



OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS AFFIRMATIVE ACTION RULES

On Sept. 24, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issued two final rules revising section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and section 503 of the Rehabilitation Act, which requires federal contractors and subcontractors to maintain affirmative action and nondiscrimination plans.

For construction contractors, there are new provisions in the rules requiring written documentation and tracking of workforce statistics to determine whether the percentage of protected employees meets affirmative action requirements for federal contracts.

RULE: Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) **STATUS: Final Rule** **EFFECTIVE DATE: March 24, 2014***

APPLIES TO:

- Contractors with a single federal contract of \$100,000 or more entered into on or after Dec. 1, 2003, and have 50 or more employees (If the contract was entered into before Dec. 1, 2003, different size requirements apply; please refer to the regulatory text.)

OVERVIEW:

- Contractors must set a quantifiable benchmark for hiring protected veterans.
 - Contractors can choose the national percentage of veterans in the workforce (currently 8 percent) OR
 - Use a combination of factors using the best available data to come up with a benchmark.
 - Contractors must conduct an annual review and create a plan/program to address any problems identified.
- Contractors must conduct data analysis.
 - Analysis must include the number of veterans hired, the number of self-identified veterans who applied, etc.
- Contractors are required to maintain relevant records for three years.
- Prime contractors must include specific language in subcontracts alerting subcontractors to their responsibilities as federal contractors (OFCCP will provide the language).
- Contractors must invite applicants to voluntarily self-identify as a veteran in the pre-offer stage of the hiring process; this is in addition to inviting applicants to self-identify after receiving the job offer.
- Contractors must list their job openings with the appropriate state employment service agency in a format that is suitable for the agency. If the state agency cannot receive job posting by mass mail distribution, then the contractor must ensure its jobs are being transmitted in the agency's preferred format.
- The OFCCP can extend the temporal scope of desk audits beyond the period set forth in the scheduling letter if the agency deems it necessary to carry out investigations of potential violations under the veterans rule.

RESOURCES: OFCCP VEVRAA Rule Page: www.dol.gov/ofccp/VEVRAARule

RULE: Section 503 of the Rehabilitation Act (Individuals with Disabilities)

STATUS: Final Rule **EFFECTIVE DATE:** March 24, 2014*

APPLIES TO:

- Nondiscrimination and general affirmative action requirements—All government contractors with contracts or subcontracts in excess of \$10,000 for the purchase, sale, or use of personal property or nonpersonal services (including construction).
- Affirmative action program requirements—Contractors with a federal contract or subcontract of \$50,000 or more and 50 or more employees.

OVERVIEW:

- Establishes a 7 percent utilization goal for individuals with disabilities.
 - Utilization goal applies at a job group level for contractors with more than 100 employees; applies to the entire workforce for contractors that have 100 or fewer employees.
 - Contractors must conduct an annual utilization analysis and create a plan/program to address any problems identified in the analysis.
- Contractors must conduct very significant new data analysis.
 - Analysis must include the number of individuals with disabilities hired, the number of self-identified individuals with disabilities who applied, etc.
 - Where the data shows the 7 percent utilization goal has not been met, then contractors must take steps to determine whether and where impediments to equal employment opportunity exist, including an assessment of personnel processes, an evaluation of outreach and recruitment efforts, and the results of the affirmation action program audit.
- Contractors are required to maintain relevant records for three years.
- Prime contractors must include specific language in subcontracts alerting subcontractors to their responsibilities as federal contractors (OFCCP will provide the language).
- Contractors must invite applicants to voluntarily self-identify as an individual with a disability in the pre-offer stage of the hiring process. This is in addition to inviting applicants to self-identify after receiving the job offer.
 - Contractors should not begin inviting applicants to self-identify as an individual with a disability (including disabled veteran status) in the pre-offer stage of the hiring process before the effective date of the rule, as this might result in a violation.
- Contractors must invite incumbent employees to voluntarily self-identify on a regular basis.
 - Within the first year after the effective date, contractors must invite employees to voluntarily self-identify as an individual with a disability. This must be done every five years thereafter. Contractors must also remind employees at least once between the five-year resurvey that they can voluntarily update their disability status information.
- The OFCCP can extend the temporal scope of desk audits beyond the period set forth in the scheduling letter if the agency deems it necessary to carry out investigations of potential violations under the individuals with disabilities rule.

RESOURCES: OFCCP Section 503 Rule Page: www.dol.gov/ofccp/503Rule

***COMPLIANCE NOTE:** Contractors with an Affirmative Action Program (AAP) in place on the Final Rule's effective date may maintain that AAP until the end of their AAP year and delay their compliance with the AAP requirements of Subpart C of the Final Rule until the start of their next AAP cycle. In addition, contractors are reminded that they must comply with the other requirements of the Final Rule, in subparts A, B, D and E, by the effective date.

This information is intended for informational purposes only, and does not constitute legal advice or opinion. More information on OFCCP's new rules can be found at OFCCP's website. ABC recommends that employers consult with experienced legal counsel in all federal contracting matters.