

Recent changes affect federal contractors

New regulations for affirmative action plans for veterans and disabled individuals require compliance

Recent changes to the regulations that govern affirmative action plans (AAPs) for veterans and individuals with disabilities (IWDs) have many federal contractors scrambling to update their AAPs. While most of the changes pertaining to AAPs can be phased in at the start of the next plan year, some of the others took effect on March 24, 2014. Following is a look at these changes and recommendations for how contractors can comply.

Changes effective immediately

Changes that took effect on March 24 include new mandatory language that must be included in a contractor's equal opportunity clause as well as the inclusion of certain mandatory language in all contracts. This language can be found at 41 C.F.R. § 60-300.5(a) and (d) for veterans plans, and 41 C.F.R. § 60-741.5(a) and (d) for IWD plans.

The new regulations also include changes to the self-identification process under both plans. The Office of Federal Contract Compliance (OFCCP), which is responsible for the enforcement of affirmative action plans and equal opportunity employment, hosts on its website a form that is strongly recommended for IWD self-identification, and Appendix B to the regulations for veterans plans contains sample language for self-identification of veterans.

Additionally, the new regulations require contractors to invite voluntary self-identification for IWDs at the pre-offer stage, invite current employees to voluntarily self-identify every five years, and remind employees that they may change their disability status at any time. Veterans should now be invited to self-identify as a "protected veteran" at the pre-offer stage and the preamble permits the invitation to be made at the same time race/gender information is requested to harmonize with the EO 11246's Internet Applicant Rule.



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Contractors must keep all information obtained through the self-identification process confidential and in a separate file from the employee's general personnel file.

Changes subject to phase-in

One recent change to the AAP regulations subject to phase-in is a new 7 percent utilization goal for employment of IWDs. Contractors are required to annually compare the representation of IWDs in each job group to that 7 percent goal (unless the contractor has fewer than 100 employees, in which case it may apply the goal to the workforce as a whole). If the contractor identifies any problem areas, it must develop and execute a responsive, action-oriented program.

The OFCCP made clear that, at least for the time being, it will not fine or penalize a contractor that fails to meet the 7 percent utilization goal, unless that contractor also fails to take annual remedial steps to increase that figure. Similarly, the changes to veterans AAPs now require contractors to set hiring benchmarks, using either the national percentage of the civilian labor force (published on the OFCCP website) or by using the five factors outlined in the regulations.

Certain changes that impact both types of AAPs include: 1, enhanced data collection requirements; 2, increased external dissemination, outreach and positive requirement obligations; 3, increased document retention periods; and 4, the requirement that the policy statement must indicate the top U.S. executive's support for the AAP.

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Changes to the data collection regulations now require contractors to document: 1, the number of applicants who self-identified pre-offer as protected veterans or IWDs; 2, the total number of job openings and jobs filled; 3, the total number of applicants for all jobs; 4, the number of protected veteran or IWD applicants hired; and 5, the total number of applicants hired. Contractors must keep these records for three years.

New external dissemination, outreach, and positive recruitment requirements mandate that the new regulations require contractors to send written notice of their AAP to subcontractors, including subcontracting vendors and suppliers, and request appropriate action on the part of the subcontractor. Contractors must also conduct annual self-assessments of their efforts and document the criteria used to evaluate each effort, reach a conclusion about the effectiveness of the efforts, and if unsuccessful, identify and implement alternative efforts.

One mandatory criterion used to evaluate each effort must be the data collected pursuant to the new data collection requirement discussed above. Contractors must document their outreach and recruitment efforts and keep those records for at least three years.

With respect to internal dissemination, the new regulations require contractors to incorporate their AAPs into their policy manuals or otherwise make them available to employees, and a contractor that is a party to a CBA must notify the union official of the policy and request their cooperation.

Action plan

Before their next AAP plan year starts, contractors are strongly encouraged to:

- invite applicants to self-identify pre- and post-offer using the approved OFCCP form;
- conduct initial self-identification surveys of current employees;
- implement documentation procedures for outreach and recruitment efforts and self-audit reporting systems;
- conduct documented assessment of outreach and recruitment efforts and implement procedures to conduct such assessment annually;
- train employees engaged in key personnel activities;
- conduct data analysis related to applicants and hires;
- draft a policy statement showing the top executive support for AAP;
- ensure applicants and employees have equal access to the contractor's personnel processes; and
- conduct annual workforce assessments, applying the utilization goal or hiring benchmark, identifying problem areas, and developing responsive, action-oriented plans.

Contractors seeking clarification about compliance with the new regulations should consult attorneys.

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