



Affirmative Action and Compliance

Transitioning Over to the New Regs

Section 503 and VEVRAA - Post March 24, 2014

If you did your homework, the March 24th deadline requirements of Section 503 and VEVRAA passed and you were able to check off the following from your to-do list:

- ✓ Updated EO Clause in applicable subcontracts
- ✓ Updated EEO/AA Policy statement
- ✓ Updated EEO tagline in advertisements
- ✓ Additional notice to state employment services offices
- ✓ Accommodations for Online Application Process

(Download our **NEW REGULATION CHECKLIST** (<http://alturl.com/nydky>) which has detailed information to bring you into compliance if you haven't already done so.)

Now that March 24th has passed, there is a new list that needs attention. However, before you try to get them completed in a matter of weeks, it is important to note that the OFCCP recognizes that the new regulations require considerable work and changes for federal contractors. As such, they are treating this first year as a transitional period. As you move forward with the changes to comply with the new regs, be sure to document your efforts as evidence your organization is moving toward compliance.

We recommend taking on the new regulations in stages. As the saying goes, "How do you eat an elephant?" Answer: "One bite at a time." That said, where do you start?

1. **START RIGHT:** If you haven't already, communicate these changes to your organization's leadership team to ensure that you have available the necessary resources to update the recruitment processes.
2. **SELF-IDENTIFICATION REQUIREMENTS:** The new regulations require that all federal contractors invite applicants (both pre- and post-hire) to voluntarily self-identify their disabled and/or veteran status, in addition to gender and race. The new regulations also mandate that all employees are surveyed during the first year to voluntarily self-identify as disabled or veteran. We recommend that you use the early part of this transitional period to start implementing the new self-identification processes. Likewise, the OFCCP is encouraging contractors to use this time to gather data and establish their workforce data systems before their first new affirmative action plan year after March 24, 2014.

Once you have the process established, you will be required to survey at least once every five years, and send out reminders during the interim.

Remember to keep any self-identification forms in a separate "Data Analysis File", separate from the personnel or medical file.



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To download the approved CC-305 form (Voluntary Self-Identification of Disability), go to:
http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary_Self-Identification_of_Disability_CC-305_SD_Edit1.24.14.pdf

It is important to also note that the form may not be modified in any way except to create an exact duplicate for the purpose of completing it electronically. The e-form must:

- Display the OMB number and expiration date;
- Contain the text of the form without alteration;
- Use a sans-serif font, such as Calibri or Arial; and
- Use at least 11-pitch for font size (with the exception of the footnote and burden statement, which must be at least 10-pitch in size).

3. ACCOMMODATION PROCESSES

- a. All Recruiters, managers, and supervisors need to be aware of the accommodation process to follow when an applicant or employee requests assistance or an accommodation because of a disability.
- b. Your online application system should give equal access to individuals with disabilities, including contact information for job seekers who request an accommodation in order to apply.
- c. Keep a record of reviews and responses for requests for Reasonable Accommodation.

4. ADMINISTRATIVE PROCESSES

- a. All required records and documents are to be maintained for 3 rather than 2 years
- b. Terminology Updates

Old – Stop Using

“Covered Veterans”
“Other Protected Veterans”
“Disabled Person”

New – Update all Electronic/Print Documents including Websites

“Protected Veterans”
“Active duty wartime or campaign badge Veterans”
“Individual with a Disability” OR “Worker with Disability”

- c. Continue to post job openings with the ESDS to see qualified Protected Veterans and Individuals with Disabilities.
- d. Document your outreach efforts to minority, women and disabled and veterans’ organizations and self-assess the outcome. Drop organizations that do provide poor referrals.
- e. Ensure that job descriptions contain essential job functions.
- f. Keep all disability status information in a separate “Data Analysis File”.
- g. Make available for inspection the Disabled and Veterans portions of next year’s AAP (next year - minus the applicant and hire data) upon request by any employee or applicant. Post a notice identifying the location and hours during which employees and applicants can access these portions.

Going Beyond Good Faith Efforts

As part of any audit, federal contractors are being asked for a list of local organizations that have been contacted as part of their “good faith efforts”. You will also want to be able to show that you have reached out to these organizations with specific job descriptions to reach minority talent pools. General outreach is no longer acceptable; the OFCCP now requires proof of posting or “listed, live and actionable” requisitions.

In this light, be sure to take advantage of the OFCCP’s latest searchable database that can be used to search for local female, minority, disabled and veteran organizations found at:

<http://www.dol-esa.gov/errd/index.html#search>

A mix of women's industry portals and specific industry associations' sites can also be found at:

<http://www.recruiting-online.com/course55a.html>

Stay posted for more recruitment resources as the year progresses.



Increase in Onsite Visits

Onsite visits are becoming more frequent and this time, with a focus on compensation. These onsite reviews typically follow numerous requests for compensation data during the desk audit.

What are auditors investigating?

- Auditors are asking for additional information for off-site analysis which they will use to develop PAGs (pay analysis groups) to test for statistical significance in large groups of employees. PAGs are not based on job title or job group code. A PAG is defined as a group of employees who are comparable for purposes of the contractor's pay practices. The on-site visit may also result in detailed position review including substantiating that employees are doing work consistent with their job titles and descriptions.
- Auditors are also seeking anecdotal evidence of compensation discrimination by conducting multiple manager and employee interviews while onsite.

If your organization is selected for an OFCCP compliance review, determine how to "put your best foot forward". Be prepared to provide additional and more detailed information; it's part of the package. Be ready for OFCCP inquiries into executive, managerial, and professional pay practices and information, including "perks" such as parking, gym memberships, etc.

Most importantly, before you submit ANY information, make sure you understand it and know where your risks lay. If you need assistance, EKW&A can support you in recognizing and asserting appropriate defenses to irrelevant and/or overbroad analyses and requests for information.

Documenting Employment Decisions

Many audit outcomes are complicated by the fact that inadequate documentation was retained at the time of an employment decision event; i.e., termination, hire, promotion. Even if there was a legitimate reason behind the decision, it is important to have the document trail that led to the final decision. Typically, employers worry only about the bad stuff like problem employees, disciplinary issues, and such. However, it is equally important to document the good things to support promotions, pay increases and even to prove that an employee's manager does not harbor any ill will against the employee, if later disciplinary action is necessary.

Equally important is the timeliness of the documentation. Everyone knows that the longer we wait, the less we remember. Keep a paper trail of events and communications as they occur. Write down what topics were discussed, who was present, what issues or concerns arose and what promises or agreements were made. When the OFCCP comes knocking, you'll be glad you did.

OFCCP's 2015 Budget

While federal contractors are still adjusting their 2014 processes for the new regulations, there's already talk of 2015. Much as we have enough on our plates, the OFCCP's budget requests help to identify coming trends, so it's wise to take notice. It is also prudent to acknowledge that next year's budget request is fortified by the fact that in 2013, the OFCCP achieved 97% of its compliance evaluation target (4,110 audits) resulting in over \$7.8 million in back pay to almost 9,300 victims.

So why are they asking for an increased budget of 3 percent?

1. Enforcement

The OFCCP wants to complete the same amount of evaluations as is expected in 2014 (4,290) to continue its trend of increased scrutiny.

2. Scheduling Letter

Above and beyond updates to the scheduling letter as a result of the regulatory changes to Section 503 and 4212, the OFCCP seeks to issue a new scheduling letter to collect detailed "total" compensation (e.g., stock options, pension plans, etc.) during a desk audit, job group and job title personnel activity data in minority subcategories, etc.)

3. Comp Data Collection Tools

The OFCCP plans to issue a Notice of Proposed Rulemaking (NPRM) in 2014 on a compensation data tool that would collect information on salaries, wages and other benefits paid to employees of federal contractors and subcontractors. This is a follow-up to the Advanced NPRM released in 2011 that centered around the same kind of instrument that would collect gender and race based compensation information from contractors.

4. Gender Discrimination Guidelines

The OFCCP wants to revise existing gender discrimination guidelines as part of 2014 and 2015 fiscal years. This may impact compensation analyses requiring that contractors share gender-based data with the OFCCP.

Lessons Learned in Applicant Tracking

Remember that in an audit, it is not what you did but what your data and records demonstrate that you did. Review these reminders to ensure that your applicant tracking is on target:

1. Make sure your disposition codes match the stages and statuses of your recruitment process.
2. Do you make changes to recruitment practices as OFCCP regulations, directives and trends change?
3. Audit your disposition codes on a regular basis to ensure that they are:
 - Being used (get rid of disposition codes that are not being used)
 - Used in the right stages
 - Used to document withdrawals
 - Using a basic qualifications knock-out
4. Map out current recruitment processes, including professional, high-volume and staffing firms.
5. Self-audit past hiring cycle interview notes. Do they answer the what, when, how? Could they stand up to an audit?
6. Do the stages of your recruitment process match the process; i.e., resume reviewed, recruiter screen, forwarded to hiring manager, interview by manager, tested, offer extended, hired?
7. Confirm and verify that recruiting firms used in the hiring process are tracking the required applicant data and can provide the necessary applicant flow reports for all positions.
8. Review screening questions.
 - Are all candidates getting asked the same questions?
 - Do the questions accomplish the recruitment goal?
 - At what point are they asked in the process?

Disposition Codes

Disposition codes should fall into five main groups:

- Basic qualifications not met
- No interest by Candidate
- No interest by Company
- Candidate declined offer
- Hired

Disclaimer: This document is meant only as a guide based on practical recommendations for AAP compliance. The information is not intended to be, nor does it constitute legal advice. It is recommended that your Affirmative Action Plan compliance procedures and all employment policies, procedures and practices be reviewed by your in-house counsel or other legal counsel with qualifications background and experience in AAP compliance.