



Legal Alert: OFCCP Proposes Changes to Rehabilitation Act Regulations

12/9/2011

Executive Summary: Today the Office of Federal Contract Compliance Programs (OFCCP) published a Notice of Proposed Rulemaking (NPRM) proposing changes to its regulations implementing Section 503 of the Rehabilitation Act. The NPRM will significantly change the Rehabilitation Act obligations for federal contractors. Comments on the proposed changes are due by February 7, 2012.

Some of the more significant changes proposed by the OFCCP include:

- Revising the definition of disability and its component parts to be consistent with the changes made by the Americans with Disabilities Act Amendments Act (ADAAA) and the EEOC regulations interpreting the ADAAA;
- Revising the mandatory EO clause in a number of ways, including changing the language to more closely mirror the language and intent of the ADAAA and requiring that the entire EO clause be included verbatim in all covered federal contracts, including subcontracts;
- Requiring contractors to invite all applicants to self-identify as individuals with disabilities before and after an offer of employment;
- Requiring contractors to annually survey employees so that any employee may self-identify as an individual with a disability. The OFCCP invites comments on its proposed self-identification invitation text and whether an alternative, such as the use of forms similar to those used by federal government agencies, would be more appropriate;
- Requiring contractors to maintain the self-identification data;
- Requiring that contractors annually conduct an anonymous survey all of employees using the language and manner prescribed by the OFCCP;
- Mandating specific steps contractors must take, at a minimum, in the annual review of personnel policies, which include: providing a statement of reasons for rejecting individuals with disabilities and describing the nature and type of accommodations for individuals with disabilities (these steps are currently treated as recommended procedures);
- Requiring contractors to engage in a minimum number of outreach and recruitment efforts;
- Establishing a utilization goal for disabled individuals. The Agency seeks

comments on a numerical value for the goal: a 7% national goal, goal ranges of 4% and 10%, or other approaches; and

- Requiring contractors to annually review and evaluate the effectiveness of their outreach and recruitment efforts and implement further outreach efforts if their current efforts are found to be ineffective.

These proposed changes to the Rehabilitation Act are the first revisions to the regulations since 1996. If they become final, there will be significant additional requirements placed upon the contracting community.

Federal contractors are encouraged to submit their own comments to this NPRM and/or to encourage industry-based organizations to submit comments. When submitting comments, contractors should reference the increased burdens (i.e., time and money) which will be placed on them to satisfy these new obligations.

If you have any questions regarding the NPRM or other labor or employment issues relating to government contractors, please contact Karen Tyner, kytyner@fordharrison.com, Linda Cavanna-Wilk, lcavanna-wilk@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.