

CLIENT ALERT: New Regulations Substantially Impact Federal Contractors' Compliance Obligations

On August 27, 2013, the U.S. Department of Labor's ("DOL") Office of Federal Contract Compliance Programs ("OFCCP") released the final ruling on new regulations that substantially impact federal contractor and subcontractor compliance obligations under both Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"). Both rules impose significant new recordkeeping, reporting, administrative and affirmative action obligations on contractors. As the regulations go into effect this week, contractors should be aware of the changes highlighted below. Contractors with written affirmative action programs ("AAP") already in place under the old regulations may delay compliance with new affirmative action requirements until their first AAP is due following the March 24, 2014 effective date.

Section 503 of the Rehabilitation Act

Section 503 applies to private-sector companies that have \$10,000 or more in contracts with any federal agency and prohibits discrimination by these contractors against individuals with disabilities in employment. The regulation changes, issued as part of an effort to update and strengthen contractors' affirmative action and nondiscrimination responsibilities, establish the objective for contractors to employ a minimum of 7 percent disabled workers. Contractors must assess their compliance with the goal annually and establish specific programs to address any identified problems. While failing to meet the 7 percent "disability utilization goal" is not a violation of the regulation, contractors that cannot show that they meet that minimum or are taking steps to achieve that goal, could face penalties and, potentially, the loss of their government contracts.

Under the updated regulations, contractors are required to invite applicants to self-identify as individuals with disabilities (using **language** prescribed by OFCCP) and invite their employees to self-identify every five years. At least once during the years between these invitations, contractors are obligated to remind their employees that they may voluntarily update their disability status at any time. In other words, the new regulations require federal contractors to ask employees if they have a disability—something employers are typically advised not to do in order to avoid liability under the Americans with Disabilities Act, as amended ("ADA").

Although the ADA generally makes it unlawful for employers to gather information on a worker's disability status, the Equal Employment Opportunity Commission made an **exception** so that federal contractors can comply with the new rules. The new regulations otherwise implement changes bringing Section 503 in line with the ADA Amendments Act of 2008, revising the definition of "disability" and certain nondiscrimination provisions of the implementing regulations. The challenge for employers will be to maintain confidentiality of specific individuals and their disabilities, and to continually ensure that the disclosure of disabilities does not negatively affect the employment of those who choose to disclose.

Federal contractors should note that Section 503 posting, data collection, and recordkeeping requirements also have been modified.

Vietnam Era Veterans' Readjustment Assistance Act

VEVRAA applies to government contractors and subcontractors with 50 or more employees and government contracts of \$100,000. VEVRAA prohibits these contractors from discriminating in employment against protected veterans and requires these employees to make efforts to recruit, hire, promote, and retain these veterans. The new VEVRAA regulations include strengthened affirmative action provisions to aid contractors in their efforts to recruit and hire protected veterans. They

require contractors to establish annual hiring benchmarks for protected veterans. Contractors may choose to establish a benchmark equal to the national percentage of veterans in the civilian labor force, which will be published and updated annually by the Office of Federal Compliance Programs. Alternatively, contractors may choose to establish their own benchmarks using certain data from the Bureau of Labor Statistics and Veterans' Employment and Training Service/Employment and Training Administration in conjunction with certain contractor-specific factors.

The new VEVRAA regulations require contractors to invite applicants to self-identify as protected veterans at both the pre-offer and post-offer phases of the application process. Like those made to Section 503, the changes also impose recordkeeping and data collection requirements.

In light of the new regulations, federal contractors should contact their MBJ attorney with questions regarding their obligations under both Section 503 and VEVRAA.

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