

Effective Veteran Outreach— Understanding the Compliance Requirements

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The Office of Federal Contract Compliance Programs (OFCCP), an agency of the U.S. Department of Labor, enforces regulations under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and can audit anyone subject to regulations to determine their compliance. The OFCCP's focus on Veteran outreach in audits has been gaining momentum during the past two years. Patricia Shiu, Director of the OFCCP, has made it clear that monitoring these efforts by federal contractors is a priority for the agency. As a federal contractor or sub contractor, it is important that you:

- are aware of what OFCCP has been asking in audits,
- know how they have been enforcing VEVRAA regulations, and
- are up-to-date on changes that can be expected in the next 12 to 18 months.

When it comes to Veteran compliance, it is important to be aware that recently Active Case Enforcement (ACE) replaced the Active Case Management (ACM). Under the ACE procedures, compliance officers (COs) will perform a "full desk audit," and as such they can request any supporting documentation. The COs have been requesting a variety of information from contractors that specifically pertains to the affirmative action plan for Veterans. It's important for contractors to be prepared to give COs this information. Below are questions the OFCCP will be looking to have answered:

- Does the contractor have a copy of the most recent VETS-100 and/or VETS-100A reports filed with DOL?
- Has the contractor posted the location and hours during which the AAP may be reviewed by employees or applicants?
- Does the contractor have copies of job postings from the plan year, and did they include verbiage inviting Veterans and individuals with disabilities to apply?
- Has the contractor reviewed all physical and mental job requirements?
- Do position descriptions and qualification standards contain any medical restrictions?
- Did the contractor list all suitable employment openings with the state employment service?
- Is there proof of posting all open positions with relevant state or county workforce agencies?
- Did the contractor undertake appropriate outreach, recruitment, dissemination of policy, and other affirmative action?
- Are there adequate descriptions of the selection process?
- Do application forms request information on medical conditions or type of military discharge?

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- Has the contractor invited employees and applicants to identify themselves as individuals with disabilities (after a job offer is extended) or Veterans?
- Does the contractor have samples of all self-identification forms?
- Is there an available list of all applicants and employees who self-identified as Veterans?
- Has the contractor reasonably accommodated the physical and mental limitations of qualified employees and applicants who are individuals with disabilities or special disabled Veterans?
- Is there a list of accommodation requests received from Veterans and individuals with disabilities, including: names, date requested, and details on accommodation requested?
- Were any accommodation requests denied? If so, why?
- Does the contractor require pre-employment physical examinations, physical examinations for promotions, or other changes in status?
- Does the contractor have a detailed list of the company's good faith efforts, including targeted recruitment sources for Veterans such as partnership in the local community, Veterans associations, and websites?
- Is there an ability to demonstrate relationship building with the resources listed under targeted recruitment sources?
- Does the contractor have other personnel action forms such as applications, terminations, and performance evaluations?
- Does the contractor have an up-to-date employee handbook?
- Does the contractor have a policy manual for personnel? If so, are there any medical restrictions generally, or for specific jobs?
- Are there copies of purchase orders and contracts available?

There are a number of ways the OFCCP is enforcing Veterans outreach. The OFCCP requires contractors to post most open jobs with the state employment agency and employment service delivery systems. Contractors are required to include all positions except executive and top management positions, positions that will be filled from within the contractor's organization, and positions lasting three days or less. Listing with the appropriate employment service delivery system must be done at the same time as a contractor's use of any other recruitment source or effort.

In an audit, the OFCCP will want to see proof the contractor posted the job openings, and the actual postings for all the job openings. If a contractor cannot show open jobs are routinely posted with an employment service delivery system, the OFCCP typically issues a conciliation agreement. If the contractor's only issue is not posting open jobs, the conciliation agreement will require the contractor to post with an employment service delivery system. Also, the agreement usually

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lists two to five additional agencies specifically targeting Veterans, where the contractor will be required to post all open positions. The contractor has to report back to the OFCCP with proof of postings, (usually three times), over an eighteen month period to fulfill the terms of the conciliation agreement.

The OFCCP has also been coming onsite to check on contractor's Veteran outreach. Once onsite, they typically want a tour of the facility, and to check all policies relating to Veterans. The agency will look at leave, disability, medical restrictions, and Uniformed Service Employment and Reemployment Rights Act (USERRA) policies. The agency will also look at job descriptions and how any employment tests or medical restrictions are handled. They will ask for the last three years of your VETS-100 or VETS-100A filings, and will typically ask to interview active employees who have identified as a Veteran. The visit can last anywhere from a few hours to a few days.

Given all the information provided above, how do contractors ensure they are prepared in the event of an audit? A commitment from contractors to work with agencies to target Veterans is what the OFCCP is looking for. They don't want contractors to fulfill their obligations by simply posting their jobs with the concerned agencies. The OFCCP wants contractors to monitor the sources and create "linkage" agreements to build relationships with those targeted agencies. The following is a list of what the OFCCP expects when it comes to Veteran outreach. This list is taken directly from their website, and will assist you in adjusting procedures or establishing partnerships to proactively respond to an audit:

- Create partnership arrangements with local and national recruiting sources for referral of qualified covered Veteran applicants
- Establish a relationship with the Local Veterans' Employment representative or his or her designee
- Recruit covered student Veterans at educational institutions
- Create partnership arrangements with Veterans' service organizations to employ qualified covered Veterans
- Establish relationships with the Veterans Administration Medical Center job placement programs
- Advertise job openings and recruit qualified covered Veterans during company career days or related activities in the local community
- Encourage subcontractors to seek qualified covered Veterans for employment opportunities
- In addition to listing specific employment opportunities, contact the appropriate employment delivery systems when new federal contracts are obtained, or when significant hiring will occur

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Following these preliminary steps will help your organization be audit ready when it comes to Veteran compliance.

In the past, retaining diagnostic information was not a requirement for contractors to remain in compliance with VEVRAA and Executive Order 11246. However, this year Office of Information and Regulatory Affairs (OIRA) has approved a proposed rule submitted by the OFCCP titled “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Evaluation of Recruitment and Placement Results under the VEVRAA of 1974, As Amended.”

The proposed rule will be published in the Federal Register. In brief, the proposed Notice of Proposed Rulemaking (NPRM) will revise the regulations in 41 Code of Federal Regulations (CFR) parts 60-250 and 60-300, thereby strengthening the affirmative action provisions of VEVRAA. Under the new rule, federal contractors and subcontractors will be required to conduct more substantive analyses of recruitment and placement actions taken under VEVRAA, and the use of numerical targets to measure the effectiveness of affirmative action efforts will also be required. Revisions to recordkeeping requirements have also been made in the proposed rule.

With increased enforcement activity, effective Veteran outreach is a vital aspect to overall compliance success. Federal contractors and subcontractors must take the necessary steps to meet required regulations, and be prepared for a potential OFCCP audit. To learn more about Veteran outreach, or how to prepare your company for a potential audit, please contact Berkshire Associates at 800.882.8904 or email bai@berkshireassociates.com.

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