

Federal Contractors – Protected Veterans and Disabled Individuals Need Love Too....

Labor & Employment Law Update

By Heather Bailey on February 6, 2015

Many federal contractors had their 2014 annual affirmative action plans in place prior to the March 24, 2014 effective date for contractors to begin analyzing and maintaining a hiring benchmark for protected veterans, as well as a utilization goal for disabled individuals. However, the time is nearing to update those plans and be compliant with the new regulations. What does this mean for you?

Veterans

If you haven't already started, you should begin asking your **applicants** to voluntarily self-identify whether they are a protected veteran or not (you do not ask them to identify the specific categories of veterans at this stage). This is in addition to the existing requirement to then ask the person to self-identify once being given a job offer (which is where you can ask the specific categories). Moreover, you should poll your current employees in anticipation of creating your upcoming affirmative action plan for 2015. This is because you now have to analyze the amount of protected veterans you have in your workforce and if your outreach to veterans is effective in recruiting and hiring veterans. The regulations give you two options: you can use the hiring benchmark posted by the OFCCP in its Benchmark Database or you can create your own following five factors such as applicant hiring ratios over the past year and the number of veterans in the previous four quarters who participated in the employment service delivery system in your state which is also posted in the Benchmark Database by the OFCCP. Unless you have a compelling reason to create your own, the one-size fits all location benchmark can be used to simplify your analysis. Then, you perform an analysis just like you do for your females and minorities to determine whether you meet the benchmark or not.

The good news here: you are not required to apply the benchmark to each specific job group – you can benchmark your company as a whole. Lastly, your VETS-100A reports got a new name. Come August 2015, you'll be looking for the VETS-4212 form to file. Oh, and don't forget to add "veteran status" to your EEO clauses!

Disabled Individuals

You need to start asking your **applicants** to voluntarily self-identify if they are disabled or not. I know, this goes against everything we learned in employment law 101, but it's true. Do not reinvent the wheel and go rogue – use the actual self-id form created by the OFCCP, which can be found here:

http://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/VoluntarySelf-ID_CC-305_ENG_JRF_QA_508c.pdf. Once offered a job, ask them to voluntarily self-identify again using the same form. If you haven't already, poll your current workforce using the same form – and then do so every 5 years for current employees. The reasoning behind this is that some people may not want to identify themselves as having a disability prior to being offered a job, as well as, employees may develop disabilities over the course of time from the last time they were asked to self-identify.

Here, your recording efforts are a yard stick to see if you reached the aspirational national utilization goal of 7% of disabled individuals. Again, you can focus on your entire workforce in your analysis of meeting this goal in your updated plan. This is not to be used as a quota or a ceiling but a gauge to see if your recruitment efforts are once again effective.

It's best to seek guidance from your employment labor counsel to ensure you are in compliance with all affirmative action requirements. Waiting until the OFCCP audit letter comes may be too late.

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