

Complete AAP News

Jobs for Veterans Act



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Special points of interest:

- The Job for Veterans Act becomes law December 1, 2003
- "Job Applicant" still undefined
- 2000 EO Special File containing census data for AAPs not yet available
- EEO-1 Form revisions still in the works

In summary:

1. The Jobs for Veterans Act applies only to contracts and subcontracts entered into after December 1, 2003.
2. The Department of Labor will be unable to fully enforce the Act with regards to posting job openings until regulations are created.
3. Until implementing regulations are published, contractors have some latitude in interpreting how and where to post job openings.

Details:

In the Fall of 2003, President Bush signed the Jobs for Veterans Act that changes some of the AAP requirements for Federal Contractors.

As of December 1, 2003, 38 USC 4212(a) is amended to read as follows:

"(a)(1) Any contract in the amount of \$100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal

services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of \$100,000 or more entered into by a prime contractor in carrying out any such contract."

Previously the section stated:

"(a) Any contract in the amount of \$25,000 or more entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action..."

Note that the threshold for listing job openings with the state increases from \$25,000 to \$100,000. Government agencies must include a provision in the contract requiring the contractor to take affirmative action with regard to veterans. It applies only to new



contracts entered into after December 1, 2003.

The new law further states:

"(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that

"(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any

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Job Applicant Definition Still Undecided

The interagency task force comprised of the Equal Employment Opportunity Commission, Office of Federal Contract Compliance Programs, Department of Justice, and Office of Personnel Management has been given until December 31, 2003 to develop a definition of "job applicant" for purposes of federal reporting and record keeping.

The task force has been working on the revised definition for almost 3 years since required by the

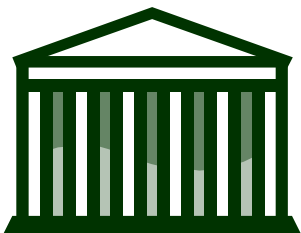
Office of Management and Budget (OMB) to define "job applicant" in the modern workplace.

The current definition of applicant was taken from 1978 Employee Selection Guidelines Questions and Answers which states: "The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities."

Once a definition is devel-

oped, it must be submitted to the OMB for approval, then published in the Federal Register for public comment before the definition becomes part of the regulatory scheme.

Census 2000 Equal Employment Opportunity File



Census 2000 EEO file will differ from the 1990 file

The Census 2000 EEO file will be created through an interagency agreement between a Federal consortium (consisting of the Equal Employment Opportunity Commission; the Department of Justice, Civil Rights Section; Department of Labor, Office of Federal Contract Compliance Programs; and the Office of Personnel Management) and the Census Bureau. The overall cost is approximately \$1,000,000!

The File will contain similar information as did comparable files from the 1970, 1980, and 1990 censuses. It will serve as the primary external benchmark for comparing the race, ethnicity, and sex composition of an organization's internal workforce, and the analo-

gous external labor market, within a specified geography and job category.

The projected release date for the Census 2000 EEO File is late Fall 2003, but some sources expect this to be delayed until Spring of 2004.

To stay up-to-date on the status of the 2000 EEO file, visit <http://www.census.gov/hhes/www/eeoindex.html>

One interesting fact from the website:

The Census 2000 EEO file will show 12 race/Hispanic categories (15 in Hawaii), instead of the six shown in previous files; many of the new race categories are for multiracial groups.

The file will provide data only for geographic areas with a population of 50,000 or more, and for occupation categories with 10,000 or more people nationwide. The geographic restriction means that over two-thirds of the counties in the U.S. are not identified separately on the EEO File, but are combined with other counties to create aggregate geographic areas (meeting the 50,000 threshold) specifically for the EEO File. The category size restriction means that 35 occupations in the Census 2000 classification had to be combined with other occupations, so that the resulting aggregates would meet the 10,000 threshold. As a result, the Census 2000 file will show 472 occupation categories.

EEO-1 Form Revisions

The Equal Employment Opportunity Commission (EEOC) still hopes to revise the EEO-1 reporting form by the end of 2003.

The proposed changes include possibly increasing the number of both racial and ethnic categories and re-defining the EEO categories.

There are many questions and issues that remain to be addressed before any revisions could be implemented. Officials from both

the EEOC and the Office of Contract Compliance Programs (OFCCP) have assured contractors the agencies are working together and that a reasonable transition period would be given for contractors to comply before any changes would become effective.

The proposed changes would increase the racial/ethnic categories from five to seven. The proposed new format would also split

the Official & Managers EEO category into three levels.

It is likely these changes will not be completed by the end of 2003. The EEOC must post a final draft of their changes in the Federal Register for 30 days before issuing the final regulation. Sources close to the agency admit it is unlikely the new EEO-1 form could be implemented before 2005.

OFCCP EO Survey

The Office of Management and Budget granted OFCCP's request to continue sending out the EO Survey for another two years, while a consulting firm completes an analysis of the survey's value as a selection tool for compliance reviews.

The OFCCP hired Abt Associates to study whether the EO Survey data can be used to develop a selection model that is able to identify contractors that are

more likely to be engaged in systematic discrimination. This system could potentially replace the EEDS system that is based on the EEO-1 form and has been used for over 20 years.

It is hoped that an accurate selection model will enable OFCCP to efficiently allocate its resources and avoid initiating evaluation of those employers who are in general compliance with EEO guidelines, thereby reducing the burden on them, and effi-

ciently spending tax-payer dollars.

The annual survey will be sent to 10,000 randomly selected contractors. The Survey was mandated by the November 2000 regulation changes at 41 CFR § 60-2.18.



The EO Pay Survey will continue to be sent to 10,000 randomly selected contractors for at least two more years.



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Jobs for Veterans Act continued...

additional or subsequent national electronic job bank established by the Department of Labor)..."

"Employment Service Delivery System" is defined in Section 4101(7):

"(7) The term 'employment service delivery system' means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act." (The Wagner-Peyser Act of 1933 established a nationwide system of public employment offices, known as the Employment Service.)

Note that the law instructs the Secretary of Labor to "prescribe regulations" to implement these changes. Until regulations are created, the Department of Labor lacks the ability to fully enforce the new law.

It is unclear whether listing openings with America's Job Bank will be defined as an employment service delivery system by the Department of Labor. Until regulations are issued, the plain language of section (A) above seems to indicate a contractor *must* list job openings with an employment service delivery system, and then *may* list these same openings with other sources, including America's Job Bank. This may indicate America's Job Bank will not be considered an employment service delivery system. Some attorneys and consultants interpret the language this way and are advising clients they must begin to list all job openings with their local state employment office.

But consider the language previously used in this section of the law. Prior to Dec 1, 2003, 38 USC 4212 (a) read:

"...the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its employment openings..."

The previous language clearly states that job openings must be listed with the local employment service office. Yet using this language, the Department of Labor wrote regulations that allowed listing job openings with a nationwide service called America's Job Bank. They decided this met the requirement to list openings with the local employment service office. It is possible the Department of Labor will decide through regulation that America's Job Bank is an appropriate employment service delivery system under the new law.