

WILLIAMS MULLEN

Technical Phases of OFCCP's Regulations
Regarding Individuals with Disabilities, Disabled
Veterans, Recently Separated Veterans, Other
Protected Veterans and Armed Forces Service
Medal Veterans

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Lynn F. Jacob, Partner

Richmond, VA
804.420.6427
ljacob@williamsmullen.com

Sara B. Rafal, Partner

Virginia Beach, VA
757.473.5384
srafal@williamsmullen.com

Laura D. Windsor, Partner

Richmond, VA
804.420.6466
lwindsor@williamsmullen.com



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Threshold Coverage

- Section 503 of the Rehabilitation Act of 1973 ("Section 503") - employers with federal contracts or federal subcontracts in excess of \$10,000. 29 U.S.C. § 791
- Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002 ("VEVRAA") - employers with federal contracts or federal subcontracts in the amount of \$100,000. 38 U.S.C. § 4212.

Internal Communications

Mandatory

- Display current Equal Protection is the Law poster in personnel office, on bulletin boards and places accessible to applicants. Where contractor has employees that do not work at the contractor's physical location, post a link to the poster on Internet. Make notice available in large print or braille. 41 CFR 60-300.5(a)(9); 41 CFR 60-741.5(a)(4).
- Make available to any employee or applicant for employment the full affirmative action programs for Persons with a Disability, Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Services Veterans, absent the data metrics, and post at each establishment the location and hours during which these programs may be inspected. 41 CFR 60-300.41; 41 CFR 60-741.41.
- On a yearly basis reaffirm and post on bulletin boards affirmative action and anti-harassment policy statement which is dated and signed by the top executive and include in employee handbook. Notice must be accessible and understandable (i.e. Braille or large print). 41 CFR 60-300.44 (a) and (e); 41 CFR 60-741.44 (a) and (e).
- When the applicant applies or is considered for employment, invite the applicant to inform contractor whether the applicant believes that he or she is an individual with a disability using the specific form authorized by the OFCCP and invite the applicant to inform the contractor whether the applicant believes that he or she is a recently separated veteran, other protected veteran or Armed Forces service medal veteran. 41 CFR 60-300.42(a); 41 CFR 60-741.42(a).
- After an offer is made, but before the applicant begins his or her job duties, invite the applicant to self-identify status as disabled and/or as an otherwise protected veteran using the specific form authorized by the OFCCP. 41 CFR 60-300.42(b); 41 CFR 60-741.42 (b).

- During first year contractor becomes a contractor and every five years thereafter, invite employees to self-identify their status as disabled and/or as a person with a disability. In the interim during the five years, remind employees of ability to update status record. 41 CFR 60-741.42 (c)
- If contractor is unionized, notify union officials and/or employee representatives of the contractors' EEO/Affirmative Action/Anti-Harassment Policy and request their cooperation. 41 CFR 60-300.44(g)(2)(i); 41 CFR 60-741.44(g)(2)(i)

Encouraged

- Discuss EEO policy and commitment to affirmative action in employee meetings. 41 CFR 60-741.44(g)(3)(i)
- Conduct special meetings with management and supervisory personnel. 41 CFR 60-741.44(g)(3)(iii)

External Communications

Required

- Include "Equal Opportunity Clause" in boldface print in all applicable purchase orders or subcontracts, incorporating the clauses by reference by citing to 41 CFR 60-1.4(a); 41 CFR 60-300.5(a); and 41 CFR 60-741.5(a).
- Provide written notification of the contractor's affirmative action policies to subcontractors, vendors and suppliers and request that they take appropriate action. 41 CFR 60-300.44(f); 41 CFR 60-741.44(f).
- Use the caption, "An Equal Employment Opportunity/Affirmative Action Employer," or EEO/M/F/Disabled/Vet Employer" in all recruitment advertising. 41 CFR 60-1.41.
- With the exception of executive and senior management jobs meeting the FLSA executive exemption test, positions lasting three days or less and jobs for which only internal candidates are being considered, list all employment openings at an appropriate state workforce agency, job bank or employment service delivery system (ESDS). 38 U.S.C. 4212(a)(2)(A); 41 CFR 60-300.5 (EO clause, paragraph(2)).
- Advise the state employment security agency in each state in which the contractor has an establishment of: the contractor's government contractor status; the name and location of each hiring location in the state; and the hiring manager's contact information for each location in the state and request priority referrals of protected veterans for job openings at each location in the state. In addition, if the contractor uses outside job search companies, the contractor must provide the outside companies' contact information. 41 CFR 60-300.5 (EO clause, paragraphs 2 and 4).

- Enlist support in recruiting and developing on-the-job- training opportunities for qualified disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans, and qualified disabled individuals. 41 CFR 60-300.44 (f); 41 CFR 60-741.44(f). See lists set forth in 41 CFR 60-300.44 (f)(1) and 41 CFR 60-741.44(f) for examples of efforts that can be made to satisfy this requirement.
 - Department of Veterans Affairs Regional Offices. 41 CFR 60-300.44 (f)(1)
 - Veterans counselors and coordinators on college campuses. 41 CFR 60-300.44 (f)(1)
 - Services officers of the national veterans' groups. 41 CFR 60-300.44 (f)(1)
 - State Vocational Rehabilitation Service Agency, mental health or developmental. 41 CFR 60-300.44 (f)(1)
 - Disability agency in area of establishment. 41 CFR 60-741.44(f)(2)(i)(A)
 - Employment One-Stop Career Center or American Job Center nearest establishment. 41 CFR 60-741.44(f)(2)(i)(B)
 - Department of Veterans Affairs office nearest establishment. 41 CFR 60-741.44(f)(2)(i)(C)
 - Entities funded by DOL providing recruitment or training services for disabled, like Employer Assistance and Research Network. (www.earnworks.com). 41 CFR 60-741.44(f)(2)(i)(D)
 - Local disability groups or centers for independent living. 41 CFR 60-741.44(f)(2)(i)(E)
 - Placement or career offices of educational institutions specializing in placement of individuals with disabilities. 41 CFR 60-741.44(f)(2)(i)(F)
 - Private recruitment sources specializing in disabled individuals. 41 CFR 60-741.44(f)(2)(i)(G)
 - Formal briefings, preferably on contractor property, with recruiting services, including explanations of current and future job openings and of selection processes. Affirmative Action officer should attend, if possible, and formal arrangements for referral and feedback should be established. 41 CFR 60-741.44(f)(2)(ii)(A).
 - Efforts at educational institutions should include efforts to reach individuals with disabilities. 41 CFR 60-741.44(f)(2)(ii)(B)
 - Participation in work study programs for students with disabilities. 41 CFR 60-741.44(f)(2)(ii)(C)
 - Make disabled individuals available for career days and related activities. 41 CFR 60-741.44(f)(2)(ii)(D)
 - Any other positive steps necessary to attract disabled individuals with requisite skills that are not in the workforce, including use of DOE's Rehabilitation Services Administration and other organizations. 41 CFR 60-741.44(f)(2)(ii)(E).
 - Consider known disabled applicants for other positions they may be qualified for when position applied for is unavailable. 41 CFR 60-741.44(f)(2)(ii)(F).
 - Publicize policy in contractor publications, reports and other media. 41 CFR 60-741.44(g)(3)(ii)

Records, Filings

- Prepare and update annually written Affirmative Action Programs for each establishment when dollar volume of U.S. contracts or subcontracts reaches \$50,000 (\$100,000 for

VEVRAA) and contractor employs 50 or more employees. 41 CFR 60-300.40; 41 CFR 60-741.40.

- Contractors with 100 or more employees entering into or modifying a contract or subcontract in the amount of \$100,000 or more must file a VETS-100A in lieu of the VETS-100 form. 41 CFR 61-300.11.
- Two year record retention requirement.
 - With the exception of those personnel records subject to the three year retention requirement, a contractor is required to preserve all personnel/employment records made or kept by the contractor for the longer of two years after the date of the making of the record or the personnel action involved. However, if the contractor has less than 150 employees or does not have government contracts totaling at least \$50,000, records must only be kept for one year. Personnel records include records related to: requests for accommodation; results of physical examinations; job advertisements and postings; applications and resumes; tests and test results; interview notes and other records having to do with hiring, assignment, promotion, demotion, transfer, layoff, or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship. 41 CFR § 60-300.80 (a); 41 CFR 60-741.441.80(a).
- Three year record retention requirement.
 - All information on self-identification must be maintained as confidential, and maintained in a data analysis file (rather than in the personnel or medical files of an individual employee) for three years. Note-information may be maintained in existing human resources information systems or applicant tracking systems provided that the disability-related data are stored securely (apart from other personnel information), and access to this data must be limited solely to personnel who have a need to know the information for the purpose of complying with OFCCP's regulations. 41 CFR § 60-300.44(k); 41 CFR 60-741.44(k)(1); 41 CFR 60-741.441.80(b).
 - The number of applicants who self-identified as protected veterans or are otherwise known as protected veterans. 41 CFR § 60-300.44(k).
 - The number of applicants who self-identified as individuals with disabilities. 41 CFR 60-741.44(k)
 - The total number of applicants for all jobs. 41 CFR 60-741.44(k)
 - The number of job openings and the total number of jobs filled. 41 CFR 60-741.44(k); 41 CFR 60-741.441.80(b).
 - The number of applicants with disabilities hired. 41 CFR 60-741.44(k)(3); 41 CFR 60-741.441.80(b).
 - The number of protected veteran applicants hired. 41 CFR § 60-300.44(k).
 - All records documenting external dissemination of policy, outreach and recruitment. 41 CFR 60-741.44(f)(4); 41 CFR 60-741.441.80(b).
 - If using other than the 7.5 benchmark, factors considered and how benchmark was determined. 41 CFR 60-300.45.

Assignment of Responsibility for Affirmative Action Program

- Responsibility for affirmative action program must be assigned to an official of the contractor. 41 CFR 61-300.44(i); 41 CFR 60-741.44(i).
 - His or her identity should appear on all internal and external communications regarding the contractor's affirmative action plan.
 - Official must be given necessary senior management support and staff to manage implementation of the affirmative action program.

Training

- For all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes. 41 CFR 60-741.44(j).
- To assure that the commitments in the contractor's affirmative action program are implemented. 41 CFR 60-741.44(j).

Self-Assessment and Audit

- Annually establish hiring benchmarks for Protected Veterans using one of two options. 41 CFR 60-300.45.
 - Option one - Establish a benchmark equaling the national percentage of veterans in the civilian labor force (currently 8%), or
 - Option two - Establish a benchmark taking into account:
 - The average percentage of veterans in the civilian labor force in the states where the contractor is located over the past three years,
 - The number of veterans over the previous four quarters who were participants in the employment service delivery system in the state where the contractor is located,
 - The application ratio and hiring ratio for the previous year,
 - The contractor's assessments of its outreach/recruitment efforts, and
 - Any other factors affecting the availability of qualified protected veterans.
- Establish a utilization goal for disabled individuals set by OFCCP (currently 7%) for each job group (if under 100 employees, can set goal for entire workforce instead of by job group). 41 CFR 60-741.45(a); 41 CFR 60-741.45(d)(2)(i).
- Conduct utilization of disabled analysis by job group annually (unless fewer than 100 employees – conduct by workforce). 41 CFR 60-741.45(d)(3).
- When utilization is less than goal in any job group, determine impediments to employment by assessing effectiveness of personnel processes, effectiveness of outreach and recruitment, audit results and other areas. 41 CFR 60-741.45 (e).
 - Establish a specific action-oriented program to address any identified problems to include modification of personnel processes, alternative or additional outreach and recruitment. 41 CFR 60-741.45(f).

- Adopt a procedure to review personnel processes that includes a schedule for the review of all physical and mental job qualification standards to ensure any qualifications that eliminate applicants are job-related and consistent with business necessity. 41 CFR 60-741.44(c)(1) and (2).
- Periodically review personnel processes and document a description of the review and necessary modifications that may be made as a result of the review. 41 CFR 60-741.44(b).
- When utilization is less than goal in any job group, determine impediments to employment by assessing effectiveness of personnel processes, effectiveness of outreach and recruitment, audit results and other areas. 41 CFR 60-741.45 (e).
- Establish a specific action-oriented program to address any identified problems to include modification of personnel processes, alternative or additional outreach and recruitment. 41 CFR 60-741.45(f).
- Assure that all tests used in the employee selection process are validated for job relatedness – ability to perform the tasks relating to the specific job in question, and maintain information on the impact of selection procedures on protected classes of applicants and employees. 41 CFR 60-3.4.

Encouraged

- Annotate the application form of protected veterans to identify each vacancy for which they were considered. App. C to 41 CFR 60-300
- Include in protected veterans’ personnel files: App. C to 41 CFR 60-300
 - Identification of each promotion for which the employee was considered.
 - Identification of each training program for which the employee was considered.
- If protected veteran is rejected for employment, promotion or training, document the reason and, if protected veteran is disabled, a description of the accommodations considered. App. C to 41 CFR 60-300

Reasonable Accommodation to Physical and Mental Limitations

- As a matter of nondiscrimination, contractors are required to make Reasonable Accommodation to Physical and Mental Limitations. 41 CFR 60-300.44 (d); 41 CFR 60-741.21(a)(6); 41 CFR 60-741.44(d)
 - To the extent that an applicant self-identified during the initial post-offer stage regarding possible reasonable accommodation, or an employee is known to be disabled and is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor must confidentially inquire whether the problem is disability-related and whether the employee is in need of reasonable accommodation. 41 CFR 30-300.42(d); 41 CFR 30-300, App. A(2); 41 CFR 60-300; 41 CFR 60-741.44(d).
 - When an accommodation is deemed an undue hardship, the contractor must provide the accommodation if funding is available from another source or give the disabled

veteran the option of providing the accommodation or of paying the portion of the cost that constitutes the undue hardship. 41 CFR 60-741.42(d).

- Contractors are encouraged, but not required, to comply with the following guidelines:
 - Develop, implement and disseminate written procedures for processing reasonable accommodation requests. 41 CFR 60-741.44(d)(2).
 - Provide written confirmation to the applicant after receiving accommodation request. 41 CFR 60-741, App. B(7).
 - Process request for accommodation as expeditiously as possible (5 to 10 days or within 30 days if medical documentation is required). 41 CFR 60-741, App. B(8).
 - Provide written refusals for an accommodation request that includes the basis for denial. 41 CFR 60-741, App.(B)(11).
 - Transmit reasonable accommodation information to new employees at time of new hire orientation and to unions, if applicable. 41 CFR 60-741, App (B)(13).
 - Do not reduce compensation because of actual or anticipated costs of accommodation. 41 CFR 60-741.21(a)(9).
 - Give individuals with disabilities the option of covering a portion or all of the accommodation expense themselves if the accommodation is deemed an undue hardship. 41 CFR 60-741, App. A.
 - Create a contemporaneous written record when contractor makes an employment decision because the employee poses a “direct threat” to himself or other employees. 41 CFR 60-741.44(c)(3).
 - Make information and computer technologies accessible, even absent request for accommodation. 41 CFR 60-741.44(b).

Provide Equal Opportunity and Affirmative Action for Veterans

- Provide equal opportunity and affirmative action for four categories of veterans: 1) disabled veterans; 2) recently separated veterans (veterans who were discharged or released from active duty within the last three years); 3) Armed Forces service medal veterans (veterans who, while serving on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985); and 4) other protected veterans (veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the U.S. Department of Defense. (41 CFR 60-300.4; 38 USC 4212).

Required Contents of Affirmative Action Plan For Protected Veterans

41 CFR 60-300.44

- Policy statement. 41 CFR 60-300.44(a).
- Review of personnel processes. 41 CFR 60-300.44(b).
- Physical and mental qualifications. 41 CFR 60-300.44(c).
- Reasonable Accommodations to Physical and Mental Limitations. 41 CFR 60-300.44(d).

- Harassment. 41 CFR 60-300.44(e).
- External dissemination of policy, outreach and positive recruitment. 41 CFR 60-300.44(f).
- Internal Dissemination of Policy. 41 CFR 60-300.44(g).
- Audit and Reporting System. 41 CFR 60-300.44(h).
- Responsibility for Implementation. 41 CFR 300.44(i).
- Training. 41 CFR 60-300.44(j).
- Data Collection Analysis. 41 CFR 60-300.44(k).

Required Contents of Affirmative Action Plan For Individuals with Disabilities

41 CFR 60-741.44

- Policy Statement. 41 CFR 60-741.44(a).
- Review of Personnel Policies. 41 CFR 60-741.44(b).
- Physical and Mental Qualifications. 41 CFR 60-741.44(c).
- Reasonable Accommodations to Physical and Mental Limitations. 41 CFR 60-741.44(d).
- Harassment. 41 CFR 60-741.44(e).
- External dissemination of policy, outreach and positive recruitment. 41 CFR 60-741.44(f).
- Internal Dissemination of Policy. 41 CFR 60-741.44(g).
- Audit and Reporting System. 41 CFR 60-741.44(h).
- Responsibility for Implementation. 41 CFR 60-741.44(i).
- Data Collection. 41 CFR 60-741.44(k).
- Utilization Goals. 41 CFR 60-741.45(a).
- Utilization Analysis. 41 CFR 60-741.45 (d).
- Identification of Problem Areas. 41 CFR 60-741.45 (e).

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