EXTENDING AFFIRMATIVE ACTION PLANS TO VETERANS AND THE DISABLED: ARE YOU READY FOR 2012 COMPLIANCE?

Pending proposals could add to banks’ Labor Department compliance duties

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A year ago, I began this blog with an article about the Office of Federal Contract Compliance Programs: the OFCCP. I remarked how this agency of the federal Department of Labor flies under the radar for most bankers, but with a 20% increase in enforcement activity, banks should start taking notice.

Two significant OFCCP proposals set to take effect in 2012 now make that imperative.

A refresher on the OFCCP

The OFCCP enforces Executive Order 11246, a Carter-era initiative that requires federal contractors to establish and maintain an affirmative action plan (AAP), and undertake workforce reporting and other obligations. Banks with more than 50 employees are deemed “federal contractors” covered by the order because of their federally insured status, the sale of U.S. bonds, and other products and services that link banks inextricably with the federal government.

Annual preparation of an AAP requires some pretty complex number-crunching to ascertain the availability of women and minorities in the relevant population, and careful workforce recordkeeping to track their recruitment, hire, promotion, and termination in the various work groups within the bank. If these numbers show underutilization, that is, that the employment of women and minorities does not parallel their availability, then goals and timetables must be set for achieving compliance. Over the years, many bank HR professionals have absorbed the AAP burden into their routine, or have identified resources (like my firm, Employment Law Compliance) that can help.

Now, as well as doing this exercise for women and minorities, the OFCCP proposes that federal contractors include veterans and the disabled in a similar AAP analysis.

Proposed rule on veterans

The proposal, published on April 26, 2011, requires banks subject to AAP requirements to engage in specific types of outreach and recruitment, targeting veterans protected under the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA).

Those protected by VEVRAA include all who have served during a war, campaign, or expedition for which a campaign badge is authorized. Banks would also need to maintain data on the number of protected veterans who are referred for jobs, and who apply or are hired, much as they currently do for women and minorities, and to establish benchmarks for hiring based on availability data and other relevant information. Another proposed rule change would require banks to invite veterans to self-identify both pre- and post-offer of employment.

The period for comments on the proposed rule expired last July, and a Final Rule is expected early in 2012. To see the proposed rule, and submitted comments, click here.

It is anticipated that the Final Rule will closely follow the proposed rule, and take effect 120 days after publication.

Proposed rule on the disabled

This proposal, published on Dec. 9, 2011, is open for comment until Feb. 7, 2012. You can read the proposed rule here. As proposed, this rule requires federal contractors, including banks with more than 50 employees, to set a hiring goal of having at least 7% of their workforce be individuals with disabilities.

Section 503 of the Rehabilitation Act of 1973 already obligates federal contractors to provide equal employment opportunity to qualified disabled workers. And, of course, the Americans with Disabilities Act prohibits discrimination against the disabled, and requires appropriate accommodations to be made to allow qualified disabled individuals to perform their job.

The proposed rule goes much further. Federal contractors would be required to keep records of disabled applicants throughout the recruitment, screening, and hiring process, as they currently do for women and minorities, and set a timetable for achieving the 7% goal. This would impose a significant burden on banks subject to affirmative action requirements.

What your bank can do

It is not too late to take action:

• Inform senior management of both proposals and the likely impact on bank operations.

• Submit comments on the proposed rule on the disabled, either individually, or through professional associations like the ABA, your state bankers’ organization, or the Society for Human Resource Management.

• Make sure your AAP is current and complete.

While Congress is deadlocked, federal agencies like the OFCCP are using their rule-making powers to make sweeping changes in the workplace. Combined with stepped-up enforcement of existing regulation, this spells trouble for banks that have not given the HR function the resources and attention it deserves.

About the author

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