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Labor and Employment Alert: New Rules Regarding Affirmative Action Obligations for Disabled and Veteran Workers Take Effect March 24, 2014

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As discussed in Vorys' September 3, 2013 *Client Alert*, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) previously issued final rules interpreting Section 503 of the Rehabilitation Act (Section 503) and the Vietnam Veterans' Readjustment Assistance Act of 1974 (VEVRAA). The final rules, aimed to improve hiring and employment opportunities for disabled and veteran workers, impose numerous new affirmative action obligations on federal contractors or subcontractors covered by Executive Order 11246 (contractors). The final rules take effect on March 24, 2014. However, any contractor with an affirmative action plan (AAP) already in place may maintain that AAP until the end of the AAP year. The following summarizes several key aspects of the Section 503 and VEVRAA final rules.

Applicant Flow Data

Effective March 24, 2014 (or the first day of the contractor's next new AAP year), contractors must capture and maintain applicant flow data regarding individuals with disabilities and covered veterans. To do so, contractors must invite individuals to self-identify, both pre and post-employment. Additionally, contractors must invite current employees to self-identify their disability status every five years. Appendix B to the new VEVRAA regulations provides **recommended** language for contractors to use when inviting individuals to self-identify covered veteran status. The recommended language can be found [here](#). In contrast, the final rules for Section 503 provide **required** language that contractors must use when inviting individuals with disabilities to self-identify. The required language can be found [here](#).

Additional Data Collection Requirements

In addition to collecting applicant flow data regarding individuals with disabilities and covered veterans, the final rules also require contractors to collect the following related data: (i) number of open jobs; (ii)

number of jobs “filled;” (iii) total number of applicants; (iv) total number of applicants hired; (v) total number of disabled/covered veteran applicants; and (vi) total number of disabled/covered veteran applicants hired.

Hiring of Disabled and Covered Veteran Applicants

The final rules require that contractors set a goal of having individuals with disabilities comprise 7% of their workforce, for each and every job classification. In addition, the final rules introduce hiring benchmarks for protected veterans. To establish its veteran hiring benchmark, a contractor must either: (i) adopt the national veteran hiring percentage published by OFCCP (currently 8%); or (ii) calculate its veteran hiring benchmark using relevant state-specific data published by OFCCP and the contractor’s own applicant, hiring and recruiting experience.

Equal Employment Opportunity Clauses

The new OFCCP FAQs confirm that contractors can combine required EEO clauses (Executive Order 11246, Section 503, VEVRAA) into a single “incorporation by reference” clause in non-exempt contracts, subcontracts and purchase orders, so long as the entire clause is set in bold text.

The Section 503 and VEVRAA final rules present contractors with many new challenges and pitfalls to affirmative action compliance. If you have any questions, please contact your Vorys attorney.