

# One Minute Memo<sup>®</sup>



## OFCCP Publishes Final Rule on Veterans Effective September 7, 2007

On August 8, 2007, the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) published its final rule implementing the 2002 Jobs for Veterans Act amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). These laws require federal contractors not to discriminate against and to take affirmative action in favor of military veterans. Remarkably, it has taken the agency five years to publish regulations implementing these amendments. The 2002 law amended VEVRAA by raising the threshold of covered federal contracts under the Veterans laws from \$25,000 to \$100,000, modifying the definition of covered veterans, and revising requirements on where covered contractors must list job openings. The final rule generally reflects the OFCCP's previously published (January 2006) proposed rule. The text of the final rule is at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/E7-15385.htm>. OFCCP's VEVRAA regulations are at 41 C.F.R. part 60-250 *et seq.* and the new JVA regulations are at 41 C.F.R. part 60-300 *et seq.*

### *Job Listings*

The new regulations provide some flexibility to contractors who must list their job openings, but offer no easy solution to the void created by the dissolution of America's Job Bank (AJB). Since AJB was discontinued on June 30<sup>th</sup>, contractors who are obligated to post jobs in multiple locations have no free "single stop" resource to list their openings. Rather, they must choose between the time consuming exercise of notifying multiple state and local employment offices or subscribing to one of the third

party vendors who, for a fee, will act as listing agents to post the contractor's jobs with every required employment office. While some employers had pleaded for a delay in the issuance of the new regulations while a successor to AJB was developed by the government, the OFCCP was unrelenting.

The new regulations and their preamble specifically state that contractors are to fulfill their job listing requirement by listing job openings with the appropriate "employment service delivery system." This may include the workforce agency job bank or employment service in the state or local area where the job opening occurs. Listing may be accomplished via mail, fax, electronic mail, or other electronic posting. The OFCCP also expressly states that contractors may use third parties, such as private or non-profit sector job banks, Internet gateway and portal sites, and recruiting services and directories, to assist them with the transmission of job listings to the appropriate employment service delivery system.

The OFCCP has posted a link to the state workforce agency job banks on its website at <http://careeronestop.org>. This link allows contractors to identify those state workforce agency job banks that accept electronically transmitted job listings.

### *Coverage*

As the new regulations go into effect on September 7<sup>th</sup> there is a somewhat awkward co-existence of the old and new laws. Because VEVRAA and the JVA have different coverage thresholds and veterans categories, there are special

considerations if the contractor has active contracts that began both before and after December 1, 2003. If contractors have any active contracts predating December 1, 2003, they must comply with the veterans affirmative action laws if they have a contract of \$25,000 or more. However, if all active federal contracts began or were modified on or after that date, the contractor is covered only if the contract is for \$100,000 or more.

### *Categories*

Contractors may delete the category, "Vietnam Era Veteran" from their affirmative action plans unless they have active federal contracts that were entered into before December 1, 2003. If a contractor has such a contract, it should maintain the Vietnam Era Veteran category in its AAP. The JVA also expanded the coverage of veterans with disabilities. Prior to amendment by the JVA, VEVRAA covered veterans rated as having 10% to 20% serious employment handicap or a disability rated 30% or more by the Department of Veterans Affairs. The JVA amendments expanded coverage to include all veterans with service-connected disabilities. Accordingly, the category of "special disabled veteran" is now described as "disabled veteran." The JVA also expanded the coverage of "recently separated veterans" from one to three years after discharge or release from active duty and added the new category, "Armed Forces Service Medal Veteran."

All covered contractors should amend their AAP language and the form used for veterans self-identification to reflect the following new and modified definitions of covered veterans:

Disabled Veteran: (1) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or (2) a person who was discharged or released from active duty because of a service-connected disability.

Recently Separated Veteran: Any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

Armed Forces Service Medal Veteran: Any veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

Other Protected Veteran: Any veteran 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 Department of Defense.

### *Employment Agencies*

The final rule also provides that a contractor using an employment agency for hiring is not relieved of its obligation to list the job with an appropriate employment delivery system. The OFCCP notes that under certain circumstances, employment agencies also might count as subcontractors who must comply with the regulation's job listing requirement.

### *EEO-1 and VETS-100 Deadline Approaches*

Don't forget the September 30<sup>th</sup> deadline for submitting these reports. Also be sure you understand the changes to the EEO-1 report that go into effect with this filing. If you have questions about the revisions to the EEO-1 Report, the Veterans regulations or any other affirmative action matters, or if we can help you file your EEO-1 or VETS-100 reports, please contact your Seyfarth Shaw attorney, or any Seyfarth attorney on our website [www.seyfarth.com](http://www.seyfarth.com).

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