

# New Rules Change Requirements for Federal Contractors

Skadden

January 2015

This article is from Skadden's *2015 Insights* and is available at [skadden.com/insights](http://skadden.com/insights).

Contributing Partner

**John P. Furfaro**  
New York

Contributing Counsel

**Risa M. Salins**  
New York

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square  
New York, NY 10036  
212.735.3000

[skadden.com](http://skadden.com)

A string of Executive Orders signed by President Barack Obama and new rules published by the Department of Labor (DOL) in 2014 have imposed additional obligations on federal government contractors and subcontractors. New rules set requirements for the hiring of veterans and those with disabilities, mandate disclosure of labor and employment law violations, increase minimum wage, expand protected classes and more. While the full impact of these new requirements remains to be seen, employers who contract with, or are considering contracting with, the federal government must stay current on these rules in order to ensure compliance and assess costs.

**Veterans and Individuals With Disabilities:** On March 24, 2014, new regulations issued by the DOL's Office of Federal Contract Compliance Programs (OFCCP) expanding affirmative action obligations for veterans and individuals with disabilities went into effect. The rules with respect to veterans apply to federal contractors with a contract of \$100,000 or more, while the rules with respect to individuals with disabilities apply to federal contractors with a contract of \$10,000 or more. The most significant new requirement is that covered federal contractors must adopt hiring benchmarks for veterans (either based on the national percentage of veterans in the workforce or an individualized benchmark created for the establishment) and utilization goals for individuals with disabilities. More specifically, under the veterans rules, contractors may either establish a benchmark equal to the national percentage of veterans in the civilian labor force or establish their own individualized benchmark in accordance with OFCCP guidelines. The rules pertaining to individuals with disabilities set a national utilization goal of 7 percent, and applied to each job group for contractors with over 100 employees, or to the entire workforce if the contractor has fewer than 100 employees. The OFCCP launched two new databases to help federal contractors comply with these regulations.

First, the veterans Benchmark Database includes the current national hiring benchmark (7.2 percent for 2014), as well as relevant state data for contractors who choose to create an individualized benchmark to consider. Second, the Disability and Veterans Community Resources Directory provides a non-exhaustive directory of groups and organizations that provide assistance with training, recruiting and hiring veterans and individuals with disabilities. Contractors who do not comply with the new requirements could face termination of their federal contracts, as well as debarment from receiving future contracts.

**Fair Pay and Safe Workplaces:** On July 31, 2014, President Obama signed the Fair Pay and Safe Workplaces Executive Order, stating that it was designed to "crack ... down on federal contractors who put workers' safety and hard-earned pay at risk." The order imposes three significant requirements on federal contractors. First, companies seeking new federal procurement contracts valued at \$500,000 or more will be required to report any violations of 14 specific labor and employment laws that occurred within three years prior to bidding. The laws include the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations Act, the Davis-Bacon Act (DBA), the Service Contract Act (SCA), the Family and Medical Leave Act, Title VII of the Civil Rights Act, the Age Discrimination

# New Rules Change Requirements for Federal Contractors

Continued

in Employment Act and the Americans With Disabilities Act, as well as any equivalent state laws. After being awarded a contract, federal contractors will have an ongoing obligation to report any such violations every six months. Based on this information, the contracting agency will determine whether any remedial measures are required, including contract termination or suspension and debarment from consideration for future contracts. Second, federal contracts worth more than \$500,000 must include a provision requiring contractors to provide employees for whom they are required to maintain wage records with a document each pay period showing hours worked, overtime, pay, and any additions to or deductions from pay. Third, for contracts exceeding \$1 million, the order restricts the use of predispute arbitration agreements for claims arising under Title VII or any tort related to or arising from sexual assault or harassment. Contractors with covered contracts may arbitrate such claims only if the employee voluntarily consents to arbitration after the dispute arises. The order is effective immediately, but it will not apply to new solicitations until the Federal Acquisition Regulation Council issues a final rule to implement the order, which is expected to occur in 2016.

**LGBT Protection:** Executive Order 13672, which became effective July 21, 2014, amended Executive Order 11246 by expressly adding sexual orientation and gender identity to the list of protected classes. In addition, on August 19, 2014, the DOL's OFCCP issued Directive 2014-2, which interprets the prohibition against sex discrimination in Executive Order 13672 to include discrimination on the basis of gender identity and transgender status.

**Minimum Wage Increase:** On October 1, 2014, the DOL announced its final rule implementing Executive Order 13658 raising the minimum wage for employees working on covered federal government contracts from \$7.25 an hour to \$10.10 an hour. The final rule applies to a new or replacement contract awarded on or after January 1, 2015, provided the contract is a procurement contract for construction covered by the DBA, a contract for services covered by the SCA, a contract for concessions, or a contract in connection with federal property or lands and related to offering services for federal employees or the general public.

**Veteran Reporting:** On September 25, 2014, the DOL's Veterans' Employment and Training Service issued a final rule to revise the regulations implementing the reporting requirements under the Vietnam Era Veterans Readjustment Assistance Act. The final rule renames the VETS-100A Report to VETS-4214 Report and provides that contractors can now report the total number of "protected veterans" in their workforce in the aggregate, rather than by each category of veterans protected by the statute. The prior rules required covered contractors to record the different subclasses of protected veterans (i.e., disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces service medal veteran). These new reporting requirements apply beginning with the annual report filed in 2015.

In addition to the obligations set forth above, the OFCCP has published the following two proposed rules that would place additional requirements on federal contractors.

# New Rules Change Requirements for Federal Contractors

Continued

---

**Equal Pay Report:** The OFCCP's controversial proposed Equal Pay Report Rule asks certain federal contractors to provide an annual Equal Pay Report on employee compensation, including summary information on total W-2 compensation paid to employees by race, sex, ethnicity and specified job categories.

**No Pay Secrecy:** A second proposed rule would bar federal contractors from maintaining pay secrecy policies. Under the terms of the proposal, federal contractors may not fire or otherwise retaliate against employees or applicants for discussing, disclosing or inquiring about their compensation or that of another employee or applicant.

Both of the above proposed rules are subject to public comment and employers are advised to keep apprised of related developments. The other requirements addressed in this article are in effect, and covered employers need to move forward with compliance.