

## Recent Developments for Federal Government Contractors

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In the past few weeks, there have been two significant developments impacting federal contractors and subcontractors. On May 19, 2008, the Department of Labor issued final rules to implement statutory amendments to federal contractors' and subcontractors' affirmative action obligations, which change the reporting requirements. And, on June 6, 2008, President Bush issued an Executive Order requiring federal contractors to use E-Verify to verify the work authorization of new employees and current employees who perform work on future federal contracts.

#### **A. Department of Labor Issues New Regulations on Veterans Reporting Requirements for Federal Contractors and Subcontractors**

The Department of Labor's Veterans' Employment and Training Service issued final regulations on the reporting requirements for federal contractors and subcontractors under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 on May 19, 2008 to implement amendments made by the Jobs for Veterans Act of 2002 ("JVA"). These new regulations, which are effective as of June 18, 2008, make several important and significant changes to the reporting requirements for federal contractors and subcontractors.

Under the new regulations, employers with federal contracts or subcontracts of \$100,000 or more entered into or modified on or after December 1, 2003 must file the new VETS-100A Report. Employers with federal contracts or subcontracts of \$25,000 or more entered into before December 1, 2003 must continue to file VETS-100 Reports. Importantly, any contractor or subcontractor with both types of contracts must file both forms.

The new VETS-100A Report also reflects the updated protected categories of veterans under JVA, and now requires covered contractors and subcontractors to report annually on the following categories of veterans:

Disabled Veterans. "Disabled veteran" means any veteran who: (a) is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or (b) was discharged or released from active duty because of a service-connected disability.

Other Protected Veterans. "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service in a war, campaign, or expedition in which a campaign badge has been authorized under the laws administered by the Department of Defense.

Armed Forces Service Medal Veterans. "Armed forces service medal veteran" means a veteran who, while service on active duty in the Armed Forces, participated in a United States military operation for which a service medal was awarded pursuant to Executive Order 12985.

Recently Separated Veterans. "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active military duty. The new VETS-100A also alters the list of job categories in conformance with changes made by the Equal Employment Opportunity Commission to its EEO-1 form. Specifically, the "Officials and Managers" job category is now divided into "Executive/Senior Legal Officials and Managers" and "First/Mid Level Officials and Managers."

Those federal contractors that are subject to the VETS-100A Report filing requirement must collect and maintain the employment data on the new protected categories of veterans beginning in 2008, and report the first year of data on the VETS-100A Report to be filed by September 30, 2009. In order to ensure compliance with these reporting requirements, federal contractors and subcontractors will need to examine their federal contracts and consider how to survey their workforce in order to properly categorize them into the new categories. At a minimum, federal contractors and subcontractors should take an inventory of the federal contracts to determine whether they are subject to the new reporting requirements and consider revising any employee self-identification forms to include both the pre-JVA protected categories of veterans and the new categories as amended by JVA.

### **B. Amended Executive Order 12989 Requires Federal Contractors to Use E-Verify**

On June 6, 2008, President Bush amended Executive Order 12989 to require federal government contractors to use an electronic employment verification system designated by the Secretary of Homeland Security to verify the work authorization and all new hires and existing personnel assigned to perform work on federal contracts. In a press conference on June 9, 2008, Secretary Michael Chertoff designated E-Verify as the system to be used under the order. E-Verify is an internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees. The amended executive order does not address whether or not subcontractors will also be required to use E-Verify, but rulemaking authority is granted to the Department of Homeland Security, and Secretary Chertoff has stated that rules would be required to implement the order.

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Search