

***Third Thursday* Briefing:
Affirmative Action and OFCCP
Enforcement**

May 22, 2014

The webinar will begin shortly. Please stand by.

Today's Presenters



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Agenda

- Update - Section 503 and VEVRAA Regulations
- Compensation Data Collection Tool
- EO – Sharing Compensation Information
- EO – Minimum Wage for Federal Contractor Employees
- “Moratorium” on TRICARE enforcement

VEVRAA and Section 503 Regulations

- Went into Effect March 24, 2014
- “Phased-in Compliance” - many obligations delayed until next affirmative action plan after March 24, 2014
- Recurring Implementation Issues
 - Disabled self-identification form
 - AA Policy - “indicate top US executive’s support”
 - Job posting EEO language
 - Separate “data analysis file”

VEVRAA and Section 503 Regulations

- OFCCP's Posting of FAQs
 - Combined language for flow downs
 - “Job filled” includes non-competitive actions; “Hires” includes promotions and transfers
- Resources
 - Recruitment resources for veterans and individuals with disabilities
 - VEVRAA Benchmark Database

Compensation Data Collection Tool

- Advance Notice of Proposed Rulemaking – August 2011
 - Scope of data to be submitted extremely broad
 - Grouping of data for reporting purposes problematic
 - Multi-establishment, “industry focused compensation reviews”
 - Put on hold pending 2012 election

Compensation Data Collection Tool

- National Academy of Sciences Report – 2012 - “Collecting Compensation Data from Employers”
 - Prepare comprehensive plan for use of earnings data before initiating data collection
 - Conduct pilot study to test the collection instrument – independent provider
 - Enhance capacity to summarize, analyze, and protect the confidentiality of earnings data
 - Seek legislation that would increase the ability of the agency to protect confidential data

Compensation Data Collection Tool

- Presidential Memorandum – April 8, 2014
 - “Advancing Pay Equity Through Compensation Data Collection”
 - Directs DOL to obtain summary data on compensation, including data by sex and race
 - Proposed rule within 120 days – early August, 2014
- NPRM – OFCCP to OMB – May 5, 2014
 - “Requirement to Report Summary Data on Employee Compensation”
 - No further details yet available

E.O. - Discussing Compensation

- Amends Executive Order 11246
- Prohibits discrimination or retaliation against applicants or employees because they “inquired about, discussed, or disclosed” their own compensation to another employee or applicant
- Applies to all employees, including supervisors
- Exclusion for disclosure by employee who has access to compensation information as part of job duties
- Proposed rules expected by September 2014

E.O. - Minimum Wage

- \$10.10 minimum wage for *some* government contracts
- To cover solicitations issued for new contracts after January 15, 2015.
- Announced February 12, 2014
- Implementing Regulations - October 31?
- Scope
 - Service Contract Act
 - Davis Bacon Act

E.O. - Minimum Wage

- Open Questions
 - Federal leases
 - Concession contracts
 - Other “contract like” documents/arrangements
 - FLSA?
- Significance
 - No impact on Davis Bacon Act contractors
 - SCA contracts in rural areas for certain industries
- Possible legal challenges?
 - SCA “local wage determination” requirement

TRICARE Subcontractors

- Background
 - Definition of “subcontractor”
 - *Florida Hospital* litigation
- Pending Legislation – HR 3633

“A . . . recipient that receives a payment from the Federal Government, directly or indirectly and regardless of reimbursement methodology, related to the delivery of health care services to individuals, whether or not such individuals are or have been employed by the Federal Government, shall not be treated as a Federal contractor or subcontractor by the Office of Federal Contract Compliance Programs based on the work performed or actions taken by such individuals that resulted in the receipt of such payments.”

TRICARE Subcontractors

- House Hearings on HR 3633
 - Scheduled for March 13, 2014
 - March 11, 2014 letter – Secretary of Labor to Chairman Kline and Chairman Walberg – “compromise”
- Directive 2014-01 – May 7, 2014
 - Five year moratorium on enforcement activities relating to TRICARE providers – “prosecutorial discretion”
 - End to *Florida Hospital* Litigation
 - “Outreach and technical assistance” to providers

TRICARE Subcontractors

- Directive 2014-01 – May 7, 2014 (continued)
 - Coverage – “health care entities that”
 - Participate only in TRICARE as subcontractors
 - Participate in TRICARE as subcontractors *and* as subcontractors under any Medicare program
 - Participate in TRICARE as subcontractors *and* as subcontractors under FEHBP
 - Participate in TRICARE as subcontractors *and* as subcontractors under “any other federal health program”
 - Moratorium does NOT extend to complaint investigations

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