

Summary of the Final Rules on Affirmative Action for Veterans & Individuals with Disabilities

On August 27, 2013, the Office of Federal Contract Compliance Programs (OFCCP) announced the final rules on affirmative action for protected veterans and individuals with disabilities. The rules were subsequently published in the Federal Register and will become effective on March 24, 2014. However, affirmative action plans do not need to incorporate the changes required by the new rules until after the rules become effective. Thus, for employers who prepare their plans on a calendar year basis, 2015 will be the first year that their plans need to address the new requirements. Nonetheless, because the changes required by the final rules are substantial, federal contractors should be meeting with management, IT personnel, and their legal advisors now to ensure compliance with the new regulations. Below is a summary of the major changes required by the final rules.

Broader Coverage

The new rules broaden the definition of “disability” under §503 by adopting the definition of “disability” (as well as other terms) set forth in the ADAAA. Additionally, the rules modify the definition of veterans under VEVRAA to include recently separated veterans, Armed Forces service medal veterans, disabled veterans and active duty wartime or campaign badge veterans.

Hiring Benchmarks & Utilization Goals

The final rules establish new numeric targets that federal contractors will have to satisfy with respect to recruiting and hiring of veterans and individuals with disabilities. Specifically, federal contractors will be required to establish an annual goal of hiring veterans at a rate similar to the national percentage of veterans in the workforce (currently around 8%). Additionally, the regulations will require employers to set a goal of

having at least 7% of the total workforce be made up of individuals with disabilities in every job category within a company. Currently, there is no penalty for failing to meet these goals; however, contractors that fail to meet these hiring benchmarks will be required to show that they are making good-faith efforts to achieve the goals.

Invitations to Self-Identify

Contractors will now be required to ask applicants to self-identify as veterans and individuals with disabilities at both the pre- and post-offer stage. (Previously, contractors were only required to ask about veteran and disability status at the post-offer stage.) Additionally, contractors will be required to reissue the invitation to self-identify every five years and must remind employees at least once during the intervening time period that they can voluntarily update their disability status.

Recruitment & Outreach

Contractors are required to conduct appropriate outreach and make substantial recruitment efforts with respect to veterans and individuals with disabilities. The final rules identify a number of proposed resources that can be used by contractors to carry out these obligations. Contractors are also required to post job openings with the appropriate state employment service.

Collecting & Maintaining Data

Contractors are required to annually document (1) the number of applicants who have self-identified as protected veterans or individuals with disabilities or who are known to be protected veterans or individuals with disabilities, (2) the number of total job openings and the total number of jobs filled, (3) the total number



of applicants for all jobs, (4) the number of applicants who are protected veterans or who have disabilities and were hired, and (5) the total number of applicants hired. This documentation must be maintained for three years.

Self-Evaluation Requirements

The final rules require contractors to review their outreach and recruitment efforts on an annual basis and evaluate the effectiveness of those efforts in identifying and recruiting individuals with disabilities and protected veterans. This review must be documented and the documentation must be maintained for three years. Additionally, contractors must review their personnel processes and physical and mental job qualification standards periodically to ensure that those processes and qualifications do not tend to screen out qualified individuals with disabilities.

Written Accommodation Policy

The final rules require contractors to participate in an interactive process regarding accommodations for individuals with disabilities. Although not required, the use of a written reasonable accommodation policy is listed as a best practice. Additionally, the rules require contractors to give disabled veterans the option of covering a portion (or all) of the expense of a proposed reasonable accommodation themselves if it is deemed an undue hardship.

Priority Considerations & Referrals

Under the final rules, contractors are required take the following action at the time an initial job listing is made: (1) inform the state employment service of their contractor status, (2) provide contact information for the hiring official at each location in the state, (3) provide contact information for any outside job search services they use, and (4) request priority referrals of protected veterans for job openings.

Other Requirements

Contractors are required to issue accessible and easy-to-understand notices about the rights of employees and applicants in the form prescribed by the OFCCP. This may require contractors to make the notices available in Braille or post notices where they can be viewed by individuals in wheelchairs.

Any electronic notices must be posted in obvious places on the Company's website or sent by email. Additionally, contractors are required to include the EO clause at §60-300.5(a) in all subcontracts. Contractors must also take action to distribute their affirmative action policies internally and must include such policies in their policy manuals and notify union officials and other employee representatives of such policies. Finally, the final rules require that all personnel involved in recruitment, screening, selection, promotion, and disciplinary actions be trained on the contractor's affirmative action obligations.

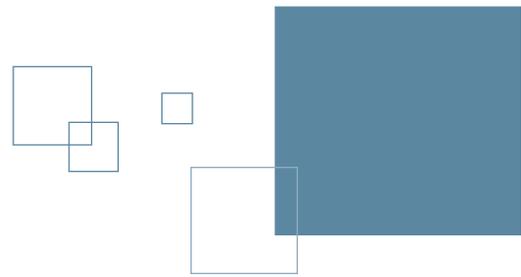
For more information on the final rules and compliance obligations for federal contractors, please feel free to contact:

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Affirmative Action Compliance

Foley's Labor & Employment Practice provides services to meet every aspect necessary for affirmative action compliance.

At a Glance

- » We have a team of paralegals and professionals that collect and synthesize data to prepare affirmative action plans compliant with Federal Executive Order 11246 and the applicable laws and regulations.
- » We have experienced attorneys from across the country who work closely with our clients to defend their affirmative action programs in audits conducted by the Office of Federal Contract Compliance Programs (OFCCP).
- » We leverage our leading-edge technology and experience to defend clients in negotiations or litigation with the Department of Labor whenever an affirmative action program is challenged or the results from an OFCCP audit lead to litigation or allegations of violations.

Affirmative Action Plans

Contracting with government agencies necessitates compliance with complex affirmative action guidelines and requirements. Noncompliance can not only put you out of the competition before it even begins, but can expose you to expensive litigation and significant damage awards. For federal contracts in particular, you will need to maintain and provide detailed analyses of your affirmative action and equal opportunity efforts as required under Federal Executive Order 11246. Increasingly, state and local governments are requiring vendors to submit affirmative action plans as well.

From creating OFCCP-compliant affirmative action plans and conducting utilization and adverse impact analyses to maintaining statistical information, and preparing and filing EEO-1 and VETS-100 reports, our attorneys and paralegals have the knowledge and experience necessary to assist federal contractors regardless of the number of sites or employees.

To meet the needs of clients of various sizes, we have established "flat fee" plan preparation services that provide highly competitive pricing.

Rates vary based on the quality of the data as well as the number of employees per site, and may be modified (after consultation with you)

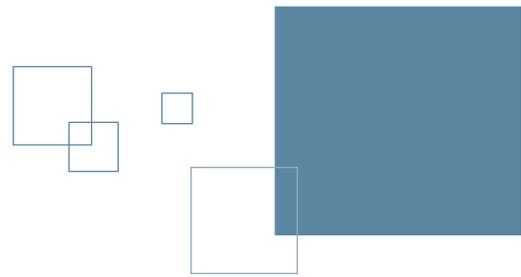
- » Good data, minimal clean-up (75 – 150 employees): \$1,750 – \$3,250
- » Good data, minimal clean-up (150 – 300 employees): \$2,750 – \$4,000
- » Fair data, moderate clean-up (75 – 150 employees): \$3,500 – \$5,750
- » Fair data, moderate clean-up (150 – 300 employees): \$4,250 – \$6,500
- » Fair data, significant clean-up (75 – 150 employees): \$4,500 – \$7,000
- » Fair data, significant clean-up (150 – 300 employees): \$5,500 – \$7,750

We also can quote prices for plans with more than 300 employees

Included in the service is a fully integrated plan and training necessary for federal contractors to comply with Executive Order 11246. We can also train your EEO coordinator separately for ongoing compliance and provide assistance with and training on software and/or program use should you decide to update your own affirmative action plan in the future.

OFCCP Audit Defense/Counseling

As a federal contractor required to maintain an affirmative action program, an OFCCP audit is nearly inevitable for you. The OFCCP conducts thousands of audits each year, and has become a strong partner of the EEOC when it comes to enforcement and litigation involving perceived or alleged discriminatory conduct.



Our experienced attorneys, from offices throughout the country, work with our team of paralegals to provide advice and representation in OFCCP audits. Depending on your needs, we can work in the “background” or as the upfront representative for you on these audits.

Additionally, we have the experience and relationships with experts to ensure that any allegations involving disparate impact, discrimination in compensation, or other perceived violations are immediately analyzed, evaluated, and addressed with a strong defense. Based on our extensive experience in this OFCCP audit defense work, we are able to provide our clients with flat, alternative fee pricing amongst the most competitive in the field.

- » Rate for defending and responding to an OFCCP Desk Audit: \$3,500 – \$6,000
- » Rate for defending and responding to a Supplemental Follow-Up on a Desk Audit: \$2,500 – \$4,000
- » Rate for defending and assisting with an OFCCP On-Site Audit: \$2,500 – \$4,000 (excluding travel costs)
- » Rate for defending and responding to a Compensation Review: \$2,500 – \$4,000
- » Rates may be modified (after consultation with you)

We review and update your affirmative action plan and the materials necessary to meet the submission requirements of a Desk Audit Letter and assist you in preparing and responding to follow-up questions and requests for additional information that may determine whether or not the OFCCP converts your audit to an On-Site Audit.

With an On-Site Audit, we provide training and education to persons likely to be interviewed by the OFCCP on-site, review your facility for compliance concerns, and prepare your EEO coordinator and HR management team so they are able to respond to questions and produce information most often requested during the On-Site Audit. We can also assist with preparation and conduct the analysis necessary to address an OFCCP Compensation Review.

Foley’s Labor & Employment Practice provides counsel, advice, representation, and services from the beginning plan preparation to litigation defending an affirmative action program, including all phases in between, to allow you to be compliant when bidding for government contracts.

For more information on our Affirmative Action Compliance Program services, please feel free to contact any of the leaders of these services:

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