

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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Douglas B. Brown, LLC

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OFCCP ISSUES REVISED HIRING BENCHMARK FOR VETERANS BENCHMARK MOVES FROM 8% TO 7.2%

Under the newly revised regulations regarding Veterans (VEVRAA) which became effective Monday, March 24th, the OFCCP established, for the first time, a hiring benchmark (goal) for Protected Veterans. Covered employers are given a choice of either accepting the National Percentage of Veterans in the Civilian Labor Force as their benchmark, or developing their own benchmark by considering five (5) different factors. This hiring benchmark is part of the Subpart C requirements that become effective as of the start of the next AAP planning cycle. For contractors on a calendar year plan, that means the benchmark requirement will be effective January 1, 2015.

The Annual National Percentage of Veterans in the Civilian Labor Force is based on Census Population Survey Table 1, provided by the Bureau of Labor Statistics (BLS) and is updated annually. Until this point in time, the OFCCP had published the 2014 benchmark number as 8%. However, on Friday, March 21st, the OFCCP announced that the benchmark number would actually be 7.2%. This benchmark will be in effect for all AAPs that renew after March 24, 2014. It is also important to recognize that this percentage will be updated and a new number will be published each year, resulting in a new benchmark at that point for contractors who simply adopt the BLS percentage.

While contractors have the option of developing their own benchmark (see the “Methods for Establishing a Hiring Benchmark” at <http://www.dol-esa.gov/errd/VEVRAA.jsp>), based on the requirements for doing so (including the recordkeeping obligations) there appears to be little reason to undertake the process for developing an individualized benchmark.

ASSOCIATED BUILDERS AND CONTRACTORS CHALLENGE TO IMPLEMENTATION OF THE REVISED REGULATIONS FOR INDIVIDUALS WITH DISABILITIES REJECTED BY THE U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA

On Friday, March 21st, the U.S. District Court for the District of Columbia rejected in its entirety the challenge by the Associated Builders and Contractors (ABC) to the implementation of the revised Section 503 regulations regarding individuals with disabilities. The court denied every one of ABC’s challenges, and held that the OFCCP acted within its regulatory powers when it developed and implemented the new regulations. This is a substantial victory for the OFCCP. While ABC can file an appeal, the decision means that the Section 503 regulations are in effect as of March 24, 2014.

OFCCP PUBLISHES DISABILITIES AND VETERANS COMMUNITY RESOURCES DIRECTORY

Just prior to the implementation of the revised VEVRAA/503 regulations, the OFCCP has published a Disabilities and Veterans Community Resources Directory. The directory is accessible on the OFCCP website at:

<http://www.dol-esa.gov/errd/resources.html>

Per the OFCCP:

“Recruitment Directory

OFCCP conducted extensive outreach during and after the Section 503 of the Rehabilitation Act (Section 503) and Vietnam Era Veterans’ Readjustment Act (VEVRAA) rulemaking. During this outreach many contractors asked for assistance with locating community and other resources for recruiting veterans and individuals with disabilities. To meet this stated need, OFCCP, working with other DOL and federal agencies, created a non-exhaustive directory of groups and organizations that are available to provide assistance with training, recruiting, and hiring veterans and individuals with disabilities.

Search

This directory search provides two primary functions:

- The ability to search by state, and the ability to download your search results; and
- The ability to import the information into any word processor, spreadsheet, or database software package.”

The intent in publishing the directory is to provide contractors with access to resources on both a national and local level when coming into compliance with and implementing the new VEVRAA/503 regulations and when engaging in outreach with veterans and disability organizations.

This resource is in addition to the Employment Resource Referral Directory also available on the OFCCP website.

OFCCP PUBLISHES DISABILITY SELF-IDENTIFICATION FORM IN SPANISH

The OFCCP has just published a Spanish-language version of the Section 503 – Disability Self-Identification form. The form is available on the OFCCP website at:

<http://www.dol.gov/ofccp/regs/compliance/section503.htm>

While there is no requirement in the regulations to present the disability self-identification form in both English and Spanish versions, to the extent that an employer regularly provides communications to employees and applicants in Spanish, they may wish to consider making the Spanish-language self-id form available.

AN OBSERVATION ON THE IMPLEMENTATION PROCESS

An observation that has been made during the move toward implementation of the regulation is that coming into compliance is going to be a work in progress. As noted by these recent roll-outs by the OFCCP, even the Agency is making changes and adjustments, or providing new/additional information just before the implementation date. As such, while contractors should be making every good-faith effort to come into compliance as quickly and as completely as possible, everyone involved needs to understand that it may take some time to dot every “i” and cross every “t.”

This is going to be a phased in process. First there is compliance with Subparts A, B, D, and E as of March 24, 2014. Second, will be compliance with Subpart C as of the start of the contractor’s new AAP cycle. Lastly, one year after the new AAP cycle, contractors will need to implement the audit and evaluation requirements in Subpart C which focus on the contractor’s efforts to comply.

It is reasonable to anticipate that there may continue to be adjustments, modifications or new information provided by the OFCCP. We will merely need to stay aware of any new developments and be flexible when adjusting to them.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.