



2015 OFCCP DEVELOPMENTS

What Federal Contractors Need to Know Before Updating AAPs for 2016

*Presented by Christopher Northup, Ellen Shong & Associates
and
Kimberly J. Korando, Smith Anderson*

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Today's Objectives

- Review Executive Orders and other recent regulatory changes effective in 2015
- Review upcoming regulatory changes and OFCCP's enforcement agenda
- Provide guidance to contractors updating their VEVRAA/503 AAPs in 2016

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Today's Agenda

- Executive Orders and regulations effective in 2015
- Future regulations on the horizon and the OFCCP's regulatory agenda
- OFCCP's enforcement focus for the coming year and other comments on OFCCP activity
- VEVRAA/Section 503 areas for contractors to be aware of when preparing AAP for Veterans and Individuals with Disabilities (IWD)

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Recent Executive Orders

- The President can issue Executive Orders (EO) independent of Congress
- Agencies such as OFCCP responsible for issuing regulations enacting EOs, providing opportunity for comments, and then issuing final regulations

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Newly Implemented Regulations from EOs

| EO No. | Title | Status | Effective Date | Comments |
|--------|---|--|---|---|
| 13658 | Establishing a Minimum Wage for Contractors | <u>Final Regulations</u> issued | Contracts entered into/modified on or after 1/1/2015 | \$10.10, not applicable to existing contracts prior to effective date; <u>as of 1/1/2016 increases to 10.15</u> |
| 13672 | Further Amendments to Executive Order 11478, EEO in the Federal Government, and Executive Order 11246, EEO (LGBT) | <u>Final Regulations</u> issued | Contracts entered into/modified on or 4/8/2015 | Requires updates to protected categories in tag line, posters, and other areas |
| 13665 | Non-Retaliation for Disclosure of Compensation Information | <u>Final Regulations</u> issued 9/11/2015 | Contracts entered into/modified on or 1/11/2016 | Regulations titled "Prohibitions Against Pay Secrecy Policies and Actions" |
| | | | | |

E.O. 13672 LGBT

- Amends Executive Order 11246 (regulations governing AAPs for Women and Minorities)
- Requires addition of protected categories “gender identity” and “sexual orientation”
- Per regulations must update
 - EO clause in contracts/purchase orders (if specify protected groups)
 - EOE tag line (if specify protected groups)
 - EEO is the Law Poster
 - for consistency: modify policies, other references where gender referenced

E.O. 13672 LGBT

- Regulations fail to define “gender identity” and “sexual orientation” – to be addressed by separate regulations from FAR council
- Transgender not included as a specified protected category. But OFCCP acknowledges covered by sex discrimination.
- Does not require:
 - Changes to AAP for Women/Minorities
 - Voluntary self-id of gender identity or sexual orientation
 - Goals or statistics for gender identity or sexual orientation categories

E.O. 13665- Regulation on Prohibitions Against Pay Secrecy Policies and Actions

- Covered contracts for contracts entered into or modified on or after 1/11/2016
- EO was titled with “Non-retaliation” but OFCCP issued regulations as non-discrimination
- Must
 - Update EO clause in contracts/purchase orders (if not incorporated by reference)
 - Post updated EEO is the Law Poster
 - Include non-discrimination provision in existing employee manuals or handbooks
 - Disseminate by electronic or paper posting of non-discrimination provision (separate from updated EEO is the Law Poster)

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Future Executive Orders/Regulations

| EO No. | Title | Status | Effective Date | Comments |
|--------|---|---|--|---|
| n/a | Update to Sex Discrimination Guidelines | Final regulations expected late 2015 | Unknown | Existing regulations have not been updated since 1980 |
| n/a | Presidential Memorandum directing OFCCP to issue compensation data collection tool (Compensation data collection) | Final regulations expected late 2015 | Spring 2017 at earliest | "Equal Pay Report" W-2 data report by EEO-1 establishment / categories |
| n/a | Update to construction contractor affirmative action regulations | Proposed regulations expected late 2015 | Unknown | Existing regulations have not been updated for many decades |
| 13673 | Fair Pay and Safe Workplaces | Proposed regulations comment period ended 8/26/2015 | Unknown | Certification by contractors of labor law compliance |
| 13706 | Establishing Paid Sick Leave for Federal Contractors | On or before late 2016 | Estimated effective for solicitations on or after <u>1/1/2017</u> | Contractors must grant at least one hour of paid sick leave for every 30 hours worked |

OFCCP's Enforcement Focus for the Coming Year

- Continue to identify and address systemic pay discrimination
- Elimination of gender, racial/ethnic-based discrimination in the construction industry
- Upgrade agency's internal case management system
- Ensure employers have information needed to implement LGBT Executive Order
- Continue enforcement of Section 503 and VEVRAA regulations implemented in FY 2014

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OFCCP's Other Activities

- **Audit activity down:** 2,603 compliance reviews reported for FY 2015 (10/1/2014 to 9/30/2015) but OFCCP predicted 3,900+ compliance reviews. Audits taking longer and staff stretched.
- **Budget increase request:** OFCCP asking Congress for \$7M increase (to \$114M) including 10 additional employees for compensation review.
 - OFCCP has failed since beginning its compensation initiative to find any major pay discrimination (measured in \$'s recovered)
- **Worker status:** May start looking at worker status (independent contractor) and joint employment issues
- **OFCCP jurisdictional contract threshold:** for VEVRAA increased from \$100,000 to \$150,000 (single, not aggregated) as of October 1, 2015 (by FAR Council).

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OFCCP's Other Activities

- **Poster supplement:** Published an EEO is the Law supplement (on website)
 - Updates to LGBT, Pay Transparency, Individuals with Disabilities and Protected Veterans
- **New website:** Created a “Class Member Locator Website”
 - Lists contractors and conciliation agreements looking for potential class members to participate in remedies www.dol.gov/ofccp/CML/index.htm#ListofCases
- **OFCCP infographic for Protected Veterans:** OFCCP appeared to expand protected veterans category of “Active Duty Wartime or Campaign Badge Veteran”
 - Uses the phrase “periods of war” rather than “during a war” which broadens coverage to include Korean conflict, Vietnam Era, and Persian Gulf War as Congress did not declare these as “wars” See: http://www.dol.gov/ofccp/posters/Infographics/ProtectedVet_InfoGraphic_JRFQA508c.pdf
 - Pat Shiu indicated on October 30, 2015, OFCCP did not intend to expand protected veterans category and did not believe it had done so in the infographic
- **“Checklist for Compliance with Section 503”** available from OFCCP http://www.dol.gov/ofccp/regs/compliance/resources_ContractorAssessmentToolsAndTrackers.htm

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Veterans and IWD Changes

- OFCCP published revised regulations for Veterans and Individuals with Disabilities effective March 24, 2014
- By now or shortly all contractors will be subject to these revised regulations:
 - Veterans 41 CFR 60-300 (VEVRAA)
 - www.dol.gov/ofccp/regs/compliance/vevraa.htm
 - Individuals with Disabilities (IWD) 41 CFR 60-741 (Section 503)
 - www.dol.gov/ofccp/regs/compliance/section503.htm

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Revised Compliance Obligations as of March 24, 2014

- Key changes in Equal Opportunity (EO) clause (60-300.5 and 741.5):
 - **Notification** to employment service delivery system (ESDS) (*federal contractor, desire priority referrals, hiring locations and contact information*)
 - **Modify EOE** (tag line) to add veterans and disabled categories (*Minimum “EOE. Veterans/Disabled.”*)
 - **Modify EO clause** in contract/subcontract/PO must include required language and bolding

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Key Compliance Obligations DURING 1st AAP year beginning after March 24, 2014

- At beginning of AAP year, set hiring benchmark for protected veterans
- Applicants
 - Offer applicants, pre-offer, the opportunity to self-identify protected veterans and disability status
 - Offer applicants who receive an offer, post offer, the opportunity to self-identify protected veterans and disability status
 - For disability status, must use OFCCP's mandatory form or replica
- Employees:
 - Must provide employees with opportunity to self-id disability status during this first AAP year
 - Must also invite every five years and send reminder at least once in between these invitations
- Vendors/subcontractors
 - Send written notification of company AA/EEO policy
- Review personnel process

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Subpart C

Invitation to Self-Identify

OFCCP's final
self-
identification
form for IWDs

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Voluntary Self-Identification of Disability

Form CC-305
OMB Control Number 1250-0005
Expires 1/31/2017
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Why are you being asked to complete this form?

When we do business with the government, we must reach out to, hire, and provide equal opportunity to qualified people with disabilities.¹ To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for a job, any answer you give will be kept private and will not be used against you in any way.

If you already work for us, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our employees to update their information every five years. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

How do I know if I have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition.

Disabilities include, but are not limited to:

- | | | | |
|-------------|----------------------|--|--|
| • Blindness | • Autism | • Bipolar disorder | • Post-traumatic stress disorder (PTSD) |
| • Deafness | • Cerebral palsy | • Major depression | • Obsessive compulsive disorder |
| • Cancer | • HIV/AIDS | • Multiple sclerosis (MS) | • Impairments requiring the use of a wheelchair |
| • Diabetes | • Schizophrenia | • Missing limbs or partially missing limbs | • Intellectual disability (previously called mental retardation) |
| • Epilepsy | • Muscular dystrophy | | |

Please check one of the boxes below:

- ☐ YES, I HAVE A DISABILITY (or previously had a disability)
- ☐ NO, I DON'T HAVE A DISABILITY
- ☐ I DON'T WISH TO ANSWER

Your Name

Today's Date

Voluntary Self-Identification of Disability

Form CC-305
OMB Control Number 1250-0005
Expires 1/31/2017
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Reasonable Accommodation Notice

Federal law requires employers to provide reasonable accommodation to qualified individuals with disabilities. Please tell us if you require a reasonable accommodation to apply for a job or to perform your job. Examples of reasonable accommodation include making a change to the application process or work procedures, providing documents in an alternate format, using a sign language interpreter, or using specialized equipment.

¹ Section 503 of the Rehabilitation Act of 1973, as amended. For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at www.dol.gov/ofccp.

PUBLIC BURDEN STATEMENT: According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

Key Compliance Obligations AFTER 1st AAP year beginning after March 24, 2014

- Prepare data collection summaries for applicants and hires by protected veterans and disability status
- Assess external outreach and recruitment efforts
 - Required annually
 - Document
 - If determined not effective, identify and implement alternative efforts
- Document audit of compliance with obligations to measure effectiveness, need for remedial action
- Evaluate whether met Utilization Goal for Individuals with Disabilities
 - 7%, by Job Group if >100 employees
 - If not met, develop action oriented programs, additional outreach/recruitment
 - No fines or penalties for failure to meet goal

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Key Compliance Obligations AFTER 1st AAP year beginning after March 24, 2014

- Veterans Hiring Benchmark
 - Different than the Utilization Goal for Individuals with Disabilities as this only looks at hiring statistics
 - Notice that “goal” was not used in regulations
 - 7.2% previously and 7.0% currently (eff. 4/21/2015) is the benchmark for overall hiring of Protected Veterans
 - Regulations (41 CFR 60-300.45) don’t require contractor to do an analysis to determine whether benchmark met and no remedial action
 - Might be used in assessment of outreach and recruitment efforts along with other data analysis in 60-300.44(k).
 - No fines or penalties for failure to meet hiring benchmark

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Data Collection (44(k))

| | Title | Notes |
|--------------|--|---------------------------------------|
| Veterans/IWD | Total number of applicants for all jobs | |
| Veterans/IWD | Total number of job openings | |
| Veterans/IWD | Total number of jobs filled | |
| Veterans/IWD | Total number of applicants hired | |
| Veterans | Number of applicants who are “protected veterans” | Pre-offer Self-identified or “known” |
| Veterans | Number of “protected veteran” applicants hired | Post-offer Self-identified or “known” |
| IWD | Number of applicants who are individuals with disabilities | Pre-offer Self-identified or “known” |
| IWD | Number of applicants with disabilities hired | Post-offer Self-identified or “known” |

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Data Collection (44(k))

Protected Veterans Sample

| Category | July 1, 2014 to June 30, 2015 |
|--|----------------------------------|
| Total number of applicants for all jobs | 1,200 |
| Total number of job openings | 30 |
| Total number of jobs filled | 30 |
| Total number of applicants hired | 30 |
| Number of applicants who are “protected veterans” | 100 |
| Number of “protected veteran” applicants hired | 2 |

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Data Collection (44(k))

Individuals with Disabilities Sample

| Category | July 1, 2014 to June 30, 2015 |
|---|----------------------------------|
| Total number of applicants for all jobs | 1,200 |
| Total number of job openings | 30 |
| Total number of jobs filled | 30 |
| Total number of applicants hired | 30 |
| Number of applicants who are individuals with disabilities | 50 |
| Number of applicants with disabilities hired | 1 |

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Data Collection (44(k))

Protected Veterans Alternate Calculation

| Category | July 1, 2014 to June 30, 2015 |
|--|----------------------------------|
| Total number of applicants for all jobs | 1,200 |
| Total number of job openings | 30 |
| Total number of jobs filled | 30 |
| Total number of applicants hired | 30 |
| Number of applicants who responded either Yes or No to “protected veterans” (removes non-responses) | 400 |
| Number of applicants who are “protected veterans” | 100 |
| Number of applicants <u>hired</u> who responded either Yes or No to “protected veterans” (removes non- responses) | 20 |
| Number of “protected veteran” applicants hired | 2 |

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Assessment



Sample Assessment of Outreach and Recruitment

| Outreach / Recruitment Activity | Date of Activity | Description | Evaluation |
|---|-------------------|--|---|
| Annual meeting with State Vocational Rehabilitation Service Agency (SVRA) | November 15, 2014 | Briefed SVRA with FCI's outreach and recruitment efforts for IWDs. | SVRA representatives will conduct briefings with FCI management regarding hiring IWDs and reasonable accommodations to expand the inclusion of IWDs in FCI workforce. Also, SVRA will begin posting FCI job openings starting in 2015, which will help expand FCI's IWD applicant pool. |
| Briefing of Local Disability Advocates (LDA) | September 1, 2014 | Briefed representatives of LDA, a local disability advocacy group, regarding FCI's services and job opportunities for IWDs, and provided an FCI facility tour. | LDA will begin sending job applicants to FCI starting in 2015 and include FCI in its list of companies that are undertaking affirmative efforts to hire IWDs. FCI will also participate in LDA activities and LDA-sponsored job fairs in 2015. |
| Outreach event at Local Community College | October 8, 2014 | Conducted outreach event at local community college to attract students who are IWDs. | Community college did not have a targeted program specifically designed to attract students who are IWDs, therefore, limited impact in the school. Only 2 students attended event. Consider partnering with other educational institutions. |
| Participated in Disability Job Fair | November 14, 2014 | Disability Job Fair was hosted by the local disability advocacy groups, and over 30 employers participated. | Received 15 applications from qualified individuals with disabilities. 1 was hired. Resumes were retained for consideration in future job openings. |

Criteria for Evaluation:

1. Did the activity attract qualified applicants with disabilities?
2. Did the activity result in the hiring of qualified individuals with disabilities?
3. Did the activity expand FCI's outreach to individuals with disabilities in the community?
4. Did the activity increase FCI's capacity/capability to include individuals with disabilities in its workforce?

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Audit



Sample Self-Audit Table

| AAP Components | AAP Requirements | Compliance (Y/N) and date last inspected/reviewed (if applicable) | Remedial/Follow-up actions necessary (if any) |
|--|---|---|--|
| Policy Statement (§ 60-741.44(a)) | EEO policy statement posted on bulletin boards | Y (last inspected on mm/dd/yyyy) | None |
| | Policy available in a form that is accessible and understandable to IWDs | Y (last inspected on mm/dd/yyyy) | None |
| | EEO policy indicates top executive support for AAP | Y (policy statement signed by CEO on mm/dd/yyyy) | New CEO starting mm/dd/yyyy. Publish new policy statement. |
| Review of Personnel Processes (§ 60-741.44(b)) | Periodic review of personnel processes | Y (last review conducted on mm/dd/yyyy) | Modify applicant flow logs to include tracking of IWDs during the job application process. Schedule next review of personnel processes on (mm/dd/yyyy) |
| | Reasonable accommodation provided for applicants and employees who are IWDs | Y (last review conducted on mm/dd/yyyy) | Time and attendance software system is not accessible. Provide alternate means for timekeeping as accommodation for employees who are IWDs. May procure upgrade to an accessible software package. |

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Recordkeeping Obligations for Revised Regulations

- 3 years (increase from 2 years for these areas):
 - Documents related to external dissemination of policy, outreach and positive recruitment (-300/741.44 (f) (4))
 - Data and calculations for protected veterans and disabled applicants and hires as part of data collection analysis (-300/741.44 (k))
 - Annual hiring benchmark for protected veterans

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Data Analysis

- Data will not be available to conduct .44(f)(3) or .44(k) analysis until after the plan year concludes in 2015 or, in some cases, 2016
- Example
 - For example, AAP year is January 1st, 2014 to December 31, 2014
 - Contractor begins collecting data with self-identify forms January 1, 2015 (i.e., first AAP year that begins following March 24, 2014)
 - First data analysis under .44(f)(3) and .44(k) conducted following conclusion of AAP year, December 31, 2015

Ellen Shong &
Associates, LLC

Thank you for attending today's webinar!

Kimberly J. Korando, Smith Anderson
kkorando@smithlaw.com | 919.821.6671

Christopher Northup, Ellen Shong & Associates, LLC
Chris_northup@mindspring.com | 919.387.8154

Ellen Shong &
Associates, LLC