Asked Questions
- Contractor Resources
- Side by Side Charts of 503 & VEVRAA Changes
- Webinar Slides and Recordings

AAP Elements

Data Collection Analysis 41 CFR 60-300.44(k)

- Requires contractors to document and update annually:
  - Number of protected veteran applicants
  - Total number of applicants for all jobs
  - Total number of job openings and jobs filled
  - Number of protected veterans hired
  - Total number of applicants hired
- Maintain these records for 3 years.

Contact Information

- Help Desk: (800) 397-6261
  TTY: (877) 889-5627
- Email: ofccp-public@dol.gov
- Division of Policy, Regulations Line:
  (202) 693-0103