

New Affirmative Action Obligations

The year 2014 will see the implementation of new requirements by the Office of Federal Contract Compliance Programs (OFCCP) that will affect all federal contractors, including the University. These requirements are included in two regulations involving a contractor's obligations in hiring workers who are veterans and/or disabled, respectively. Contractors like the University will soon be under a duty to engage in affirmative action with respect to these groups and to add appropriate provisions in their affirmative action plan. The objective, of course, is to enhance employment opportunities for protected veterans and individuals with disabilities (IWDs).

Regarding veterans, the OFCCP rule updates the Vietnam Era Veterans' Readjustment Assistance Act of 1974. The government's news release states that the rule will put into place "a quantifiable metric" to serve as a yardstick to help contractors assess how well they are doing in recruiting veterans. The metric involves a new obligation for the contractor to adopt, each year, a "benchmark" for the representation of protected veterans in its employ. The benchmark can be based on the national percentage of veterans in the workforce, which is currently 8%. Or, a contractor may set its own benchmark, based on official data and factors related to its establishment.

Obviously, the benchmark will vary from year to year. Other administrative requirements are added by the rule as well, such as the incorporation of an equal opportunity clause referencing veterans in all subcontracts and in position advertisements, stronger accountability and record-keeping duties, etc. The contractor must also engage in an annual assessment of the effectiveness of its endeavors to recruit veterans and a determination of the need for additional or alternative outreach methods.

The other rule was issued under Section 503 of the Rehabilitation Act of 1973, which deals with hiring obligations for IWDs. Among other things, it mandates a fixed "utilization goal" of 7% of qualified IWDs for each job group in a contractor's workforce. It further specifies data collection, recordkeeping, recruiting and outreach, training, etc. actions that a contractor must take. Similar to requirements already in place with respect to women and minorities, a contractor will be expected to include in its affirmative action plan an annual utilization analysis and assessment of problem areas, as well as an identification of "action oriented programs" targeting particular problem areas.

These new rules will underscore the importance of the "self-identification" process for these groups. Of course, the University will need veteran and IWD data, not only on new hires, but on the existing workforce as well. While the new rules become effective in March 24, 2014, contractors will have until the beginning of the next new affirmative action plan/program year (September 1, 2014 for the University) to comply with the affirmative action part of the rules. The administrative portion must generally be in place by the March effective date, however.

The employment rate for post-2001 veterans and for IWDs remains below the rates for all veterans and for non-veterans and the rate for individuals with no disabilities. These new rules are clearly designed to address this problem, though like most federal initiatives, they will result in an additional administrative burden for the University.