

OFCCP Audits Focus On Veteran Hiring

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Although the new veterans hiring rules have been delayed, the Office of Federal Contract Compliance Programs (OFCCP) will focus its audits in aggressively interpreting the current regulations to support the affirmative action policies. The OFCCP has proposed new rules for veterans that would require contractors to track those who apply for jobs and write reports explaining decisions not to hire protected veterans. However, these proposed regulations have been delayed for at least nine months.

Despite the regulatory delay, the OFCCP will use the audits as a jump-start to the new hiring rules. It is anticipated that the OFCCP will scrutinize federal contractors' good-faith efforts at hiring or attempting to hire veterans. Employers should be prepared to review and evaluate hiring efforts, including how many military veteran applicants were referred by an agency, how many were interviewed and how many were hired. Federal contractors also should begin tracking the number and quality of veteran applicants referred by recruitment sources and, if ineffective, cease using those sources. Failure to take these affirmative steps may give an appearance that the employer is just "going through the motions," which will result in technical violations for being deficient in either outreach programs or recordkeeping.

While it is wise for employers to begin the tracking process and reviewing recruitment sources, federal contractors should avoid asking applicants if they are veterans. This particular question could result in further scrutiny by the OFCCP if the employer fails to hire the applicant as it would give the appearance of discrimination. Under the current regulations, employers are not required to make such an inquiry.

In addition to external recruitment efforts, employers should be prepared to demonstrate "known veteran" employees have been considered for promotions and retraining opportunities. The OFCCP's position is that employers should look internally at known veteran employees (even if none apply for a position) to determine if that employee is qualified and interested for the position. Many companies and their advocates have argued that this runs contrary to equal employment opportunity since it results in preferential treatment of veterans as well as imposes a significant burden on employers. Nonetheless, employers should be prepared for this inquiry during an OFCCP audit.

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