



HR, Compliance & People Development

Affirmative Action 101: The Basics

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Background

CAI

- Employers Association w/ 1000+ members
- Served NC companies for 50 years
- Local resource for HR, compliance, & people development

Affirmative Action Division

- Produced AAPs for approximately 20 years
- Dedicated resources for AAP preparation
- Provide assistance with all matters of affirmative action compliance
- Consulting, training & audit assistance and support

Agenda

- **Laws & Regulations of Affirmative Action**
- **Who is covered? Who enforces?**
- **When must a plan be completed?**
- **What is required?**
- **Miscellaneous**
- **Upcoming changes**
- **Questions**

Purpose of Affirmative Action

- Affirmative action is intended to promote the opportunities of defined minority groups within a society to give them equal access to that of the majority population.
- Based on principle of equal opportunity laws





Laws & Regulations



- Executive Order 11246
- Section 503 of the Rehabilitation Act of 1973
- Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)

E. O. 11246

- Prohibits federal contractors and subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, **gender identity, sexual orientation** or national origin.
- Requires Government contractors to engage in affirmative action for women and minorities.

Rehabilitation Act of 1973

- **Section 503:**
 - Prohibits discrimination against individuals with disabilities
 - Requires employers to take affirmative action in all employment activities for qualified individuals with disabilities
 - Requires employers to make reasonable accommodations for individuals with disabilities

Vietnam Era Veterans' Readjustment Assistance Act

- **VEVRAA**
 - Prohibits discrimination based on veteran status
 - Requires covered federal government contractors and subcontractors to take affirmative action to employ and advance covered veterans in all employment decisions

Who is covered?

- **Contractors – hold a contract directly with a federal government agency**
- **Subcontractors – hold an agreement with a federal contractor or other subcontractor in which you supply goods or services that assist in the fulfillment of the prime contract**

Who is covered? (cont.)

- **Federal contract/subcontract of \$10,000 or more**
- **Financial institutions that serve as depositories for federal funds (any amount)**
- **Financial institutions that are covered by FDIC or NCUA deposit insurance**

Who enforces?

- **Office of Federal Contract Compliance Programs (OFCCP)**
 - Division of the Department of Labor
 - Enforces all AAP laws & regulations
 - Select organizations for audit
 - Investigate charges of discrimination
 - Collect financial damages for non-compliance

What is required in an AAP?

- **Written AAP required for each location with 50 or more employees**
- **Women & Minorities**
 - Narrative document
 - Statistical/numerical reports
- **Individuals with Disabilities & Covered Veterans**
 - Narrative document including numerical thresholds and assessments

When must an AAP be developed?

- Annual preparation of your written AAP
- Plan date left to discretion of the federal contractor or subcontractor
- New contractors must prepare AAP within 120 days of contract date



Women & Minorities: Narrative

- **Commitment to EEO**
- **Responsible parties for implementation**
- **Identification of problem areas and action-oriented programs**
- **Internal auditing and reporting**

Women & Minorities: Statistical Reports

- Employee data from a specific point in time
 - Workforce analysis
 - Job group analysis
 - Availability analysis
 - Incumbency compared to availability
 - Placement goals
 - Prior year goal attainment

Employment Activities



Review of Employment Activities

- **Adverse Impact Analysis**
 - Analysis covers previous 12 months
 - Hires/Offers vs. Applicants
 - Promotions vs. Persons considered
 - Terminations vs. Persons considered
 - Involuntary Terminations vs. Persons considered

Hires/Offers vs. Applicants

- **Hires/Offers:** Individuals selected including those that rejected offers of employment
- **Applicants:** Individuals who were considered for a specific position

Applicants: Who to include

- **Internet Applicant Definition**

- 1) Person submits expression of interest via internet or other electronic method (email, app tracking systems, resume database, job bank, etc.)
- 2) Contractor considers person for employment for a particular position
- 3) Person has basic qualifications for considered position
- 4) Person does not remove self from consideration

Applicant Dispositions

Common Dispositions	Better Dispositions
Not Hired	Not Hired – Schedule/Hours conflict
Other Candidate Selected	Not Hired – Did not provide sufficient information to verify past employment
Position filled	Position Filled – Candidate not reviewed
Overqualified	Not Hired – Salary requirements out of range
Not Selected	Not Selected – Did not meet minimum education requirement

Promotions vs. Persons Considered

- **Promotions:**
 - employment action resulting in higher pay, greater rank, skill or responsibility
 - promotions may be competitive or non-competitive in nature
- **Persons Considered:**
 - Individuals that apply or indicate interest in a position or were considered

Terminations vs. Persons Considered

- **Terminations:**
 - Includes both voluntary and involuntary terminations
- **Persons Considered:**
 - Compared to all persons who held positions throughout the year

Involuntary Terminations vs. Persons Considered

- **Terminations:**
 - Includes involuntary terminations
- **Persons Considered:**
 - Compared to all persons who held positions throughout the year

Compensation Review



Compensation Analysis

- “Evaluate compensation systems to determine whether there are gender, race, or ethnicity based disparities”
- Compare females to males and minorities to non-minorities
- Look for disparities in pay and investigate differences

Affirmative Action Program for Individuals with Disabilities & Protected Veterans



Jurisdictional Thresholds

- FAR Council reviews dollar threshold every 5 years
- Effective October 1, 2015 contract thresholds were increased
 - VEVRAA: \$150,000 (prev. \$100,000)
 - Includes VETS-4212
 - Section 503: \$15,000 (prev. \$10,000)

[JurisdictionalThresholds_508_Feb2016_JRFQ_A508c.pdf](#)

AAP: IWD/Veterans

- Narrative, Utilization Goals/Hiring Benchmarks & data assessments
- Available for review upon request
- Included in narrative:
 - Policy statement & dissemination of policy
 - Responsible parties for implementation
 - Review of personnel processes and training of personnel involved in employment decisions
 - Reasonable accommodations

IWD/Veterans

- Harassment Prevention
- Internal Auditing and Reporting System
- Review of physical and mental job qualifications
- **Data Collection & Assessments**
 - Utilization Goals by job groups/Hiring Benchmarks by AAP location
 - Data collected on applicants, hires, and job openings
 - Assessments of targeted recruiting & outreach

IWD/Veterans Regulation Changes

- AA Policy Statement
- Incorporation of EO Clause – required language
- Targeted Recruiting & Assessments
- Job Advertisements
- Invitation to Self-Identify – Pre & Post offer, Survey of current employees
- Utilization Goal – 7% by Job Group (IWDs)
- Hiring Benchmarks – 6.9% by AAP (Vets)
- Data Collection & Analysis

IWD/Veterans

Affirmative Action Policy Statement

- Include EEO/AA policy in AAP and on company bulletin boards. (no change)
- The new rule clarifies the statement must identify **highest ranking U.S. official**
- Notification should be sent to subcontractors & vendors and made available to applicants who apply online

VEVRAA

EO Clause – Combined Section 503, VEVRAA & EO 11246

“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.”

IWD/Veterans

Outreach & Recruitment

- Required to undertake targeted outreach to employ individuals with disabilities/veterans
- Conduct annual assessment of effectiveness of these efforts. Make changes if deemed ineffective.

IWD/Veterans

Job Advertisements

- Contractors must state in job solicitations and advertisements that they are an equal opportunity employer of individuals with disabilities/veterans
- Should not use abbreviations! (M/F/D/V)
- *Sample:* Equal Opportunity Employer including Veterans/Disabilities

IWD/Veterans

Invitation for **Applicants** to Self-Identify

- Contractors required to invite applicants (pre-offer & post-offer) to voluntarily self-identify as an individual with disability & veteran
- Must use language provided by OFCCP for disability solicitation

Must survey current employees within first AAP year

- Must re-survey employees every 5 years
- Reminder to employees within 5 year period

IWD/Veterans

- Accommodation

- Required to enter into interactive accommodation discussion with employees and applicants
- Consider written process/procedures

- Website accessibility

- Contractors encouraged to make online application system compatible with assistive devices
- Accommodation obligation extends to online application system

IWD/Veterans

Utilization Goals & Hiring Benchmarks

- Contractors must set Utilization Goals for IWDs by job groups: 7%
- Contractors must adopt hiring benchmarks for veterans by AAP location: 6.9%
- Must conduct annual review of current utilization/benchmarks and assess if problem areas

IWD/Veterans

Data Collection & Analysis

- Document and update annually, the following:
 - Total # applicants & # who self-identified as IWD/Veterans
 - Total # of applicants who are hired & # hired who self-identified as IWDs/Veterans
 - Total # job openings and total # jobs filled
- Include 3 years of data in AAP

IWD/Veterans

	2015	2016	2017
Total Job Openings	10		
Total Jobs Filled	9		
Total Hires	9		
Total Hires identified as disabled	1		
Total Applicants	175		
Total Applicants identified as disabled	8		

Recordkeeping Changes

- **3 Year Recordkeeping requirement for:**
 - Outreach & Recruitment efforts for Protected Veterans and Individuals with Disabilities
 - Data Collection & Assessments for Veterans/IWDs
 - Self-id forms Veterans/IWDs
 - Veterans Hiring Benchmarks

Sample AAPs

- OFCCP provided new sample AAPs
- Including transitional AAPs for VEVRAA/503

<http://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm>

Recordkeeping Changes

- **3 Year Recordkeeping requirement for:**
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 - Self-id forms Veterans/IWDs
 - Veterans Hiring Benchmarks

What Else?



Miscellaneous Requirements

- EEO-1
- VETS-4212
- Record Keeping
- Poster Requirements
- Job Listing Requirements
- Sex Discrimination Updates

EEO-1

- Used to collect the race, gender and ethnicity composition of your workforce by location
- Submitted annually
- Allow employees to self-identify
- Required by all employers with 100 or more employees & all federal contractors and subcontractors

Revised EEO-1 Report

- Approved for 2017
 - Collaboration EEOC & OFCCP
 - Revised report to require submission of W-2 earnings by defined pay bands/EEO-1 category
- **First Report due March 31, 2018**
- [Approved Revised Report](#)

VETS-4212

- VETS-100A report updated for 2015
 - Final rule issued September 25, 2014
 - VETS-100 report rescinded
 - Renamed VETS-4212
 - Employers will report on aggregated protected veterans rather than individual veterans classifications by EEO-1 categories
 - Option to report veteran hires and total hires either by EEO-1 categories or in Total
 - [VETS Report](#)
- Due September 30 annually

Record Keeping

- **AAP requirements:**
 - Current and previous year plans
 - 2 years after last employment decision (applicants, hires, promotions, terminations, etc.)
 - 3 years for parts of new regulations
 - Preserve records for duration of employment investigations/audits

Poster Requirements

- Must post commitments under:
 - Equal Employment Opportunity is the Law (with GINA clause) & [Supplemental Poster](#)
 - E.O. 11246
 - Rehabilitation Act of 1973
 - VEVRAA
 - Employee Rights on Government Contracts
 - Employee Rights Under the NLRA
 - Memo from top site official regarding your company's EEO/AAP policy

Job Listing Requirements

- Contractors are **REQUIRED** to list all open positions with the state job service
 - Jobs for Veterans Act (JVA): \$150,000+
 - 3 exceptions to this requirement
- CAI strongly encourages additional outreach efforts
 - Example: Veterans of Foreign Wars, Wounded Warrior Project, Heroes For Hire, Vocational Rehabilitation Offices, etc.



LGBT Non-Discrimination

- President Obama signed EO 13672 on July 21, 2014
 - Prohibits federal contractors/subcontractors from discriminating on the basis of sexual orientation or gender identity
 - Update EO clauses and required language in PO's
 - Update EEO/AA policies, handbook and any other documentation where protected classes are listed to include these groups
 - Train managers and personnel responsible for employment decisions on these protected classes
- **Final Rule effective April 8, 2015**

Updated EO clause

This contractor and subcontractor shall abide by the requirements of Executive Order 11246 (41 CFR 60-1 through 60), as amended, and the applicable regulations in 41 CFR §60-300.5(a) and 41 CFR §60-741.5(a). If applicable, the subcontractor agrees to comply with referenced regulations. Further, if applicable, seller agrees to file Standard Form 100 (EEO-1) and the VETS-4212.

“This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, gender, gender identity, sexual orientation, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.”

Pay Transparency

- President Obama signed EO 13665 on April 8, 2014 to amend EO 11246
 - Prohibit contractors/subcontractors from retaliating against employees & applicants for discussing or disclosing compensation
 - Requires modification of equal opportunity clause in contracts & subcontracts
 - Requires contractors/subcontracts to incorporate prescribed language in handbooks & disseminate to employees & applicants
- Final Rule published in Federal Register September 11, 2015
- **Effective January 11, 2016**



Pay Transparency Policy Statement

The contractor will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information.

Sex Discrimination Update

- OFCCP released final rule updating guidelines – June 14, 2016
- Update addresses:
 - Protections related to pregnancy, childbirth, related medical conditions
 - Promotes fair pay practices
 - Safeguards works providing caregiving for loved ones
 - Protects transgender employees
 - Prohibits discrimination on sex stereotypes
- **Effective August 15, 2016**

Fair Pay & Safe Workplaces

- EO 13673 issued on July 31, 2014 regarding Fair Pay & Safe Workplaces
 - Safe Workplaces (ON HOLD)
 - Contractors (& bidders) would report on violations for 15 labor laws prior 3 years
 - Contractors will require same assurances of subcontractors
 - Paycheck Transparency
 - provide employees documentation each pay period showing hours worked, overtime hours, pay, additions or deductions made (January 1, 2017)
 - Comment period extended to August 26, 2015
- Effective October 25, 2016

Overtime Rule

- The effective date of these changes is December 1, 2016.
- The primary position duty tests remain unchanged.
- The minimum salary threshold (exempt employees) will increase to \$913 weekly/\$47,476 annually.

ON HOLD



Construction Contractors

- OFCCP's Spring Regulatory Agenda projected revised regulations for construction contractors
 - Last updated in 1980
 - Expect to propose new method for establishing goals
 - Address VEVRAA/503 updates
- Was Targeted August 2016
(on hold at this time)



Paid Sick Leave

- EO 13706 issued September 7, 2015 establishing paid sick leave for federal contractors
 - Contractors covered are same as minimum wage increase (DBA, SCA, concessions, etc.)
 - Accrue 1 hour sick leave per 30 hours worked
 - Total at least 56 hours / year
 - Accrued sick leave may be carried over
- **Publication September 30, 2016 and effective January 1, 2017**



OFCCP's Current Focus

- “Good faith” efforts are no longer enough to define affirmative action. The are looking for measurable results.
- During audits, the OFCCP intends to conduct more thorough and careful reviews.
- The OFCCP has made strides to more efficiently and effectively collaborate with the Department of Justice and the Department of Labor.
- Specific areas of focus include individuals with disabilities, protected veterans and pay discrimination.

Common Results

- Have seen increased audit activity this year
 - Violations for lack of outreach for Veterans and Individuals with disabilities
 - Violations for not listing jobs with state job service
 - Violations for website accessibility
 - Accommodations
 - Hiring Discrimination (including steering)

Penalties for Non-Compliance

- Conciliation Agreements – no \$ involved (technical compliance)
 - Additional reporting/information due to OFCCP (12-18 months)
- Conciliation Agreement - \$ involved
 - Compensation issues (pay corrections + back pay)
 - Selection issues – payment for non-selection + back pay & job offers
 - Press Releases
- Debarment – current & future contracts, published in database, press release, etc.

Questions?

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