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Office of Federal Contract Compliance Programs Issues Substantial New Rules Relating to Employment of Veterans and Persons with Disabilities by Holders of Federal Contracts

On September 23, the Office of Federal Contract Compliance Programs (OFCCP) published a final rule making substantial changes to the rules implementing the Vietnam Era Veterans Readjustment Assistance Act and section 503 of the Rehabilitation Act of 1973. The changes are based on the OFCCP's findings that returning military veterans, of all wars, are experiencing difficulty in finding employment on return to civilian life, and that a "substantial" disparity exists in the employment rate of individuals with disabilities when compared with national unemployment rates. The main points of the new rules are:

- Establishment of hiring benchmarks for veterans and utilization goals for individuals with disabilities. Contractors have two alternative methods for setting the veteran hiring benchmarks: setting the contractor's benchmark at the national percentage of veterans in the civilian workforce (as determined by the OFCCP and posted on its website); or setting the benchmark specifically for the individual contractor using a five factor test:
 1. For the preceding three years the average percentage of veterans in the labor force in the state where the contractor is located;
 2. For the past four quarters, the number of veterans participating in the state run employment finding system;
 3. Applicant and hiring ratios for veterans and non-veterans for the previous year;
 4. The contractor's own assessment of the effectiveness of its veteran outreach and hiring efforts;
 5. The nature or location of a job or other factors that would affect the availability of veterans.

The utilization goal, for all federal contractors, is now seven percent of the contractor's workforce be composed of qualified individuals with disabilities. If this goal is not met the contractor must take action to determine why it was not met and establish a program to eliminate and impediments.

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- Requiring that contractors give applicants the opportunity to self identify not just after receipt of an employment offer (the current law) but also the opportunity to self identify prior to receiving an offer. Contractors must also perform a survey of its workforce with respect to disabilities every five years.
- Requiring that contractors retain for three years records on the number of veteran applicants, the number of job openings, the total number of applicants hired and the number of veterans hired, and details of evaluations of outreach and recruitment efforts.
- Requiring that contractors incorporate the current Equal Opportunity Clause pertaining to veterans in all subcontracts and requiring the contractor to incorporate a new sentence in subcontracts stating that the contractor abides by the requirement prohibiting discrimination against qualified individuals on the basis of disability.

The new rules take effect 180 days after the September publication in the Federal Register.

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