

A REVIEW OF FEDERAL CONTRACTOR EEO OBLIGATIONS AFTER SEPTEMBER 21, 2026

DirectEmployers Association

ROFFMAN HORVITZ, PLC
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HUMAN RESOURCES COMPLIANCE AND EMPLOYMENT DATA ANALYTICS

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SEPTEMBER 15, 2026

1

1

MEET THE TEAM



JOSHUA S. ROFFMAN
MANAGING ATTORNEY

Joshua Roffman is the Managing Attorney of the Firm. Josh's practice focuses on advising and assisting employers with using data and statistical tools to evaluate their employment practices. He has been advising federal contractor employers about compliance with federal and state equal employment opportunity and "affirmative action" requirements for over twenty years. He currently is guiding employers in assessing their DEIA and similar programs for risk mitigation and compliance with nondiscrimination laws.

Josh also advises and assists employers with privileged pay equity statistical analyses. He develops and runs the statistical analyses and combines that with knowledge of the law and a pragmatic understanding of businesses and other employers to ensure analytical rigor, usefulness, and legal soundness.

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2

2

MEET THE TEAM



ALISSA A. HORVITZ
MEMBER ATTORNEY

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on evaluating nondiscrimination and equal opportunity throughout all phases of employment using data and employment analytics. This includes analysis and advice regarding EEO in recruiting, hiring, promotions, terminations, and compensation (pay equity), as well as DEI reviews for government contractor employers. Alissa also does live and virtual training on relevant employment law topics.

MEET THE TEAM



JAMES M. MCCAULEY
OF COUNSEL

James McCauley is Of Counsel with Roffman Horvitz. James's experience includes evaluation and analysis of employment practices to ensure equal opportunity; preparation of EEO-1, VETS-4212, and California Pay Data Reporting filings; pay equity analyses; and analysis of applicant and hire records to address potential claims of hiring disparities.

About Mickey Silberman, Esq.



Mickey Silberman is the founder and Managing Principal of Silberman Law, PC.

For more than 30 years, Mickey has counseled and represented employers in every industry across the full spectrum of workplace law, specializing in government contractor EEO obligations, Pay Equity, and Artificial Intelligence in the Workplace.

He is nationally recognized as a leading attorney and public speaker in these areas.

TOPICS

- Overview of Final Regulations Published on August 21
- The 2013 VEVRAA and Section 503 Regulatory Expansion
- The Decision: Disability Self-Identification Solicitations
- Veteran and Disability Outreach
- Executive Orders 14173 and 14398

OVERVIEW OF FINAL REGULATIONS PUBLISHED ON AUGUST 21

7

7

NEW FINAL RULES PERTAINING TO THE THREE LAWS OVERSEEN BY OFCCP

- Elimination of Executive Order 11246 Regulations Pertaining to “Affirmative Action” for Women and Minorities
- Non-Substantive Housekeeping Changes to VEVRAA Regulations Pertaining to “Affirmative Action” for Protected Veterans
- Housekeeping and Substantive Changes to Section 503 of the Rehabilitation Act Regulations Pertaining to Individuals with Disabilities
- Effective September 21, 2026

8

8

SECTION 503 REGULATIONS

- Elimination of Self-Identification Solicitation Obligation
- Elimination of Utilization Analysis and Data Collection Analysis
 - Veterans' regulations continue to have the hiring benchmark and data collection analysis
- Elimination of Self-Identification Form CC-305

THE 2013 VEVRAA AND SECTION 503 REGULATORY EXPANSION

SECTION 503 AND VEVRAA REGULATIONS – A HISTORY LESSON, PRE- AND POST-2013

- Significant Expansion of Regulatory Obligations in 2013
 - Disability self-identification solicitation requirements expanded
 - Disability applicant self-identification and employee resurveys
 - Data metrics added for the first time to the annual AAPs
 - Disability utilization/Veteran hiring benchmark
 - Data collection of protected veterans and individuals with disabilities who self-identified during the application stage and the hire stage, along with total opportunities
 - Much more employer accountability and robust responsibilities beyond the data metrics (see next slide)

SECTION 503 AND VEVRAA REGULATIONS – A HISTORY LESSON, PRE- AND POST-2013 (CONTINUED)

- Much More Robust Responsibilities Beyond the Data Requirements
 - Allowed digital posting of the EEO notice, in addition to physical poster for employees; mandated electronic notice to applicants if employer uses electronic ATS
 - Made incorporating the EEO clause into subcontracts very precise with specific flow-down language and bold font
 - Extended reasonable accommodation to any electronic application system (best practice to make online application system compatible with assistive technologies)

SECTION 503 AND VEVRAA REGULATIONS – A HISTORY LESSON, PRE- AND POST-2013 (CONTINUED)

- Much More Robust Responsibilities Beyond the Data Requirements (continued)
 - AAP must be reviewed and updated annually by the responsible official (greater accountability)
 - Ensured the AAP (absent the data) would be made available to applicants and employees
 - Enhanced many of the sub-paragraphs within 60-741.44
 - New regulations eliminate only one obligation
 - 60-741.44(k) – Data Collection Analysis
 - The 10 other paragraphs of the 60-741.44 from then 2013 regulatory expansion remain
 - 6 of those 10 paragraphs were changed or expanded in 2013
- Added 60-741.45 - Utilization Analysis
 - Now eliminated

**THE DECISION:
DISABILITY SELF-
IDENTIFICATION
SOLICITATIONS**

DISABILITY SELF-IDENTIFICATION SOLICITATIONS

- New Regulations Eliminate the Obligation to Solicit Self-Identification of Disability Status
 - Pre-offer
 - Post-offer / pre-employment
 - Employee resurveys every 5 years
- Veterans Pre-Offer and Post-Offer / Pre-Employment Self-Identification Solicitations Obligations Remain

DISABILITY SELF-IDENTIFICATION DOL/OFCCP REASONING

- Prohibited by the Americans with Disabilities Act
 - 42 U.S.C. § 12112 (d) – Medical examinations and inquiries
 - 12112(d)(2) – Preemployment
 - Pre-offer
 - 12112(d)(4) – Examination and inquiry
 - Pertains to employees
 - Gloss over 12112(d)(3) – Employment entrance examinations
 - Post-offer / pre-employment
 - See also EEOC's ADA regulations at 29 C.F.R. § 1630.14
 - (a) Acceptable pre-employment inquiry
 - (b) Employment entrance examination
 - (c) Examination of employees
- Unnecessary Burden

HISTORY OF LEGAL GUIDANCE AND OBLIGATIONS

- ADA Statutory Language: 42 U.S.C. « 12201 – Construction

- (a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

HISTORY OF LEGAL GUIDANCE AND OBLIGATIONS (CONTINUED)

- EEOC's ADA Regulations: 29 C.F.R. « 1630.1(c) – Construction

(1) ***In general.*** Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-794a, as amended), or the regulations issued by Federal agencies pursuant to that title.

(2) ***Relationship to other laws.*** This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than is afforded by this part.

- Appendix to Part 1630 – Interpretive Guidance on Title I of the Americans With Disabilities Act

- Section 1630.14(a) Pre-employment Inquiry (“As previously noted, collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act is not restricted by this part. (See « 1630.1 (b) and (c) Applicability and Construction).”)

HISTORY OF LEGAL GUIDANCE AND OBLIGATIONS (CONTINUED)

- Federal Register Original Publication of ADA Regulations – 56 Fed. Reg 35726 (July 26, 1991)

“Many employers and employer groups have asked the Commission to discuss whether employers may invite applicants to self-identify as individuals with disabilities. In that regard, many of the commenters noted that section 503 of the Rehabilitation Act imposes certain obligations on government contractors. The interpretive guidance accompanying « 1630.1(b) and (c) notes that ‘title I of the ADA would not be a defense to failing to collect information required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act.’ To reiterate this point, the Commission has amended the interpretive guidance accompanying « 1630.14(a) to note specifically that this section does not restrict employers from collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act.”

56 Fed. Reg. 35732

HISTORY OF LEGAL GUIDANCE AND OBLIGATIONS (CONTINUED)

- EEOC Guidance Documents

- Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations (October 10, 1995)

“May an employer ask applicants to “self-identify” as individuals with disabilities for purposes of the employer’s affirmative action program?”

Yes. An employer may invite applicants to voluntarily self-identify for purposes of the employer’s affirmative action program if:

- the employer is undertaking affirmative action because of a federal, state, or local law (including a veterans’ preference law) that requires affirmative action for individuals with disabilities (that is, the law requires some action to be taken on behalf of such individuals); or
- the employer is voluntarily using the information to benefit individuals with disabilities.

Employers should remember that state or local laws sometimes permit or encourage affirmative action. In those cases, an employer may invite voluntary self-identification only if the employer uses the information to benefit individuals with disabilities.”

HISTORY OF LEGAL GUIDANCE AND OBLIGATIONS (CONTINUED)

•EEOC Guidance Documents (continued)

- ADA: Disability-Related Inquiries and Medical Examinations (November 7, 2000) (response to OFCCP inquiry regarding proposed requirement to solicit “special disabled veteran” status from applicants)
- EEOC Letter to OFCCP Director Patricia Shiu (August 8, 2013) (response to OFCCP inquiry regarding requirement to solicit pre-offer voluntary self-identification from applicants)
- OFCCP Federal Register publications pertaining to VETS-100 / VETS-4212 and VEVRAA and Section 503

BEST PRACTICES IF ELECTING TO CONTINUE SOLICITING DISABILITY SELF-IDENTIFICATION

•What's on the Form

- Voluntary
- Not going to be used to make any employment decisions
- Not answering the request will not result in any adverse decision
- Why is the employer asking (?)
- How the form will be maintained/stored (see below)
- How the form will be used

•How the Form Itself Needs to be Maintained/Stored

- Separate from the application
- Kept in a confidential medical file (i.e., in a database that is separate and apart from the personnel database)
- Ensure that only a very small # of need-to-know people can access the database where the information is stored

HANDLING OF DISABILITY SELF-IDENTIFICATION INFORMATION

- Recordkeeping
 - Section 503 recordkeeping requirements
 - Discretionary
 - Purge?
- How to Maintain the Data
- Employee Access to Own Information (Self-Service Portals)

ENFORCEMENT MECHANISMS?

- EEOC?
- OFCCP Audit Technical Violation
- False Claims Act

VETERAN AND DISABILITY OUTREACH

25

25

OUTREACH EFFORTS

- Obligation
- Written Assessment
- Lack of Data
- Alternative Data Metrics
- Recordkeeping

26

26

EXECUTIVE ORDERS 14173 AND 14398

27

27

EXECUTIVE ORDERS 14173 AND 14398

- Status of Regulations
- Proposed SAM Certification
- EEOC Information Requests
- False Claims Act Settlements
 - DOJ Initiated
 - IBM (\$17 million)
 - Accenture (\$25 million)
 - Initiated by Qui Tam Relator
 - Deloitte (\$21.5 million)
 - Relator American Alliance for Equal Rights receives \$4.3 million of the \$21.5 million
 - Settlements tied to rescinded Executive Order 11246 Equal Opportunity clause (FAR clause 52.222-26)

28

28

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THANK YOU