

Hot Employment Topics in Government Contracting

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Employers contracting with the federal government or receiving subcontracts from primary contractors are required to comply with executive orders and agency rules calling for equal opportunity, affirmative action and workplace accommodation. Between 2014 and 2015, the Office of Federal Contract Compliance Programs (OFCCP) issued numerous rules and guidance regarding government contractors, including setting hiring goals for veterans and individuals with disabilities; specifying fair pay and safe workplaces requirements; adding sexual orientation and gender identity as protected classes; and raising the minimum wage. In addition, the OFCCP issued proposed rules on equal pay, pay transparency and sex discrimination.

Skadden held a video webinar on June 4, 2015, for federal contractors outlining the OFCCP's changes and new requirements for compliance. Skadden speakers were John Furfaro, partner and head of the Labor and Employment Law Group, and counsel Risa Salins, also of the labor group. Guest speakers were Charles Diamond, managing director at Alvarez & Marsal, and Mary Dunbar, who specializes in preparing affirmative action plans and addressing OFCCP audits.

Key Takeaways From the Seminar

Under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act of 1973 (Section 503), the OFCCP has set a benchmark for the hiring of veterans (currently 7 percent) and a utilization goal of 7 percent for the employment of qualified individuals with disabilities. While the OFCCP has not set specific penalties for failure to meet the benchmark or utilization goal, federal contractors still must take steps to reassess their existing recruitment and hiring processes in an effort to get as close as possible. In addition, both VEVRAA and Section 503 require federal contractors to request self-identification from job applicants and employees, as well as collect and maintain data. Favorably for federal contractors, the VETS-100 form has been phased out and the replacement VETS-4212 report requires reporting of specified information based on the federal contractor's veteran workforce in the aggregate, rather than by each veteran category.

In 2014, the Fair Pay and Safe Workplaces rules imposed reporting requirements on federal contractors to identify "subject violations" that occurred within the three years prior to bidding for a federal contract. The Department of Labor recently issued

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proposed guidance for compliance, such as defining the severity of labor violations and excluding private settlements from required disclosure. Also in 2014, Executive Order 13672 expressly added sexual orientation and gender identity to the list of protected classes under Executive Order 11246 for covered contracts, and Executive Order 13658 raised the minimum hourly wage from \$7.21 to \$10.10. Finally, the OFCCP has changed its scheduling letter and itemized listing for conducting audits. These materials provide additional notice to federal contractors, identifying whether the contractor is being selected for routine compliance review or a corporate management compliance evaluation and incorporating VEVRAA and Section 503's requirements.

Three additional rules have been proposed by the OFCCP addressing pay and sex discrimination. The Equal Pay Report would require federal contractors with at least 100 employees and a covered contract of \$50,000 or more to submit an annual employee compensation report. In addition, the pay transparency proposed rule would forbid federal contractors with contracts for more than \$10,000 from maintaining pay secrecy policies and retaliating against employees or job applicants for discussing their pay. The final proposed rule addressing sex discrimination would replace outdated guidelines first adopted in the 1970s to align more closely with recent changes in sex discrimination law.