



DirectEmployers
Association

Update on the Current Status and Latest Developments Related to EEO and DEI Compliance at the End of the Federal Government's Fiscal Year

Webinar Q&A Guide

Q: Since job groups were addressed in EO11246, how should the VEVRAA and Section 503 AAPs be prepared?

A: The concept of **job groups** applies only to the disability utilization analysis. The veteran hiring benchmark and the data collection analyses are not calculated using job groups.

Insofar as the disability utilization analysis is concerned, construction employers with direct federal construction contracts prepared Section 503 AAPs, too, including a disability utilization analysis, but they've never used job groups. Job groups were a supply and service concept, not a construction concept. Construction employers typically prepared Section 503 analyses by EEO-1 category or trade, and OFCCP never critiqued that. We have always inferred from that position that employers retain discretion to group employees for purposes of the disability utilization analysis either by using legacy EO11246 job groups, EEO-1 category, skill or trade, or any other sensible grouping for purposes of comparing their employment of individuals with disabilities against the 7% goal.

The question also asked how the Section 503 and VEVRAA AAPs should be prepared, and the answer is "by establishment." The Section 503 and VEVRAA regulations require employers "within 120 days of the commencement of a contract, [to] prepare and maintain an affirmative action program at **each establishment.**" 41 CFR Section 60-741.40(b)(2) and 41 C.F.R. Section 60-30040(b) (bold font added). The OFCCP has not proposed to modify those regulations.



Q: How about any special programs a company might have in place for Veterans or perhaps a neurodiverse group? Permissible or Violation?

A: Permissible. Non-veterans are not a protected group, and non-disabled people are not a protected group. It is very unlikely that someone who is not a veteran or not disabled is going to file a discrimination charge alleging denial of opportunities or exclusion from programs that are aimed at veterans or neurodiverse groups.

Q: Some state laws may have stronger protections or requirements that encourage DEI – so there may be tension between following state law versus these new federal requirements (if they are enforced) What are your thoughts on navigating federal vs state DEI requirements?

A: The federal government has insisted in its legal briefs and at oral argument through the Department of Justice attorneys who represent it, that it is only focused on **illegal** DEI. If there are state laws that encourage illegal DEI, we recommend that you get a legal opinion from your employment lawyers regarding the competing requirements and risk associated with non-compliance at the state level.

Q: Where can we read the comments to the proposed changes to the D/V regs?

A: Rescission of EO 11246: <https://www.regulations.gov/docket/OFCCP-2025-0001>

Modifications to 503: <https://www.regulations.gov/docket/OFCCP-2025-0003>

Modifications to VEVRAA: <https://www.regulations.gov/docket/OFCCP-2025-0002>

