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# New Regulations to Take Effect on Recruitment of Veterans and Disabled Employees by Federal Contractors

## Working Together

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The Office of Federal Contract Compliance Programs ("OFCCP") has announced new regulations that will affect federal contractors' and subcontractors' recruiting of veterans and disabled employees. The new regulations take effect on March 24, 2014, with some exceptions, and have been enacted under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973. Among other changes, these regulations:

- Create "hiring benchmarks" for veterans and "utilization goals" for disabled employees;
- Require covered employers to collect new types of demographic data on applicants and existing workers; and
- Require covered employers to document compliance efforts, and to maintain certain data collected in the course of compliance.

Whether an employer is a covered employer subject to these new rules is dependent on the dollar value of the employer's federal contracts or subcontracts, as well as, in some cases, the number of employees in the employer's workforce.

The new goals and benchmarks are not, despite some press reports and political commentary to the contrary, mandatory quotas for hiring. That is, failure to meet them is not, in itself, a violation of the regulations. But the rules nonetheless oblige employers to pursue the aspirational targets in good faith, and they create real, tangible compliance tasks for doing so.

With respect to recruiting veterans, covered employers must decide whether to adopt the "standard" 8% hiring benchmark promulgated by the OFCCP, which the government has concluded represents the portion of protected veterans in the national labor pool as a whole. Or the employer must establish a custom benchmark of its own based on enumerated factors such as veterans' representation in the state labor force and the employer's own historical applicant and hiring ratios. There is not yet any caselaw guidance on what standards the government will apply to determine the sufficiency of an employer's custom benchmark, suggesting that at least initially, the standard benchmark may be the simpler and more conservative course.

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With respect to recruiting disabled employees, there is a single 7% goal with no alternative for individual customization. Importantly, the goal is applicable to the workforce as a whole, not to new hires specifically, and an employer with more than 100 employees must separately apply the goal to each distinct "job group" within its workforce.

Covered employers must ask job applicants to self-identify, at the time of application, as protected veterans or disabled persons, and must use certain mandatory language when doing so. Moreover, because the utilization goal for disabled employees is applicable to the whole workforce, not just to new hires, employers must, at certain specified intervals, request that *existing* employees provide their disability status. Notably, employers must maintain these data for three years, not, as in many other equal employment opportunity contexts, two.

Examples of other required good faith efforts include mandatory outreach to applicants from protected groups, documentation of employers' compliance efforts, and annual self-assessments of employers' progress. Employers have been given considerable latitude in how to carry out that outreach, but examples of outreach efforts encouraged by the government include collaborating with and issuing notices of job vacancies to third-parties who have access to covered applicant pools or have mandates of their own to assist such populations, such as state disability services agencies, college veterans' counselors, and local veterans and disability advocacy or service groups.

In short, these new requirements will entail significant and potentially logistically complicated compliance obligations for which government contractors and subcontractors should begin to plan immediately.