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Affirmative Action Compliance Consultants

AAP FOR PERSONS WITH DISABILITIES AND COVERED VETERANS

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August 2011

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AFFIRMATIVE ACTION PLAN FOR PERSONS WITH DISABILITIES AND COVERED VETERANS

By Thomas H. Nail and Cornelia Gamlem, SPHR

In addition to the required affirmative action plan (AAP) for women and minorities under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA), and the Jobs for Veterans Act of 2002 (JVA), also require contractors with 50 or more employees and a government contract worth \$50,000 or more, in aggregate, to develop and maintain a written AAP. As required under Executive Order 11246, contractors and subcontractors with contracts of less than \$50,000 and with an employee base under 50 are not required to have a written AAP, although they are still required to comply with general nondiscrimination and affirmative action obligations outlined in the regulations.

An AAP for Individuals with Disabilities, Disabled Veterans, Veterans of the Vietnam Era, Armed Forces Service Medal Veterans, Other Protected Veterans, and Recently Separated Veterans, as codified in the Federal regulations at Title 41, Chapter 60 (CFR 60-741, 60-250, and 60-300), is typically twenty to thirty pages in length. It describes a company's programs, policies and procedures designed to ensure that all covered individuals have equal opportunities in all employment-related matters and must, specifically, outline good faith efforts toward that end. AAPs must be reviewed and updated on an annual basis. Normally, a single AAP is prepared by a contractor covering the requirements of the Rehabilitation Act, VEVRAA, and JVA because the requirements for these laws are quite similar. In addition, the AAPs required under the Rehabilitation Act, VEVRAA and JVA, currently require only a narrative component. However, it should be noted that on April 26, 2011 the Office of Federal Contract Compliance Programs (OFCCP) published a notice for proposed regulations to update contractor's responsibilities concerning veterans. For the first time, the OFCCP proposed requiring quantitative measures to provide accountability with regards to various veteran activities (hiring of veterans, self identification forms provided, outreach efforts - identifying agencies contacted and results, etc.). The final rulings are almost complete and recent communications from the OFCCP provide a strong indication that these proposals will become final in the near future.

Accompanying these laws is a specific set of regulations that describe the required components of each of these affirmative action plans, which are legally binding on Federal contractors. The Department of Labor's OFCCP is the agency with authority to enforce these laws and audit a company's AAPs. These audits are called compliance evaluations. During these evaluations, the OFCCP compares the AAPs to requirements contained in the Federal regulations, as noted in the above paragraph.

The regulations require that the AAP narrative address the following ten (10) areas:

1. Equal Employment Opportunity Policy Statement - This section contains a policy statement that your company does not discriminate against individuals with physical or mental disabilities, Disabled Veterans, Veterans of the Vietnam Era, Armed Forces Service Medal Veterans, Other Protected Veterans, and Recently Separated Veterans, and that the company will provide equal employment opportunity and affirmative action for such individuals. The policy statement should cover all areas of employment and should be posted in a conspicuous place where applicants and employees can view it (i.e. company bulletin boards, company lobby, etc.)
2. Review of Personnel Processes - This section discusses your company's personnel processes for ensuring systematic consideration of the job qualifications of applicants and employees with known disabilities and covered veterans, for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. It provides for a review (and modification, if necessary) of your company's personnel processes to ensure that your company's obligations are carried out. Part of the personnel process must include ensuring equal access for on-line job posting to individuals with disabilities that express a need for a reasonable accommodation. Your organization must address its responsibility for providing and informing applicants that a reasonable accommodation is available, as needed, for the on-line job posting system. The accommodation may include providing an in-person meeting, wheelchair accessibility, website accessibility, etc. unless such accommodation causes an "undue business hardship".
3. Physical and Mental Qualifications - This section discusses the review of all physical and mental qualification requirements to ensure that to the extent these qualification requirements screen out, or tend to screen out, qualified individuals with disabilities and covered veterans, these qualification requirements are job related and consistent with business necessity.
4. Reasonable Accommodation to Physical and Mental Limitations - This section requires your company to make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities and covered veterans. An accommodation is not required, however, if it would impose an undue hardship on the operation of your business.
5. Harassment - This section requires your company to develop and implement procedures to ensure that individuals with disabilities and covered veterans are not harassed because of their disability or veteran status.

6. External Dissemination of Policy, Outreach, and Positive Recruitment - This section requires your company to undertake appropriate outreach and positive recruitment activities and to communicate these efforts that are reasonably designed to effectively recruit individuals with disabilities and covered veterans. Enlisting the assistance and support of organizations geared toward advancing in employment veterans and the disabled is an example of such an effort. Each state's Employment Service Office, for example, provides a Local Veterans Employment Representative that may be contacted for referrals. Additionally, it is a requirement of federal contractors to send all of their external job opportunities (with few exceptions) to the local Employment Service Office where the job opening exists, ensuring that the Local Veterans Representative receives them. Most states now provide an electronic (on-line) delivery method, for these required job postings.
7. Internal Dissemination of Policy - To ensure overall employee participation and cooperation in the affirmative action efforts, this section requires your company to develop and communicate procedures regarding engaging in affirmative action efforts to employ and advance in employment qualified individuals with disabilities and covered veterans. Some examples for accomplishing this are to publicize the commitment in the company newspaper, annual report or other media, or to conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation.
8. Audit and Reporting System - This section discusses how your company develops an audit and reporting system that will measure the effectiveness of the AAP and compliance with specific obligations.
9. Responsibility for Implementation - This section identifies the name and job title of the individual in your company assigned responsibility for your company's affirmative action activity, and it is recommended that this individual's identity appear on all internal and external communications regarding the company's affirmative action program.
10. Training - This section requires that all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes are trained to ensure that commitments specified in the AAP are implemented.

Generally speaking, the AAP narrative that you develop should reflect the language found in the Federal regulations. However, it should be customized to address your specific company programs, policies, and procedures.

In addition, the AAP must state that your company will invite applicants to inform the company if they believe that they may be covered by the Act and wish to benefit under the AAP. Note: in accordance with the Americans with Disabilities Act and affirmative action guidelines, the invitation to self-identify can be made to applicants only after a conditional offer of employment has been made. Few exceptions exist, which include: where the contractor is undertaking affirmative action to recruit special disabled veterans, or the invitation is made pursuant to Federal, state or local laws requiring affirmative action for special disabled veterans. Otherwise, the invitation to self identify shall take place only after an offer of employment has been extended.

The regulations also contain requirements to post the invitation to self identify, as well as the company's EEO policy statement for the benefit of employees. The EEO policy statement for Veterans and the Disabled should state that the AAP is available to any employee for inspection upon request and include the location and hours during which the program may be obtained.

The regulations found at 41 CFR § 60-250, 60-300 and 41 CFR §60-741 provides an expanded explanation of the required components and it is recommended that these be thoroughly reviewed. Further guidance is also available through the professional consulting services offered by THOMAS HOUSTON associates, inc.

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