

The Ever-expanding Workplace Obligations of Federal Contractors

Each year, covered federal contractors and subcontractors perform a ritual known to many yet loved by few – the completion of another set of affirmative action plans (AAPs). The complexity and scope of these plans often dwarf all other affirmative action compliance tasks, unless, of course, your establishment is being audited by the Office of Federal Contract Compliance Programs (OFCCP). But there is more to affirmative action than AAPs and audits.

The three sources of affirmative action obligations, Executive Order 11246 (race and sex), Section 503 of the Rehabilitation Act of 1973 (disability), and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) (protected veteran status), require contractors to undertake additional obligations throughout the year. Some of these obligations tie in directly with the written AAP, while others are completely independent of it. And, significantly, many will apply even to construction contractors and those with smaller contracts who are not required to complete annual AAPs.¹ This memo briefly outlines some new non-AAP obligations and concludes with a list of prospective obligations that are likely to be implemented in the final two years of the Obama administration.

NEW NON-AAP OBLIGATIONS

1. Nondiscrimination on the Basis of Sexual Orientation and Gender Identity

Effective April 8, 2015, contractors must add sexual orientation and gender identity to the list of protected classes referenced in the mandatory EEO Clause of their covered federal contracts and subcontracts. Consequently, federal contractors who have a contract entered or modified after that date may not discriminate against individuals in any employment action on the basis of sexual orientation or gender identity.

2. Minimum Wage of \$10.10

Contractors with a new covered federal contract entered after January 1, 2015 will have to pay a new minimum wage of \$10.10 per hour to eligible employees working directly on, or in connection with, the contracts. Despite the publicity that surrounded this new executive order, it only applies to a subset of the federal contractor universe, including those with procurement

¹ Unless otherwise noted, the non-AAP requirements of Executive Order 11246 apply to contractors who have a federal contract or contracts totaling \$10,000. The non-AAP requirements of Section 503 apply to contractors that have at least one federal contract of \$10,000 or more, and the VEVRAA obligations apply to those with at least one federal contract of \$100,000 or more. The AAP dollar thresholds are \$50,000 for the Executive Order and Section 503, and all three sources require at least 50 employees before an AAP will be required.

contracts for construction under the Davis Bacon Act, service contracts covered by the Service Contract Act, and federal concessions contracts.

3. **Streamlined Veterans Self-identification Reporting**

The OFCCP's VEVRAA regulations require covered contractors to ask applicants to self-identify as a protected veteran twice: once at the application stage, and again after an offer of employment has been made. Effective October 27, 2014, OFCCP actually reduced the paperwork burden on covered contractors by lessening the amount of specificity required in the second invitation to self-identify. This is consistent with the requirements of the new 2015 form Vets-4212 (replacing the Vets-100A form), on which employers will no longer have to break down their veteran workforce by the separate categories of protected veteran status.

ADDITIONAL OBLIGATIONS ON THE HORIZON

On January 28, 2015, OFCCP issued a notice of proposed rulemaking (NPRM) supposedly clarifying outdated sex discrimination guidelines. While most of the changes are unremarkable, some seem to clearly impose new non-AAP burdens. Most notably, perhaps, is a requirement that federal contractors provide accommodations for employees affected by pregnancy and ensure that childcare leave is available equally for men and women. Earlier, in September 2014, OFCCP issued an NPRM that would prohibit federal contractors from discriminating or retaliating against any employee or applicant who discloses or discusses compensation information. Similarly, in August 2014, OFCCP issued an NPRM that would require certain federal contractors to complete an annual Equal Pay Report. This would require disclosure of anonymized, aggregated compensation data in an annual report. The comment periods on these last two proposed rules have long since closed, and there has been no hint as to when, or whether, any of the three proposed rules will become final.



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