New Directions for Federal Contractors and Disability Affirmative Action

A Public Policy Forum

Wednesday, May 19, 2010
10:00am-12:00pm

Cornell University, Government Affairs Office
Hall of States, Room 333
444 North Capitol Street, NW
Washington, DC 20001
Collaborating Partners

• Employment and Disability Institute
  ILR School, Ithaca, NY

• Dept. of Policy Analysis and Management
  College of Human Ecology, Ithaca, New York

• Mathematica Policy Research, Inc.
  Princeton, NJ, Washington, DC, and Cambridge, MA

• American Association of People with Disabilities
  Washington, DC

• Rutgers University, School of Management and Labor Relations, Program for Disability Research
  New Brunswick, NJ
This forum is a project of the Rehabilitation Research and Training Center on Employment Policy for Persons with Disabilities, which is funded by the US Department of Education, National Institute on Disability and Rehabilitation Research. (Grant Number: H133B040013.)

This event is co-sponsored by the US Department of Labor Office of Disability and Employment Policy in a cooperative agreement to Cornell University for a National Technical Assistance, Policy, and Research Center for Employers on Employment of People with Disabilities

The content of this forum does not necessarily reflect the policies of the US Dept. of Education, and you should not assume endorsement by the Federal Government (EDGAR, 75.620 (b)).
Introduction:
Susanne Bruyère, Director
Cornell University, Employment and Disability Institute

Facilitator:
Andrew Imparato, CEO
American Association of People with Disabilities

Speakers:
Kathleen Martinez, Assistant Secretary
Department of Labor, Office of Disability Employment Policy
Patricia Shiu, Director
Office of Federal Contract Compliance Programs
Bobby Silverstein, Principal
Powers, Pyles, Sutter & Verville, PC
Larry Lorber, Partner
Proskauer
Section 503 of the Rehabilitation Act of 1973

A New Day at the OFCCP

PATRICIA A. SHIU
OFCCP Director
About OFCCP

• Network of 6 regional offices and 49 district and area offices.

• More than 600 employees nationwide.

• Reviews personnel practices of federal contractors and subcontractors through compliance audits.

• Audits 4,000 contractor establishments annually.
OFCCP’S Mission

Ensure federal contractors comply with the laws and regulations requiring nondiscrimination and affirmative action

– Executive Order 11246, as amended

– Section 503 of the Rehabilitation Act, as amended

– Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended
Executive Order 11246, as amended

- Prohibits discrimination and requires affirmative action.

- Applies generally to all Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors holding government contracts of more than $10,000.

- Different affirmative action requirements for construction and non-construction (supply and service) contractors.

- Non-construction contractors that meet the 50 employee/$50,000 contract thresholds are required to develop and maintain a written affirmative action program.
Section 503 of the Rehabilitation Act of 1973, as amended

- Prohibits discrimination and requires affirmative action.

- Applies to contractors and subcontractors with a covered Federal contract or subcontract valued in excess of $10,000.

- Contractors that meet the 50 employee/$50,000 threshold are required to develop and maintain a written affirmative action program.
Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended

- Prohibits discrimination and requires affirmative action.

- Applies to federal contractors and subcontractors with a contract or subcontract of $25,000 or more entered into before December 1, 2003, or $100,000 or more if contract entered into or modified on or after December 1, 2003.

- Contractors that meet the 50 employee and monetary threshold above, are required to develop and maintain a written affirmative action program.

- Contractors or subcontractors with contracts entered into prior to December 1, 2003 (and not since modified) and contracts entered into on or after December 1, 2003, are subject to both Parts 60-250 and 60-300.
It’s A New Day at the OFCCP

• Enhanced enforcement:
  – Individual + Systemic
  – Attention to all three laws
  – Increase outreach to stakeholders
It’s A New Day at the OFCCP

• The OFCCP is updating three of its regulations:
  – Section 503 of the Rehabilitation Act of 1973,
  – Vietnam Era Veterans’ Readjustment Act of 1974, and
  – Regulations implementing the Executive Order 11246, impacting federal and federally assisted construction.
Highlights of Section 503 Rule Change

• OFCCP will issue an Advance Notice of Proposed Rulemaking (ANPRM).

• The ANPRM will solicit public comments on how these regulations can increase employment opportunities for individuals with disabilities.

• Specifically, ANPRM will request information on how federal contractors and subcontractors can conduct more substantive analyses and monitor their recruitment and placement efforts of individuals with disabilities.
Why has OFFCP chosen an Advance Notice of Propose Rulemaking for Section 503?

OFCCP chose an ANPRM for several reasons: to allow OFCCP to become more fully informed about employment barriers experienced by individuals with disabilities, and to seek effective methods that contractors can use to increase employment opportunities.
Highlights of Section 503 Rule Change

• Goal:
  – Strengthen the regulatory requirements for federal contractors and subcontractors to provide equal employment opportunities to qualified applicants and employees with disabilities.
  
  – Update affirmative action requirements to increase employment opportunities for applicants and employees with disabilities.
  
  – Improve OFCCP enforcement measures.
Highlights of Section 503 Rule Change

• **Goal:**
  - Incorporate changes made by the ADA Amendments Act of 2008 (ADAAA).
  - Explore the incorporation of hiring goals.
  - Highlight effective employment practices in recruiting, hiring, advancing and retaining qualified individuals with disabilities.
Highlights of Section 503 Rule Change

• Challenges:
  – Determining most useful data from which to set hiring goals.
  – Increase in contractor burden.
  – Determine impact on Small Businesses.
Basic AA/EEO Obligations of Federal Contractors

- Provide equal employment opportunities and take affirmative action to employ and advance
- Develop an AAP and maintain appropriate records
- Post EEO poster and/or notices
- Provide reasonable accommodations to employees and applicants
- Comply with VEVRAA requirements
- Permit OFCCP access during compliance reviews
- File an annual EEO-1 Report
Compliance Assistance Resources

• Visit OFCCP’s website
  – http://www.dol.gov/ofccp/

• Attend an OFCCP Seminar or Workshop
  – Calendar Online

• Call or Email for Individual Assistance
  – 1-866-4-USA-DOL
  – OFCCP-Public@dol.gov
We want to hear from you!

E-mail: OFCCP-Regulatory-Agenda-503@dol.gov
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Modernizing the Affirmative Action Provisions of the Section 503 and VEVRAA Regulations
This research was funded by the Office of Disability Employment Policy, U.S. Department of Labor. The opinions expressed in this presentation are those of the presenters and do not necessarily represent those of the Department of Labor or any other agency or department of the Federal Government.
Introduction and Purpose
Scope and Purpose of Affirmative Action
Purpose of an Affirmative Action Program
Self-Identification of Disability
Components of an Affirmative Action Program

Policy Statement
Components of an Affirmative Action Program

Quantitative Analysis, including the establishment of placement goals
Components of an Affirmative Action Program

Review of Personnel Policies
Components of an Affirmative Action Program

Physical and Mental Qualifications
Components of an Affirmative Action Program

Reasonable Accommodation Policy
Components of an Affirmative Action Program

Harassment
Components of an Affirmative Action Program

External Dissemination of Policy
Components of an Affirmative Action Program

Outreach and Positive Recruitment
Components of an Affirmative Action Program

Internal Dissemination of Policy and Disability management programs
Components of an Affirmative Action Program

Accessible electronic and information technology
Components of an Affirmative Action Program

Audit and Reporting
Components of an Affirmative Action Program

Responsibility for Implementation
Components of an Affirmative Action Program

Training
Related Resources

• Employment Policy for People with Disabilities online repository of over 200 related research reports and policy briefs:
  http://digitalcommons.ilr.cornell.edu/edi/

• HR Tips (over 35 brochures in English and Spanish on workplace accommodation):
  www.hrtips.org

• Disability statistics online:
  www.disabilitystatistics.org

• National Technical Assistance Policy and Research Center for Employers on Employment of People with Disability:
  www.earnworks.com