



If you have any questions
about this Advisory,
please contact:

JOHN ZANDY
203.498.4330
jzandy@wiggin.com

ROBIN MARZOCCI
860.297.3710
rmartocci@wiggin.com

OFCCP Releases Newly Revised FAQ Sheets

The OFCCP recently released updated FAQ sheets pertaining to obligations towards **protected veterans** and **individuals with disabilities**.

As expected, as the revised regulations unfold and become operational among contractors' workplaces, questions continue to arise concerning the interpretation and implementation of the new rules. The OFCCP has offered additional clarification in these documents; the most recent updates are marked as "NEW". Please take time to review them. Even if you are not yet obligated to implement all of the requirements of the new regulations, you need to prepare and plan for the time when you must incorporate them in your own workplace.

Here is a summary of the *new* FAQ's:

- One section that was added to both the veterans and disabled revised regulations was the data collection analysis which requires contractors to track and compare veteran and disabled applicants and hires. One of the elements that must be reported is the "total number of jobs filled". The definition of "jobs filled" has been questioned ever since the regulations were published. The OFCCP has clarified that when tracking the number of jobs filled, you should count both competitive and non-competitive moves as long as

the movement is into a new, or different, position. For example, a job filled as a result of a "competitive" move would be an opening that was posted (both internally and externally), where there was an applicant pool, and an individual was selected from this pool to fill the open position. A "non-competitive" move includes automatic lines of progression, such as "step" progressions or upgrades (i.e. where there was no applicant pool and no selection process). As long as the employee moves into a new, or different, position, it should be counted as a job filled. Any sort of advancement within the same position cannot be counted.

- Regarding the hiring benchmark for protected veterans, internal promotions should be included along with external hires. Therefore, both internal and external protected veteran applicants who are selected should be counted towards the benchmark. Please note, however, that the OFCCP has made a distinction here. In order for the promotion to count towards your hiring benchmark, it must be the result of a competitive selection process (i.e. selecting from an applicant pool). Therefore, this would not include upgrades.
- The OFCCP has clarified that contractors have the right to hire the best qualified applicant. So, if an applicant with a

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disability meets the basic qualifications of the job but is not necessarily the most qualified applicant, you are not obligated to hire that person.

- We suspect that questions and clarifications pertaining to self-identification will continually be in the forefront. One situation addressed here involves an individual who self-identified as a protected veteran at the applicant stage, but then did not identify him/herself as a protected veteran at the post-offer stage. The question is can you count this as a veteran hire and include it towards your hiring benchmark? The answer is yes. You may count this person as a veteran hire. Please be sure to maintain a file for all of the pre-offer and post-offer self-identification forms.
- As you recall, contractors are obligated to ask their employees to self-identify during the first year in which the company is obligated under the new regulations. However, the regulations do not specifically state how employers must do this. Therefore, you should utilize a method that will be the most effective for your own organization, i.e. distributing a hard-copy or on-line copy of the form, posting a notice with a link to the form on the company's intranet, etc.

- What happens if employees do not respond to the survey requesting them to self-identify as to having a disability? How does this affect the 7% utilization goal that contractors are now required to measure?

All incumbents must be reported in the workforce total, regardless of whether or not they complete and return a self-identification form. Those employees who identify themselves as having a disability will be counted towards the 7% utilization goal. Additionally, if you know that an employee has a disability and this person does not return the form identifying him/ herself as having a disability, you may still count that person as an individual with a disability towards your 7% utilization goal.

Please do not hesitate to call either Robin Martocci at 860-297-3710 or John Zandy at 203-498-4330 if you have any questions.

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