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LABOR & EMPLOYMENT LAW ALERT

U.S. Department of Labor Announces New Regulations Impacting Federal Contractors and Veterans' Hiring

On August 27, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") announced two Final Rules amending the regulations that implement the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") and Section 503 of the Rehabilitation Act ("Section 503"). These new regulations significantly impact federal contractors' recordkeeping and recruitment practices.

VEVRAA requires employers doing business with the federal government to take affirmative action to recruit, hire and promote categories of protected veterans, including disabled veterans and recently separated veterans. VEVRAA also prohibits discrimination in the workplace towards veterans when making employment decisions. Section 503 prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities ("IWDs"), and requires these employers to take affirmative action to recruit, hire, promote, and retain these individuals.

The Final Rule under VEVRAA addresses veteran's unemployment rates, which are disproportionately higher for post-September 2001 veterans than rates for all veterans and nonveterans. The OFCCP addresses this disparity by strengthening the regulations that implement VEVRAA.

The Final Rule under Section 503 strengthens the affirmative action provisions of the regulations to improve job opportunities for IWDs and aid contractors in their efforts to recruit them. This Final Rule also makes changes to the nondiscrimination provisions of the regulations to bring them into compliance with the ADA Amendments Act of 2008.

Some of the most noteworthy provisions of these new regulations include the following:

- The VEVRAA Final Rule requires contractors to establish an annual hiring benchmark based on the national percentage of veterans in the workforce or on their own benchmark based on the best available data. The national percentage of veterans in the workforce is currently 8%. The Section 503 Final Rule establishes a 7% goal for the employment of IWDs.
- Federal contractors must collect, maintain and annually update quantitative data which analyses and compares the number of veterans and IWDs who apply for jobs and the number who are eventually hired in order to measure the effectiveness of their outreach and recruitment efforts. Contractors must maintain the data for three years in order to identify trends.

- Contractors must invite applicants to self-identify as protected veterans or IWDs at both the pre-offer and post-offer phases of the application process. The Final Rule also requires that contractors invite their employees to self-identify as IWDs every five years, using a prescribed language which will be posted by the OFCCP on its website. The Final Rule under VEVRAA includes sample invitations for use by contractors.
- Contractors must use specific language when incorporating an equal-opportunity clause into a subcontract by reference.
- Contractors must allow access to OFCCP for review of documents related to a compliance check or focused review.

These Final Rules will be effective 180 days after their publication in the Federal Register, which OFCCP anticipates will occur “shortly.” Current federal contractors with a written affirmative action program (“AAP”) in place on the effective date will have additional time to come into compliance with the AAP requirements. You can view the Final Rule under [VEVRAA](#) and [Section 503](#) at the included links, or on the Federal Register, when published.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following attorneys:

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