Department of Labor
Office of Federal Contract Compliance Programs
41 CFR Part 60-741
Affirmative Action and Non-discrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Final Rule
(1) Filing a complaint;
(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of VEVRAA or any other Federal, state or local law requiring equal opportunity for protected veterans;
(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for protected veterans; or
(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) Review of personnel processes.
The contractor shall ensure that its personnel processes provide for careful, thorough, and explicit consideration of the job qualifications of applicants and employees who are known as protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a protected veteran is considered for employment opportunities, the contractor relies only on the individual’s military record, including his or her discharge papers, relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new personnel processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C are not required and contractors may develop other procedures appropriate to their circumstances."

(c) Physical and mental qualifications. (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity. (2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor has the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of individual or others in the workplace. (See §60-300.2(g) defining direct threat.)

(d) Reasonable accommodation to physical and mental limitations. As is provided in §60-300.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled veteran unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee’s disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) Harassment. The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a protected veteran.

(f) External dissemination of policy, outreach and positive recruitment.

(1) Required outreach efforts.

(i) The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraph (j)(1) of this section that are reasonably designed to effectively recruit protected veterans. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (j)(2) of this section or that its activities will be limited to those listed. The scope of the contractor’s efforts shall depend upon all the circumstances, including the contractor’s size and resources and the extent to which existing employment practices are adequate.

(ii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) Examples of outreach and recruitment activities. Below are examples of outreach and positive recruitment activities referred to in paragraph (f)(2) of this section. This is an illustrative list, and contractors may choose from these or other activities, as appropriate to their circumstances.

(i) Enlisting the assistance and support of the following persons and organizations in recruiting and developing on-the-job training opportunities for veterans, in order to fulfill its commitment to provide meaningful employment opportunities for such veterans:

(A) The Local Veterans’ Employment Representative in the local employment service office (i.e., the One-Stop) nearest the contractor’s establishment;

(B) The Department of Veterans Affairs Regional Office nearest the contractor’s establishment;

(C) The veterans’ counselors and coordinators (“Vet-Rep’s”) on college campuses;

(D) The service officers of the national veterans’ groups active in the area of the contractor’s establishment;

(E) Local veterans’ groups and veterans’ service centers near the contractor’s establishment;

(F) The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP; and

(G) Any organization listed in the Employer/Supplier section of the National Resource Directory (http://www.nationalresourcedirectory.gov), or any future service that replaces or supplements it.

(ii) The contractor should also consider taking the actions listed below, as appropriate, to fulfill its commitment to provide meaningful employment opportunities to protected veterans:

(A) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company’s selection process, and recruiting literature should be an integral part of the briefing. At any
FEDERAL REGISTER

Vol. 78  Tuesday,
No. 185  September 24, 2013

Part II

Department of Labor

Office of Federal Contract Compliance Programs
41 CFR Parts 60–250 and 60–300
Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans; Final Rule
discrimination in violation of section 503 or this part.

§ 60–741.43 Affirmative action policy.

Under the affirmative action obligations imposed by the act, contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–741.20.

§ 60–741.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to the following elements:

(a) Policy statement. The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). The policy statement shall indicate the top United States executive's (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program, provide for an audit and reporting system (see paragraph (b) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy shall state, among other things that the contractor will: recruit, hire, train, and promote persons in all job titles, and ensure that all other personnel actions are administered without regard to disability; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;
(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of section 503 or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;
(3) Opposing any act or practice made unlawful by section 503 or its implementing regulations in this part, or any other Federal, State or local law requiring equal opportunity for individuals with disabilities; or
(4) Exercising any other right protected by section 503 or its implementing regulations in this part.

(b) Review of personnel processes. The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, the contractor shall ensure that applicants and employees with disabilities have equal access to its personnel processes, including those implemented through information and communication technologies. The contractor is required to provide necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes. The contractor is also encouraged to make its information and communication technologies accessible, even absent a specific request for reasonable accommodation. ¹ The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this

¹ Contractors are encouraged to make their information and communication technology accessible. There are a variety of resources that may assist contractors in assessing and ensuring the accessibility of its information and communication technology. These include the Web Content Accessibility Guidelines (WCAG 2.0) of the World Wide Web Consortium Web Accessibility Initiative, online at www.w3.org/WAI/intro/wcag.php, and the regulations implementing the accessibility requirements for Federal agencies prescribed in section 508 of the Rehabilitation Act Information on section 508 may be found online at http://www.section508.gov/index.cfm. This Web site also provides information about various State accessibility requirements and initiatives.

(c) Physical and mental qualifications. (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified individuals on the basis of disability, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c).

(d) Reasonable accommodation to physical and mental limitations. (1) As is provided in § 60–741.21(n)(6), as a matter of nondiscrimination, the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(2) Reasonable accommodation procedures. The development and use of written procedures for processing requests for reasonable accommodation is a best practice that may assist the contractor in meeting its reasonable