

# COMPLIANCE OVERVIEW

Provided by The Insurance Exchange

## Affirmative Action and Nondiscrimination for Federal Contractors

Section 503 of the Rehabilitation Act of 1973 (Section 503) prohibits federal contractors and subcontractors from discriminating against individuals based on disability. Section 503 is intended to reduce barriers to equal employment opportunities for individuals with disabilities (IWDs).

In 2014, the Office of Federal Contract Compliance Programs (OFCCP) issued a [final rule](#) to update provisions of Section 503 that had not changed since the 1970s. The regulations also implemented changes required by the ADA Amendments Act (ADAAA).

The OFCCP indicated that a change was necessary because a substantial disparity in the unemployment rate of IWDs continues to persist despite years of technological advances that have made it possible for people with disabilities to apply for and successfully perform a broad array of jobs.

Contractors that had an affirmative action plan (AAP) in place at the time were allowed to maintain that AAP until the end of their AAP year, but compliance with updated regulations is now required.

### LINKS AND RESOURCES

- OFCCP—[New Regulations](#): Section 503 of the Rehabilitation Act:
- OFCCP Section 503 [Compliance Checklist](#):
- Section 503 [Final Rule](#)

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

## HIGHLIGHTS

### SECTION 503

- Applies to all government contracts and subcontracts in excess of \$15,000 for the purchase, sale or use of personal property or nonpersonal services
- Prohibits federal contractors from discriminating against individuals based on disability
- Is consistent with updated provisions of the Americans with Disabilities Act

### EMPLOYER OBLIGATIONS

- Contractors must take affirmative action to recruit, employ, train and promote qualified IWDs.
- Contractors with at least 50 employees and a federal contract of \$50,000 must implement an APP.

## SECTION 503

Section 503 prohibits discrimination against IWDs and requires federal contractors and subcontractors to take affirmative action to recruit, employ, train and promote qualified IWDs. Section 503 regulations apply to all government contracts and subcontracts in excess of \$15,000 for the purchase, sale or use of personal property or nonpersonal services (including construction, but not federally assisted construction).

The framework articulating Section 503 contractor responsibilities has been in place since the 1970s. However, both unemployment and the percentage of working-age IWDs that are not in the labor force remain significantly higher than for those without disabilities. For this reason, a [final rule](#) on affirmative action and nondiscrimination for federal contractors became effective on **March 24, 2014**. The final rule was adopted to reduce the barriers IWDs face when entering the labor force.

The term “disability” within the context of Section 503 means:

- A physical or mental impairment that substantially limits one or more major life activities of an individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

## AFFIRMATIVE ACTION PLANS (AAPs)

To satisfy the requirements established by Section 503, contractors must establish an AAP. An AAP is a management tool designed to ensure equal employment opportunity and foster employment opportunities for IWDs. An effective AAP should be designed to be dynamic and include measurable objectives and quantitative analysis. AAPs should also implement internal auditing and reporting systems to enable contractors to monitor their progress and performance.

AAP obligations apply to every government contractor that has 50 or more employees and a federal contract of \$50,000 or more. At the time the final rule was adopted, contractors that already had an AAP in place were allowed to maintain that AAP until the end of their AAP year. However, these contractors must comply with current AAP regulations at the start of their following AAP cycles.

## UTILIZATION GOAL

A utilization goal is a benchmark set to ensure that contractors are including IWDs in their hiring practices. The utilization goal focuses on a contractor’s entire workforce and differs from the placement goal in that it measures newly placed employees. Contractors should use this goal to evaluate whether their outreach efforts are affecting the number of disabled individuals they hire.

Currently, the OFCCP has set an aspirational goal of **7 percent**. This goal is neither a quota nor a ceiling. Failing to meet the disability utilization goal is not a violation of the final rule and will not lead to a fine, penalty or sanction.

However, an employer with a utilization review lower than 7 percent must take steps to identify obstacles to equal employment that may exist within its recruitment structure. Specifically, the employer should assess existing personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its AAP audit and any other areas that might affect AAP success. Following the assessment, the contractor must develop and implement a program to correct any identified problem areas.

## VOLUNTARY SELF-IDENTIFICATION

In addition to the post-offer self-identification invitation that is already required by law, contractors must invite applicants to voluntarily self-identify as disabled individuals during the pre-offer stage of the hiring process. The OFCCP believes that gathering this data will allow contractors to evaluate the efficiency of their outreach efforts.

Contractors can find a [model form](#) that the OFCCP has provided to assist with the voluntary self-identification process. Contractors may also create their own electronically fillable form to invite self-identification. However, these forms must:

- Display the OMB number and expiration date;
- Contain the text of the model form without alteration;
- Use a sans-serif font, such as Calibri or Arial; and
- Use at least an 11-pitch font size (the footnote and burden statement must be at least 10-pitch in size).

The OFCCP is specifying the font size and type to ensure that employer-produced forms are accessible, consistent in appearance and easy to read.

## COLLECTING MEASUREMENT DATA

Section 503 requires contractors to collect specific data every year. This data includes the number of IWDs who apply for jobs with the employer and the number of IWDs the employer actually hires. Contractors must use this data to measure the effectiveness of their outreach and recruitment efforts. The data an employer records depends on whether the IWD is an applicant or an actual hire. Once recorded, contractors must preserve this data for at least **three years**.

For Applicants	For Hires
<ul style="list-style-type: none"><li>• The total number of applicants for employment and the number of applicants who are known IWDs.</li></ul>	<ul style="list-style-type: none"><li>• The total number of job openings, the number of jobs filled and the number of IWDs hired; and</li><li>• The total number of job openings and the number of jobs that are filled.</li></ul>

Collected data must include the total number of **job openings**, **jobs filled** and **individuals hired**. The total number of job “**openings**” refers to the number of individual positions advertised as open in a job vacancy announcement or requisition. Jobs “**filled**” refers to all jobs the company filled by any means, through competitive or non-competitive processes, such as reassignments or merit promotions. In contrast, the number of those “**hired**” refers solely to those applicants (both internal and external) who are hired through a competitive process, including promotions. For example, if one job vacancy announcement or requisition includes five open positions and results in four hires, the contractor would document this as five job openings and four jobs filled.

## CONTRACT LANGUAGE

Contractors must include specific, mandated language in their agreements to alert subcontractors of their responsibilities under Section 503. Including this language is meant to increase awareness of contractor obligations and increase compliance with Section 503 requirements.

## POSTING REQUIREMENT

Contractors must display at the workplace a poster to inform their workers of their rights and protections under the law. Contractors can use the “EEO is the law” [poster](#) to satisfy this requirement. Because of the 2014 final rule, some speculate that a new poster will be made available to describe the veterans protected by The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). However, as of April 2016, the poster has not changed and contractors must continue to use the existing poster. The OFCCP will post a notice on its [website](#) to let contractors know when the new poster is available for use.

A contractor with employees who do not work at the employer's physical location can satisfy the posting requirement by posting the EEO notice in an electronic format if:

- The contractor provides its employees with computers so they can access the electronic posting; or
- The contractor has actual knowledge that the electronically posted notice is otherwise accessible to its employees.

Electronic notices must be posted in a conspicuous location and format on an intranet network or must be sent to employees by electronic mail (i.e., email). If the contractor uses an electronic application process, it must post an electronic notice to inform job applicants of their equal employment opportunity rights. Electronic notices for applicants must be conspicuously stored with, or as part of, the electronic application. In addition, in individual instances, a contractor may have to provide a notice of equal employment opportunity rights electronically as a form of reasonable accommodation for a disabled employee, even if the employee works at the contractor's physical location.

## EQUAL OPPORTUNITY CLAUSE

Contractors must also state in its solicitations and advertisements that it is an equal opportunity (EO) employer for IWDs. Contractors may combine required EO clauses provided that the combined clause is set in bold text and the prescribed content of both clauses is preserved. The following example provides one illustration offered by the OFCCP:

*This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.*

## COMPLIANCE EVALUATIONS

It has long been the OFCCP's practice to obtain information pertinent to the evaluation for periods after the date of the scheduling letter. The OFCCP may extend the temporal scope of an evaluation and examine information after the date of the compliance evaluation scheduling letter, if necessary, to carry out its investigation of potential Section 503 violations.

## MORE INFORMATION

Contact The Insurance Exchange for more information regarding federal contractor employment laws.